Professor Ronli Sifris
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Australian Law Reform Commission
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By email: surrogacy@alrc.gov.au

4 July 2025

Dear Professor Sifris,

The Australian Christian Lobby (ACL) is grateful for the opportunity to make a submission to the Australian Law Reform Commission's *Review of Surrogacy Laws*

Thank you for giving the following submission your careful consideration.

Yours Faithfully,

[redacted]

Michelle Pearse,
CEO, Australian Christian Lobby

SUBMISSION:

The ALRC's Review of Surrogacy Laws

AUSTRALIAN CHRISTIAN LOBBY

About Australian Christian Lobby

The vision of the Australian Christian Lobby (ACL) is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With around 250,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the Voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

acl.org.au

ACL's concern that the Inquiry is being operated substantially out-of-scope from the Terms of Reference provided by the Attorney General

At the outset, it is important to note that the Issues Paper published by the ALRC for the purposes of guiding public debate on this important issue, and the accompanying consultation questions, depart significantly from the task specified in the Attorney-General's Terms of Reference. As a result, it appears that the ALRC has taken the inquiry in a direction never contemplated by the Terms of Reference.

At paragraphs [3] and [4], the Issues Paper presents the ALRC's summary of what has been asked of it by the Attorney-General (AG). We submit, however, that the ALRC's rephrasing is not a summary but a fundamental change to the scope of the inquiry, prioritising issues that were not in scope and omitting others that were.

The table below sets the wording provided in the AG's Terms of Reference beside the ALRC's interpretation of them. Item #1 describes the overall task. Items #2-#5 describe specific components of that task.

Item #	***AG's Terms of Reference***	***Terms of Reference as summarised in the ALRC's Issues Paper***
1	"[R]eview of Australian surrogacy laws, policies and practices to identify legal and policy reforms, particularly proposals for uniform or complementary state, territory and Commonwealth laws, that: • are consistent with Australia's obligations under international law and conventions; and • protect and promote the human rights of children born as a result of surrogacy arrangements, surrogates and intending parents, noting that the best interests of children are paramount."	"[R]eview and make recommendations about how surrogacy is, and should be, regulated in Australia, with a focus on proposals for better aligning state, territory, and Commonwealth laws … adopt[ing] a practical and human rights-based approach."
2	how to reduce barriers to domestic altruistic surrogacy arrangements in Australia, including by ensuring surrogates are adequately reimbursed for legal, medical and other expenses incurred as a consequence of the surrogacy;	how to reduce barriers to surrogacy arrangements within Australia;
3	how surrogacy arrangements made outside of Australia should be addressed by Australian law;	how Australian law should address overseas surrogacy arrangements;
4	what is the appropriate recognition of legal parentage in Australia for children born of surrogacy overseas,	how legal parentage for children born through surrogacy arrangements overseas should be recognised;

	and how may citizenship, visa and passport requirements for children born of surrogacy overseas be aligned;	how citizenship, visa, and passport requirements for children born through international surrogacy arrangements should be aligned;
5	the information that should be available to children born from surrogacy arrangements, including what information should be included on a child's birth certificate in order to meet Australia's human rights obligations under the Convention on the Rights of the Child.	what information should be available to children born through surrogacy arrangements.

The distortion created by the ALRC's reframing of the issue effects every item on this list, the most significant being that the inquiry now appears to contemplate the legalisation of commercial surrogacy. Where the AG's Terms of Reference (item #2) asked the ALRC to consider how to reduce barriers to *domestic altruistic* surrogacy arrangements within Australia, this seems to have been taken as a mandate to consider how to reduce barriers to *all forms* of surrogacy, including commercial surrogacy. A number of questions in the current consultation focus specifically on commercial surrogacy.

Commercial surrogacy is currently illegal and for very good reason. The proposition that it should now not only be legal but readily accessible, and that the "rights" of adults who commission children through commercial arrangements (whether in Australia or overseas) should be given weight in decision making related to surrogacy law reform represents a reversal of long-established policy.

A long list of government committees and inquiries have been asked again and again to consider the legalisation of commercial surrogacy, or the removal of impediments to accessing commercial surrogacy, and always with the same result, it has remained illegal. Given this history, the ALRC's decision to steer an inquiry that was intended by the Government to be about harmonisation of domestic altruistic surrogacy laws into such highly-contested territory is inappropriate and may be seen by some as opportunistic.

Commercial surrogacy can only be contemplated if Australia's international human rights obligations to prevent child trafficking are ignored. In order to include commercial surrogacy into the scope of this inquiry, the Issues Paper has had to omit the second bullet point under Item #1 in the AG's Terms of Reference, which requires it to ensure "Australian surrogacy laws, policies and practices ... are consistent with Australia's obligations under international law and conventions."

The Issues Paper appears to quote selectively from those international conventions – including the Convention on the Rights of the Child. However, it has omitted any reference to Article 35, which requires States Parties to "take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form." This raises concerns that some matters covered in the Issues Paper may appear misleading by omission.

The questions asked by the Issues Paper compound the problem by directing respondents to issues that do not fall within the scope of the Terms of Reference. For example,

> "Question 16: Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy? You might want to consider whether you agree with how we have described compensated and 'commercial' surrogacy.
>
> Question 17: If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented?"

These questions presuppose that introducing commercial surrogacy to Australia is being contemplated and that the ALRC has a mandate now to consider "how to reduce barriers to surrogacy arrangements [including commercial surrogacy arrangements] within Australia." This assumes an answer in the affirmative to the anterior (unasked) question of "whether Australia should reduce barriers to (commercial) surrogacy" at all. It means that the questions are leading and biased towards an outcome that was not intended by the AG. They do not invite feedback on equal terms from all parties.

The answers provided below are offered with a strong objection to the conduct of the inquiry so far. Noting these questions drive the conversation powerfully in a particular direction, we have nevertheless done our best to put that to one side and to provide answers in good faith.

ACL's responses to the Questions posed in the Issues Paper

Reform Principles

Question 2: What reform principles should guide this Inquiry?

ALRC will need to have full regard to the human rights engaged by this issue, in particular, those enshrined in the Declaration on the Rights of the Child, and Issues Paper, namely that:

- **The rights of the child should be paramount** – the rights and best interests of the child born through surrogacy are the most important consideration throughout the surrogacy process, and are rights Australia has a responsibility to uphold.
- **The prohibition on the sale of children** – a surrogacy arrangement in some contexts may amount to the sale of a child.
- **The right of the child to preserve their identity and nationality** – people born through surrogacy should be entitled to information regarding the circumstances of their birth (for example, through the details provided on birth certificates or available through births, deaths and marriages registries).

While surrogates' rights and intended parents' rights are also considerations in this context, the rights of children born through surrogacy (through no choice of their own) should be the primary consideration.

In addition, there are a number of other articles of the Rights of the Child that have not been included in the issues paper and which are also important for this review:

> ***"Article 9*** *1. States Parties shall ensure that a child shall not be separated from his or her parents [i.e. biological parents] against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures,*

> *that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.*
>
> ***Article 11*** *1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.*
>
> *2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.*
>
> ***Article 21*** *States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:*
>
> *(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;*
>
> *(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;*
>
> *(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;*
>
> *(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;*
>
> *(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.*
>
> ***Article 35*** *States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."*

The omission of Article 35 is, perhaps, the most surprising – but also consistent with the proposition that the ALRC has misread the Terms of Reference as permission to focus on "reducing barriers to surrogacy", rather than "reducing barriers to *domestic altruistic* surrogacy" only.

Human rights

Question 3: What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements? How should these be addressed?

Several key human rights concerns arise from surrogacy, particularly commercial surrogacy:

Right to Identity and Origins: A child has the right to know their biological parents and the circumstances of their conception and birth (UN Convention on the Rights of the Child, Article 7). Surrogacy often disrupts or obscures this right, especially when donors and surrogates are anonymous or overseas.

- A Harvard survey of 143 donor-conceived adults—primarily highly educated women aged 31 and over—challenges the notion that love alone is sufficient for a child's healthy development. The findings indicate that donor conception can have significant psychological and emotional impacts. Only 22.9% of participants learned of their donor origins before the age of 18. A substantial majority (86.5%) believed they should have access to identifying information about their biological parent, while 74.8% expressed a desire to know more about their ethnic and cultural background. Many reported a shift in identity upon discovering their origins; among those with siblings, 37.1% said their sibling relationships were affected. Nearly half (48.5%) sought psychological or psychiatric support following the revelation. Furthermore, 70% of participants believed gamete donation should be discontinued, and 62.2% considered its commercialisation to be unethical.
- The Harvard Study concludes by suggesting that anonymous donor conception should be discouraged, and that informing children about the manner of their conception at a young age is the best route to reduce harm.[1]

Access to health history: In addition to potentially lacking access to information about who their biological parents are, surrogacy may also disrupt the ability of children to know and access information regarding the health history of their biological parents and family. This may pose issues for children who suffer from health problems or who are at risk of developing certain health problems which are linked to their biological family members or genetic profile.

Exploitation of Women: In many cases, surrogacy involves the exploitation of poor and vulnerable women, who may be coerced by economic circumstances. This violates their dignity and autonomy, reducing their bodies to instruments of reproduction. There are also high modern slavery risks.

- Australians are reported as the largest client market for international surrogacy arrangements.[2]

[1] Rennie Burke, Yvette Ollada Lavery, Gali Katznelson, Joshua North, J. Wesley Boyd, "How Do Individuals Who Were Conceived Through the Use of Donor Technologies Feel About the Nature of their Conception?", Centre for Bioethics, Harvard Medical School, April 2021.

[2] "Regulating Surrogacy in Australia", Human Rights Law Centre [website]. Accessed 3/07/25.

- The central question in any given arrangement is whether the birth mother has given free and informed consent to the agreement and whether she is at risk of exploitation, including risk of trafficking.[3]
- In a 2024 submission from the NSW Anti-slavery Commissioner, it was reported that in September 2023, Greek authorities conducted a raid on the Mediterranean Fertility Institute and charged all staff members with involvement in human trafficking. The investigation revealed the use of brokers, fraudulent practices, and the falsification of records to facilitate the trafficking of at least 98 women from Ukraine, Moldova, Romania, Albania, and Georgia, many of whom served as birth mothers at the clinic. The operation predominantly targeted economically vulnerable women. In some instances, birth mothers were allegedly misled into believing they were carrying embryos from other women, when in reality the embryos were their own - a deception seemingly designed to secure their compliance and facilitate the transfer of their child to the intending parents. Notably, approximately half of the clinic's clientele were reportedly Australian.[4]
- The financial incentives associated with commercial surrogacy may exert undue influence, particularly on economically disadvantaged women who might not otherwise participate. This raises ethical concerns about an unfair disparity between the compensation offered and the significant physical and emotional risks involved. While some argue that surrogacy should be treated like any other contract, requiring only that it be entered into voluntarily with informed consent, ensuring genuine autonomy and valid consent is complex in contexts marked by poverty and social inequality.[5] Earlier studies of commercial surrogacy in India – prior to the prohibition of commercial surrogacy through the adoption of the *Surrogacy (Regulation) Act 2021* (India), which prohibits any payment to surrogates except to cover their medical expenses and insurance - identified that many birth mothers reported that they had felt 'emotionally pressurized' by their husbands to undergo surrogacy for financial reasons. Around half of these mothers were illiterate, making it difficult for them to understand the arrangement being put to them.[6]
- The absence of adequate regulation in international surrogacy arrangements can result in the exploitation of surrogate mothers, particularly in low-income countries. Surrogacy agencies, which profit by matching intended parents with potential surrogates, often operate in jurisdictions with little or no legal oversight. Women facing financial hardship may engage in surrogacy out of necessity yet receive only a

[3] Hague Conference on Private International Law, A Study of Legal Parentage and the Issues Arising from International Surrogacy Arrangements (2014), at [194]-[197].
[4] Submission from the NSW Anti-slavery Commissioner to the Review of the Surrogacy Act 2010 and the Status of Children Act 1996, 2 August 2024.
[5] Ainsley J Newson, "Compensated transnational surrogacy in Australia: time for a comprehensive review", Medical Journal of Australia, vol 204(1), January 2016, 33-35. https://doi.org/10.5694/mja15.00166
[6] Surrogate Motherhood: Ethical or Commercial?, Centre for Social Research (India) [website]. Accessed 3/07/25.

small portion of the substantial fees paid by intended parents, as agencies retain the majority of the funds. These agencies frequently exploit economically disadvantaged and undereducated women, including through unlawful practices, to meet the demand from affluent clients, including Australians. One case involved a number of Vietnamese women trafficked to Thailand and exploited as commercial surrogates by a company called 'Baby 101'. The owners of Baby 101, Taiwanese nationals, were convicted of trafficking in persons for exploitation.[7] The lack of regulation also raises concerns about the rights of children born through such arrangements, particularly regarding access to genetic and identity-related information.

- Ultimately, 2,769 children were born to Australian intended parents as a result of international surrogacy between 2010-2023, yet no Australian has ever been prosecuted for this despite such arrangements being illegal under Australian law.[8]

Separation from Birth Mother: Surrogacy deliberately separates a child from the woman who carried them and/or their siblings. This may have psychological consequences for both the child and the surrogate, and it violates the child's right to remain with their biological family unless separation is in the child's best interests.

- There are a number of concerns relating to international surrogacy, especially when arrangements take place in jurisdictions with less regulated surrogacy industries. The legal, economic and social conditions in these jurisdictions greatly increase the risk that the rights of the child, and of the birth mother, may be infringed.
- There have been several high-profile cases involving Australian parents entering into international surrogacy arrangements that highlight the potential risks involved in engaging in these arrangements. The 'Baby Gammy case'[9] in 2016 involved two twins born through an international commercial surrogacy arrangement who were separated after birth, with one twin remaining with his surrogate mother in Thailand while the other was brought to Australia to live with her intended parents in Western Australia. Chief Justice Thackray of the Family Court of Western Australia noted that the separation of the twins was an 'appalling' outcome, and that 'this case should draw attention to the fact that surrogate mothers are not baby growing machines or "gestational carriers". They are flesh and blood women who can develop bonds with their unborn children.' [10]
- Whilst the Family Court of Western Australia in the 'Gammy case' held that Gammy had not been abandoned in Thailand by his Australian parents, it raises the issue of children being born with disabilities and subsequently being rejected.

[7] See "Choen Pai Wan and Others", Thailand, in UNODC Sherloc, Case Law Database.
[8] See submission of Mr Stephen Page, Page Provan Family and Fertility Lawyers, [submission No. 59], to the NSW Parliamentary Inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023, 12 April 2024.
[9] *Farnell & Anor and Chanbua* [2016] FCWA 17.
[10] *Farnell & Anor and Chanbua* [2016] FCWA 17 at paragraph 757.

- Surrogacy involves a pre-conception contract that requires the child to be separated from the gestational mother at or shortly after birth. The essence of surrogacy is that a child is gestated by one woman and handed over to another at birth or soon after. This means that the bonding that has occurred between the gestating mother and the child she is carrying is fractured by surrogacy. This bonding occurs during pregnancy and immediately after birth. This arrangement is argued to violate the natural rights of the child by disrupting the biological and emotional bonds formed during pregnancy and the immediate postnatal period. Scientific research highlights the significance of maternal-infant bonding, underpinned by physiological processes such as the release of oxytocin during skin-to-skin contact and eye gazing, which promote attachment. Studies also show that early interactions, including breastfeeding within the first hour of life, have measurable effects on maternal behaviour and bonding. Developmental psychology further emphasizes a critical window following birth, during which infants begin to form cognitive and emotional attachments to the gestational mother. Therefore, the separation inherent in surrogacy may interfere with essential bonding processes, potentially leading to psychological harm for the child.[11]

Stateless/parentless children: Children can be left parentless, and sometimes stateless, when commissioning parents reject them or change their mind.

- The conflicting laws on surrogacy between different countries can lead to confusion in determining who a child's legal parents are. Depending on the nationality of the intended parents, the surrogate, and those providing the genetic material, the resulting child may end up:[12]
    - with no nationality ("stateless") and no parents recognised by law ("parentless") (for example, this is the situation in India);
    - parentless (e.g. California);
    - parentless but with the citizenship of the birth county (e.g. United States); or
    - being the child of the surrogate only with the citizenship of the birth county (e.g. Thailand).

Child and surrogate as a commodity: The contractual nature of surrogacy treats children as objects to be ordered and delivered, and surrogates as 'baby making' machines.

- Baby Gammy case (see above): Justice Thackray said the case "should also draw attention to the fact that surrogate mothers are not baby-growing machines, or "gestational carriers". They are flesh and blood women who can develop bonds with their unborn children…" [13]

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[11] Southern Cross Bioethics Institute [submission], Inquiry Into Legislation on Altruistic Surrogacy in NSW, 2008; Linda F. Palmer, "Bonding Matters: The Chemistry of Attachment", Attachment Parenting International News, vol. 5(2), 2002; John Kennell and Susan McGrath, "Starting the process of mother-infant bonding", Acta Paediatrica, vol. 94(6), 2002, 775-7. DOI: 10.1111/j.1651-2227.2005.tb01982.x

[12] "Regulating Surrogacy in Australia", Human Rights Law Centre [website]. Accessed 3/07/25.

[13] *Farnell & Anor and Chanbua* [2016] FCWA 17 at paragraph 757.

- The appalling outcome of Gammy and Pipah being separated has brought commercial surrogacy into the spotlight. Quite apart from the separation of the twins, this case serves to highlight the dilemmas that arise when the reproductive capacities of women are turned into saleable commodities, with all the usual fallout when contracts go wrong. This case also raised the issue of what happens when a baby is born with a material disability and the prospective parents do not want it for these reasons.[14]
  One particularly poignant case involved a surrogate mother in Ukraine who delivered twins for a wealthy American couple. In accordance with the terms of her contract, she was prohibited from holding the babies following birth and was required to relinquish them immediately. However, due to travel delays, the commissioning parents were unable to arrive on time, and the surrogate was asked to breastfeed and care for the infants in the hospital until their arrival. During this period, a maternal bond naturally developed. When the intended parents eventually arrived to assume custody, the surrogate mother, overwhelmed by emotional distress at the prospect of parting with the children, attempted to flee the hospital with them.[15]

Surrogacy for same-sex couples or single parents negatively impacts children: There is strong empirical evidence that children develop best when raised by their two natural, co-residential, married parents – 'the evidence that children flourish best under the uninterrupted care of their natural mother and father is among the strongest we have for any proposition in the social sciences.' Over five decades of social experimentation with alternative family structures—such as single parenting, stepparenting, and cohabitation—has revealed that these arrangements are generally associated with poorer outcomes for children. Although such family forms may benefit adults, they demonstrably undermine child well-being. The study argues that the key protective features of the traditional nuclear family—biological parentage, marital stability, and parental complementarity—cannot be separated from one another without diminishing child welfare. Marriage, when detached from biological parenthood (as in remarriage or same-sex marriage), does not improve and often worsens child well-being. In contrast, the best outcomes occur when both parents are the child's biological parents and are married and co-residential.[16]

To address these concerns:

- Australia should prohibit all forms of surrogacy, including cross-border arrangements, particularly commercial surrogacy.
- The law should affirm that the welfare and rights of the child are paramount and cannot be overridden by adult desires or contracts.
- Where surrogacy does occur, legal frameworks must provide rigorous protections for surrogate mothers, including independent legal and psychological support. There

[14] "Baby Gammy: Surrogacy row family cleared of abandoning child with Down syndrome in Thailand", ABC News, 14 April 2016.
[15] Julie Bindel, "Surrogacy: Human right, or just wrong?", Aljazeera, 8 September 2023.
[16] Paul Sullens, "The Case for Mom and Dad", Linacre Quarterly, vol.88(2), March 2021, 184–201. doi: 10.1177/0024363921989491.

should also be strong protections to ensure they are not subject to modern slavery arrangements.

- Legal frameworks must also provide for the right of any children born through surrogacy to know their biological parents and the circumstances of their conception and birth.
- International cooperation should focus on combatting the surrogacy industry, especially in countries with weak human rights protections.

Question 4: What information about the circumstances of their birth do you think children born through surrogacy should have access to? How should this be provided or facilitated?

An overarching obligation under the Convention on the Rights of the Child is that the best interests of the child shall be a primary consideration in all actions concerning them (Article 3). Other rights which may be relevant to surrogacy include the rights of the child (under Articles 7, 8 and 9):

- to be registered immediately after birth;
- to a name, to acquire a nationality and, as far as possible, to know and be cared for by his or her parents;
- to preserve his or her own identity, including nationality, name and family relations; and
- not to be separated from his or her parents against their will, except in certain specified circumstances.

Children born through surrogacy should have a right to:

- Know the identity of their biological mother and father.
- Know the health history of their biological parents and their families so they can be aware of any major potential health issues.
- Understand the circumstances of their conception and birth.
- Access records related to their surrogacy, including contracts and communications between parties.
- Maintain a relationship with their birth mother where possible and appropriate.
- Access such information at a young age (e.g. they should not be required to wait until they become an adult to access such information).

<u>This should be facilitated through:</u>

- <u>Legally Mandated Record Keeping</u>: All surrogacy arrangements (including associated health and contractual documents) should be recorded in a centralised register accessible to the child when they reach an appropriate age.
- <u>Age-Appropriate Disclosure</u>: Intended parents should be supported and encouraged to share this information with their child in a sensitive, age-appropriate manner.

- Access to Counselling: Children and families should have access to psychological support and counselling, including to assist with identity issues arising from surrogacy.
- Birth certificates: Birth certificates of children conceived through surrogacy should wherever possible reflect the true genetic history and heritage of the child.

Barriers to domestic surrogacy

Question 5: What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome?

Surrogacy arrangements pose considerable human rights concerns. The legal barriers and protections that currently exist are appropriate and should remain in place.

Eligibility requirements for surrogacy

Question 6: Should there be eligibility requirements for surrogacy? If so, what should those requirements be?

Yes, if surrogacy is to be permitted under Australian law, strict eligibility requirements must be in place to protect the dignity, health, and rights of both the child and the surrogate mother.

Eligibility requirements should include:

- Medical Necessity: Surrogacy should only be permitted when there is a genuine, well-documented medical inability to conceive and carry a child, not as a matter of convenience or preference.
- Age and Health Criteria: Both surrogate and intended parents should be within a safe and appropriate age range and in good physical and mental health.
- Subsequent pregnancy: Women who have not previously been pregnant should not be eligible to be surrogates, given their lack of experience with the physiological and psychological issues and changes involved in being pregnant and birthing a baby.
- Independent Counselling and Legal Advice: All parties must receive robust counselling and independent legal representation.
- Contractual agreement: The parties must be required to enter into a comprehensive contractual agreement, including which properly addresses unforeseen circumstances, such as what will occur if any health or mental health complications arise for either the surrogate or intended parents, who will take responsibility for the child if it is born with any genetic or health issues, etc.
- Ethical Assessment: A comprehensive ethical review process should ensure that the arrangement is not coercive, financially exploitative, or contrary to the best interests of the child.

- Commitment to Truthful Disclosure: Intended parents must agree to disclose the circumstances of the child's conception and birth openly and honestly, respecting the child's right to know their origin and relevant health information.
- Screening checks: Intended parents should be required to undergo extensive screening (including criminal checks) similar to those that occur in cases of adoption.
- Same-sex couples or single parents: Same-sex couples or single parents should not be eligible to enter surrogacy arrangements, as this would effectively deny the child the ability to be raised by either a mother or a father.
- Single parent arrangements also pose an additional costly economic burden on Australia's welfare system, through various sole parenting supports throughout the life of the child until adulthood.

Question 7: Are there any eligibility requirements which should be introduced, changed, or removed?

Please refer to our response to Question 6 above.

Surrogacy agreements — validity and enforceability

Question 8: Are there any requirements for a valid surrogacy agreement you think should be introduced, removed, or changed?

Agreements should all include explicit legal and financial arrangements regarding the child if it is born with a material disability or for other reasons. It is not appropriate for poor surrogate mothers to be left with babies because the prospective parents reject the child born.

Process requirements for surrogacy

Question 10: What process requirements should be in place for surrogacy arrangements? You might want to consider:

a. Should counselling also be available after the child's birth?
Yes. Ongoing psychological support should be provided to surrogates, children, and intended parents, particularly to address grief, identity issues, or regret. This should be provided by independent counsellors from a list approved by the government agency with oversight for surrogacy. The counsellor should not have a conflict of interest or any ongoing relationship with those involved in organising the surrogacy arrangements.

b. What should happen if legal advice or counselling are not provided before entering a surrogacy arrangement?
These safeguards are fundamental and need to be non-negotiable. Where the proper procedure has not been observed, the surrogacy arrangement should be legally invalid, and no parentage orders should be made until any deficiencies in terms of legal advice and counselling. If necessary, the child can be made a ward of the state and offered in adoption to other Australian parents.

c. Should parentage applications require proof of legal advice and counselling?
Yes. Proof should be mandatory and documented before any parentage order is considered.

Other strict process requirements should also apply to enhance the rigor of surrogacy arrangements and the process of transferring legal parentage. For example, pre-approval by a regulatory body should be required, including the participants undergoing screening checks and providing a criminal history report, and all parties undergoing a psychological assessment in addition to counselling and independent legal advice.

Professional services, including legal and counselling services

Question 11: What are the gaps in professional services for surrogacy in Australia?

a. Should surrogacy agencies operate in Australia?
No. Surrogacy agencies have a commercial interest in normalising and promoting surrogacy, which contradicts ethical and human rights standards.

b. Availability, accessibility, and subject matter for legal advice and counselling:
Counselling should include but not be limited to:

- Physical impacts on the surrogate.
- Psychological impacts on the surrogate.
    - Surrogates had higher levels of depression during pregnancy and post-birth, displayed lower emotional connection with the unborn baby, and greater care towards the healthy growth of the foetus, than the comparison group of mothers.[17]
- Identity and emotional needs of the child.
- Ethical considerations regarding intentionally separating a child from their birth mother.

Counsellors should have relevant professional qualifications and be a member of one of the reputable Australian Psychologist/counsellor Associations.

Legal advice should be independent and compulsory, not provided by fertility clinics where the possibility of a conflict of interests arises. Legal advice should relate to all aspects of any contractual agreement between the parties, as well as any legal considerations regarding the parentage of any children born as a result.

Legal advice should relate to all aspects of any contractual agreement between the parties, as well as any legal considerations regarding the parentage of any children born as a result.

Question 12: How should professional services operate in Australia? You might want to consider:

a. Role: n/a

[17] N. Lamba, V. Jadva, K. Kadam, S. Golombok, "The psychological well-being and prenatal bonding of gestational surrogates", Human Reproduction, vol. 33(4), February 2018, 646-653. doi: 10.1093/humrep/dey048.

b. For-profit or not-for-profit?
Professional services for surrogacy should operate on a strictly not-for-profit basis. No financial incentives should exist for professional service providers tied to surrogacy outcomes.

c. Should services operate together or separately?
Independently. Counselling must be provided by bodies with no affiliation with fertility clinics or agencies, to avoid conflicts of interest.

d. Meeting diverse needs:
Support should be trauma-informed and culturally sensitive, but always centred on child welfare and human dignity over adult desire.

Limits on advertising

Question 13: How should surrogacy advertising be regulated? You might want to consider:

a. Should advertising be allowed?
No. Advertising surrogacy risks commodification of women's bodies and children. It also risks normalising this practice and increasing the prevalence of surrogacy within society.

b. Who should be allowed to advertise?
If allowed at all, only government-regulated, not-for-profit registries with strict oversight should be permitted to advertise.

c. What content should be allowed?
If allowed at all, advertising must not include inducements, financial incentives, or emotional manipulation. It must not resemble commercial promotion in any way. Advertising should essentially only seek to practically connect parties with each other who wish to enter into surrogacy arrangements.

d. Where should advertising be allowed?
If allowed at all, advertising should only be allowed through official government channels, not via social media or commercial platforms, to prevent exploitation and abuse.

Access to Medicare and parental leave

Question 14: What entitlements, if any, should be available to surrogates and intended parents? You might want to consider:

a. Medicare rebates for fertility treatments:

There should be no public funding for fertility treatments for surrogacy arrangements. The cost of fertility treatments should be borne by the intended parents. It is up to private medical insurers to decide what, if any, of these costs they will subsidise.

b. Access by surrogates to paid or unpaid parental leave, including through enterprise agreement terms:
Surrogates should have access to medical leave and paid leave prior to the baby's birth, but

not parental leave, as they are not taking custody. Intended parents should only access parental leave after legal parentage is established.

c. Making surrogacy more affordable:
We oppose efforts to make surrogacy more accessible or affordable, as this would further entrench demand and normalise commodification of babies and women. Financial provision for any costs associated with protecting the health of women who volunteer to be surrogates should be paid for by the intended parents, secured prior to the pregnancy and held in trust for the exclusive benefit of the surrogate mother and the baby during the term of the pregnancy.

Reimbursing and compensating surrogates

Question 15: How could the process for reimbursing surrogates for reasonable expenses be improved? You might want to consider:

a. What expenses should be reimbursable?
Only direct, documented costs related to medical treatment, legal advice, and counselling should be reimbursable. Potentially, some consideration could be given to loss of earnings directly associated with the pregnancy but documentary evidence to demonstrate such loss would need to be presented in order to ensure altruistic arrangements do not become *de facto* commercial arrangements.

b. How should payment be calculated?
Case-by-case assessment with oversight by an independent ethical regulatory body. It is important that this assessment is not left to intended parents or clinics.

c. Should there be limits?
Yes. Caps should apply, and no "goodwill" payments should be permitted. This is necessary to prevent *de facto* commercial surrogacy arrangements masquerading as merely altruistic.

d. Process:
Reimbursements should be processed through a trust account, and all claims must be supported by receipts.

e. Jurisdictions to learn from:
We note Canada's system, which allows reimbursement but prohibits payment for services. Even this model has flaws but is more ethically defensible than commercial surrogacy.

If commercial/compensated surrogacy is made legal, safeguards must be established to prevent the sale of children in commercial/compensated surrogacy arrangements. This should involve either prohibiting commercial surrogacy until robust regulatory systems are in place to enforce the ban on child selling, or implementing strict regulations that:

- Ensure the surrogate mother retains legal parentage and parental responsibility at birth,
- Require all payments to the surrogate to be made before any legal or physical transfer of the child and be non-refundable (except in cases of fraud), and

- Prohibit the enforcement of contract terms that determine parentage, assign parental responsibility, or limit the surrogate mother's rights, including her rights to health and freedom of movement. [18]

Question 16 Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy? You might want to consider whether you agree with how we have described compensated and 'commercial' surrogacy.

We strongly oppose both compensated and commercial surrogacy on ethical, legal, and human rights grounds. Both practices risk commodifying women and children by treating reproductive capacity and human life as transactional. However, compensated surrogacy - where a surrogate is reimbursed strictly for reasonable, itemised expenses incurred during pregnancy (such as medical care, maternity clothing, and lost wages) - is comparatively more compatible with human rights standards than commercial surrogacy.

Commercial surrogacy, by contrast, involves significant financial profit, often for intermediaries and agencies, and introduces market dynamics that incentivise exploitation, especially of economically disadvantaged women. In such arrangements, surrogates may be subjected to coercion or undue influence, and the child is effectively treated as a product for purchase, undermining the dignity and rights of both the surrogate and the child.

While compensated surrogacy still raises ethical concerns - particularly regarding informed consent, power imbalances, and the psychological implications for both the surrogate and the child - it may avoid the more egregious violations associated with profit-driven arrangements.

Nonetheless, both forms require strict legal safeguards, transparent oversight, and a firm commitment to upholding the best interests of the child and the rights of all parties involved.

Ultimately, if surrogacy is to occur, we would most support a 'no reimbursement' or 'limited reimbursement' model in the terms used on page 16 of the Issues Paper.

Question 17: If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented? You might want to consider:

a. how compensation should be calculated;

b. if there should be a limit on the amount of compensation;

c. who should set the amount of compensation;

d. the process for compensation (for example, whether it should be paid in monthly instalments, whether the money should be kept in trust etc); and

[18] Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, UN A/HRC/37/60, 15 January 2018.

e. any jurisdictions (either within Australia or overseas) that have processes for compensation worth learning from

We reject the premise of introducing either a 'compensated' or 'commercial' surrogacy model. However, if such models are pursued despite our concerns:

- Compensation *must* be capped, publicly regulated, and held in independent trust.
- There must be no performance-based incentives (e.g., extra payment for a healthy baby) or extra "goodwill" payments.

Legal parentage of children born through surrogacy

Question 18: What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

Lack of Legal Harmonisation: As the Issues Paper discusses on page 17, where a surrogacy arrangement takes place overseas, who will be recognised as the legal parent/s will depend on the law in the host country.

Problems with Documentation and Citizenship: As the Issues Paper discusses on page 18, even when intended parents are recognised as legal parents in an overseas country, they have often not been recognised as legal parents in Australia.

Commercialisation and Exploitation Concerns:

- Profit-driven arrangements, especially in international commercial surrogacy, legal parentage processes may prioritise transactional outcomes over the rights and welfare of the child and surrogate.

Best Interests of the Child Not Central: Legal processes often prioritise parental desires or contractual obligations over what is genuinely in the child's best interests.

- Freedom of Information (FOI) documents obtained by the ABC's *Foreign Correspondent* program reveal that an Australian couple involved in a surrogacy arrangement in India misled staff at the Australian High Commission in New Delhi and were repeatedly warned that their actions could result in the child being rendered stateless. The couple ultimately returned to Australia with a baby girl, while abandoning her healthy twin brother in India, with the full awareness of Australian Government officials. The documents further disclose that both the Department of Foreign Affairs and Trade (DFAT) and the Australian High Commission in India were aware that the couple resided in New South Wales, where participation in international surrogacy arrangements is prohibited by law.[19]

[19] "India surrogacy case: Documents show New South Wales couple abandoned baby boy despite warnings", ABC News, 13 April 2015.

International arrangements often lack legal safeguards or proper oversight, undermining child protection:

- Ukraine, where commercial surrogacy is legally permitted, has become a popular destination for intended parents seeking surrogate mothers. However, the ongoing conflict in Ukraine has highlighted the significant vulnerabilities inherent in cross-border commercial surrogacy arrangements. Surrogate mothers are now facing the distressing reality of giving birth in a conflict zone, often without the ability to transfer custody of the newborns to the intended parents. At the same time, intended parents endure considerable emotional distress due to their inability to access and care for their children. As a result, many infants are born into a state of limbo - located in a war-affected region, separated from the intended parents who are typically more financially secure and better equipped to provide immediate care. Such delays in transferring surrogate-born children heighten the risk of psychological harm for both surrogate mothers and intended parents.[20]

Question 19: How could the process for intended parents to become the legal parents of children born through surrogacy be improved?

a. Timing:
Legal parentage must only be transferred post-birth, after the surrogate has had time to recover and make an informed, uncoerced decision.

b. Who makes the decision?
Only a court, with thorough review of all circumstances and the child's best interests.

c. Automatic recognition?
Absolutely not. Parentage should never be automatically transferred based on intent or contract. Parentage should only be recognised for surrogacy arrangements that are legal and not for any others.

d. Different processes based on circumstance?
Yes. Greater scrutiny should apply where the surrogate is not genetically related, or if compensation was involved.

e. Intended mothers vs fathers?
The child's rights—not parental status—must be the guiding principle. Any disparity should be addressed accordingly.

f. Compliance with process requirements?
Yes. Non-compliance should void eligibility for legal parentage transfer.

[20] J. Attawet, M. Brady, and Y. Hibino, "Psychosocial health among surrogate mothers", in Proceedings of the 9th International Conference on Public Health (2 ed.), vol. 8, 2024, 70 - 84). https://doi.org/10.17501/24246735.2023.8208

g. Best interests of the child?
This must be the non-negotiable standard, prioritising stability, identity, and truth.

h. International models?
Many international surrogacy regimes have lower ethical standards. Australia should lead in resisting global pressure to commercialise human reproduction.

Citizenship, passports and visas

Question 20: What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy:

a. Australian citizenship
The central issue is that citizenship is being used to validate ethically questionable overseas arrangements, including those in jurisdictions where commercial surrogacy is legal and exploitation is common. This risks creating a pathway for circumventing Australian law.

b. Australian passport

c. Australian visa

1. Australian Citizenship Law Does Not Recognise Overseas Surrogacy Automatically

Under the **Australian Citizenship Act 2007**, a child **does not automatically acquire citizenship by descent** unless they are considered the **biological child** of an Australian citizen. However:

- **Only biological parents are recognised** for the purposes of citizenship by descent.
- In cases of **gestational surrogacy**, this often means only the father (if biologically related and an Australian citizen) can apply for citizenship by descent for the child.
- The **non-biological partner (e.g., an Australian mother in an egg donor surrogacy)** cannot transmit citizenship unless they adopt the child through Australian law later.

2. Proof of Parentage Is Required

To apply for Australian citizenship by descent:

- **DNA testing** is typically required to prove the biological link between the Australian citizen and the child.
- This can be **costly, intrusive**, and **emotionally taxing**.
- If neither commissioning parent is genetically related to the child (e.g. embryo donation), **citizenship by descent is not available**.

3. Citizenship Applications Can Be Delayed or Refused

- Even where there is a genetic link, the **Department of Home Affairs has wide discretion** to refuse applications where they suspect the arrangement breaches foreign or Australian laws.
- Delays often occur due to the Department's need to ensure:
    - **No coercion or trafficking** occurred in the surrogacy arrangement.
    - **Consent** was informed and lawful.
    - The surrogacy arrangement **complies with the laws of the overseas country and with Australian values**.

4. Problems with Countries Where Surrogacy Is Poorly Regulated

- Many Australians seek surrogacy in countries like **India (formerly), Ukraine, Georgia, or the US**.
- Some of these jurisdictions have **limited protections for surrogate mothers**, which raises concerns under Australian public policy.
- **Commercial surrogacy** is illegal in most Australian states, and **seeking it overseas can be legally problematic**, especially in NSW, QLD, and ACT, where it is a **criminal offence to engage in commercial surrogacy abroad**.

5. Family Law and Parental Recognition Issues

- Even if the child obtains Australian citizenship, the commissioning parents are not automatically recognised as legal parents under **Australian family law**.
- This often requires a **parenting order or adoption process in Australia**.
- Some states make **adoption of a child born through overseas surrogacy difficult or impossible**, further complicating the legal parenting status.

6. Moral and Ethical Concerns

- There is growing scrutiny over the **exploitation of women** in developing countries through surrogacy.
- Authorities may review applications with suspicion if the arrangement appears **exploitative or unethical**.
- This can be a major obstacle for pro-life and ethically conservative families seeking to navigate the process.

7. No Consistent Federal Framework on Surrogacy

- **Surrogacy is regulated by state and territory laws**, which differ across Australia.
- This results in **legal inconsistency**, confusion, and lack of clarity for intended parents pursuing surrogacy overseas.

- There is ongoing pressure for **national reform**, but no cohesive system has yet been established.

Question 21: How could the process for obtaining these documents be improved?

As outlined above, international surrogacy should continue to remain illegal due to the rights of the child and of the birth mother. If it is made legal, Australia should implement stricter safeguards for granting citizenship or travel documents where legal surrogacy is involved, and such approvals should not be given for particularly in relation to illegal surrogacy arrangements.

There must be clear ethical criteria, including evidence that the arrangement did not involve exploitation or violate local or international human rights norms.

The process should not automatically confer legal recognition of parentage or encourage overseas surrogacy tourism.

A national oversight body could review all international surrogacy citizenship and visa claims.

Oversight and harmonisation – Inconsistent laws

Question 22: What is the best way to approach differences in surrogacy regulation between or within jurisdictions? You might want to consider:

a. Inconsistencies between jurisdictions:
States and territories have differing laws regarding who can access surrogacy, what expenses are allowed, and how legal parentage is transferred. This leads to legal confusion and forum shopping.

b. Are these inconsistencies problematic?
Yes. They contribute to inequitable outcomes, ethical inconsistencies, and undermine the clarity of Australian surrogacy policy.

c. Impacts of differences between federal legal regimes:
Disparities between federal regimes can result in legal limbo for children born through international surrogacy and complicate enforcement of ethical standards.

d. Courts for parentage applications:
If a judicial process for transferring legal parentage is retained, we recommend the Federal Circuit Court and Family Court of Australia hear such matters.

e. Is harmonisation important?
Yes. But harmonisation should aim to restrict unethical practices and preserve safeguards and provide any additional protections required—not merely streamline access.

f. How could harmonisation be achieved?
A model law approach or federal framework legislation could be used, provided it maintains the highest ethical standards, prohibits commercial surrogacy, and protects children's rights.

States can either adopt legislation of the same wording or delegate their powers regarding surrogacy arrangements to the Commonwealth.

Oversight and harmonisation – Oversight

Question 23: Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach? You might want to consider:

a. Type of oversight body:
We recommend a national, independent administrative body with powers to:

- Approve domestic arrangements.
- Review international surrogacy claims.
- Monitor compliance and breaches.
- Refer any criminal matters for enforcement.
- Provide guidance on ethical practice.
- Refer parties for legal advice, psychological assessment and counselling.
- Maintain a surrogacy registry and facilitate record keeping.

b. National or state-based oversight?
National oversight is essential for consistency, especially regarding international surrogacy matters.

c. Oversight of which groups?
All groups potentially directly involved in surrogacy arrangements or the surrogacy industry more broadly should be subject to oversight, such as:

- Clinics and fertility and health professionals.
- Lawyers and surrogacy brokers.
- Counsellors and psychologists.
- Any groups involved in surrogacy advertising.
- Any surrogacy agencies.

The role of the criminal law

Question 24: Should the law have a role in discouraging or prohibiting certain forms of surrogacy? You may wish to consider:

Yes.

a. Sanctions and criminalisation:

We support criminal penalties and sanctions for people engaging in or facilitating commercial surrogacy, including arrangements facilitated overseas that contravene Australian values and standards. However, as page 24 of the Issues Paper confirms, it seems as though no one has ever been prosecuted in Australia for engaging in international commercial surrogacy. As such, it is clear that reform is required to ensure that criminal penalties and sanctions which apply under the law are actually being prosecuted/acted upon. For an industry to flourish as it has suggests that a better regulatory framework is required, and that there is a need for an effective regulator and funding to address illegal surrogacies.

b. Effect of criminal law:
Using the criminal law to regulate surrogacy sends a clear moral message and provides deterrence against commodification and cross-border exploitation.

c. Are there any alternative regulatory approaches?
While regulation is essential, it should be backed by clear legal and criminal prohibitions to prevent profit-driven surrogacy markets.

Lack of awareness and education

Question 25: Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices? You might think about how people currently find out about surrogacy, or the particular groups or professions who could benefit from improved education and information.

Yes. Public understanding is often shaped by media portrayals and fertility industry marketing rather than ethical and legal realities.

We recommend:

- Public education campaigns that include information about the human rights concerns around surrogacy as well as relevant laws and risks. These campaigns must not be designed in a way that indirectly also advertises or promotes surrogacy.
- Mandatory ethics and rights-based training for health, legal, and counselling professionals.
- Resources in multiple languages to reach culturally and linguistically diverse communities.

Issues we consider to be out of scope

Question 26: Do you have any views about the issues we consider to be in or out of scope?

We are concerned that broader ethical concerns are often considered "out of scope" in legal reform. However, the moral fabric of our laws is foundational to the kind of society we become. In this regard, as noted above, we are particularly concerned that the ALRC has been asked to consider matters including *how* (but not *whether*) to reduce barriers to domestic altruistic surrogacy arrangements in Australia. Essentially, we disagree with the

basic premise underlying this Inquiry that barriers to surrogacy should be reduced in Australia and consider that the underlying ethical issues relating to doing so should also have been directly at issue in this Inquiry.

We also have concerns about it being out of scope for the ALRC to consider issues regarding egg donation in this Inquiry. The ALRC noted this issue as out of scope on page 25 of the Issues Paper despite it potentially being relevant, at least in terms of a shortage of available eggs being a barrier to accessing domestic surrogacy. However, the ALRC acknowledged that donated eggs are commonly used in surrogacy arrangements. We have strong concerns about the burden on egg donors of surrogacy. Essentially, the call on egg donors as part of surrogacy arrangements (including for same-sex couples) contributes to the objectification of women. Women are not spare parts providers. The demands made on women through egg donation processes are costly in time and entail health risks.

Other insights

Question 27: Are there any important issues with regulating surrogacy that we have not identified in the Issues Paper? Do you have any other ideas for reforming how surrogacy is regulated.

We raise the following:

International surrogacy arrangements should remain illegal in Australia and for Australian citizens. Such arrangements should not be ratified.

Loss of relational identity for the child: Surrogacy severs the maternal bond and may affect the child's identity, attachment, and sense of self. See page 4.

Risk of coercion of vulnerable women: Even altruistic surrogacy arrangements may involve emotional, financial, or familial pressure.

Slippery slope to eugenics and embryo commodification: In the context of IVF and surrogacy, there is a growing industry around embryo selection, disposal, and enhancement, which undermines the sanctity of human life.

Objectification of women: One of the psychological counselling strategies involves a deliberate effort to de-emphasise the significance of the gestational maternity of the surrogate, to allow the surrogate to cope with relinquishing the child. This is referred to as ''cognitive dissonance reduction''. Such a measure requires what is essentially an objectification of the surrogate mother.[21]

[21] Matthew Tieu, "The necessary objectification of surrogate mothers", Journal of Medical Ethics, vol. 35(3), April 2009, 171-75. DOI:10.1136/jme.2008.024679.