AUSTRALIAN FEMINISTS FOR WOMEN'S RIGHTS

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Submission to the Australian Law Reform Commission
Review of Australian surrogacy laws: Discussion Paper

Australian Feminists for Women's Rights (AF4WR) is an incorporated association of feminists from all over Australia campaigning for women's sex-based rights protections, within a broader context of social and economic justice for all.

We welcome this opportunity to provide a submission on the above topic.

Introduction

To begin, we note the question the President of the ALRC, Mordy Bromberg, addressed to us and to other organisations present at a Roundtable held on the morning of 18 December, concerning the possibility of reconciling the Terms of Reference (TOR) of this Review established by the then Attorney General (AG), Mark Dreyfus, with a complete prohibition of surrogacy.

The ALRC has indeed been asked to consider "how to reduce barriers to domestic altruistic surrogacy arrangements in Australia". However, it is asked to do so first, in ways that are "consistent with Australia's obligations under international law and conventions" and that "protect and promote the human rights of children born as a result of surrogacy arrangements [and] surrogates", and second, in ways that "ensure surrogates are adequately reimbursed for legal, medical and other expenses incurred as a consequence of the surrogacy".

To address this second consideration first, it is our view that such "adequate" compensation is unrealisable, given the significant physical and psychological impacts and risks for the birth mother (which in some cases of extreme complications with the pregnancy or birth can include loss of life). What is the monetary value that can be placed on a woman's life, on the potential loss of her reproductive capacity (through an emergency hysterectomy for example), or on other profound physiological and psychological impacts that pregnancy and childbirth have on mothers, especially when they have been forced to relinquish their children? What dollar amount can possibly be considered "adequate" compensation for these risks and impacts?

As concerns the first consideration, we reiterate our position that surrogacy, even if framed as altruistic, is incompatible with Australia's human rights obligations. This position is consistent with that of United Nations Special Rapporteur on Violence Against Women and Girls, Reem Alsalem (which recommends the *eradication of surrogacy* in all its forms, UNGA A/80/158); with our previous submission to the ALRC Issues Paper on 10 July 2025 (Submission 182); and with another submission to the Issues Paper by a coalition of feminist organisations, of which we were a co-signatory (submission 155). A prohibition on participation in domestic or international surrogacy arrangements is the only suitable outcome if the priority consideration is genuinely the human rights of the children born, and the mothers giving birth, through surrogacy arrangements.

This submission further contends that:

- there is no human right to acquire a child through any means, including through assisted reproductive technology or procurement;
- surrogacy constitutes a form of reproductive exploitation involving the commodification of women's bodies, and the commodification of children;
- human rights law recognises that human dignity is incompatible with treating the body as a rentable object;
- the Convention on the Rights of the Child prohibits the sale of children, or transfer of children for remuneration or consideration. Even when framed as "compensation" any payment to a surrogate mother is inseparable from the procurement of a child; and
- human rights law is cautious about contracts that bind a person in advance to intimate, identity-shaping acts. It is impossible for a woman to predict the physical and psychological impacts of surrendering a child she has carried. It is, further, impossible to determine in advance the impact on a child of being born of surrogacy.

For all of these reasons, we are of the view that it is impossible to resolve the contradictions inherent in the TOR of this Review and that the Review—or indeed any review of surrogacy aiming to expand or further legitimise the practice—should thus not proceed.

We similarly question the logic informing the use of some of the terminology in the Discussion Paper, e.g. "intended parents" for the couple wishing to procure a child through surrogacy (we use the term "commissioning couple or individual" here), or the definition of a surrogate mother as a "person" who becomes pregnant and gives birth to a child: those who become pregnant and give birth to children are women. This is a biological fact, not a question of identity. If we are talking about women, we should do so

clearly and not disappear the surrogate mother's existence as a woman and birth mother with such absurd "gender-neutral" language.

We now turn to addressing the Discussion Paper's proposals in detail, even as we recognise the contradictions inherent in pursuing this review.

Proposals 1 and 2: National harmonisation of legislation and national regulator

In Australia the responsibility for regulating surrogacy falls to the States and Territories. All Australian jurisdictions have chosen to ban commercial surrogacy and most have regulation around so-called altruistic surrogacy. Any nationalisation of Australian laws needs to factor in this existing legislation and continue to ban commercial surrogacy, as a minimum.

We also recognise surrogacy as akin to human trafficking, in that it involves the procurement of humans, usually across state borders. This is regulated by the Australian government. We would support a national approach that regulates surrogacy in the same way that Australia manages other human trafficking.

Question A: Design principles and safeguards for regulatory body

Your question foregrounds the need for efficiency, accessibility, accountability and transparency. We agree. A national regulator overseeing this particularly complex and controversial issue must be accountable to all parties and transparent and balanced in its decision making. It is thus imperative that the regulatory power not be concentrated in the hands of one appointee but given to a board representing a range of interests and expertise, without the interests of the commissioning couple or individual dominating (as they currently tend to in public debate on this issue). The terms of appointment of individuals to the board should be limited to a maximum of, say, five years, and the board should report to a parliamentary oversight body such as a bipartisan human rights committee.

Proposal 3: Surrogacy support organisations (SSOs)

We oppose this proposal as the setting up of such organisations—and their very nomenclature—would further legitimise surrogacy. Framing them as some sort of "matchmaking" entity as if surrogacy arrangements were similar to dating is particularly offensive. Moreover, Proposal 3 appears to recommend that these organisations, which would be set up privately with apparently no regulatory oversight, exercise powers that are more appropriately exercised by a government regulator or by the courts (e.g. dealing with requests to waive residency and citizenship requirements or facilitating conflict resolution).

AF4WR is opposed to any sort of profiteering by third parties on the back of surrogacy arrangements, however the latter may be legitimised or regulated. No surrogacy arrangement is, or should be, entered into lightly, and may involve considerable anxiety or distress for all parties. The introduction of profit-making "agents" into the equation is absolutely abhorrent and must be rejected as part of any regulatory model.

If the ALRC sees a need, within its proposed regulatory model, to devolve some responsibilities to more locally-situated agencies in order to review and process surrogacy agreements, these agencies should be governmental or auspiced by state governments, not private, and no profits should be earned from their existence or functioning. Under no circumstances, however, should they play a role of "surrogacy matchmaker" or otherwise serve as agents for commissioning couples or individuals, egg providers, surrogate mothers or medical practitioners.

Proposals 4 and 5: Approving surrogacy agreements and Components of the approval process

If we are being forced to accept the legal legitimation of surrogacy, then yes, it absolutely must be legally regulated and a formal agreement entered into prior to any egg harvesting or impregnation process commencing. We agree with the concerns expressed in para. 68, p. 22 of the Discussion Paper, although we disagree that the surrogate mother should be simply a vehicle for bringing a child into the world and removed from the equation thereafter. As stated above, we categorically reject the creation and involvement of SSOs. Surrogacy should never be a business advantaging third parties.

We also reject the presumption of approval of a surrogacy arrangement at the outset. Each case must be considered on its merits and there should be no expectation whatsoever on the part of commissioning couple or individual that approval is automatic or even likely. If we are forced to accept the existence of surrogacy under Australian law, then it must be a truly exceptional occurrence, not a norm, and the most rigorous checks and balances applied in every individual case.

Question C: Should SSOs approve surrogacy arrangements?

No. SSOs as proposed in the Discussion Paper should not even exist.

Proposal 7: Role of national regulator to inform and educate

Any national regulator, and existing state regulators, have a responsibility to educate and inform all parties, including medical practitioners, of the risks, human rights considerations, rights and responsibilities of participating in surrogacy.

We do not, however, accept number of assertions made in the explanatory paragraphs.

First, the assertion that "parents through surrogacy are not the child's actual parents" is a "misconception" (para. 74, p. 24) is of concern. The meaning of the word "actual" is "true, existing in fact" and the reference in this paragraph to the commissioning couple or individual as being "actual parents" without a word of reference to the birth mother is at best misleading and indeed wrong, in all commonly accepted senses of the words "parent" and "mother".

We are further concerned about the assumptions underpinning assertions in para. 78, pp. 24–25. The assumption about the desirability of "intended parents" being present at the birth is chillingly reminiscent of Margaret Atwood's dystopian fiction *The Handmaid's Tale*, and immediate separation of the birth mother from the child is clearly presented as the most desirable outcome (which flies in the face of all medical knowledge about birthing).

Breastfeeding is frowned upon in this paragraph as something the birth mother should not be "forced" to do—regardless of the proven psychological and physical health benefits of breastfeeding to both mother and child. If the best interests of the child are prioritised as the Discussion Paper claims, then being given a healthy start in life through breastfeeding must be considered integral to those interests.

Proposals 8 and 9: Prohibition of domestic surrogacy for "impermissible profit or reward" and prohibition of "unregistered" overseas surrogacy, with civil rather than criminal penalty

The argument under this proposal for removing criminal penalties is that children may be deprived of parents (presumably the "intended parents"), that surrogate mothers may suffer unjust criminal penalties and that rather than deterring the practice, criminal penalties would simply drive it "underground" (paras 87–88, p. 28). The evidence for such a claim is, however, shaky. That said, we agree that surrogate mothers should never suffer either criminal or civil penalties as, objectively speaking, they are in the more vulnerable position, and either exploited or at risk of being so, and surrogacy demonstrably shares many characteristics with prostitution.[1] As for the commissioning couple or individual, we are not convinced that civil penalties would constitute a sufficient deterrent, nor are we convinced that the claim that penalties drive the practice "underground" is less valid in the case of civil penalties than in the case of criminal penalties.

[1] Ekman, Kajsa Ekis, 2013. Being and Being Bought: Prostitution, Surrogacy and the Split Self. Melbourne: Spinifex Press.

We see the problem of recourse to "impermissible" surrogacy, either domestic or overseas, not as one of inadequate domestic "supply" of surrogate mothers as the Discussion Paper claims (para. 21, p. 5), but as created by the very legitimation of surrogacy as a desirable practice, in which women are constructed as vehicles for producing children for third parties. Having a child is not a "service" like cleaning a house or providing a haircut: it is a demanding experience that is transformative both physically and psychologically for the birth mother.

We strongly support the severest criminal penalties for engaging in overseas commercial surrogacy arrangements, which are largely unregulated and pose considerable human rights concerns. We do not accept that "registration" renders overseas surrogacy acceptable and do not accept that any jurisdiction in which commercial surrogacy is allowed is "low-risk", especially to the birth mothers and egg providers (paras 92–94, p. 30).

Proposal 10: Facilitation of prohibited surrogacy

We support Proposal 10 and are in favour of criminal rather than civil sanctions.

Proposal 11: Authorising advertising in relation to surrogacy

We firmly oppose any advertising of surrogacy, which under no circumstances should be considered in any way comparable to a form of exchange in the marketplace.

Proposal 12: Same treatment for traditional and gestational surrogacy

We agree, but not for the same reasons. There is always a profound physical connection between a birth mother and a child, and the pregnancy operates profound changes in a woman's body, regardless of the source of the egg. The primary definition of "mother" should be the woman who gestates and births the child, rather than any egg provider or commissioning couple or individual.

However, full support must be provided to egg providers because this process is a significant medical and psychological intervention.

As an aside, emerging science demonstrates that there is some transfer of genetic material from gestating child to mother, even if this child is not from the mother's own egg. There is thus a "genetic connection" between mother and child even where a different egg provider was involved.

Proposal 13: Requirement for access to surrogacy

We repeat our earlier observation that there is no human right to have a child, whether biological, adopted, or procured.

We hold that surrogacy is not justified under any circumstances, and there is never any absolute "need" for any individuals to order from a third party or parties the creation of a new baby.

We note that if surrogacy is to continue to be practised legally then the requirements should be strictly limited to medical reasons only. There is no conceivable justification for allowing surrogacy on "psychological" grounds, including "tokophobia" (pathological fear of pregnancy). Further, we do not accept the proposed "broad" definition of "genuine" need (para. 114, p. 35) as this leaves the way open to further normalisation of surrogacy, not to mention manipulation of the law by those with enough money to pay high-level lawyers.

We also note that in the Discussion Paper, para. 111, p. 34 clearly recognises the high risk to surrogate mothers, which should reinforce a position to prohibit all forms of surrogacy.

Proposal 14: Age requirement for surrogate mother

Under no circumstances should a surrogate mother be aged under 25; studies on development into adulthood and full brain maturity have shown that full development of the prefrontal cortex is not complete until age 25. Women under that age should not be making significant life-changing and body-altering decisions. There should be no "accredited counsellor"-facilitated exceptions (para. 117, p. 35).

Proposal 15: Residency requirements for commissioning couple or individual

If surrogacy is to continue to be enabled in Australia, we do not consider that this requirement should ever be dispensed with.

States should continue to restrict access to surrogacy for non-citizens, to prevent "surrogacy tourism".

Proposal 16: Requirement of previous successful pregnancy

If surrogacy is to continue to be enabled in Australia, we do not consider that this requirement should ever be dispensed with.

Proposals 17 and 18: Requirement for medical and psychological screening

This should definitely be a requirement, but we do not consider that an SSO should be involved as we do not agree with the creation of these SSOs.

We also question why the surrogate mother's psychologist must be a member of the Australian and New Zealand Infertility Counsellors Association as her psychological needs are clearly separate from the presumably infertile commissioning couple or

individual. Such counsellors *may* be biased in favour of surrogacy arrangements and their advice risks being weighted towards the commissioning couple or individual, to the disadvantage of the woman proposing to enter into the agreement as a surrogate mother.

Question D: Psychological assessment

Yes, psychological assessment should apply for all parties. The commissioning couple or individual also needs to be cognisant of the psychological risks to the child from separation from her or his birth mother.

Proposal 19: Criminal history check

The commissioning couple or individual should definitely undergo a criminal history check and the results should be provided to the women who is the intended surrogate mother before any contract is entered into.

A review of the commissioning couple's or individual's criminal history should also be considered as part of the regulator's approval of the surrogacy arrangement. Any conviction that relates to child or sexual abuse should prohibit any commissioning couple's or individual's access to surrogacy.

Proposal 20: Legal advice

All parties should receive legal advice from an accredited legal provider and this advice must be free for the women who is the intended surrogate. The commissioning couple or individual should not have the same legal advisor as the intended surrogate due to conflict of interest considerations. Again, there should be no role for any private SSO as we do not agree with the creation of surrogacy agencies.

Proposal 21: Counselling

We agree that there should be counselling for all parties, including partner and children of the surrogate mother.

As per our comments in response to Proposal 18, we do not understand the rationale for insisting that the counsellor must be a full member of the Australian and New Zealand Infertility Counsellors Association. This implies a conflict of interest impacting on the surrogate mother in particular.

Questions F and G: Funding of access to counselling for others

The surrogate mother's partner and any children should also have access to counselling funded by the commissioning couple or individual.

Counselling during and after birth should be available to the surrogate mother and her family if desired and should be funded by the commissioning couple or individual.

Proposal 22: Surrogacy agreements

Under no circumstances should any surrogacy agreement require the intended surrogate mother to accept the presence of the commissioning couple or individual at birthing nor should it require the immediate separation of birth mother and child after birth.

The birth mother must have the opportunity to breastfeed the child and as stated in our earlier submission in response to the Issues Paper, the birth mother must have the choice to have an ongoing relationship with the child whom she has carried to term and to whom she has given birth. This relationship, if desired by the surrogate mother, must be accommodated by the commissioning couple or individual.

In our opinion, an immediate post-birth separation meets the threshold for description as cruel and unusual, for both mother and child. The WHO recommendation is for a child to be exclusively breastfed for six months, so ideally, for the best interests of the child she or he should not be separated from her or his breastfeeding mother for at least six months.

Question H: Other requirements

Legislation needs to recognise the high likelihood of coercion involved in altruistic surrogacy and put safeguards in place, recognising that consent is invalid where there is a power imbalance and/or social norms or emotional pressures compel compliance.

Proposal 23: Surrogates' autonomy, bodily integrity and informed consent

These are essential.

Proposal 24: Enforceability

Questions I & J: Enforceable and unenforceable provisions

It is not reasonable to expect that a surrogate mother will be able to predict all the physical and psychological impacts of the pregnancy and childbirth, even if she has carried a pregnancy to term before. Not only are there medical risks but physical and psychological transformations do occur and the possibility of regret on the part of the birth mother must be acknowledged. Entering into a surrogacy arrangement is not the same as buying or selling a house or a car and thus the maxim "all sales are final" should not apply in the case of the intended surrogate mother. On the other hand, the commissioning couple or individual, in "commissioning" a child in this way, have agreed to the imposition of significant physical and psychological demands on the surrogate mother, and an "agreed" sacrifice on her part, and should not have the opportunity to

change their minds once the process is entered into. They should most certainly not be able to withdraw from the agreement if the "commissioned" child does not meet their expectations in some way (has a disability, for example).

It is thus our opinion that agreements should be enforceable for the commissioning couple or individual, including costs, but not for the surrogate mother. If the surrogate mother experiences regret and wishes to exit the agreement, and the commissioning couple or individual wish to recover part of their costs for this reason, provision must be made for cost recovery that is both sensible—proportionate—and humane: that is, not onerous for the surrogate mother. Any measure providing for cost recovery must factor in the power imbalance that is intrinsic to any surrogacy agreement: the surrogate mother carries the majority of the risk and the commissioning couple or individual reap the majority of the reward. We note that the Discussion Paper recommends that even in the case of non-compliant or prohibited surrogacy agreements, "it may be appropriate for the legislation to provide that the entitlements to reimbursements and other payments in Proposals 25 and 26 should be enforceable as statutory entitlements, so that the surrogate [mother] is not unreasonably disadvantaged" (para. 154, p. 48). We can but agree.

We further note that the risk of miscarriage or other problem necessitating an abortion to save the surrogate mother's life or health should not result in any attempt at recovery of costs up to that point by the commissioning couple or individual. The commissioning couple or individual must be fully cognisant of the medical risks to which the surrogate mother may be subjected and of potential unexpected negative outcomes that are not her personal fault. She should thus not be expected to bear any material costs associated with such an outcome and should be compensated for any temporary or lasting health impact of an aborted pregnancy, just as she would for a pregnancy carried to term.

Question K: Method of enforcement

Any disagreement over these matters, if unable to be resolved by a court-approved mediator, should be resolved by a court decision.

Proposal 25: Reimbursing surrogate mothers for expenses

We completely agree that all listed pregnancy-related expenses incurred by the surrogate mother, including deprivation of income and related superannuation contributions, and any other pregnancy-related expense not listed under the Proposal, must be met by the commissioning couple or individual.

Children of the surrogate mother also need to be supported with counselling.

Question L: Should caps be set?

We do not believe that any cap should be set on compensation for expenses, because each pregnancy is different and the situation of each woman entering into an arrangement as surrogate will be different. (See, however, our response to Question M.) This situation will include unanticipated health impacts of the pregnancy. There must not under any circumstances be any financial disadvantage for the surrogate mother. We agree that expenses should continue to be paid for a reasonable period after birth. The Discussion Paper mentions up to one year for life and health insurance (the mention of life insurance again begs the question of how much a woman's life is "worth"), but there may be other expenses, such as inability to return immediately to fulltime paid employment, or expenses associated with breastfeeding (which as set out above we consider imperative for the wellbeing of the child). *All* expenses directly resulting from the pregnancy and childbirth must be covered by the commissioning couple or individual.

Given the delay in presentation of some birth related health impacts, this medical support needs to be in place for up to ten years if needed, through a commitment to fund private health cover, or through a bond.

Proposal 26: Reimbursement for hardship

We completely agree that hardship or "extraordinary loss" must be fully compensated. There should be no maximum cap: such payments must be determined on a case-by-case basis.

Question M: Additional support payment

Yes, the surrogate mother's "time, effort, inconvenience, and unique contribution to the surrogacy arrangement" must be fully recognised by the commissioning couple or individual, including through extra support payment if needed.

However, even when framed as "compensation", any payment to a surrogate mother remains inseparable from procurement of a child. The provision of such additional support thus also brings the arrangement teetering closer to the commodification of children and the commodification of a women's reproductive capacity. Such commodification is inconsistent with human rights principles, which recognise that human dignity is incompatible with treating the body as a rentable object. In addition, the Convention on the Rights of the Child prohibits the sale of children, or transfer of children for remuneration or consideration.

We therefore continue to emphasise the inherent contradiction in this Review's TOR and maintain that the only approach to surrogacy that is consistent with Australia's human rights obligations is a prohibition.

Proposal 27: Holding funds in a trust account

Agreed, but we do not agree for a role for an SSO as we do not agree to the creation and involvement of SSOs. The commissioning couple's or individual's legal representative or accountant should manage the payments and the name, profession and contact details (and costs) for this person should be part of the surrogacy agreement.

Proposals 28 & 29: Medicare entitlements

We do not agree with the reimbursement of costs associated with any ARTs (assisted reproductive technologies) under Medicare. These are not fundamental health needs. Currently, fundamental health needs are not adequately met by Medicare: rebates are set too low and have not kept pace with the CPI, such that gap payments are often onerous. Dental expenses are not covered at all, unlike national health systems in comparable Western democracies. There is thus absolutely no justification in using our national health insurance provider to support optional, non-medically necessary services.

Proposal 30: Legal parents

Under no circumstances should the birth mother be removed from documentation concerning the child's parentage. If surrogacy is to continue to be allowed in Australia, state records (birth certificates) must be amended to include *both* the name of the birth mother *and* the name of the adoptive ("intended") parents. Even when the birth mother cedes legal parentage to the commissioning couple or individual, her name should remain on the record as the child's mother.

We do not accept the Discussion Paper's argument in para. 186, p. 57 that the commissioning couple or individual are those most concerned in the case of stillbirth or death soon after birth. The commissioning couple or individual have not yet developed any relationship to the child beyond that which exists in their imagination; it is the birth mother who suffers the main emotional and material consequences in such cases.

However, any costs associated with managing a stillbirth, including medical care and managing the child's remains, must be covered by the commissioning couple or individual as part of the contract.

Question N: Right of the surrogate mother to declaration of parentage

We concur with paragraph 1(b) of Proposal 30, except for the statute of limitations of three months, which we consider insufficient. In any case, no measure adopted concerning legal parentage for the commissioning couple or individual should constitute abrogation of the surrogate mother's right to file for legal parentage. This right must remain intact and be explicit in the Family Law Act.

Proposals 31 & 32: Judicial pathway to legal parentage in unapproved arrangements

In all surrogacy arrangements, including "approved" arrangements, the surrogate mother must remain the legal parent and the commissioning couple or individual need to make a formal application for adoption.

Questions O and P: Pathways to legal parentage

We do not consider there to be any mitigating factors in the case of transnational surrogacy because those commissioning a child through overseas/commercial surrogacy should be well aware of the law and of their own responsibilities (and risks) in such cases. They are owed no favours. Similarly, we do not believe that the pathway towards adoption in such cases should be simplified. Our compassion must be with the woman who has acted as the surrogate mother, not with the Australian aspiring parents who have knowingly flouted the law and, more often than not, contributed to practices that are highly exploitative of women in other countries.

Question Q: Parental leave arrangements

Our existing parental leave arrangements implicitly acknowledge that part of maternity leave is to allow the mother to recover physically and emotionally from the birthing and breastfeeding of a child, while part is for providing care to a newborn baby. This is why maternity leave provisions are longer than paternity leave. Clarity on this demarcation between recovery leave and caring leave would be helpful in a number of circumstances, including surrogacy, as well as stillbirth or abortion.

The commissioning couple or individual should have access to the same leave provisions as available for any other adopting parents.

Proposal 33: Information available through birth certificates

As stated above, the surrogate mother should be recorded as the birth mother on the child's birth certificate. This is not the child's "gestational history", it is the child's birth mother. We do not speak of "gestational history" in other cases of adoption after birth; there is no reason to introduce this bizarre term in the case of post-surrogacy adoptions either.

This information should be available to the child from birth (Option 33.1).

Proposals 34, 35 and 36: Surrogacy register

Once surrogacy has been legally enabled, it is certainly better to keep a register rather than not. However, we fail to understand why the ALRC finds it necessary to include information about physical "characteristics" (appearance? disability?) and "ethnicity". The very thought of recording such details is repugnant, and reeks of both racial and sexist profiling.

We similarly fail to understand why the commissioning couple or individual should not also be included on this proposed register.

We do not believe failure to record information should be subjected to criminal sanctions.

Question R: Capturing of all relevant information

To ensure a child has access to her or his genetic history, provisions for recording the identity of any egg provider or sperm donor should be included in the register.

Proposals 37–41: Registered overseas arrangements

Under no circumstances do we support any legitimation of transnational ("overseas") surrogacy. Overseas surrogacy is part of a growing transnational medical marketplace in which egg providers and surrogate mothers are prey to exploitative practices and there are no "good" surrogacy regimes within such a context. Moreover, in a transnational context, more than one national jurisdiction comes into play and Australia has no control over what other national governments do or do not decide to allow, enable or prohibit. There is, further, a distinct possibility of future trauma experienced by the child of transnational surrogacy through a sense of cultural dislocation and a sense of commodification (already present in all surrogacy arrangements in our opinion, but exacerbated in transnational surrogacy).

As previously stated, we do not support domestic surrogacy either, but as it already exists but is badly and unevenly regulated, to the detriment of birth mothers in particular, any improvement that prioritises the interests and welfare of the birth mother (surrogate mother) and those of the child over the desiderata of the commissioning couple or individual can only be welcomed.

Finally, we would like to comment on the notion of "consent" in "agreed" surrogacy arrangements, which is often used as an argument in support of the continuation and indeed expansion of domestic surrogacy. However, "consent" within an exploitative and unequal relationship such as surrogacy, in which women's bodies are considered to be alienable objects, is a contingent and contested idea. Indeed, Australian law regulates, limits or bans practices that are demonstrably harmful to individuals or groups even when those people may be perceived to have "consented" to them. Even if, in a liberal democracy, any proposal for laws regulating or limiting what informed adults can reasonably have a right to consent to is, and indeed should be, carefully considered and debated, "consent" to practices such as surrogacy does not ever occur within a context of equal power.

As noted above, the surrogate mother carries all the personal risk and the commissioning couple or individual reaps the major reward through procuring a child. At best, the intended surrogate mother cedes to financial, social or emotional pressure, but at worst, surrogacy, even in some cases of supposedly "consensual" domestic surrogacy, comes close to fitting the description of modern slavery. The more private intermediaries with vested financial or reputational interests in the continuation and expansion of the practice are involved, and the more haggling is involved concerning the value of a woman's life or of her uterus (or in other words, the "price" of a child), the closer we come to that latter scenario.

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