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Dear House of Representatives Standing Committee on Social Policy and Legal Affairs,

We write in regards to the *Inquiry into Surrogacy*. We write as two researchers who have conducted extensive empirical research on the topic of surrogacy, specifically with regard to both the experiences of intending parents, and broader public discourses with regard to international commercial surrogacy. Our comments below in response to three of the terms of reference are based on our research findings.

## **2. Medical and welfare aspects for all parties involved, including regulatory requirements for intending parents and the role of health care providers, welfare services and other service providers**

One of the primary issues we have explored in our research to date has been the impact of commercial surrogacy on women who act as surrogates outside Australia. Given that Australia has no jurisdiction over clinics who engage such women overseas, our concern has been with whether guidelines that would normally be adhered to within Australia (i.e., NHMRC guidelines for assisted reproductive technologies) would be mirrored in overseas locations, and if not, what this means for the care of women who act as surrogates for Australian citizens.

We would thus suggest that at least one of the following two things are necessary. First, in Australian states and territories where it remains legal for Australian citizens to enter into commercial surrogacy arrangements overseas, it would be beneficial for agreements to be developed between the countries so as to ensure that similar protocols and practices are adhered to in clinics outside of Australia. This might involve a register of international clinics that meet Australian guidelines. The second option would be to legislate for commercial surrogacy within Australia. This would mean that Australia has complete autonomy over the actions of its citizens, and could better regulate the practice of commercial surrogacy. This may or may not involve prohibiting Australian citizens in all states and territories from entering into commercial surrogacy arrangements outside of Australia, so as to prevent this practice continuing (if the first option outlined above is not adopted).

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A key benefit of the first suggestion outlined above would be the maintenance of a register through which children born through surrogacy may later be able to trace all those involved in their conception and birth. As we know from donor conceived children in Australia, the lack of capacity to potentially make contact with donors is for some distressing. A proactive approach to this with regard to international commercial surrogacy would be to ensure that records are held (either within Australia or through links with international clinics) so that children born through surrogacy may contact, if they wish, all involved in their conception or birth.

### **3. issues arising regarding informed consent, exploitation, compensatory payments, rights and protections for all parties involved, including children**

A number of court cases heard in Australia seeking to attribute legal parentage to people who have undertaken commercial surrogacy arrangements outside of Australia have indicated that in some instances women who act as surrogates outside of Australia may not be fully able to give informed consent. Additionally, in our own research with Australian citizens who have entered into such arrangements we have identified instances where decisions have been made by clinics overseas that do not accord with agreements made with Australian citizens. Whilst the issue of informed consent and the issue of variations on agreements are very different matters, their similarities lie in the apparent lack of control or self-determination that may be inherent to some sectors of international surrogacy programmes.

Again, as per our recommendation in relation to the third term of reference, ensuring that exploitation is prevented and that rights and protections are afforded requires Australia to be able to monitor the undertakings of its citizens. Whether or not this is best facilitated by either/both agreements with international clinics or making commercial surrogacy available in Australia is a significant question. However it is one that we recommend should be given serious consideration given the likelihood that Australian citizens will continue to enter into commercial surrogacy arrangements, and that given the factors outlined above, there is no guarantee that this will result in positive outcomes for all parties at all times.

### **6. the adequacy of the information currently available to interested parties to surrogacy arrangements (including the child) on risks, rights and protections**

Aspects of our research have focused on the loss or vulnerability that some intending parents may bring with them into their journey to surrogacy. In this research we have explored how, for some such parents, there may be the assumption that once the 'hurdle' of surrogacy is over, that what remains will be less onerous. Our research has questioned this assumption, however, and has highlighted the ongoing challenges that may be faced by some parents who have children through surrogacy, both challenges similar to all parents, and challenges unique to surrogacy (i.e., public attitudes, children's desire to meet surrogates or donors). Our participants have also told us that their decision making was largely informed by knowledge gleaned from informal channels.

We would thus suggest the importance of increasing the availability of public information about surrogacy, so that potential parents may more easily be able to make informed decisions. Whilst VARTA provides information currently, their work could be further supported nationally in a wider array of outlets. Further, counselling services made available to intending parents may help to ensure more positive outcomes for all parties. At present such counselling is available to people who undertake altruistic surrogacy within Australia, and is available at clinics internationally that provide this option. Ensuring that all intending parents are able to discuss their decisions prior to entering into a surrogacy agreement would appear to be an important option to make available.

In sum, our research findings suggest the need for a significant overhaul of surrogacy in Australia. Whilst some states and territories have sought to curtail international commercial surrogacy by legislating against it, this does not necessarily appear to be working. Whilst a commercial surrogacy programme in Australia or agreements between clinics internationally may not mitigate all potential problems, one or both would certainly go a great way towards redressing some of the imbalances that exist within the commercial sector, specifically as they impact upon women who act as surrogates, children, and intending parents.

We are happy to provide any further information about our research on request, though most is available in the publications listed below.

Yours Sincerely,

Dr Damien W. Riggs      Dr Clemence Due

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- Riggs, D.W. (2016). Narratives of choice amongst white Australians who undertake surrogacy arrangements in India. *Journal of Medical Humanities*.
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- Riggs, D.W. & Due, C. (2014). 'The contented faces of a unique Australian family': Privilege and vulnerability in news media reporting of offshore surrogacy arrangements. *Feminist Media Studies*, 15.
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- Riggs, D.W. & Due, C. (2010). Gay men, race privilege, and surrogacy in India. *Outskirts: Feminisms Along the Edge*, 22.
- Riggs, D.W., Due, C. & Power, J. (2015). Gay men's experiences of surrogacy clinics in India. *Journal of Family Planning and Reproductive Health*, 41, 48-53.