Rosemary West
[redacted]

Australian Law Reform Commission

Dear ,

Submission to a Review of Surrogacy Laws: Discussion Paper (2025)

The Handmaids' Tale

Surrogate motherhood is not new, but is it a custom that should be allowed to continue and expand in modern, more equitable, less patriarchal times? If it is regulated or legislated or commodified, will that make it less likely that a surrogate mother would be able to change her mind and decide to keep her baby? In her eagerness to help an infertile couple, a friend or relative, would she have to sign a contract that required her to hand over her baby or to repay the medical and other expenses she was paid by the commissioning parents? Will this be in the best interests of her child.

In the Old Testament story of Abraham and his infertile wife Sarah, the enslaved handmaid Hagar became the original or archetypal surrogate mother. When Sarah eventually gave birth to Isaac, Hagar and her baby Ishmael were cast out, and became the ancestors of the Arab peoples, so the story went in my school scripture classes.

When Margaret Attwood wrote the Handmaid's Tale in 1985, she said there was nothing in the story that had not happened in real life. At least Hagar got to keep her child. When Offred gave birth to her patriarchal commander's child, she and her fellow handmaids had their children taken from them. (As Hagar no doubt would have, had Sarah not given birth to Isaac.)

Offred even lost her name: the handmaids were named for their commanders. Even here there are echoes in the ALRC proposal, which as far as I can see from a word search, does not contain the words 'woman' or 'mother'. Like the handmaids of Gilead, the surrogate mothers of the ALRC's proposed regime would be reduced to walking wombs, nameless, voiceless and deprived of their babies and of their rights.

In between Hagar and Offred came the largely untold stories of surrogate mothers who provided children for commissioning parents out of misplaced generosity or for financial reasons, often linked to their poverty and vulnerability and the need to provide for their existing families. Women such as Elizabeth Kane in the USA and Odette (not her real name) who spoke of her experience at a 2019 Australian conference on surrogacy. For both of these women, the experience of surrogate motherhood severely damaged their family relationships. The sister and cousin for whom they provided babies displayed the jealousy of the infertile woman for the woman who was carrying her child, similar to the jealousy that

inspired Sarah to cast out Hagar. Odette's story was published in the ARMS newsletter and is attached to the ARMS submission to this review.

I was not a handmaid. I make this submission in the light of my experience as a single mother in the 1960s, who kept my child in the face of then almost overwhelming pressures to adopt, and then went on to be founding convenor and first president of the Council for the Single Mother and her Child (now Council for Single Mothers and their Children) in 1968-70.

Through CSMC I came to meet and share the tragedies of women who were forced to give up their children for adoption, and went on to grieve for the rest of their lives. As convenor and first president, my name and phone number were on the CSMC fact sheets and I got to receive the midnight phone calls from pregnant mothers who were being thrown out of home – as I had been asked to leave the flat I shared with schoolfriends, once my pregnancy became known. I got to hear the grief of mothers who were sent interstate or to local maternity homes and told they could not come home unless they relinquished their babies for adoption.

I had experienced the pressures for adoption. I was told I was a disgrace to the family, formally "cut off without a penny" and asked to change my surname by my father, at my mother's bidding. The monthly visit to the Royal Women's Hospital involved following a yellow line: you handed over your bottle of urine, then went to be checked by the all-male doctors, including a digital examination if they felt like it, ending up with the social worker. Mine told me that if I loved my baby, I would give her up for adoption by a family with two parents who would give her a good education. If I kept her, we would both end up in the gutter. I recall emerging from one of these sessions thinking that we needed an organisation along the lines of the Student Action campaign my child's father and I had been part of at university.

CSMC played an important part in the formation of ARMS I was privileged to attend the National Adoption Conference in Adelaide in 1982, and to attend the foundation meeting of ARMS, which began as the Australian Relinquishing Mothers Sisterhood. CSMC and ARMS worked together with Jigsaw and other adoptee and adoptive parent groups to open the adoption records and I was able to share the joy of relinquishing mothers who were reunited with their children. Later I served as an independent member of the board of VANISH, the Victorian Adoption Network for Information and Self Help.

In 1992, I learnt that I had a sister who had been born to my teenage mother 18 years before me, and had spent her life in institutions. The first thing my sister wanted, when I met her a week later, was to meet her mother, who fortunately was still alive and suffering dementia, but who still remembered the daughter she had been unable to keep - for fear of ruining her life - and welcomed her with loving open arms. I consulted the ARMS coordinator who advised me to arrange for them to meet as soon as possible, telling me that "every mother (she) had known had experienced reunion as a burden lifted, even when they had not consciously wanted it."

Forced adoption may seem like a last century thing, but if the ALRC proposals are adopted and commercial surrogate motherhood is legalised, it's highly likely that surrogate mothers will be required to sign contracts before their babies are born to ensure they give their babies up, maybe without seeing them, as happened with the forced adoptions of the 1960s & 1970s (until 1973 when there was a Supporting Mothers Benefit which gave single mothers an alternative.) I worry about the altruistic surrogacy now permitted in Australia, but at least those surrogate mothers have a legal right to keep the babies they carry, though that may be an even harder thing to do than it was for most single mothers to resist the pressure to relinquish children for adoption in the 1960s.

It took almost a decade from when the Whitlam Government put an end to forced adoptions (by introducing the Supporting Mothers Benefit) for relinquishing mothers to speak out about their trauma, and the official apologies and redress schemes are still coming. It would probably have been longer had the 1983 adoption conference not brought them together.

Once deprived of single mothers as a source, infertile couples turned to third world countries for the children they so badly wanted. With those countries now increasingly prohibiting the inter-country adoption of their children, infertile couples are turning to the vulnerable or impressionable young women who can be prevailed upon or paid to bear children for them, and they would prefer to have those services provided locally, hence this review.

I know a gay couple with two beautiful children who have between them four mothers (two egg donors, two surrogate mothers, from different overseas countries). I had coffee with one of the Dads and asked if his children would have access to any of their mothers and he said 'yes, of course,' but has been hard to pin down for a follow up coffee now that his children are older.

Please, ALRC and Attorneys General, do not give rise to a new round of apologies and redress schemes by facilitating the exploitation of another generation of relinquishing mothers. I note that commercial surrogacy involving payments beyond medical expenses resulting from the pregnancy or birth is currently prohibited in all Australian States and this prohibition should remain.

I was overseas with a dodgy computer when submissions had to be lodged in July, but signed a letter of support for ARMS (now the Association Representing Mothers Separated by adoption) submission, opposing the legalisation or commercialisation of surrogate motherhood.

Hence I would like to strongly support the excellent, well thought-out ARMS submission.

1. In particular I support the contention that surrogate motherhood is contrary to the best interests and human rights of surrogate mothers and the children they bear and should be prohibited. Overseas surrogacy arrangements are prohibited in some States and should be prohibited nationally.

2. I also agree that the experience of surrogate motherhood is similar and analogous to the experience of bearing and losing a child to forced adoption. Even in the heyday of forced adoption, some mothers were able to resist and keep their children. We have not heard of a surrogate mother who has kept her child, but there is at least one reported case of a surrogate mother who was forced to have a late-term abortion after the commissioning parents changed their minds.

3. If the Commonwealth Government chooses not to prohibit surrogate motherhood nationally and overseas, I support the emphasis in the submission on the need to protect, first and foremost,

- the best interests of the child that is born from a surrogacy arrangement, and his or her rights to identifying knowledge of the identity of the surrogate and any gamete donor parents, and
- the interests of the birth mother, and her right to make decisions about whether or not to change her mind and keep her child, and if she decides to relinquish her child to the commissioning parents, to have continuing access to the child she has borne.

4. One of the lessons we have learnt from the experiences of mothers and children who were separated by adoption and by other child removal practices employed on Aboriginal and other children is that those mothers and children (and in many cases the fathers) benefited from reunion, and in many cases from continuing relationships.

   Accordingly, I submit that the child born from surrogacy should have the right to information about and to meet and to have a continuing relationship with the birth mother, and with any genetic donor parents. This should include access rights and informal babysitting first rights if the birth mother lives locally. This right should extend to any children born from overseas surrogacy arrangements.

   These rights should be made clear to all parties, prior to any surrogate pregnancy. They should be written into any parenting plans and ensured – in the case of overseas birth mothers – by requiring commissioning parents to provide a trust fund to cover the costs of at least three visits by the birth mother to Australia or by the child to the birth mother's country for access purposes.

   Further, I submit that contact be maintained by commissioning parents with the donor and surrogate mothers so that if they die or through illness or indisposition are unable to care for the child, the birth mother be contacted and - if she wishes - included in any plans for the child's future, including the option of caring for the child.

   I note that the none of the ALRC questions and proposals raise the fundamental question of whether surrogate motherhood should be permitted or not.

   Thank you for providing me with an extension to submit my response to the specific ALRC proposals which I have provided below. As the proposals and questions are

clearly designed to provide for an expanded, industrial surrogacy program, it has been difficult for me to express my opinions in my response.

I recall the late Professor Louis Waller, then Human Rights Commissioner, opposing the legalisation of commercial surrogacy when this first came up in the 1980s, saying "We don't want another generation of grieving mothers," to which I say hear hear. Please read the attached poem: Quietly. It was written by a mother who had lost/relinquished her child to the adoption assembly line and was published recently in the ARMS newsletter. To my mind it exemplifies the grief experienced long-term by mothers who have lost children to adoption. This is what we don't want to see repeated as it is likely to be if the ALRC proposals are implemented.

Yours sincerely,

Rosemary West OAM, BA(Hons), MA

Response to the ALRC proposals, which in my view would establish a commercial surrogacy industry in a way that would violate the best interests and human rights of s mothers and their families, including any children they bear for commissioning parents. From the content of many of these proposals including Proposal 20, it would seem that the main parties to benefit would be the commissioning parents and the lawyers and IVF companies that stand to make huge profits from their implementation. This at the expense of the likely harm to the health and wellbeing of surrogate mothers and their children.

In my response, I have endeavoured to convey my concerns about and fundamental opposition to surrogate motherhood but to provide a fall-back position in the event that the Commonwealth Government chooses to proceed with the ALRC's very strongly held proposals. It is important to ensure as far as possible that surrogate motherhood agreements do not end up facilitating human slavery, as has happened with overseas surrogacy arrangements and as happened in Australia's colonial history with the "blackbirding" of Pacific Island labourers for Queensland sugar plantations.

Proposal 1 & Proposal 2

Creation of a National Regulator and a nationally consistent surrogacy framework

I oppose the creation of a National Surrogacy Regulator and the consolidation of surrogacy law at the federal level.

Surrogacy is not comparable to defence, taxation, or border control — the areas typically regulated nationally in Australia. Historically, ethically contested practices such as prostitution, adoption, abortion, and assisted reproduction have remained **state-based precisely because decentralisation preserves democratic contestability**.

A national regulator would:

- elevate surrogacy to a **nationally endorsed industry**,grie
- entrench a single regulatory orthodoxy resistant to reform or prohibition, and
- make future ethical correction far more difficult once harms become undeniable.

State-based regulation, while imperfect, preserves the possibility that jurisdictions can **tighten laws, halt expansion, or move toward prohibition**. National consolidation forecloses this possibility and cements surrogacy as a permanent social institution

Proposal 3

Establishment of Surrogacy Support Organisations (SSOs)

I strongly oppose the creation of Surrogacy Support Organisations.

This proposal would create a new cottage industry of licensed intermediaries — effectively franchising surrogacy facilitation across Australia. SSOs would normalise, promote, and geographically distribute surrogacy, including into rural and regional communities.

Key concerns include:

- structural conflicts of interest where organisational viability depends on maintaining a supply of surrogate mothers,
- replication of known harms seen in international "support organisations" such as [redacted], and
- professionalisation of recruitment under the guise of counselling and safeguards.

This proposal does not reduce exploitation — it institutionalises it, ensuring surrogacy becomes easier, more visible, and more culturally embedded over time

Proposal 4

I oppose Proposal 4 as written.

In my view, legislation should provide that:

- a surrogate mother may not be engaged without an agreement between her and the commissioning parents to acknowledge that:
  - she will be the legal mother with the right to keep the child until/unless she signs a legal form to relinquish the child 30 days after the birth.
  - she will have the right to hold, breast-feed and otherwise care for the child during those 30 days.
  - she will have a continuing right to a relationship with the child that includes regular access and/or the provision of photographs.

- her name along with the name of any gamete donors will be on the original birth certificate.
- the child will have the right to medical and identifying information about the surrogate mother and any gamete donors.
- the child will have the right to know and meet the surrogate mother and any gamete donors at the age of 16, if not before.
- the commissioning parents will also have the right to have access to the child during the 30 days and to have custody of the child if the surrogate mother does not wish to care for the child herself.
- If the surrogate mother lives in a different country or State to the commissioning parents, the commissioning parents will

    + provide a trust fund to pay for at least three access visits by the surrogate mother or the child, and
    + pay for at least three visits per year for the surrogate mother or the child, similar to the access rights of separated parents.

- an assisted reproductive technology service provider may only conduct an in-vitro fertilisation procedure or otherwise facilitate an attempt to achieve a pregnancy where satisfied that there is an agreement in place along the above lines.
- relevant courts may approve the transfer of parental rights only if they are satisfied that there is an agreement in place along the above lines and that a trust fund for access has been provided.

Proposals 5, 6 and 7

I oppose proposals 5, 6 and 7 in keeping with my opposition to Proposals 1,2 and 3

Proposal 8

I oppose Proposal 8 as written.

In my view,

1. Legislation should prohibit intended parents and surrogates from engaging in a domestic or overseas commercial surrogacy arrangement.
2. Compliance with the prohibition should be enforced by a civil penalty regime or by existing and prospective criminal offences to prohibit commercial surrogacy.

Proposal 9

I oppose Proposal 9 as written.

In my view:
1. Legislation should prohibit intended parents from intentionally or recklessly engaging in overseas surrogacy arrangements.

2. Compliance with the prohibition should be enforced by a civil penalty regime or by existing extraterritorial criminal offences.

Proposal 10

I oppose Proposal 10 as written.

In my view:
1. Legislation should prohibit individuals and organisations, including Surrogacy Support Organisations, from:

a. intentionally or recklessly facilitating, inducing, or procuring (including by advertisement), or attempting to facilitate, induce or procure, the involvement of a person in a domestic or overseas surrogacy arrangement; or

b. intentionally or recklessly coercing or attempting to coerce (by pressure, force, or fraudulent means) the involvement of a person in any surrogacy arrangement.

2. Compliance with the prohibition should be enforced by:

Option 10.1 A civil penalty regime;

Option 10.2 Criminal sanctions; or

Option 10.3 A combination of civil penalties and criminal sanctions

Proposal 11

I oppose Proposal 11 as written re permitting advertising for surrogate mothers and gamete donors

In my view:

1. Legislation should provide that advertising in relation to surrogacy is prohibited.

I oppose any relaxation of advertising prohibitions.

Advertising is not neutral. It is inherently persuasive and asymmetrical, targeting women's empathy, financial vulnerability, and sense of moral duty. International evidence shows that once advertising is permitted, recruitment escalates and ethical boundaries erode rapidly.

Claims that advertising can be sufficiently "regulated" ignore reality: advertising increases volume by design.

If the policy objective were truly to reduce exploitation and limit surrogacy, advertising would remain prohibited. Proposal 11 directly contradicts the stated aim of protecting women and children by expanding demand and recruitment pipelines

Proposal 12

I oppose Proposal 12

In my view, surrogate motherhood should be prohibited, but if it is not, or if a child is nonetheless born to a surrogate mother, legislation is required to protect the rights of the surrogate mother and child, as spelt out in my version of Proposal 4.

Proposal 13

I oppose Proposal 13

In my view, surrogate motherhood should be prohibited, but if it is not, I agree that legislation should provide that to access surrogacy, the intended parents must be unable to conceive, gestate, or birth a child for a medical, biological or psychological reason.

Proposal 14

I oppose Proposal 14 to lower the age requirement for a surrogate mother to 18.

In my view, surrogate motherhood should be prohibited, but if it is not, legislation should provide that a surrogate mother must be at least 25 years old, have the legal capacity to make an informed decision and have given birth to other children that are still with her.

We strongly oppose the inclusion of discretionary exemptions allowing surrogacy below the age of 25 and for women giving birth for the first time.

The clause permitting approval by an “accredited counsellor” introduces a dangerous loophole, particularly in light of recent state-level moves to permit surrogacy at 18 years of age without prior childbirth.

This undermines the rationale for age safeguards entirely and exposes young women — often without full neurological, psychological, or social maturity — to irreversible medical and emotional risks.

The proposal also reveals a deeper incoherence: while acknowledging surrogacy’s gravity, it simultaneously lowers thresholds in pursuit of expanding supply. This is ethically indefensible.

Proposal 15

I oppose Proposal 15 re citizenship and residency requirements as written.

In my view, surrogate motherhood should be prohibited, but if it is not, legislation should require that at least one intended parent must be either an Australian citizen or permanent resident,

Proposal 16

I oppose Proposal 16

In my view, surrogate motherhood should be prohibited, but if it is not, I agree that legislation should provide that the surrogate mother must have previously carried a pregnancy and given birth to a live child.

Proposal 17

I oppose Proposal 17 as written, because of the reference to the approval process.

In my view, motherhood should be prohibited, but if it is not, I agree that legislation should provide that:

1. the surrogate mother must undergo a medical assessment by an independent medical practitioner. The independent medical practitioner must certify that the surrogacy can proceed without undue risk to the surrogate mother's health; and

2. the independent medical practitioner must provide their report to the surrogate mother.

Proposal 18

I oppose Proposal 18 as it is written regarding a requirement for psychological screening of parties to a surrogate motherhood agreement.

In my view, surrogate motherhood should be prohibited, but if it is not, I agree that legislation should provide that:

1. the surrogate mother and the intended parent(s) must undergo a psychological assessment by a professional psychologist, to determine their social, emotional, and psychological suitability to enter a surrogacy arrangement without undue risk to their own or another person's health or wellbeing;

2. the surrogate mother and the intended parent(s) must disclose any current or previous diagnosed mental health conditions to the independent psychologist; and

3. the independent psychologist must provide their report to the party including a recommendation of whether the party should be allowed to proceed with a surrogacy arrangement.

Proposal 19

I oppose Proposal 19 as it is written, regarding a requirement for a criminal history check.

In my view, surrogate motherhood should be prohibited, but if it is not, there should be a legislated requirement for intended parents to undergo a criminal history check before engaging in a surrogacy arrangement.

Question E: The result of this check should be provided to the surrogate mother to facilitate informed consent to the arrangement, to the psychologist undertaking the psychological assessment and to the IVF clinic involved in facilitating the pregnancy.

Proposal 20

I oppose Proposal 20 as it is written regarding legal advice requirement for intended parents and surrogate mothers

In my view, surrogate motherhood should be prohibited, but if it is not, legislation should provide that:

1. All parties must receive independent legal advice before entering a surrogacy arrangement. The advice must cover the following matters:

a. the surrogate mother's and gamete donor's right to bodily integrity, reproductive autonomy, and informed consent in relation to medical treatment or procedures that directly affect them and their and the child's human rights as set out in my alternative Proposal 4;

b. legal parentage under the judicial pathway (see Proposals 30 and 31);

c. limits on the enforceability of the surrogacy agreement (see Proposal 4);

d. the operation of the reimbursement provisions and the lack of optional hardship payments;

e. the right of the child born through surrogacy to know their genetic and gestational origins, including their right to access identifying information (see Proposals 33–35);

f. The increased risks to the health of surrogate mothers and their babies, compared to with natural or non-surrogate IVF births, as outlined in the ARMS submission to this ALRC consultation.

g. other increased risks to the wellbeing of surrogate mothers and their babies, including the risk to family relationships exemplified in the stories of Elizabeth Kane and Odette.

2.Legislation should provide that the legal practitioner who provides the advice must provide the party with written confirmation that the matters outlined in paragraph 1 were discussed and the

requisite advice provided, and that the legal practitioner believes that the party appeared to understand the advice.

3. Law societies in each jurisdiction should provide accreditation for lawyers providing legal advice on surrogacy arrangements.

Proposal 21

I oppose the terms of Proposal 21 regarding counselling required for intended parents and surrogate mothers.

In my view, surrogate motherhood should be prohibited, but if it is not, I agree that 1. legislation should provide that all parties must undergo counselling before entering a surrogacy arrangement.

The counselling must:
a. be provided by a professionally qualified psychologist or counsellor

b. include at least:

i. one independent counselling session with the intended parent(s);

ii. one independent counselling session with the surrogate mother, who may be accompanied by an advocate;

iii. one independent counselling session with each gamete donor, if there are any, other than the intended parent(s) who may be accompanied by an advocate;

iii. one independent counselling session with the surrogate mother's partner (if she has one), and/or session with other members of the surrogate mother's family who express an interest and who feel they will be impacted by the proposed surrogacy.

iv. a joint counselling session with at least the surrogate mother and commissioning parents present;

Should the surrogate mother feel that the counsellor is not independent but is biassed towards the interests of the commissioning parent(s), she should have the right to nominate a counsellor of her choice for her individual and joint counselling sessions.

c. not be provided by a psychologist who has been involved in the parties' independent psychological assessments; and

d. include discussion of the following matters:

i. the implications of the surrogacy arrangement for the relationships between the parties and their respective families;

ii. the attitudes of the parties to genetic screening, possible termination of pregnancy, and any other complications that may arise during medical treatment, pregnancy, or birth;

iii. the possibility of any party deciding not to proceed with the surrogacy arrangement, including the implications if the surrogate mother is already pregnant, or if the surrogate mother seeks a parentage declaration;

iv. the attitudes of the parties towards the conduct of the pregnancy, including how much input the intended parent(s) should have into the surrogate's lifestyle choices during the pregnancy;

v. the implications if the intended parents separate during the surrogacy arrangement;

vi. the attitudes of the parties to how and when the child should be told about their genetic and gestational origins;

vii. the attitudes of the parties to the surrogate mother or the surrogate's family having an ongoing relationship or contact with the child born through the surrogacy arrangement, and the extent of such contact; and

viii. how the parties will resolve any disputes that arise during the surrogacy arrangement.

ix. the issues outlined in my alternative version of Proposal 4.

2. Legislation should provide that the counsellor must advise the parties that ongoing counselling is available to them individually and collectively throughout the course of the arrangement, and may be initiated at the reasonable election of any party to the surrogacy arrangement.

3. Legislation should provide that the counsellor must provide each party with written confirmation that the matters outlined in paragraph 1(d) and Proposal 4 were discussed and the counsellor believes that the parties appeared to understand the counselling and the personal consequences of the surrogacy arrangement.

4. The commissioning parent(s) should be required to cover the cost of the surrogate mother's and her family members' and advocate's counselling before and after the birth for as long as the surrogate mother feels it is necessary.

Proposal 22

I oppose Proposal 22 as written regarding surrogacy agreements.

In my view, surrogate motherhood should be prohibited, but if it is not, I agree that a surrogacy agreement must:

a. be in writing and signed by the surrogate mother, her partner (if any), and the intended parent(s);

b. be entered into before the surrogate mother becomes pregnant;

c. contain provisions relating to permitted payments to the surrogate mother;

~~d. state whether the surrogate elects to receive either or both of the optional hardship payments (see Proposal 26);~~

e. contain a provision that ongoing counselling must be available to the parties, both individually and at joint sessions, at the reasonable election of any party, and paid for by the intended parent(s) (see my amended version of Proposal 21);

f. include the statement required by my amended version of Proposal 23; and

g. identify the following threshold requirements and confirm that they have been satisfied: i. legal advice requirements have been met (see Proposal 20);

ii. counselling requirements have been met (see Proposal 21);

iii. a medical assessment has been conducted, and the medical practitioner has certified that the surrogacy arrangement can proceed without risking damage to the mother's health beyond that of a normal pregnancy and birth;

iv. a psychological assessment has been conducted, and the psychologist recommended that the surrogacy arrangement can proceed (see Proposal 18); and

v. intended parents have completed a criminal history check (see Proposal 19)).

2. medical, legal, psychological; IVF and other professionals engaged to facilitate a surrogate mother's pregnancy or parental arrangements should satisfy themselves that the requirements in paragraph 1(g) and my version of Proposal 4 have been met and are attached to the surrogacy agreement before they involve themselves in an engagement that may have unforeseen consequences for them as well as the parties to the agreement.

Proposal 23

I oppose Proposal 23 as written as it does not adequately protect surrogate mothers' rights.

In my view, surrogate motherhood should be prohibited, but in the event that it is not, I agree that

1. State or Federal legislation should not permit the inclusion of - and should not validate = any provision in a surrogacy agreement that inhibits the surrogate mother's right to autonomy, bodily integrity, and informed consent in relation to medical treatment or procedures that affect them or her human rights as outlined in my alternative Proposal 4.

2. A statement confirming these rights must be included in a surrogacy agreement.

Proposal 24

I oppose Proposal 24 regarding federal legislation to require compliance with parenting agreements.

In my view, surrogate motherhood should be prohibited, but if it is not, I consider it should be left to:

a. the States to determine to what extent surrogate motherhood should be restricted or prohibited, apart from where the surrogate mother's human rights are concerned;
b. professionals engaged by commissioning parents to facilitate surrogate motherhood to ensure that the surrogate mother's rights are adequately protected as indicated in this submission.

I don't think it is in the public interest to establish a new federal bureaucracy to legislate and/or regulate surrogacy or to enforce federal or State legislation or regulations.

Proposal 25

I oppose the terms of Proposal 25 regarding reimbursing surrogate mothers for expenses

In my view, surrogate motherhood should be prohibited, but in the event it is not, I submit that the list of expenses in the ALRC-recommended Proposal 25 is too broad and is likely to lead to loopholes that effectively breach the current nationwide ban on commercial surrogate motherhood. Any such expanded payments or "monthly allowances" for surrogate mothers represent a clear pathway toward compensated surrogacy and incentivise commercial surrogacy for financially vulnerable women.

This proposal directly contradicts Australia's longstanding prohibition on commercial surrogacy and signals a policy shift toward its de facto legalisation

It should be left to the States to determine how and which medical items relating to conception, pregnancy and birth should have costs covered by commissioning parents.

Any mechanism that extends beyond reimbursement of direct, verifiable medical expenses should be opposed.

Proposal 26 regarding hardship payments for surrogate mothers.

In my view, surrogate motherhood should be prohibited, but if it is not, I would support legislation to prohibit commercial surrogacy, which accords with the current status quo in all Australian States and which would serve the best interests of surrogate mothers and their children.

But I do not support regulating or legislating for the hardship payments advocated by Proposal 26 because, like the Proposal 25, it would represent a clear pathway toward compensated surrogacy and incentivise commercial surrogacy for financially vulnerable women.

And directly contradicts Australia's longstanding prohibition on commercial surrogacy and signals a policy shift toward its de facto legalisation

Proposal 27 regarding holding the funds in a trust account

In my view, surrogate motherhood should be prohibited, but if it is not, I agree with Proposal 27 that

1. before parties to a surrogacy arrangement attempt to achieve a pregnancy, intended parents should pay an agreed upon sum of money (as discussed in Proposal 25 and my alternative Proposal 4) into a trust account;

2. the sum of money should cover:

a. the full estimated medical cost of the surrogacy arrangement, and

b. any foreseeable access visits to or by the surrogate mother should she wish – or be willing to accept – access visits as discussed in Proposal 4.

3. the disbursements to the surrogate mother are to be made from this trust account as costs are accrued in a manner to be determined by State Governments.

Proposal 28 and 29

I oppose the Proposal 28 and 29 recommendations for Medicare rebates to be paid for assisted reproductive services to apply to treatment carried out for the purpose of surrogacy or for psychological or psychiatric assessment or counselling undertaken undertaken in pursuit of during or in consequence of a surrogacy agreement.

Such payments would be a perverse incentive to encourage surrogate mothers and commissioning parents to engage in surrogacy and would be contrary to the best interests of the surrogate mother and her child.

Proposal 30: Automatic recognition of intended parents on birth certificates

We strongly oppose any proposal to name commissioning parents on the birth certificate at birth as this:

- erases the name of the woman who carried and gave birth to the child,
- legally falsifies biological reality, and
- treats the child as the fulfilment of a pre-approved contract between adults rather than a rights-bearing person.

Birth certificates exist to record truth, not intention. This proposal amounts to state-sanctioned falsification of identity and completes the commodification of children whose gestation was contractually arranged only after regulatory approval.

It also contradicts the child's right to identity under international human rights law and mirrors practices already condemned in other jurisdictions.

Proposal 31 and 32: re a judicial pathway to legal parentage

I agree broadly with Proposals 31 and 32, that

1. where a child has been born to a surrogate mother, whether in Australia or overseas,

a. the surrogate mother is and should remain legal parent of the child until she voluntarily signs a statement to relinquish the child;

b. the intended parents must make an application for a declaration of legal parentage to the Federal Circuit and Family Court of Australia, or a State Court (if that is what a State Government requires) within three months of the child being born (for domestic arrangements) or entering Australia (for overseas arrangements); and

c. the Federal Circuit and Family Court of Australia or a State Court (if that is what a State Government requires) be empowered to consider and determine the application taking into account all relevant considerations, but giving paramount consideration to the best interests of the child.

Proposal 32 seems reasonable, re retrospectivity.

Question P: I do not agree that commissioning parents who have legal parentage determined overseas should be exempted from the need for a Family or State Court decision to determine legal parentage unless they have been living overseas for work or other legitimate reasons for a considerable time and not simply to evade the need for an Australian court decision

I have not had time to read the relevant provisions of the Family Law Act or to consider whether a specialist list is appropriate so I am not commenting on those points. But I am inclined to think a specialist list would be inappropriate if it becomes something of a fast track for avoiding proper consideration of the best interests of the child.

Proposals 33 and 34 regarding the information available through birth certificates and a surrogacy register.

I agree with Proposals 33 and 34 that where a child has been born to a surrogate mother in Australia or overseas,

1. Legislation should require birth registration statements and other documents seeking to register the birth of a child born in any Australian state or territory or overseas to include a section to collect information about surrogacy-related births. Information collected should include the mother's identifying details such as full name, address, and date and place of birth.
2. 2. Legislation should provide that where the above information has been provided to the registry of births, deaths, and marriages, an addendum — stating that additional information is available and may be obtained via the national surrogacy register (or relevant state or territory-based register) (see Proposal 35) — must be attached to every copy of the birth certificate issued to the person born through surrogacy from birth.

   Re **Question R:** it should be the responsibility of the commissioning parents to provide the surrogate mother's details for the purpose or birth registration, surrogacy or donor

conception register and legal parentage records, unless the surrogate mother elects to undertake this responsibility.

Proposals 35 and 36

I agree with proposals 35 & 36 regarding the provision of information, **except** that I prefer this information be held in existing state and territory donor conception registers (the Northern Territory and Tasmania, which have not established donor conception registers, should establish them).

Proposal 37 & 38 regarding overseas surrogacy arrangements

I strongly disagree with the Proposal 37 recommendations 1a – 1c regarding establishing a federal bureaucracy to assist intending parents to use an overseas surrogate mother to carry a child for them by providing registration and other facilities.

I agree with points:

- 1d. that if the intended parent(s) intentionally or recklessly proceed with such an arrangement, ~~without registering with the registration entity ('unregistered overseas surrogacy arrangement'),~~ they should be subject to a civil penalty regime.
- 2. That proceeding with such an arrangement should not prevent the commissioning parents from applying for a passport or visa for the child or for birth registration or legal parentage agreement provided they have a surrogacy agreement with the surrogate mother and provided she has signed a form relinquishing the child.
- And with Proposal 38, if an amendment to the Family Law Act is needed to enable commissioning parents to apply for legal parentage through the Family Court (unless a State Government requires a State Court to determine such cases.

Proposal 39

I strongly disagree with the streamlining proposals in Proposal 39.

Question V: I agree that citizenship by descent should be recognised for children born of a gamete donor or surrogate mother overseas.

Question W: A child that is stateless as a result of their birth to a surrogate mother overseas should be treated in the same way as proposed in Proposal 38.

Question X: I agree that a temporary visa should be introduced for a child that is born to a surrogate mother overseas to cover the three month period before the commissioning parents must apply for legal parentage

Proposal 40 & 41

I agree both of these proposals seem reasonable in the event a child has been born to a surrogate mother, whether this is legal or not.

Endnotes:

Please note I have used the term surrogate mother in place of surrogate throughout my submission because the latter term is disrespectful, dehumanising and shows an offensive disregard to gender issues and the status of women in our society as well as in proposals to further entrench surrogate motherhood as a means for infertile couples to have children that they can convince themselves are their own.

I have also tried to emphasise in my answers that I prefer State rather than federal governments to be responsible for dealing with the morass of issues resulting from infertile couples' or individuals' wishes to use surrogate mothers to obtain children, regardless of the impact of this on the health and welfare of the mothers and of the children they bear.

While I think the use of surrogate mothers is profoundly, fundamentally wrong and exploitative, I have tried in my response to support measures that might improve the present situation, in the event that the government decides not to proceed with the radical ALRC proposals to legalise, commercialise and expand surrogate motherhood.

I acknowledge, support and have drawn on the excellent work of ARMS, Active Watchful Waiting (Inc) and FINRRAGE (Australia). I agree with FINRRAGE (Australia) that the ALRC should – and could in the context of their referral to consider the best interests of the child in this matter – advocate for the prohibition, first, of the use of overseas surrogate mothers and eventually for the prohibition of domestic surrogate motherhood. We also support the FINRRAGE (Australia) recommendation for an information campaign to highlight the health risks and damage to the health and bodies of surrogate mothers and to their children, as identified in studies cited in the ARMS submission.

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