AUSTRALIAN FEMINISTS FOR WOMEN'S RIGHTS

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Submission to the Australian Law Reform Commission
Review of Australian surrogacy laws

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.

As a signatory to the submission by a "Coalition of feminist organisations" spearheaded by the Affiliation of Australian Women's Action Alliances (AAWAA), we endorse all the comments and recommendations made therein and will not repeat them here. Rather, the present submission is to further elaborate key points, or draw attention to further aspects of this question, with reference to both the Terms of Reference (TOR) and the ALRC's Issues Paper #52 of June 2025. This submission focuses primarily on Q. 27 of the Issues Paper (p. 26): *the key important issue that is not identified or addressed is the rights of women used in surrogacy.*

1. Given the long-demonstrated and well-documented harmful physical and psychological impacts of both egg-donation and gestational surrogacy on the women used as surrogates,[1] the lack of attention to the rights and needs of these women is a matter of considerable concern—indeed, alarm. In fact, the word "women" only appears once in the Issues Paper and the word "female" does not appear at all. The "surrogate" and her "unique contribution" are listed as "key terms", with "gestational services" and "reproductive labour" being listed as synonyms for this "unique contribution", thus tacitly emphasising that surrogacy is conceptualised primarily as a relationship of commercial exchange between more or less equal partners rather than as exploitation of women.

2. The TOR make it clear that the Australian government, as represented by then Attorney-General Mark Dreyfus, is committed to expanding access to so-called "altruistic" surrogacy in Australia. The TOR appear to rely on the presumption that "adequate reimbursement of expenses" is sufficient to neutralise the impacts on egg-providing and gestational surrogates used in such "altruistic" surrogacy. This presumption shows an appalling ignorance of the actual physical and psychological impacts of egg harvesting and implantation, and of pregnancy and childbirth, on women used in surrogacy. First and foremost among these impacts is 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 psychological impacts. One does not "make a baby" like one makes a cake.

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.[2]) 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 being genetically unrelated to the birth mother.[3]

In fact, the medical aspects of surrogacy are barely touched upon in the issues paper, which is yet another indication that the rights and welfare of women used in surrogacy are given little weight in the discussion. This oversight is all the more worrying when one considers the global surrogacy industry to be a multi-billion-dollar component of (largely unregulated) so-called "medical tourism" (see [4] below), to which Australians contribute substantially.

3. *There exists no human right to a biological child.* International human rights treaties spell out the right to marry and found a family but there is no international human right 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. Surrogacy arrangements 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. 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, which clearly states that among other things, children have the right to know and be cared for by their parents.

4. The TOR and Issues Paper do not address the reality 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 among key contributors to the development of gestational surrogacy amongst vulnerable women in Ukraine and South East Asia.[4] It is far from clear that "reducing barriers to domestic altruistic surrogacy arrangements" (as the TOR put it) 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 "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 (another consideration in the TOR and Issues Paper), it is unlikely 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.

5. As concerns criminalisation, we have already stated in the "Coalition" paper our support for the complete prohibition of surrogacy. The Issues Paper argument that criminalisation may drive surrogacy arrangements (further) underground is a weak one. To use the related issue of prostitution as an example: legal regulation has not halted trafficking but on the contrary has resulted in higher trafficking inflows, especially to wealthier countries, and Australia is no exception. Far from acting as a deterrent, legal regulation of a practice legitimises that practice and opens a backdoor to unregulated forms of it diversifying and increasing. It is thus unlikely that better incentivised and regulated "altruistic" surrogacy, especially when considered in the context of [4] above, will stop Australians engaging in transnational commercial surrogacy arrangements.

"Practical" solutions?

We reiterate our opposition to all forms of surrogacy, which largely serves the interests of men and breaches the rights of women as set out in the Convention on the Elimination of all forms of Discrimination Against Women (notably as concerns exploitation in trafficking and prostitution and as concerns protection of women's health notably reproductive health), as well as the Convention on the Rights of the Child.

However, if the government is intent on providing some form of legitimation to surrogacy, 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 surrogacy due to the higher health risk to the birthing mother;
- A national highly regulated process for entering surrogacy arrangements including raising the uniform age that women can become a surrogate to 30 across all jurisdictions;
- 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 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 pointed out in the Coalition submission, surrogacy arrangements do not occur on a "level playing field" from which gendered considerations are absent);
- 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.

[1] See for example: Klein, Renate (2017) *Surrogacy: A Human Rights Violation* and Ekman, Kajsa Ekis (2025) *Being and Being Bought: Prostitution, Surrogacy and the Split Self* (2nd edition). Both published by Spinifex Press, Melbourne.

[2] 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

[3] https://theconversation.com/surrogacy-is-booming-but-new-research-suggests-these-pregnancies-could-be-higher-risk-for-women-and-babies-239574

[4] 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