AUSTRALIAN FEMINISTS FOR WOMEN'S RIGHTS

Submission to the Inquiry into fertility support and assisted reproductive treatment

Conducted by the NSW Legislative Council Select Committee on Fertility Support and Assisted Reproductive Treatment

Australian Feminists for Women's Rights (AF4WR) is an incorporated association of feminists from all over Australia campaigning for women's sex-based rights protections, within a broader context of social and economic justice for all. We welcome this opportunity to provide a submission on the above topic. In keeping with our remit as an organisation, we will be focusing on specific issues impacting on women.

Summary

The Terms of Reference (TOR) cover three broad areas in relation to impacts on women:

1. *Physical and mental health support for women suffering pregnancy loss or facing infertility through such conditions as endometriosis or cancer (these two are specifically mentioned in the TOR);*
2. *Access to surrogacy; and*
3. *Various so-called infertility treatments other than surrogacy, including but not limited to IVF, which we will refer to here as "assisted reproductive technologies" (ART).*

As concerns (1), AF4WR fully endorse the provision of public health support for women suffering any serious health condition including gynæcologically-related ones such as endometriosis, and for women having suffered miscarriage, stillbirth, ectopic pregnancy or other loss of a pregnancy.

This submission thus focuses on (2) and (3). First, we would like to state that there is no *right* to a biological child, that is, a child that carries the DNA of one or both of the parents. All core UN treaties set out the right of all to marry and found a family, but there is nothing in any rights document that frames having a *biological* child as a human right. We are concerned that the cultural and medical insistence on the use of various technologies to produce a biological child in the cases where either intended parent experiences fertility issues has resulted in **a range of harms to women and comes at increasing economic cost as well.**

Our position with regard to (2) is that all surrogacy should be outlawed: there is no "arrangement" that makes this exploitation of women's bodies morally justifiable. **Our position with regard to (3)** is that IVF should not be normalised as a solution to fertility risks and should not be publicly funded either in whole or in part.

2. Surrogacy

In practically all institutional conversations concerning the use of surrogacy in Australia today, including in this review, the recent Federal review and the current bill before the Western Australian parliament, the primary and near-exclusive focus is on the intended parents, with some attention also to the rights of the child produced through surrogacy. The relative lack of attention to the rights and needs of women used as surrogates is a matter of considerable concern—indeed, alarm.

Although international commercial surrogacy has been shown to be particularly deleterious to women's health and women's rights, not to mention the rights of the internationally-purchased baby, domestic so-called "altruistic" surrogacy does not *necessarily* reduce the risks to women and certainly does not eliminate them. However, even before we contemplate physical risks, the core question of the commodification of women as rentable uteruses or sellable eggs—as *body parts* considered separately from the woman as a person—must be addressed.[1] Surrogacy arrangements almost always involve production of a child using the intended father's sperm but the egg is not always that of the intended mother—presuming the adoptive parents are a heterosexual couple—and the womb used most certainly is not. In other words, it is the father's genetic material that is the most consistently (in fact, always) present in surrogacy arrangements, but not necessarily that of either the birth mother (surrogate) or the intended adoptive mother. Yet, there is no international human right nor indeed fully encoded Australian right (only an implied one through laws regulating surrogacy) for any male to use a woman's body as a tool to produce offspring. On the contrary, such use of a woman's body *violates* women's human rights. Even in so-called "altruistic" surrogacy arrangements, a number of women have reported retrospectively that they felt coerced into surrogacy by their family or friends, without a full understanding of the risks—including the rupture of her own bond with the child to whom she has given birth, and the resulting grief experienced.

Moreover, a child is not a commodity, but a human being. Practices that commodify children and that disrupt the mother-child bond are not consistent with the provisions of the UN Convention on the Rights of the Child (CRC), which clearly states that among other things, children have the right to know and be cared for by their parents. Although neither the CRC nor any other UN convention limits the definition of "parent" to a biological one nor as we have stated above encodes any "right" to a biological child, other UN treaties and policies (such as Millenium Development Goal 5 on maternal health) make it clear that the woman who gives birth to a child is considered to be its mother in the most fundamental sense. Children have a right to know the women who brought them into the world.

Under no circumstances, then, is surrogacy, even when "altruistic", a relationship between equal partners benefiting from full personhood. The very TOR make this clear: a desire is expressed to "better support families *and* surrogates" (emphasis added): the surrogate—the woman who carries and gives birth to the child—is through the use of this conjunction "and"

placed outside the "family" and thus presumed to have no parenting relationship to the child. This separation of "surrogate" and "family" shows an appalling ignorance of the physical bond created between birth mothers and the children to whom they give birth, even when they do not share initial genetic material. This is not an "essentialist" ideological position as some may hold: it is a biological reality, with ongoing physical and psychological impacts that last beyond the moment of giving birth. One does not "make a baby" like one makes a cake.

As concerns physical risks, the harmful physical and psychological impacts of both egg-donation and gestational surrogacy on the women used as donors or surrogates have long been demonstrated and are well documented.[2] First, there is some indication that hormone treatments and repeated egg harvesting impact deleteriously on donors' medium to long term health. Second, pregnancy and childbirth operate profound changes in women's bodies and they are far from risk-free processes. Commercial surrogacy certainly exacerbates these impacts—among other things, through the widespread use of medically unnecessary caesarean sections (C-sections)—but they are far from absent in "altruistic" surrogacy. (Pre-term and unnecessary C-section use has in fact increased globally for all births but is particularly used in surrogacy.[3]) More generally, longitudinal research has shown that women involved in gestational surrogacy are exposed to greater risks during pregnancy, due among other factors to the baby often being genetically unrelated to the birth mother.[4]

It is also worth noting that Australians use significantly more international surrogacy than domestic surrogacy: only around 20 percent of children born via surrogacy to Australian intended parents are born domestically. Australians are in fact among key contributors to the development of gestational surrogacy amongst vulnerable women in Ukraine and Southeast Asia.[5] It is far from clear that enhancing access to domestic surrogacy arrangements will stem the transnational surrogacy tide. That implicit presumption appears to be based on the assumption that women are so altruistic that a simple matter of improved and better regulated "expenses" payments would result in more of them rushing to produce offspring for others, or that the intended parents would be perfectly comfortable with having a birth mother living in the same country who could at any time engage in legal proceedings re custody or access to her child. From a purely "practical" point of view, then, it is unlikely that either the intended surrogate or the intended adoptive parents would be comfortable with such an arrangement. From a purely human rights point of view, the exploitation of women used in surrogacy would still remain unaddressed.

Our position is thus that all surrogacy should be outlawed: there is no "arrangement" that makes this exploitation of women's bodies morally justifiable. However, as our governments, both state and federal, seem intent on further legitimising surrogacy in this country, we would suggest that *at the very least* the following restrictions apply:

- A clear statement in all surrogacy-related legislation that there is no automatic human right to a biological child;

- A ban on gestational-only surrogacy (through implantation of another woman's fertilised egg) due to the higher health risk to both the egg donor and the birthing mother;
- A highly regulated process for entering surrogacy arrangements including raising the uniform age that women can become a surrogate to 30;
- A ban on birth mothers ceding parental rights: the overarching principle should be that a woman entering surrogacy should never have fewer rights than any other woman going through pregnancy, childbirth or new motherhood;
- A Government-funded review of the interaction between trauma and abuse (not excluding coercive control related abuse) and surrogates/women considering entering surrogacy arrangements (there is to date very little research on this aspect yet as stated above, surrogacy arrangements do not occur on a "level playing field" from which gendered considerations are absent: the use of women as reproductive tools dissociated from their experience of pregnancy, childbirth and mothering can only happen in the first place in a society that is not sex-egalitarian in a substantive sense);
- Limits on the weight given to the wealth or ethnicity of intended parents during tests of best interests of the child where custody is disputed, in order to restrict the impact of power imbalances.

3. ART

We note at the outset that there is a substantive difference between ART and surrogacy in that, whatever the mental and physical health concerns one may have for women undergoing ART (we will focus here on IVF), they are not expected to relinquish the child they have "gestated" and brought into the world to a third party or parties. They are undergoing the treatment *for themselves* and not on the requisition of others.

Within our Association, women's personal experiences of ART have been varied and we have among our members women who have resorted to IVF and other technologies in order to become pregnant and/or bring a pregnancy to term. We would, however, as in the case of surrogacy, like to separate out the personal motivations of women in undergoing IVF—in this case, the actual birth mothers who will go on to become legal parents—and the associated health and economic costs.

Health costs. Undergoing IVF is psychologically and physically demanding for the mother, and not without health risks to both her and her child. Although not frequent, such risks are significant in their impact. Multiple pregnancy and the risk of premature or low-birth-weight babies are among the most common risks (other health risks are exacerbated in multiple pregnancies). Other risks with severe consequences, although rare, are a slightly heightened risk of ectopic pregnancy and a risk of ovarian hyper-stimulation syndrome. Moreover, IVF does not have a guaranteed outcome and women could face multiple failures and often years

of treatment. As a result, women can suffer depression in addition to the other bodily changes that IVF brings about.

Our position is that IVF should not be normalised as an appropriate solution to fertility risks, due to these impacts on the women involved, many of which are not fully appreciated during the emotionally charged pursuit of conception.

Economic costs. These costs are incurred both by the women concerned and by the government. At the moment the NSW government provides a means-tested subsidy to intending mothers using IVF. Already, such subsidies are a drain on the public health purse, when our hospitals are already facing resourcing crises; any proposed increase to such subsidies would take resources away from other urgently needed health support (including for pregnancy and childbirth, or indeed loss of pregnancy). Individuals choosing to put themselves through IVF is one thing: providing support for doing so via the public health purse is quite another. The NSW government's health budget in the area of support for pregnant and birthing mothers would be better used in addressing the shocking findings of the government's 2024 inquiry into birth trauma: experienced by one in three women and including a high incidence of obstetric violence.

Our position is that there should be no public funding of IVF.

[1] See for example: Ekman, Kajsa Ekis (2025) *Being and Being Bought: Prostitution, Surrogacy and the Split Self* (2nd edition). Melbourne: Spinifex Press.
[2] See for example: Klein, Renate (2017) *Surrogacy: A Human Rights Violation.* Melbourne: Spinifex Press.
[3] See for example the editorial and series of articles in *The Lancet* vol. 392 no. 10155, 2018 on the "global caesarean section epidemic". https://www.thelancet.com/journals/lancet/issue/vol392no10155/PIIS0140-6736(18)X0043-9
[4] https://theconversation.com/surrogacy-is-booming-but-new-research-suggests-these-pregnancies-could-be-higher-risk-for-women-and-babies-239574
[5] See for example Page, Stephen (2023) "Surrogacy in Australia: the 'Failed Experiment'?" https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/PrecedentAULA/2023/6.html