From: Patricia Harper
To: Surrogacy
Subject: Submission ... ALRC Review of Surrogacy ... "Creating Children"
Date: Monday, 19 January 2026 4:00:07 AM

[redacted]

ALRC Inquiry into SURROGACY and SURROGATE MOTHERHOOD AGREEMENTS

A SUBMISSION

The primary purpose of this submission to the ALRC with respect to its Review of ***surrogate motherhood agreements*** in Australia (referred to by the ALRC as "surrogacy") is to:

- Emphasise the importance of learning from, and acting on, the "***lived experience***" of women who have given birth to a child, whom they permanently relinquished to the care of others; and
- Reflect on the words of Professor Louis Waller, Chair of Australia's first Inquiry into IVF and Assisted Reproductive Technology 1984 … on the importance of *"[avoiding the creation of] another generation of grieving mothers"*

THE IMPORTANCE OF "*LIVED EXPERIENCE*" IN THE DEVELOPMENT OF PUBLIC POLICY RELATING TO THE LIVES OF WOMEN … AND THE CHILDREN TO WHOM THEY GIVE BIRTH

Who are we talking about

▪ **Women**
In 1972, almost **10,000** women (9,798) in Australia who were single and pregnant, carried their baby in utero for 9 months, then relinquished their baby immediately after birth … to an infertile couple unable to bear child of their own. 1972 was the peak year for the adoption of children in Australia.

In the last few decades of the 20th century, over **250,000 women** in Australia who were single and pregnant, carried their baby in utero for 9 months, then relinquished their baby immediately after birth to an infertile couple unable to bear a child of their own.

The birth records of the 250,000 children to whom these relinquishing mothers gave birth, were kept secret (until 1984 in Victoria, and later in other States) … so that their mother could never find out, meet or know, the child to whom they had given birth.

▪ **Children**
As a consequence, over the last several decades of the 20th century,
over **250,000 children** … who were relinquished by their mother immediately after birth … were placed for adoption by an infertile couple.

The birth records of these 250,000 children were, as stated, originally kept secret … so that they, too, could never find out, meet, or know their mother who had given birth to them … thus preventing them from establishing their own sense of self-identity.

How did the voice of such "lived experience" develop in Australia

▪ **CSMC and NCSMC … 1970s and 1980s**

The "lived experience" of relinquishing mothers was first given voice to by the Council for the Single Mother and her Child in Victoria. **CSMC**, established by single mothers in Victoria in 1970 … and the national CSMC, NCSMC, established in 1973 … were established to support women who were single, had become pregnant, were pressured to relinquish their child to adoption immediately following birth, or who had decided as single mothers to keep and care for their child. Increasingly, many of these women resisted the pressure of adoption agencies, infertile couples, family members, and many in the broader public … and made the decision to keep their baby and, as a single mother, rear their child on their own !

For the next 10 years from the early 1970s … until the early 1980s when ARMS was established … CSMC and NCSMC represented, and spoke for, the interests of women who had relinquished a child for adoption. A representative of CSMC was a member of the VALRC, whose Report led to the introduction and passage of Victoria's new Adoption Act in 1984.

▪ **ARMS … and MALA … from 1980s**

In 1982, a group of relinquishing mothers present at the Australian Adoption Conference in Adelaide met, and decided to form a group called the **Association of Relinquishing Mothers**, **ARMS**. Following the establishment of ARMS in 1982, ARMS (now known as the Association Representing Mothers Separated by adoption) began taking the primary responsibility for representing the interests, and speaking for, Australian women who had relinquished their child for adoption.

ARMS, in 2021, established the **Mothers Adoption Loss Alliance**, **MALA,** to act as a national voice for mothers affected by adoption, and to inform the community of the lifelong and negative impact of the grief and trauma of being separated through adoption. MALA advocates to ensure all States and Territories introduce a Redress Scheme which includes financial compensation, counselling, and support for all those adversely affected by adoption.

▪ **Victorian Adoption Legislation Review Committee, VALRC 1978-83**

In Victoria, the "lived experience" of relinquishing mothers … and of their children, adopted at birth and growing into adults searching for their mothers … was a significant factor in driving the development of major changes in adoption law and and practice in Victoria … most importantly as members in shaping the report and recommendations of the **Victorian Adoption Legislation Review Committee.**

▪ **Adoption ACT 1984, Victoria**

The 1983 Report of the VALRC led to the successful passage of the **1984 Adoption Act,** major new adoption legislation in 1984 in Victoria which *inter alia* enabled adopted adults to access their original birth certificate … seek information about their birth mother … and in most cases, make contact with and meet their mother. Their "lived experiences", as described by relinquishing mothers to Members of the Victorian Parliament, were seen as central to the successful passage of the new legislation … especially with respect to enabling adopted children, as adults, to gain access to their original birth certificate and information relating to their natural mother/parent.

Recognition, by Australian Governments, of the harmful consequences and trauma of relinquishment and adoption

▪ **Apologies for Forced Adoption**
The "lived experience" of thousands of relinquishing mothers and adopted children/adults was a key factor in the Federal Government in 2013 … and all State Governments and the ACT … issuing Official Apologies for their involvement in historical adoption practices, recognising the profound harm and trauma inflicted upon individuals and families going back several decades.

▪ **Redress Schemes** …
Redress schemes have been established in Australia, particularly in Victoria and Tasmania … and are being considered by other States … to address the trauma of mothers separated from their children before 1990 … and provide financial redress/compensation, counselling, and support to the many mothers who continue to live with the serious, complex and ongoing effects of their experience of forced separation in adoption.

Parallels between adoption … and surrogate motherhood agreements

ARMS, based on "lived experience", is the major, and most significant, voice representing and speaking for the 250,000+ women in Australia who have become pregnant, carried a child in utero for 9 months, then relinquished their baby at birth to an infertile couple as a result of consenting to an adoption agreement … and drawing the community's attention to the parallels with the experience of women who have become pregnant, carried a child in utero for 9 months, then relinquished their child at birth to an infertile couple as a result of consenting to a surrogate motherhood agreement.

Acknowledgement of the parallels between the "lived experience" of relinquishing mothers who relinquish their baby at birth to infertile couples in adoption … and the "lived experience" of mothers who relinquish their baby at birth to infertile couples in surrogate motherhood agreements … is highly relevant to the ALRC surrogacy enquiry into surrogate motherhood agreements.

Recognising these parallels is particularly important, taking into account the Apologies, issued by both Federal and State governments … and the Redress Schemes established by State Governments in recognition of the serious, complex and ongoing ongoing negative effects of their experience of adoption.

ALRC … TERMS OF REFERENCE

In December 2025, the Federal Attorney-General referred to the ALRC, a review of Australian surrogacy laws, policies and practices to identify, legal and policy reforms, particularly proposals for uniform or complementary State, Territory, and Commonwealth laws that:

- *"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, **surrogate mothers**, and **intending parents** … noting that **the best interests of children are paramount"*** (emphasis added)

The Terms of Reference of the ALRC requiring it to protect and promote the human rights of children born as a result of surrogate motherhood agreements … the welfare and best interests of the child being paramount … thus **raise primary and fundamental questions to be addressed.**

FUNDAMENTAL QUESTIONS … to be addressed by the ALRC … and by the community

<u>Rights of CHILDREN</u> … <u>do surrogate motherhood agreements uphold the human rights, and best interests, of the child</u>

▪ **ARMS' submission to the ALRC** … Based on the "lived experience" of its members and that of the 250,000 Australian women who have relinquished a child to adoption, and of the 250,000 children relinquished to adoption, over recent decades … ARMS submits that surrogate motherhood agreements do not protect or promote the rights of the child, and are not in the best interest of **children** … for reasons including that:

Every child has the inherent right to know the truth of their origins as recognised by the UN Convention on the Rights of the Child, CRC. Surrogacy arrangements deliberately obscure or sever this right. Experience has shown that records of these arrangements can be 'lost', destroyed, incorrectly recorded, or simply not provided to the child, ensuring that many will never know the circumstances of their birth or be given the opportunity to know their origins and perhaps meet the mother who gave them birth, or their biological family.

The principle of "the paramount interests of the child" must prevail over adult desires. However 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.

▪ **Should society be "*creating children*" who would not otherwise be born**
In 1984, the Family Law Council established a Committee, under the chairmanship of Justice Austin Asche of the Family Court of Australia, to prepare for the FLC and Federal Attorney-General, a report relating to AID, IVF, embryo transfer, surrogate motherhood arrangements, and related matters.

The Report, ***"CREATING CHILDREN: A uniform approach to the law and practice of reproductive technology in Australia",*** was adopted unanimously by the FLC and addressed the many complex issues raised … the first and most important being the **purpose of reproductive technology and surrogacy which <u>enabled the creation of children who would not otherwise be born.</u>**

▪ **The creation of children … and developments in reproductive technology … "What are we talking about ?"**
The FLC Report stated that

"2.1 Reproductive technology refers to the body of medical and scientific knowledge and research which, when applied, ***enables the creation of a child who could not have been conceived/born, without the intervention and application of that technology. …***

2.2 Reproductive technology and 'technological' conceptions ***are only made possible through the allocation of substantial resources by the community****. Those resources are paid for by the community through the funding of hospital facilities and equipment, hospital staff salaries and expertise, through the funding of research, the education and training of doctors and other professional staff, the provision of counselling services, and through medical benefit payments.*

2.3 In understanding what is meant by reproductive technology, it is essential to recognise the one major characteristic that substantially differentiates reproductive technology from other recent developments in science and technology. Technology which sustains and prolongs a

life which already exists, such as, for example, liver transplants or artificial hearts, differs from reproductive technology in that ***the latter enables the creation of new life, the creation of a child who would not otherwise be born."*** (emphasis added)

The FLC Report went on to emphasise the importance of the **community properly assessing the merits of the social, ethical, and legal questions raised … a question of public policy as relevant in 2026, as it was in 1985.**

▪ **Are surrogate motherhood arrangements in the "best interests" of the <u>child</u> born**
This raises a central question of public policy: namely … if it is not in the best interests of a child to be "created" as the result of a surrogate motherhood agreement … then this poses a fundamental question for the Australian community and governments to answer:

"Should surrogate motherhood agreements/surrogacy be prohibited ?"

The ALRC Terms of Reference require the ALRC to consider legal and policy reforms that are consistent with Australia's obligations under international law and conventions … including the Convention on the Rights of the Child, CRC … and require that the ALRC "*protect and promote the human rights of* ***children*** *born as a result of surrogacy arrangements … noting that the best interests of the child are paramount*" !

This suggests that if it cannot be established that "the best interest of the child" are protected and promoted by surrogacy arrangements, then as a consequence surrogate motherhood agreements and surrogacy in any form, commercial or altruistic, should be **prohibited**.

The submissions from ARMS and MALA, which I fully endorse (and extracts from which I quote below), submit that Surrogate Motherhood Agreements are not in the best interest of **children** … and should be prohibited.

<u>Rights of WOMEN</u> … <u>do surrogate motherhood agreements uphold the human rights of women, and of surrogate mothers</u>

▪ **ARMS' submission to the ALRC** … Based on the "lived experience" of its members and that of the 250,000 Australian women who have relinquished a child to adoption, on research and on consultation … ARMS submits that surrogate motherhood agreements do not protect or promote the rights of surrogate mothers, and are not in the best interest of **women** … for reasons including that:

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 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 and proposals of the ALRC Issues & Discussion Papers, that mother would be locked from the beginning into relinquishing the child to whom she gave birth, 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 the ALRC; 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 ARMS 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.

It is further submitted by ARMS that women have a right not to be exploited, degraded 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.

Legalising surrogate motherhood arrangements also creates systemic pressure for women to view surrogacy as a legitimate path, even when it entails profound physical, emotional and social risks.

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.

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 Qand 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.

CONCLUSION … A Commitment to Principles and Ethics

As called for by ARMS, a principled and unequivocal opposition to all forms of surrogacy, whether commercial or altruistic, must be upheld. Surrogacy arrangements, by their very nature, undermine fundamental human rights, compromise the dignity of women, and

disregard the paramount interests of children.

▪ 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.

▪ A principled position is clear … surrogacy is incompatible with the paramount interests of the child, and of the rights of women, human rights and social justice.

As stated … 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 their bodies and undermining their dignity. Legal recognition of surrogacy legitimises systemic discrimination by endorsing the treatment of women as a means to an end, rather than autonomous persons.

Tricia Harper AM
Victorian Honour Roll of Women, Member

Founding Member, Council for the Single Mother and her Child, CSMC 1970
Founding Member, National Council for the Single Mother and her Child, NCSMC 1973
Member, ARMS, Association Representing Mothers Separated by Adoption (formerly Australian Relinquishing Mothers Association): Honorary life member
Member, Family Law Council 1979-86 … author of FLC Report 1985: *"Creating Children: A uniform approach to the law and practice of reproductive technology in Australia"*
Member (AIFS), Monash/Queen Victoria Hospital, Committee on Psycho-Social Research in AID and IVF, 1984-86
Member, Adoption Legislation Review Committee, Victoria, 1978-83 … report leading to *Adoption Act* 1984
Deputy Chair, Child Welfare Practice and Legislation Review 1982-85 … report leading to *Children and Young Persons Act* 1989
Member, Adoption Legislation Review Committee, ACT, 1986
Chair, Victorian Women's Advisory Council to Premier 1983-86
Member, Administrative Review Tribunals 1993-2021 … including SSAT, RRT, MHT, VCAT (Health/ART List)

Lived experience:
When pregnant as a young single woman, my sister and her husband agreed to take on the care of my child following my child's birth. One month before my baby was due to be born, my sister and her husband told me they would not honour the agreement … a decision destructive of family relationships. As a consequence, I kept my baby daughter following her birth … and went on to help found the Council for the Single Mother and her Child, CSMC Victoria.

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