Submission to ALRC Review of Surrogacy Laws

Presbyterian Church of Australia

PO Box 2196, Strawberry Hills, NSW, 2012

Who we are

This submission has been prepared by the Church and Nation Committee of the Presbyterian Church of Australia (PCA) Assembly. The PCA consists of over 500 congregations meeting in all Australian States and Territories. The Presbyterian Church has been part of Australian society since 1803 and formed as the PCA in 1901.

The Church and Nation Committee includes theologians, academics, ministers and lawyers among its membership.

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Our Position

1. The Presbyterian Church of Australia urges the Commission not to recommend changes that would expand surrogacy access or permit commercial surrogacy in Australia.
2. Expanding access to surrogacy arrangements or legalising commercial surrogacy would undermine the dignity and cohesion of the family unit.
3. Permitting surrogacy arrangements in law redefines parenthood as merely a legal status defined by the government. Parenthood becomes no longer a profound relationship rooted in biology and human nature, but a provisional licence granted by the government.
4. If parenthood is a legal status defined by the government, then parenthood is a status that may be withdrawn by the government.
5. If parenthood is a legal status defined by the government, and those seeking that legal status must be pre-approved by the government, then it follows that all people seeking the legal status of parenthood must be subject to the same pre-approval process.
6. The risks and consequences of abuse are so great that the harms of surrogacy outweigh any good that may result.
7. Commercial surrogacy commodifies women and children. It our view it must remain unlawful. Children are not commodities.
8. Surrogacy is a matter for the States, not the Commonwealth.

Constitutional and federal issues

Under our Constitution, surrogacy is a matter for the States, not the Commonwealth. The Constitution does not confer legislative power relating to surrogacy on the Commonwealth. Thus, it is unlikely that the Commonwealth possesses power to legislate in relation to surrogacy. By contrast, the States possess power to legislate in relation to surrogacy.

Surrogacy Degrades the Integrity of the Family

Article 16 of the Universal Declaration of Human Rights states that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State". Governments should protect and promote the family, rather than undermining and degrading it.

Surrogacy raises profound implications for the nature of the family. Surrogacy, by its very nature, fractures the traditional understanding of family based on natural kinship and parental connection. Rather than parenthood being defined by conception, gestation and birth, parenthood is defined solely by reference to the will or intention of the intended parents. Under a surrogacy arrangement, at most only one of the intended parents can have a biological connection with the child.

Where surrogacy is permitted, a person becomes a parent through legal recognition of a person as a parent, not through biological connection and descent. The ALRC's Issues Paper recognises this, defining the term "legal parent" as "[t]he person or people who are legally recognised as a child's parent/s".[1]

That is, parenthood is no longer defined by biological connection, but is a legal status defined by the government. Biological connection (conception, gestation and birth) is not, of itself, sufficient to bring the status of legal parenthood into existence. Permitting surrogacy in law means that parenthood is akin to a kind of licence granted by the state upon satisfaction of certain conditions. The parent-child relation – one of the deepest and most profound relationships – is redefined as something akin to a liquor licence or working with children check.

This is, of course, profoundly out of step with reality. Parenthood is created by natural law and human nature, not government fiat. Parenthood is inescapably tied to biological connection. In exceptional cases that connection may be broken, for a variety of reasons. However, this should not be rendered normative. Permitting surrogacy is a profound distortion of the meaning and nature of the family.

[1] Australian Law Reform Commission, *Review of Surrogacy Laws*, Issues Paper 52 (2025) 3.

The family, as a social and biological unit, is foundational to a stable society. Surrogacy replaces the natural creation of a child within a committed relationship with a contractual transaction. It shifts the focus of family formation from responsibility to intentionality, which can reduce children to lifestyle accessories rather than relationally-constituted human beings.

We recognise that society's views have changed from earlier generations. Nevertheless, we urge the Commission not to make recommendations which further degrade the nature of the family. The ideal context for raising children remains a stable, loving relationship with their biological parents. While this does not always occur, the law should not promote structures that deliberately separate children from this ideal at their inception.

The risk of abuse

While the desire to become a parent is understandable, legal systems must prioritise the rights and welfare of the child over the preferences of adults. Surrogacy raises the potential for abuse of the most horrific kind imaginable. There have been instances where paedophiles have purchased babies through surrogacy arrangements for the purpose of perpetrating the abuse of those children. Reducing the barriers to surrogacy arrangements in Australia increases the risk that this might occur.

It is possible to attempt to minimise the risk that this might happen through legislative pre-approval and screening of intended parents. Even if the risk of such abuse occurring is small, the harm caused is so catastrophic that the risks of surrogacy far outweigh any good that may result. The Australian government has a responsibility to protect the most vulnerable, and there is none more vulnerable than children.

Parenthood as a provisional licence

Some have argued that legislative pre-approval and screening of intended parents is a means of dealing with the potential for abuse.[2] That is, prior to entering into a surrogacy arrangement, intended parents must undergo some form of government pre-approval, such as through a court hearing.

This, again, has profound implications for the nature of the family. Earlier this submission made the point that legalising surrogacy has the consequence that parenthood is no longer defined by biological

[2] Eg Meg Lawson, 'How Should the Law Respond to Australians' Use of International Commercial Surrogacy?' (2022) 43(1) *Adelaide Law Review* 105.

connection, but is a legal status defined by the government, akin to a liquor licence. Before being permitted to hold the legal status of parent, intended parents must pass a government pre-approval process.

The inescapable logic is that the same principles will be applied to all parents. This is not a "slippery slope" argument, but one about the nature of consistency in the legal system. Accepting a principle in law means that the logic implications of that principle must be accepted and adopted throughout the legal system.

Two consequences follow from the logic of surrogacy, whereby parenthood is redefined as merely a legal status defined by the government.

The first is that if parenthood is a legal status defined by the government, then parenthood is a status that may be withdrawn by the government. Parenthood is no longer a profound relationship rooted in biology and human nature, but a provisional licence granted by the government and subject to recall.

Secondly, if parenthood is a legal status defined by the government, and those seeking that legal status (ie intended parents) must be pre-approved by the government, then it follows as a matter of logic that all people seeking the legal status of parenthood must be subject to the same pre-approval process.

Concerns about discrimination and equality are considered today to be among the most important concerns to be addressed. The ALRC's Issues Paper itself makes copious reference to discrimination.[3] The paper expressly states that "People may face legal barriers to accessing surrogacy. Some of these barriers may be discriminatory".[4]

If intended parents under a surrogacy arrangement are subject requirements that other parents are not subject to, then that would amount to discriminatory treatment. The logic of surrogacy parenthood means that every person who wishes to have a child, whether through a surrogacy arrangement or otherwise, must be pre-approved by the government before being permitted to do so.

Today, some views are considered harmful. The expression of traditional Christian beliefs relating to sexuality, in particular, is no longer considered acceptable in a growing range of contexts, and many

[3] Australian Law Reform Commission, *Review of Surrogacy Laws*, Issues Paper 52 (2025) 7, 9, 24.
[4] Ibid 7.

people find traditional beliefs offensive, harmful and even threatening.[5] As one prominent religious leader noted in 2020, '[t]here is undoubtedly increased religious antipathy in the Australian community'.[6]

In a 2017 *Quarterly Essay* Benjamin Law wrote: "Here's the uncomfortable reality: parents don't always know best". He went on to raise the "uncomfortable question": "should parents' wishes for their kids take priority when those wishes compromise that kid's wellbeing?"[7] Sometimes, "the greatest risk for these kids is their families".[8]

Parents who do not affirm their children's sexuality or gender identity may be considered to be at risk of harming their children. Such parents are likely to be at risk of having their provisional parenthood licence revoked by the government.

Commercial Surrogacy Commodifies Women and Children

The logic of the market pervades so many aspects of modern life. Legalising commercial surrogacy would extend this even further into the family. Commercial surrogacy treats wombs as a service for hire and children as products of a commercial transaction. Vulnerable women – typically women from poor countries – become instruments of reproductive labour, exploited by commercial surrogacy providers.

The current restrictions on commercial surrogacy are justified and should be preserved. Commercial surrogacy encourages the view that a woman's reproductive capacity can be contracted, regulated, and enforced. Such a framework undermines human dignity and sets a dangerous precedent for the commodification of life.

A child born from a commercial agreement is the product of a market transaction. This arguably contradicts Australia's obligations under the United Nations *Convention on the Rights of the Child*, particularly the child's right to know and be cared for by their biological parents (Article 7), and to be protected from sale or trafficking (Article 35).

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[5] See eg Teaching Regulation Agency, 'Ms Glawdys Leger: Professional conduct panel outcome: Panel decision and reasons on behalf of the Secretary of State for Education' (December 2023) 13 <https://www.gov.uk/government/publications/teacher-misconduct-panel-outcome-ms-glawdys-leger>; *Forstater v CGD Europe*, United Kingdom Employment Tribunal (18 December 2019) [85].

[6] Frank Brennan, 'Do We Need New Laws to Protect Religious Freedom in Australia?', *ABC Religion and Ethics*, 20 February 2020 <https://www.abc.net.au/religion/frank-brennan-do-we-need-new-laws-to-protect-religious-freedom/11984926>.

[7] Benjamin Law, 'Moral Panic 101: Equality, Acceptance and the Safe Schools Scandal' (2017) 67 *Quarterly Essay* 1, 58.

[8] Ibid 57.

Expanding access to surrogacy, by permitting wider categories of people to commission surrogacy or by making it easier to arrange such arrangements, risks normalising a model in which adult desire overrides the child's best interests.

Even altruistic surrogacy arrangements have led to complex legal and emotional disputes, including conflicts over parental rights and custody, financial obligations, and emotional trauma. Efforts to "regulate away" the ethical risks are likely to fall short. Once commercialisation is permitted, market forces will inevitably push towards normalisation, exploitation, and loophole-seeking behaviour.

Commercial Surrogacy Commodifies Women and Children

Surrogacy is contrary to international law. The *Convention on the Rights of the Child* states:

> States Parties shall ensure that a child shall not be separated from his or her 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 (art 9.1).

International law therefore requires that children should not be separated from his or her parents against their will. Infant children are unable to provide consent to being removed from their parents. None of the provisos listed in art 9.1 (abuse or neglect by the parents, or where the parents live separately) are applicable in relation to surrogacy arrangements.

Therefore, surrogacy arrangements are contrary to Australia’s international law obligations.