AUSTRALIAN
CATHOLIC BISHOPS
CONFERENCE

General Secretariat

Bishops Commission for Life, Family and Public Engagement

9 July 2025

The Hon Justice Mordecai Bromberg
President
Australian Law Reform Commission

Associate Professor Ronli Sifris
Assistant Commissioner
Australian Law Reform Commission

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Dear Justice Bromberg and Associate Professor Sifris

Review of Surrogacy Laws

This submission from the Australian Catholic Bishops Conference is made to contribute to the Review of Surrogacy Laws (the Review). This submission can be made public.

The Australian Catholic Bishops Conference (the Conference) is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

The Bishops Commission for Life, Family and Public Engagement (the Commission) is one of several commissions established by the Conference to address important issues both within the Church and in the broader Australian community. The Commission has responsibility for commenting on the regulation of surrogacy.

One in five Australians identify as Catholic. The Catholic Church and its agencies contribute in numerous ways across the spectrum of Australian society. As an integral part of its core mission, the Church seeks to assist people to experience the fullness of life. It is concerned with all that impacts on human dignity and wellbeing for the common good.

I would be happy to answer any questions the Law Reform Commission may have regarding this submission. I can be contacted via [redacted]

Yours sincerely

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Executive Summary

Surrogacy, in all its forms, undermines the dignity of women and children by commodifying human life and turning pregnancy into a transaction. At its core, surrogacy treats women as instruments to be used and children as products to be commissioned. Every child has the right to be conceived, carried, and raised within the stable, loving bond of its biological mother and father. To deliberately bypass this context is to violate the child's inherent dignity and best interests.

While the pain of infertility is real and deserving of compassion, not all responses to suffering are just. Surrogacy introduces new and profound harms. It places women and children at heightened medical risk, causes enduring emotional trauma, and opens the door to exploitation. For children, it breaches core human rights, including identity, parentage, and protection from commodification, which are rights affirmed by the *United Nations Convention on the Rights of the Child*.

The Australian Catholic Bishops Conference calls on the Law Reform Commission to recommend the prohibition of all forms of surrogacy in Australia. Australian law should, as far as possible, preserve the inherent dignity of every human person by giving paramount importance to the rights of children, and protect vulnerable women from exploitation and harm. Children have no voice in these arrangements, yet it is they who bear the most profound consequences. The law must protect their right to be conceived, carried, and raised in a context where they are received in love, not produced as part of a contractual arrangement.

We call for stronger enforcement of Australia's ban on commercial surrogacy, especially in relation to overseas arrangements that effectively circumvent domestic laws and protections.

There is no regulatory framework that can eliminate the inherent harms of surrogacy.

Preliminary note

We are deeply concerned that the Terms of Reference for this Inquiry appear to prioritise easier access to surrogacy, presented in Question 1 as improving navigation and access, rather than upholding the fundamental rights and dignity of women and children. This framing risks placing adult desires ahead of children's rights. We reject the idea that expanding surrogacy serves the best interests of children or respects human dignity. Any legal reform must begin with a clear commitment to protect children from commodification, women from exploitation, and society from the normalisation of contract-based human reproduction.

In this submission, we have responded to select questions in the Issues Paper. As we hold that all forms of surrogacy are ethically unacceptable, we have not addressed questions that proceed from the assumption that surrogacy is a legitimate or desirable practice.

Conference response to Questions posed in Issues Paper

Reform Principles

Question 2: What reform principles should guide this Inquiry?

The human rights of children should be the primary principle guiding the inquiry.

Every child is a unique human being with inherent dignity and rights, who deserves to be conceived, carried, and raised within the stable, loving bond of their biological mother and father. Their rights to identity, connection, and care must be upheld as primary and inviolable, not contingent on the desires or arrangements of adults.

No human being should come into existence as the product of a transaction. While society rightly rejects the buying and selling of persons, surrogacy permits the commissioning of a child to satisfy adult desires. Whether or not money changes hands, the underlying reality remains: the child is created to fulfil a contract or agreement, not welcomed as the fruit of a loving union.

As one commentator argues:

> …in commercial surrogacy, the child is de facto turned into a product. A few thousand dollars are paid to the mother when she delivers the newborn baby. This, by all definitions, constitutes baby trade. It is the buying and selling of children. But even in altruistic surrogacy, there is a drastic change in the way we look at children: as products to be exchanged through contracts.[1]

The *United Nations Convention on the Rights of the Child*[2] affirms that in all actions concerning children, "the best interests of the child shall be a primary consideration"[3]. The Convention recognises children not as the property of adults, but as persons with inherent rights that must be upheld and protected.

These include the right to:

- An identity and family relations[4]
- As far as possible, know and be cared for by their parents[5]
- Not be separated from their parents against their will, except in certain specified circumstances[6], and

[1] Ekman, K E, Stop Surrogacy Before it is Too Late. *Festival of Dangerous Ideas*. 19 August 2014. See: https://medium.com/festival-of-dangerous-ideas/stop-surrogacy-before-it-is-too-late-9910035a63f0#.ma2g0si1u
[2] UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577.
[3] Ibid Art 3
[4] Ibid Art 8
[5] Ibid Art 7
[6] Ibid Art 9

- Maintain personal relations and direct contact with both parents, except if it is contrary to the child's best interests[7].

In addition, Article 35 provides that member states must "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"[8]. The reality is that the practice of surrogacy can create conditions that bear concerning similarities to the sale and trafficking of children, where infants are commissioned, transferred across borders, and handed over to unrelated adults in exchange for payment. The risk for children is extremely high.

Surrogacy, by design, denies a child their rightful identity, origin, and connection to the woman who bore them. It is a systemic violation of the child's human rights—one that no legal workaround can justify.

It is concerning that although commercial surrogacy is banned in Australia, including overseas arrangements in several jurisdictions, these laws are rarely enforced.[9] As a result, Australians are continuing to commission children through international commercial surrogacy with little scrutiny or consequence, undermining the intent of the legal prohibitions which are to protect children.

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?

The human rights of children who are at risk of being commissioned as part of surrogacy arrangements should be the key consideration for the Commission in this inquiry.

Domestic and international surrogacy arrangements raise significant concerns under the *Convention on the Rights of the Child*, which recognises that children are bearers of inherent rights, rather than commodities or objects of adult desire.

Surrogacy, by its nature, risks violating several key rights enshrined in the Convention:

1. The right to know and be cared for by one's parents[10]. The Convention affirms that every child has the right, "as far as possible, to know and be cared for by his or her parents." Surrogacy arrangements, by design, intentionally sever the biological and gestational

[7] Ibid Art 9.
[8] Ibid Art 35.
[9] Australian Law Reform Commission *Issues Paper: Review of Surrogacy Laws*, Issues Paper 52, June 2025 at paragraph 80.
[10] UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, Art 7

connection between the child and at least one — often both — of their natural parents. This deprives the child of the very relationships the Convention recognises as foundational.

2. The right to preserve identity and family relations[11]. Surrogacy can obscure or legally erase the child's identity and origins, particularly when birth certificates are altered or gestational mothers are omitted from official records. This undermines the child's right to preserve their identity, nationality, and family relationships without unlawful interference.

3. The principle of the child's best interests[12]. The best interests of the child must be "a primary consideration in all actions concerning children." Yet surrogacy is often justified primarily by reference to the desires of intended parents, not the long-term welfare or developmental needs of the child. The emotional, psychological, and identity-related consequences of being born via surrogacy are seldom considered in policy debates.

4. The right not to be separated from parents against their will[13]. While this article allows for separation in limited circumstances, surrogacy creates a scenario in which separation is planned and executed from conception. The child is deliberately removed from the woman who carried and gave birth to them, regardless of the child's emotional or biological bond.

5. Protection from sale and trafficking[14]. United Nations member states are obliged to take action to prevent the abduction, sale or traffic in children "for any purpose or in any form." Commercial surrogacy arrangements, especially those involving international travel and payment, closely resemble the commercial transfer of children. The commissioning, contractual delivery, and transfer of a child in exchange for payment raises serious concerns under this article.

The rights of children must be central in any legal or policy response to surrogacy. This involves:

- Upholding and enforcing existing bans on commercial surrogacy, including overseas arrangements, to prevent the commodification and cross-border transfer of children.
- Resisting any policy or legal framework that would legitimise practices inherently in tension with the rights outlined in the *Convention on the Rights of the Child*.
- Prioritising the right of children to their identity, family relations and as far as possible to be known and cared for by their parents, above the desires of adults seeking to become parents.
- Ensuring that any legal arrangements involving children uphold the child's best interests in both principle and practice and not merely in contractual terms.

[11] Ibid Art 8
[12] Ibid Art 3
[13] Ibid Art 9
[14] Ibid Art 35

Ultimately, children are not products to be commissioned or delivered. They are persons with inherent dignity and rights that must be respected, protected, and fulfilled.

In addition, the human rights of women, who are at risk of exploitation and trafficking as a result of surrogacy arrangements, should also be a key consideration of the Review.

The stories of surrogate mothers reveal deep emotional, physical, and spiritual harm that surrogacy can inflict. Many women who have given birth to babies as surrogates experience profound grief, anxiety, and trauma after surrendering the child they carried.

Cathy, a former surrogate mother, reflects on the enduring impact:

> "The pain never goes away. I am still an emotional basket case and struggle every day with this… When I signed the paper, I thought I could do it. I did not realise it would break my heart. The pain and emptiness I feel have been unbearable."[15]

Another woman, Sherrie, shares her profound grief:

> "I can't describe the depth of sadness I felt when I came home without the child I loved, carried within me, and gave birth to. It was as if I had a child die… I just couldn't help but love this child like my own, because it was my own … As I watched their car driving away that day on the gravel road, I felt like the dust left behind to scatter in the corn fields."[16]

Many women report lasting psychological distress, including grief, anxiety, depression, and ongoing separation trauma. In some cases, the impact extends to their own children, who express fear that they too might be given away.

In a study[17]which found that surrogate mothers often form deep emotional bonds with the babies they carry, researchers warned that surrogacy "should be considered a high-risk emotional experience" because of the distressing psychological effects these women face.

At its core, surrogacy requires the intentional suppression of the natural maternal bond that develops during pregnancy — a bond grounded not only in biology, but in the spiritual and emotional reality of motherhood.

As Chief Justice Thackray of the Family Court of Western Australia noted:

> [S]urrogate mothers are not baby-growing machines, or "gestational carriers". They are flesh and blood women who can develop bonds with their unborn children.[18]

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[15] Jennifer Lahl, Melinda Tankard Reist, Renate Klein (eds), *Broken Bonds: Surrogate Mothers Speak Out*, Spinifex Press, Australia, 2019, p.5.
[16] Ibid p.16
[17] Ahmari Tehran H, Tashi S, Mehran N, Eskandari N, Dadkhah Tehrani T. Emotional experiences in surrogate mothers: A qualitative study. *Iran J Reprod Med*. 2014 Jul;12(7):471-80. PMID: 25114669; PMCID: PMC4126251. Accessed here https://pmc.ncbi.nlm.nih.gov/articles/PMC4126251/
[18] *Farnell & Anor and Chanbua* [2016] FCWA 17 at 757.

Surrogacy also places women and babies at significant physical risk.[19]A 2024 Canadian study[20] published in the *Annals of Internal Medicine* examined over 860,000 single-baby births, including 806 gestational surrogacy cases. Women acting as gestational surrogates experienced severe maternal complications at a rate of 7.8 per cent, more than three times the risk of women who conceived naturally (2.3 per cent) and nearly double the risk of those who conceived through IVF (4.3 per cent). Complications included postpartum haemorrhage, severe pre-eclampsia, infection, and increased risk of premature birth.

Beyond individual cases, there is a broader pattern of commodification and exploitation. Surrogacy disproportionately affects financially vulnerable women, who are often recruited into arrangements with limited legal or medical protections. The risk of exploitation increases significantly in international arrangements where oversight is weak and cross-border enforcement is minimal.

The role of the criminal law

Question 24: Should the law have a role in discouraging or prohibiting certain forms of surrogacy?

The law should prohibit all forms of surrogacy, especially commercial surrogacy, because it violates the inherent dignity of the human person and breaches key principles of international human rights law.

Surrogacy reduces the child to an object of adult desire and turns pregnancy into a service that can be arranged or purchased.

It fails to protect the most vulnerable party involved: the child. A child has no voice in decisions governing their conception, gestation, and separation from the mother who carried them. Surrogacy intentionally severs the natural maternal bond and replaces it with contractual arrangements designed to satisfy adult intentions. This undermines the child's fundamental rights under the *Convention on the Rights of the Child*, including the right to identity, to know and be cared for by their parents, and not to be separated from them except where absolutely necessary.

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[19] Lahl, Jennifer; Fell, Kallie; Bassett, Kate; Broghammer, Frances H.; and Briggs, William M. (2022) "A Comparison of American Women's Experiences with Both Gestational Surrogate Pregnancies and Spontaneous Pregnancies," *Dignity: A Journal of Analysis of Exploitation and Violence*: Vol. 7: Iss. 3, Article 1. https://doi.org/10.23860/dignity.2022.07.03.01

[20] Velez MP, Ivanova M, Shellenberger J, Pudwell J, Ray JG. "Severe Maternal and Neonatal Morbidity Among Gestational Carriers : A Cohort Study". *Ann Intern Med*. 2024 Nov;177(11):1482-1488. doi: 10.7326/M24-0417. Epub 2024 Sep 24. Erratum in: Ann Intern Med. 2025 Mar;178(3):456. doi: 10.7326/ANNALS-25-00347. PMID: 39312777. Accessed here: https://pubmed.ncbi.nlm.nih.gov/39312777/

Commercial surrogacy in particular risks turning children into commodities, transferred across borders, handed to unrelated adults, and often exchanged for money. These practices closely resemble child trafficking.

Beyond legal violations lies a deeper moral truth: every human life is a gift, not a product to be commissioned or controlled.

There is no form of regulation that can remedy the fundamental injustice at the heart of surrogacy, which is that it treats human beings, especially children, not as persons to be loved and protected, but as objects to be commissioned, exchanged, and delivered according to contract.

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 offer the Church's profound vision for the human person, one that is grounded in God's plan of love and freedom for every human being. It considers[21] every child to be a gift, not "an object to which one has a right",[22] and motherhood as a personal and embodied vocation that cannot be reduced to a function or outsourced.

Every human being is made in the image and likeness of God (Genesis 1:27) and thus has inalienable worth and dignity.

> We were conceived in the heart of God, and for this reason each of us is the result of a thought of God. Each of us is willed, each of us is loved, each of us is necessary.[23]

As Pope Francis[24] asserted, surrogacy is "a grave violation of the dignity of the woman and the child based on the exploitation of situations of the mother's material needs". A child, he reminds us, "is always a gift and never the basis of a commercial contract".

The Church's teaching on human freedom and the dignity of the human person stands in direct opposition to this commodification of women. A woman is not a machine for reproduction; she is a person made in the image of God, called to bear life with love,

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[21] *Donum Vitae* ("The Gift of Life"), published in 1987 by the Congregation for the Doctrine of the Faith, is the foundational Church document addressing bioethical questions around procreation, particularly in response to the rise of in vitro fertilization (IVF) and surrogacy. It affirms that human life is a sacred gift from the moment of conception and must never be treated as an object or product.

[22] Ibid at part 8.

[23] Encyclical Letter *Laudato Si* of the Holy Father Francis on Care for our Common Home, at 65.

[24] Christopher White, "Pope Francis calls for global ban on surrogate motherhood: Kids not 'commercial contract', *National Catholic Reporter*, 8 January 2024.

freedom, and dignity. Surrogacy reduces this sacred role to a service contract—an arrangement that denies the woman's full humanity.

Surrogacy also directly contradicts a vision of motherhood as a sacred vocation grounded in the full personal dignity of the woman. Motherhood is not merely a physical or biological process, it is a profound act of self-giving that unites the woman's body, heart, and soul in openness to new life.[25] It is within this communion that a woman discovers a unique capacity to nurture, protect, and love the child she carries, forming a bond that shapes both her own identity and the child's. To sever this bond by design is emotionally damaging and spiritually disordered. Surrogacy attempts to divide a woman's body from her identity, as though she could be a vessel without being a mother.

[25] Apostolic Letter *Mulieris Dignitatem* of the Supreme Pontiff John Paul II On The Dignity and Vocation of Women on the Occasion of the Marian Year, accessed here https://www.vatican.va/content/john-paul-ii/en/apost_letters/1988/documents/hf_jp-ii_apl_19880815_mulieris-dignitatem.html