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The Commissioner
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001
surrogacy@alrc.gov.au

Dear Commissioner,
Please accept our submission to the ALRC's November Discussion Paper on Surrogacy Laws, Policies and Practices in Australia.

Firstly, we want to register our dismay on how the Discussion Paper follows straight on from the Issues Paper by putting forward proposal after proposal to greatly increase surrogacy in Australia. The Discussion Paper acknowledges on p. 6 that the ALRC has also received "many submissions [that] opposed surrogacy ..." but rather than taking their recommendations into account, the Discussion Paper simply states that, "In the Final Report, we will canvass these different views in more detail."

We believe that the ALRC is following a highly undemocratic process by only pursuing the path of growing surrogacy in Australia. We wish to register FINRRAGE's strong opposition to this process.

Furthermore, we are disappointed that the Discussion Paper is written using the same 'politically correct' language we criticised in the Issues Paper. You do not name surrogate *mothers* or indeed *women*. We all know that only women can gestate a baby and give birth to her or him. In the rare event that a so-called transman might be a surrogate mother, we all know that this person is still biologically female. Such language is disrespectful of all biological females as it erases women. In the context of surrogacy, it further instrumentalises 'the surrogate' as an empty vessel that is filled with an embryo which gets removed from the container after nine months. End of story. The container is now discarded. Such language does nothing to enforce 'human rights' that the Discussion Paper is so keen to laud.

It has also come to our attention that [REDACTED] a member of the ALRC's Advisory Committee, [REDACTED]

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[REDACTED]

We believe the ALRC should remove [REDACTED] from their Advisory Committee. [REDACTED] is unfit to be an ALRC Advisory Committee Member. Furthermore, [REDACTED] is totally out of touch with *real* surrogate mothers' experiences during pregnancy, birth and after their child is taken from them.

As we have little confidence that our views will be taken into account in the ALRC's Final Report, out of the 41 Proposals on 72 pages we highlight those that we find particularly objectionable. This does not mean that we agree with the others. *We condemn the whole document as the misguided attempt to build a new Surrogacy Empire in Australia.* Such an expansion was never asked for in the 2016 Report 'Surrogacy Matters'. What the ALRC was asked to do was to look at all the states and territories with a view to bring in more uniform laws, not to increase surrogacy.

We therefore disagree fundamentally with the ALRC's processes and procedures.

There is one Proposal with which we do agree: establishing a Registry with ALL participants in surrogacy. We understand this to mean that the birth mother is named as well as the egg provider (if different from the female partner in a commissioning couple). Such a Registry should be open to children born from surrogacy at the age of 16. The Registry could be national or state/territory based. Of course, children born from surrogacy should be informed about their origins and their mother as soon as they are able to comprehend such matters. The response by two gay men who are asked about the mother: "You do have a mother. You are looking at him" is reprehensible and deeply disturbing (in *Broken Bonds* 2021, p. 12.)

Proposals we particularly disagree with:

Proposal 3: SOSs Surrogacy Support Systems (adapted from the UK Law Commission Report that so far has been shelved by both the Tory and Labour Government)

The ALRC contends that before a surrogacy can proceed, it needs to be registered. It proposes this be done by SOSs: new private entities that ensure that psychological and medical screening, counselling and legal advice are obtained (and yes, criminal checks would

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have to be added). FINRRAGE believes that this would amount to installing a *cottage industry* all over Australia from the city to the bush with competing businesses.

No doubt, [REDACTED] would happily start cloning itself to provide such SSOs throughout Australia. Surrogacy lawyers will like the idea too. We find this one of the worst and far-reaching Proposals, as SSOs would ensure that surrogacy spreads throughout Australia – IF and that remains a big IF – these groups can recruit enough women who fall for the kindness and compassion trap of being angels and giving the ultimate gift of love: a child (never mind if they get sick or die in the process).

Proposal 30: The ALRC proposes that at the birth of the child, the commissioning parents are named as the parents of the baby and are listed on the Birth Certificate. *This amounts to the total erasure of the mother and the total commodification of the child whose creation as an embryo in an IVF clinic was only started after the surrogacy had been declared ‘properly registered’ by an SSO.* Talk about being instrumentalised. FINRRAGE truly wonders what has happened to people who propose such laws ... they must have had their hearts removed (and yes, we know that such pre-birth parentage orders exist already in some US states ... which does not make them any less heartless).

We actually doubt that pre-birth parentage could become legal in Australia as gleefully proposed by the ALRC. We do have to abide by Commonwealth Law. Upon the birth of a child in a hospital, a doctor/nurse/midwife has to fill in the form ‘Newborn Child Declaration Form’. Unless falsified by the hospital staff (and this has indeed happened in adoption cases), this form will contain the name of the *mother*. It is entirely unclear to us how this *legal* document could be exchanged with the pre-arranged parentage order – a contract – without having to go through a court. These legal uncertainties are another reason why we strongly object to pre-birth parentage contracts. If they were used instead of the ‘Newborn Child Declaration Form’, this would amount to trafficking: a crime.

Proposals 1 and 2: Our third biggest NO goes to the question whether a National Regulator should be created instead, as is the practice now, allowing the states and territories to decide what surrogacy laws they want. In Australia, very few issues are regulated nationally. They are usually big, like defence. Most other issues remain state-regulated, e.g. prostitution, roads, hospitals, assisted dying laws. That makes them often messy and time consuming to change.

But we strongly believe that surrogacy should stay under the control of states/territories. They must continue to have a say in the way surrogacy is regulated in their domain. A National Regulator would also falsely elevate surrogacy to a ‘nationally important’ issue which we clearly do not want to see happening. (The comparison to foodstuff that the ALRC’s Discussion paper makes is wholly inappropriate and offensive.)

Since our aim is to gradually see surrogacy numbers diminish throughout Australia as the cruel nature of surrogacy becomes known to more people and they say ‘no’ to this woman- and children hating transaction, we wholly reject the Proposal for a National Regulator.

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There are many other dangerous proposals, like **Proposal 11**: allow *advertising* for surrogate mothers and egg 'donors'; currently prohibited. We expect that the convoluted text should soothe us into thinking that no bad advertising excesses could happen ... advertising is advertising: it should remain prohibited. We want fewer, not more surrogacies taking place in Australia.

The age of the surrogate mother. While the current age of 25 is kept (and a surrogate mother must have had a previous child), there is a loophole in **Proposal 14**: "A surrogate must be at least 25 years old, *unless otherwise approved by an accredited counsellor, and have the legal capacity to make an informed decision.*"

This is a very dangerous sentence, given that the West Australian Parliament voted yes to a Bill on 3 December that approves of 18-year-old women as surrogate mothers (without the need for previous children).

As an aside, it is weird to also read a proposal that commissioning parents should be 18 years' old. An 18-year-old wanting to become a father/mother of a child from surrogacy is a question worth pondering.

Proposal 25 (4) talks about the payments to surrogate mothers. In the main, it should be about reimbursement for medical, legal and pregnancy expenses, but there is a loophole that talks about paying a *monthly allowance*. This smacks very much of the slippery slope road into compensated/commercial surrogacy ... which was always ██████████ preferred option. An amount of \$1000-2000 is put forward. Even holding this money in *escrow* is mentioned ... FINRRAGE sincerely hopes that the ALRC will erase this passage after they learn about the recent scandal in the US around the agency SurroConnections where the commissioning parents lost all the funds they deposited into an escrow account when a SurroConnections' employee run away with all the money. Just one of the many, almost daily, overseas scandals around surrogacy (Chinese billionaires buying themselves babies in the USA is very topical right now).

Seen in conjunction with a statement on p. 10 (para 33) that we should drop the distinction between altruistic and commercial surrogacy, we would argue that the writing is on the wall: commercial surrogacy is where we are heading if the ALRC ██████████ get their way.

However, we are puzzled that the ALRC obviously did not take any guidance from the submission (No. 153) from the Attorney General's Department – the very place where your Final Report will land – to the Issues Paper that they should focus on altruistic surrogacy and leave out any discussion about compensated/commercial surrogacy. The AG's Department's submission makes the same point that we have previously raised: nothing in the 2016 Report 'Surrogacy Matters' was pointing towards an investigation whether Australia should allow commercial surrogacy. On the contrary this was ruled out. Commercial surrogacy was to remain illegal.

The conclusion we draw from the ALRC's determination to pursue their ultimate goal – which we believe is compensated/commercial surrogacy – is that no critical submission will

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stop them if not even the AG's Department's submission does. What hope do we ordinary feminist mortals – women, adult human females – have to be taken seriously?

At the end of the Discussion Paper, there are further proposals about regulating international surrogacy (Proposals 37-41). Firstly, the ALRC proposes that these surrogacies should be registered too. By the SSOs? More money for them. They will be pleased.

But once registered, what overseas 'safe' IVF/surrogacy clinics will the SSOs recommend? Vague statements as to finding "well-regulated surrogacy programs overseas" can make us weep or laugh. If [REDACTED] runs an SSO, they will have plenty of clinics to suggest. After all, they regularly invite people from IVF clinics from countries all over the world including those that are at war (e.g. Ukraine), or poor countries in Africa or South America. Can they prove that these clinics are 'well-regulated'? Of course not, and given the weak language the ALRC uses in these last proposals we think they know that too.

We strongly suggest that the ALRC should ask *all* states and territories to criminalise going overseas for surrogacy. Queensland, New South Wales and the Capital Territory must keep their existing laws that criminalise overseas surrogacy, but *must enforce* them. The ALRC should suggest to them, and to DFAT as well, to run educational campaigns including TV ads along the lines: "Go overseas for international surrogacy and you and your bought/trafficked child will be turned back at the airport when you arrive." Similar fearmongering ads helped to reduce smoking; hopefully they would reduce instances of overseas surrogacy too.

Before we send off this submission, we would like to answer a comment and a question that Justice Bromberg raised in the meeting with seven abolitionist women's groups on 18 December 2025.

1. To our surprise, Justice Bromberg said that just because there were some Proposals in the Discussion Paper this did not mean that they will be in the Final Report. While this might give us a glimmer of hope, we should remain realistic. Having produced a lengthy Issues Paper and then a 72-page Discussion Paper with 41 Proposals in which *no* critical submissions were given any consideration – and having a short timeframe for the enquiry as we were told – it is difficult to be hopeful about significant changes to the Final Report ... – unless Justice Bromberg makes a 180 degree turn from the expansion of surrogacy to the abolition of surrogacy!
2. Equally surprising, Justice Bromberg asked for ideas how the ALRC might put forward the case for abolition. Here is what we think in a nutshell: as the ALRC has a responsibility to respect international laws, especially CEDAW, the ALRC could state that after considering the many violations of UN Conventions that surrogacy engages in, they decided to challenge the Terms of Reference given by the previous Attorney General, the Hon. Mark Dreyfus. Instead of considering proposing uniform laws for states and territories for the *regulation* of altruistic surrogacy, the ALRC now wants to make the case for *abolition* as they perceive surrogacy to be a profound violation of the human rights of women and children, and an unethical global exploitative industry. We believe that as an independent body, the ALRC can change Terms of References and inform the (new) Attorney General of their decision.

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As surrogacy in Australia is regulated by states and territories (which we hope will remain), they should be given a five-year period during which they should strive to reduce the numbers of surrogacies undertaken in their domain, and begin preparing new laws for the abolition of surrogacy to be put forward in (and voted on) their respective parliaments. Italy and Slovakia could provide useful information on details of such laws covering national as well as international terrain. Consultation with the UN Special Rapporteur on Violence against Women and Children, Ms Reem Alsalem, would no doubt also be highly productive.

Hand in hand with commencing these legal reforms, the ALRC should suggest that states and territories – or indeed the nation – should engage in an *information campaign* (a) on the harms of surrogacy to women and children; (b) on the truism that no one has a *right* to their own biological child; (c) on other options for involuntary childless people to have children in their lives; and (d) on removing stigma from women who have decided to remain ‘childfree’.

In conclusion, after all the criticisms of the ALRC we have expressed in this and our previous submission to the Issues Paper, we would be mightily relieved if the ALRC, under the guidance of Justice Bromberg, radically changed their deliberations on surrogacy from expansion to abolition. Is it realistic that a fairy-tale ending for this sordid experiment is possible, or will the strong forces of pro-surrogacy advocates, including their money-making agendas prevail?

Sincerely,

Dr Renate Klein
Co-ordinator FINRRAGE (Australia)