



Opening statement

Chair, members of the committee, we appear before you today not only as women's advocates but as co-guardians – with you – of women's welfare. We also appear as monitors of the constitutional and human-rights order in New South Wales and as the women who entrusted you with the authority to uphold that order. Members, your office carries significant powers and we honour that in speaking to you today in the hope that you will use your powers for the protection of those of us who are most vulnerable to state and structural harm.

As guardians, you have accepted on our behalf the burden to limit what can be done in our name, and we thank you for taking on this work. But as citizens – and here we speak especially as women and as mothers – we hold rights against parliament: rights to not have our bodies or our children treated as resources in a market, however strong the demand, and rights to your protection from state and structural harms that individuals cannot prevent alone.

A core question for this inquiry, then, is how parliament understands its role in relation to women and surrogacy. The starting point we offer is guardianship. Applied to women and girls as a sex class, this means legislators hold a duty to protect us from laws that license the exploitation and commodification of our reproductive capacity.

This is why guardianship, properly understood, is not paternalism. Women do not lack capacity or competency. We lack protection. Paternalism assumes that adults lack capacity and uses that as a justification for overriding our wishes 'for our own good'. Guardianship instead recognises that adults have agency, but also that some social arrangements are so structurally exploitative that the state must not endorse them, even when some citizens step into them. A parliament that refuses to construct and manage a market that depends on women's inequality is not denying women's agency; it is honouring a duty to ensure that our agency is not used as raw material for exploitation.

In this inquiry, however, parliamentarians are being invited into a different self-image: as stewards of a policy domain now being termed 'fertility support', managing sets of consumer and industry interests. Within that stewardship frame, purchasers, clinics, brokers, 'surrogate mothers' and children all appear as 'stakeholders' whose claims must be balanced. We press the committee to step out of that comfortable stewardship frame and into the space that guardians inhabit, where there are hard limits on what may be organised as a service and commodity market. A steward of a reproductive market is, by definition, working for that market's continuity and stability; a guardian of women and children can, and sometimes must, recommend that the market not exist at all.

Seen through this lens, your Terms of Reference embrace not just technical questions. They go to whether this committee will recommend removing protections in the name of 'access',

or will instead affirm that the only coherent safeguard for an inherently exploitative practice is prohibition.

'Barriers to accessing surrogacy' are not inconveniences to be removed; they are essential, minimal protections against the commodification of women as a sex class. And where harm is inherent in the structure of an arrangement, no amount of regulation can cure it. A framework built on stewardship will only ever treat women's bodies as sites of managed risk. A framework built on guardianship, however, will prohibit surrogacy, extend that prohibition extra-territorially, criminalise facilitation and brokerage, and integrate surrogacy into anti-trafficking and women's-rights protections.

Our request to you is simple and it is serious: to remember, in this inquiry, that the parliament must not primarily steward an industry but instead guard women and children in its role as trustee of the community's power. We are asking you to live in that role on which we rely and that you have promised to us to uphold. The authority you possess is considerable and we lend it to you on terms.