LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
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Submission Cover Sheet

Inquiry into Parentage (Surrogacy) Amendment Bill 2023

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ACT Legislative Assembly Review
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Dear Committee Members,

Re Parentage (Surrogacy) Amendment Bill 2023[1]

Introduction

The Parentage (Surrogacy) Amendment Bill 2023 represents an improvement on the current law. However, it does not go far enough. If the Australian Capital Territory (ACT) is serious about protecting children's rights, it should accept that all children born through surrogacy have a right to have their functional parents recognised as their legal parents. There should not be a need to demonstrate "pressing disadvantage". Further, the Territory should remove the prohibition on compensated surrogacy so that parents of children born through compensated surrogacy arrangements do not abstain from seeking a parentage order for fear of prosecution.

Positive aspects of the Bill

Replacing "substitute parent" with "intended parent"

The Bill purports to address existing gaps and better align the ACT's surrogacy laws with other Australian jurisdictions. One of the ways it does so is by replacing the term "substitute parent" with "intended parent". This is the term used in all Australian jurisdictions except Western Australia, whose law is in desperate need of reform. It is the more accurate term as a surrogacy arrangement is one in which a surrogate carries and gives birth to a child with the clear *intention* that the child be parented by another. In a surrogacy arrangement, there is never an intention for the surrogate (and partner) to function as the factual or legal parents of the child. Therefore, the use of the term 'substitute parents' is inaccurate and does not reflect the reality of the arrangement.

Legal advice, counselling, and a written agreement

The Bill also mandates legal advice, counselling, and a written agreement before conception. This is sensible, good practice; it ensures that all parties to a surrogacy arrangement have a clear understanding of what is involved and have considered all the possible scenarios and how they would be managed should they eventuate. It also brings the ACT in line with other jurisdictions. Most Australian jurisdictions require a surrogacy arrangement to be entered into in writing and signed by all parties, that being the intended parents, surrogate and partner (if any).[2] Further, all jurisdictions require that both the surrogate and intended parents undergo counselling[3] and that the parties receive independent legal advice.[4] Some jurisdictions, like Victoria,

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[1] Parts of this submission have been drawn from my earlier writings on this topic, including: Ronli Sifris, 'Surrogacy bill a step in the right direction, but doesn't go far enough' *Monash Lens* (3 November 2023); Submission to the ACT Justice and Community Safety Directorate, *Inquiry into ACT surrogacy laws* (July 2023); Ronli Sifris and Adiva Sifris, 'Parentage, Surrogacy and the Perplexing State of Australian Surrogacy Law: A Missed Opportunity' (2019) 27 *Journal of Law and Medicine* 369.

[2] *Surrogacy Act 2010* (NSW) s 34; *Surrogacy Act 2022* (NT) ss 14, 16; *Surrogacy Act Qld 2010* (Qld) s22(2)(e); *Surrogacy Act 2019* (SA) s 10(5)(a); *Surrogacy Act 2008* (WA) s 17(b).

[3] *Surrogacy Act 2010* (NSW) s 35(1); *Surrogacy Act 2022* (NT) s 22(1); *Surrogacy Act Qld 2010* (Qld) s22(2)(e); *Surrogacy Act 2019* (SA) s 10(5)(c); *Surrogacy Act 2012* (Tas) s 16(2)(f); *Assisted Reproductive Treatment Act 2008* (Vic) s 43(a), (b); *Surrogacy Act 2008* (WA) s 17(c).

[4] *Surrogacy Act 2010* (NSW) s 36(1); *Surrogacy Act 2022* (NT) s 20; *Surrogacy Act Qld 2010* (Qld) s22(2)(e); *Surrogacy Act 2019* (SA) s 10(5)(b); *Surrogacy Act 2012* (Tas) s 16(2)(a); *Assisted Reproductive Treatment Act 2008* (Vic) s 43(c); *Status of Children Act 1974* (Vic) s 23(2); *Surrogacy Act 2008* (WA) s 17(c).

are fairly specific about the matters to be covered during counselling. For example, the Victorian regulations require counselling to include, among various other matters, discussion of the attitudes of all parties to possible termination of pregnancy as well as ways of telling the child about surrogacy.[5] I urge the Committee to carefully consider the remarks made by Stephen Page in his submission to this Committee regarding the importance of involving *appropriately qualified* counsellors and his reflections of the circumstances in which the certain legal requirements may constitute an impediment to effective counselling.

Age criteria for surrogates, while respecting their pregnancy and birth rights

The Bill establishes age criteria for surrogates, while respecting their pregnancy and birth rights. Once again, this makes sense. A decision to be a surrogate is significant, with the surrogate agreeing to assume the risks inherent in pregnancy and childbirth for another person or couple. So, it is rational to expect a certain level of maturity before such risks can be assumed. All jurisdictions except the ACT have a minimum age requirement of 25 years for surrogates.[6] The Bill brings the ACT in line with the rest of Australia, while retaining a level of discretion and flexibility to prevent an unduly rigid approach.

Further, the protection of a surrogate's right to autonomy and bodily integrity is essential from a feminist, human rights, and health law perspective. The right to autonomy and bodily integrity are fundamental human rights as well as constituting the key legal and ethical principles underpinning the provision of healthcare in Australia. For example, the law relating to consent to treatment requires that health professionals respect a patient's right to refuse medical treatment even if that treatment is in their best interests – such is the strength of the principle of autonomy in our legal system.[7] These rights include the right to make decisions relating to pregnancy and childbirth.

The right to autonomy, sometimes framed as the right to privacy, is enshrined in numerous human rights treaties. For example, article 17 of the *International Covenant on Civil and Political Rights* states that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."[8] This right formed the basis for the famous United States Supreme Court decision of *Roe v Wade*, which held that the right to terminate a pregnancy is located in the right to privacy enshrined in the United States Bill of Rights.[9]

The right to autonomy is also viewed as constituting a core component of a number of other rights. For example, pursuant to article 12 of the *International Covenant on Economic, Social and Cultural Rights*, everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.[10]

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[5] *Assisted Reproductive Treatment Regulations 2019* (Vic) r 10.

[6] *Surrogacy Act 2010* (NSW) s 27(1); *Surrogacy Act 2022* (NT) s 17 (exceptional circumstances may justify a minimum age of 18 years, see s 34); *Surrogacy Act Qld 2010* (Qld) s 22(2)(f); *Surrogacy Act 2019* (SA) s 10(3); *Surrogacy Act 2012* (Tas) s 16(2)(c); *Assisted Reproductive Treatment Act 2008* (Vic) s 23(2)(a); *Status of Children Act 1974* (Vic) s 23(2)(a); *Surrogacy Act 2008* (WA) s 17(a)(i).

[7] See Bernadette Richards, 'General Principles of Consent to Medical Treatment' in Ben P White et al, *Health Law in Australia* (4th ed, Lawbook Co, 2024) 137 [5.90].

[8] International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966 G.A. Res. 2200A (XXI), U.N. GOAR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976)

[9] This decision was overturned in 2022 by *Dobbs v Jackson Women's Health Organization* 597 U.S. ___ (2022).

[10] *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1066, 993 UNTS 3 (entered into force 3 January 1976) art 12(1).

Autonomy is 'at the heart of human rights approaches to health care (including reproductive healthcare)'.[11] According to the Committee on Economic, Social and Cultural Rights, '[t]he right to health… contains… the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.'[12] Accordingly, every person has an equal right to the highest attainable standard of health, and the right to autonomy and to bodily integrity in the exercise of health-related decisions are integral to the right to health.

The Committee on the Elimination of Discrimination against Women has also weighed in on this issue. It has commented that States parties should 'require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice'[13] and observed that reproductive rights include 'the right of women to autonomous decision-making about their health'.[14] Pregnancy can never be used as a reason to deny individuals their rights to bodily autonomy and reproductive self-determination, including for individuals acting as surrogates.[15]

Australia has committed itself to the provisions of the treaties set out above. Therefore, **legislative confirmation that a surrogate has the same rights to manage their pregnancy and birth as any other pregnant person is in line with Australia's existing commitments under international human rights law.**

Removal of restrictions on advertising and discriminatory barriers

The Bill purports to improve access to altruistic surrogacy arrangements in the ACT by removing unnecessary and discriminatory barriers. For example, the Bill removes restrictions on advertising for altruistic surrogacy arrangements to make it easier for intended parents to connect with potential surrogates. Every effort should be made to facilitate the establishment of above-board, healthy relationships between intended parents and surrogates in which all parties are genuine in their motivations. There is currently anecdotal evidence to suggest that some surrogacy relationships are formed via social media or other internet sites. This presents the risk of the establishment of an unhealthy or problematic relationship which may involve exploitation or other concerning behaviour.

In the 2019 Victorian Independent Review of Assisted Reproductive Treatment, the Final Report noted that:

> Many intended parents and surrogates currently connect through online surrogacy social media forums and discussion groups. As discussed in Chapter 8 in relation to online communication between gamete donors and recipients, there are anecdotal reports that these forums and discussions groups may, on occasion, expose people to risk or misleading

[11] Ronli Sifris, 'Commercial Surrogacy and the Human Rights to Autonomy' (2015) 23 *Journal of Law and Medicine* 365, 370.
[12] ESCR Committee, *General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, (22nd Sess., 2000), para. 8, U.N. Doc. E/C.12/2000/4 (2000).
[13] CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention – Women and Health*, (20th Sess., 1999), para. 31(e), U.N. Doc. A/54/38/Rev.1, chap.1 (1999).
[14] CEDAW Committee, *Concluding Observations: Sierra Leone*, para. 32, U.N. Doc. CEDAW/C/SLE/CO/6 (2014).
[15] Center for Reproductive Rights, *Submission from the Center for Reproductive Rights following the call for inputs by the Special Rapporteur on the Sale and Sexual Exploitation of Children on Safeguards for the protection of the rights of children born from surrogacy arrangements* (2019) 4.

> information. As with Recommendation 55, the government may wish to consider facilitating the operation of community-led safe channels of communication between people contemplating entering into a surrogacy arrangement.[16]

At the very least, the ACT should make surrogacy advertising laws consistent with NSW where advertising for altruistic surrogacy is permitted as long as the advertisement is unpaid.[17]

I would suggest that the ACT may wish to go further than simply facilitating the operation of community-led safe channels of communication. For example, the establishment of well-regulated surrogacy agencies may help to facilitate appropriate relationships between intended parents and surrogates in a way that ensures open communication and understanding between all parties and that reduces the risk of exploitation or other concerning behaviour which can arise when people enter into relationships out of desperation. Regulated surrogacy agencies would ensure compliance with the laws, and increase the likelihood of a positive outcome for all parties to a surrogacy arrangement: children born through surrogacy, surrogates and intended parents.

The Bill also removes the prohibition on single people becoming parents through surrogacy. Such an exemplar of discrimination has no place in modern Australia, where many children grow up in single parent homes. The eradication of such legal discrimination is therefore a welcome development.

In the last census, 14.2% of Australian families were single parent families.[18] Excluding single people from accessing surrogacy arrangements is therefore out of step with the reality of how many Australian families are constituted. The current legal approach which prohibits single people from accessing surrogacy arrangements is therefore antiquated and discriminatory. This prohibition may be viewed as violating section 22 of the *Sex Discrimination Act 1984* (Cth) which states that:

> **It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's** sex, sexual orientation, gender identity, intersex status, **marital or relationship status**, pregnancy or potential pregnancy, or breastfeeding:
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> (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
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> (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
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> (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

The provision of the current ACT legislation which prohibits single people from accessing surrogacy arrangements bears some similarity to the provision of the Victorian legislation that was struck down by the Federal Court of Australia in the case of *McBain v Victoria* (2000) 177 ALR 320. This case involved a single woman who was seeking access to assisted reproductive treatment in Victoria. At the time, section 8 of the *Infertility Treatment Act 1995* (Vic) stated that only married women could access fertility treatment. Doctor McBain argued that this provision in the Victorian Act was inconsistent with the provision in the Commonwealth's *Sex Discrimination Act* which prohibited discrimination on the basis of marital status. The Federal Court agreed. Pursuant to section 109 of the *Commonwealth Constitution*: "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the

[16] Michael Gorton, 'Helping Victorians create families with assisted reproductive treatment' *Final Report of the Independent Review of Assisted Reproductive Treatment* (May 2019) [9.7.2].
[17] *Surrogacy Act 2020* (NSW) s 10.
[18] Australian Bureau of Statistics, *Labour Force Status of Families* (June 2022).

inconsistency, be invalid." Therefore, section 8 of the Victorian legislation was found to be invalid on the basis that it was inconsistent with the Commonwealth Act.

Similarly, there are strong grounds to argue that the current prohibition on single people in the ACT accessing surrogacy arrangements is discriminatory and contravenes the Commonwealth *Sex Discrimination Act.* **Therefore, I urge the Committee to retain the provisions of the Bill that remove such discrimination.**

Removal of requirement for a genetic connection

The Bill removes the requirement for at least one intended parent to be 'a genetic parent of the child' born through surrogacy and allows the surrogate to use her own eggs, thereby permitting so-called "traditional surrogacy". The removal of the requirement for at least one intended parent to be 'a genetic parent of the child' born through surrogacy is especially significant. Western Australia is the only other jurisdiction with such a requirement and, as I have already mentioned, that State's law is desperately in need of an update.[19]

Most intended parents, if they have the choice, would choose to have a genetic connection to their child. Therefore, the requirement for a genetic connection between the intended parents and the child fails to recognise the reality that where intended parents use both donor eggs and sperm, the most likely reason for this is because they are not able to provide the gametes themselves. The reasons for this may be medical (for example intended parents who have undergone cancer treatment may not be able to provide gametes of sufficient quality) or social (for example gay cisgender men cannot provide any eggs).

The requirement for a genetic connection makes no sense in the context of the law relating to legal parentage more broadly. For example, adoption has been legally permitted for eons in circumstances where the parents have no genetic connection to the child. In more recent years, all Australian jurisdictions have recognised that in circumstances where a couple requires gamete donation to become parents, the person with no genetic connection to the child is still recognised as the child's parent, and not the egg or sperm donor.[20] Insisting on a genetic connection in the surrogacy context creates an undesirable fragmentation in the legal approach to parentage, as genetics are significantly downplayed in the context of adoption and gamete donation and rendered pivotal in the surrogacy context. The only possible explanation for retaining such a distinction is to send a message that surrogacy is frowned upon and is not viewed as an equal pathway to family formation as gamete donation and adoption.

It is illogical for genetic connectedness to be irrelevant for the purposes of establishing legal parentage in the context of adoption and donor conception but essential in the context of surrogacy. As stated in the dissenting judgment of the Grand Chamber of the European Court of Human Rights in the *Case of Paradiso and Campanelli v Italy*[21]:

> **While biological ties between those who act as parents and a child may be a very important indication of the existence of family life, the absence of such ties does not necessarily mean that there is no family life.** The Court has thus accepted, for example, that the relationship between a man and a child, who had very close personal ties between them and who believed for many years that they were father and daughter, until it was eventually revealed that the man was not the child's biological father, amounted to family life (see *Nazarenko v. Russia*, no. 39438/13, § 58, ECHR 2015 (extracts)). The majority further refer, quite rightly, to a number of other cases illustrating that it is the existence of genuine personal ties that is important, not the existence of biological ties or of a recognised legal tie (see paragraphs 148-

[19] *Surrogacy Act 2008* (WA) s 21(4(b).
[20] See for example *Status of Children Act 1974* (Vic) s 13.
[21] Application No 25358/12, 24 January 2017 [3].

150 of the judgment, referring to *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 117, 28 June 2007; *Moretti and Benedetti v. Italy*, no. 16318/07, §§ 49-52, 27 April 2010; and *Kopf and Liberda v. Austria*, no. 1598/06, § 37, 17 January 2012).

Indeed, the absence of a genetic connection should not translate into the absence of a parent-child relationship. To conclude otherwise flies in the face of the established law and wisdom relating to adoption, donor conception and indeed other areas of law. The existing anomaly in ACT law which requires a genetic connection between the intended parents and the child should be corrected.

I commend the drafters of the legislation for removing the requirement for a genetic connection.

Points of concern

Legal parentage

The Bill opens the door a crack to allowing intended parents of children born through compensated surrogacy arrangements to be recognised as the legal parents – but only a crack as they must show that the child will otherwise suffer a "pressing disadvantage". In theory, this is an improvement on the laws of the other States and the Northern Territory, which do not entertain any circumstance in which intended parents of a child born through compensated surrogacy may be recognised as that child's legal parents. Nevertheless, it does not go far enough. All children are disadvantaged when the law refuses to recognise their functional family as their legal family. A child who lives with their parents, calls them mum or dad, and looks to them for safety and security, has just as much of a right to have those parents recognised by law as their legal parents as any other child. **It should not be necessary to prove a "pressing disadvantage", and it remains to be seen how this provision would be interpreted.** It is undesirable for the legislation to introduce a provision on such an important matter which is deliberately ambiguous. There should not be any controversy in recognising that innocent children should not pay the price for the choices of their parents, and should not be discriminated against and disadvantaged due to the circumstances of their birth.

Article 2(2) of the *Convention on the Rights of the Child* provides that State Parties shall take appropriate measures to ensure that children are protected from all forms of discrimination on the basis of the status of their parents, legal guardians or family members.[22] Australia has ratified this convention, thereby binding itself to the terms of the convention under international law. In light of the discrimination inherent in treating children born through compensated surrogacy differently to children born through altruistic surrogacy, the ACT would seem to be in breach of this article. Other relevant articles of the convention are article 3(1) which states that '[i]n all actions concerning children, whether undertaken by….courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration' and 3(2) which states that 'States Parties undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians or other individuals legally responsible for him or her.'[23] A failure to recognise a child's functional parents as their legal parents is arguably in breach of article 3 which requires that the 'best interests of the child be the primary consideration'.

[22] *United Nations Convention on the Rights of the Child,* opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 2(2).
[23] *United Nations Convention on the Rights of the Child,* opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3(1) and 3(2)..

For children born as a result of compensated surrogacy arrangements, the State is the main perpetrator of discrimination; the failure of Parliament and the courts to recognise the parentage of children born through compensated surrogacy arrangements results in discrimination being perpetrated against these children. Legal parentage provides public validation of the child's family structure, a concept that transcends the practical consequences of orders for parental responsibility, which is the legal vehicle through which parents of children born via compensated surrogacy arrangement can make everyday decisions for their children. However, parental responsibility brings with it limitations; most significantly, it comes to an end when a child turns 18.

From a family law perspective, the *Family Law Act 1975* (Cth) is resplendent with references to the parent-child relationship and the importance of maintaining a meaningful relationship with both parents.[24] If functional parents are not recognised as legal parents with whom will a meaningful relationship be maintained and on what basis? Importantly, who will be liable to pay child support in the event of relationship breakdown?

Irrespective of one's views of compensated surrogacy, there can be little doubt that from a child centred approach the failure to recognise a child's legal parentage is problematic. As the authors of the Family Law Council's 2013 report commented, '[A] large number of young children are growing up in Australia without any secure legal relationship to the parents who are raising them',[25] and an immediate solution is required. The ACT has the opportunity to provide this solution by enacting legislation that allows the intended parents of children born through compensated surrogacy arrangements to be recognised as the legal parents of those children. I strongly urge the Committee to take this opportunity to recommend the enactment of such a provision – it is the only approach to the question of parentage that adequately addresses and safeguards the rights and interests of children born through compensated surrogacy arrangements.

In addition to the fact that as a matter of principle the ACT should legislate to enable legal recognition of the families of all children born through surrogacy, there are also practical reasons to question whether any applications for legal parentage would be made in circumstances where a child is born via a compensated surrogacy arrangement, even where "pressing disadvantage" is manifest. The reason why such an application is unlikely to be brought is because this Bill retains the provisions that criminalise compensated surrogacy and the threat of imprisonment for such conduct. Therefore, it is highly unlikely that intended parents of children born through compensated surrogacy would take the risk of applying for legal parentage. As Stephen Page has noted in his submission to this Committee:

> The ACT, along with Queensland and NSW criminalises overseas commercial surrogacy. Unlike Queensland and NSW where there is a time limit for prosecution, there is no time limit for prosecution of this offence in the ACT: *Parentage Act 2004* (ACT), s.41, *Legislation Act 2001* (ACT), ss. 190, 192.
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> Therefore, any intended parent who may have otherwise considered making an application to the Court to regularise the parentage of the child will be chilled by the possibility of being referred by the Court to authorities for consideration of prosecution, as has occurred several times. (citations omitted).

Therefore, at the very least the ACT should introduce a time limit for prosecution, in line with those other jurisdictions that also criminalise overseas compensated surrogacy.

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[24] *Family Law Act 1975* (Cth) ss 60B(1)(c) and (d). Section 60B(2) of the *Family Law Act 1975* (Cth) states that the principles underlying the objects are the need for children to know and be cared for by their parents irrespective of marital status (s 60B(2)(a)); the right of the child to spend time with and communicate with their parents or other significant adults (s 60B(2)(b)); that parents jointly share duties and responsibilities concerning the care and welfare and development of their children (s 60B(2)(c)); that parents should agree about their future parenting of their children (s 60B(2)(d)).

[25] Family Law Council, *Report on Parentage and the Family Law Act* (December 2013) 99.

This brings me to my next point, that being the continued prohibition of compensation.

Compensation

The prohibition on compensated surrogacy remains in place and the offence of compensated surrogacy remains one of extra-territorial operation. As stated above, while compensated surrogacy remains prohibited, it is difficult to imagine a circumstance in which the intended parents would seek a parentage order, even in cases where the child is clearly suffering a "pressing disadvantage", for fear of being prosecuted.

In line with most other Australian jurisdictions, the ACT should remove the criminalisation of extraterritorial compensated surrogacy set out in s 45 of the *Parentage Act 2004*. Retaining this provision is nonsensical and makes a mockery of the law given that it has never actually been utilised. In fact, there is no evidence that it has reduced the number of intended parents traveling overseas to access compensated surrogacy arrangements. Further, retaining this provision contravenes the one of the expressed aims of the Bill, that being to better align the ACT's surrogacy laws with other Australian jurisdictions. The majority of Australian jurisdictions do not render the prohibition on compensation to be of extraterritorial effect.

That said, while no prosecutions have taken place, the threat is still present. Therefore, the criminalisation of overseas compensated surrogacy has the potential to cause harm to the child, as it increases the likelihood that intended parents, fearing prosecution, will fail to inform the child that they were born through overseas compensated surrogacy. This contravenes the growing body of literature relating to the "right to know",[26] which precipitated the changes to Victorian law relating to anonymous gamete donation.[27] It also conflicts with article 8 of the *Convention on the Rights of the Child* which states that 'children have the right to an identity – an official record of who they are.'[28] **Children born through surrogacy should not be placed in a position where the full nature of their identity is denied out of a fear of prosecution.**

If the Committee recommends the retention of the prohibition of compensation. I urge the Committee to adopt a broader approach to the definition of reasonable expenses for which the surrogate can be reimbursed. It is unacceptable for a surrogate to be out of pocket as a result of participating in a surrogacy arrangement. This is not a contentious position. There is broad agreement that a decision to be an "altruistic surrogate" is an generous decision involving a high level of self-sacrifice, and that surrogates should not have to bear a financial cost for this act of kindness. This is why regulations exist that allow the surrogate to claim their expenses. I urge the Committee to ensure that the regulations setting out what constitute reasonable expenses are carefully drafted so as to cover the full range of expenses that a surrogate may reasonably expect to encounter in their role as a surrogate. It is better for such allowable reimbursement to be framed more broadly to ensure that the act of being a surrogate does not come at a financial cost to the surrogate.

Finally, this Bill presents the ACT with the opportunity to be a leader in legislating for real change. Just as the ACT was the first Australian jurisdiction to decriminalise abortion, with the other jurisdictions following its lead, the ACT has the opportunity to be the first Australian jurisdiction to decriminalise and regulate compensated surrogacy. The vast majority of Australian surrogacy arrangements are overseas compensated surrogacy arrangements. This is not because most intended parents desire to travel overseas to have a child – doing so

[26] See for example Victorian Parliament Law Reform Committee, *Report of the Law Reform Committee for the Inquiry into Access by Donor-Conceived People to Information about Donors* (March 2012).
[27] *Assisted Reproductive Treatment Amendment Act 2016* (Vic).
[28] *United Nations Convention on the Rights of the* Child, art 8.

is stressful and complicated. Allowing for compensation is the most obvious mechanism for increasing the number of surrogates in Australia. Surrogates deserve to be adequately compensated for the reproductive labour inherent in conceiving, carrying and birthing a child. **In a society where everyone else is paid for their role in facilitating a surrogacy arrangement – the doctors, lawyers, and counsellors – it is a matter of reproductive justice that the person working the hardest and assuming the greatest risk be compensated appropriately**.

I am happy to assist the Committee in any way I can, and to provide oral evidence to the Committee.

Yours sincerely,

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