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Catholic Women's League Australia Inc
Member Organisation of the World Union of Catholic Women's Organisations (WUCWO)
NGO Consultant (roster) status with the Economics and Social Council of the United Nations

"Be joyful in hope, patient in trouble, and persistent in prayer." Romans 12:12.

Submission regarding

Review of Surrogacy Laws

Policies and Practices

July 2025

Catholic Women's League Australia – Incorporated (CWLA) welcomes the opportunity to respond to discussion of the Review of Surrogacy Laws requested of the Australian Law Reform Commission by the Australian Government.

We understand the Attorney General requests a review of Australian surrogacy laws, policies, and practices to identify legal and policy reforms that are:

- respecting Australia's obligations under international law and conventions and that

- 'promoting 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.'[1]

We also understand that ALRC seeks input from three stated consultation sources: the community; people with lived experience; and experts in the field.[2] CWLA is pleased to respond in accord with this request for public feedback. From the community. The ALRC Issues Paper on Review of Surrogacy Laws 'introduces the Inquiry' and 'explains what we know so far about the problems' and 'how these problems could be solved'.

We present priorities regarding the principles to guide the Inquiry, and the human rights of those most affected. It is noted that of the 27 questions asked of the public, only 3 questions address the rights of, and concern for the child. The reduction of barriers is presupposed as a good. CWLA has some concerns regarding

[1] Terms of Reference 6/12/24. https://www.alrc.gov.au/inquiry/review-of-surrogacy-laws/terms-of-reference/ https://www.alrc.gov.au/news/review-of-surrogacy-laws-issues-paper-released/

[2] ALRC President Hon Justice Mordecai Bromberg. Media Release. 6/12/24. *Australian Law Reform Commission to commence new Inquiry into surrogacy laws.* https://www.alrc.gov.au/inquiry/review-of-surrogacy-laws/

Catholic Women's League Australia (Inc)
PO Box 6047
Lake Munmorah. NSW 2259
cwla.info@gmail.com
www.cwla.com.au

President Ann Pereira
Secretary Sally Fennell
Treasurer Pauline O'Malley

this weighting and will primarily address the issues and concerns for the wellbeing of children and their birthing mothers affected by surrogacy arrangements, since these are the core issues and should be the 'guiding reform principles'.

CWLA does not support any expansion of surrogacy arrangements into commercial or compensated surrogacy either overseas or within Australia. Consent itself does not determine whether something is good or deleterious, nor can a contract make surrogacy a good. This response considers the expectation of the 'rights of children' to meet the 'needs' of various other family structures, in other countries than their own or within Australia. How do these perceived needs of others compete with the right of the child to be born into his or her own family with access to his or her own mother and culture and to know this family, this mother in whose womb they grew and whose everyday voice and rhythms they knew.

As the peak body of Catholic Women in Australia, CWLA submits response to these core matters:

- **ALRC Issues paper Questions 2, 3 and 27.**
- **Term of Reference: Australia's obligations under International Law and Conventions; human rights of children and surrogate mothers, noting that the best interests of children are paramount.**

Executive Summary

1. All surrogacy is abuse of the child and mother.
2. Commercial surrogacy is coerced surrogacy.
3. Compensated surrogacy commodifies the child.
4. Other countries are increasingly limiting surrogacy arrangements e.g. European Parliament has confirmed surrogate motherhood as a form of human trafficking 22/4/24. International Surrogacy legislation is reviewed below.
5. Testimonies and cases are relevant to be heard and considered e.g. Australian experience: Judgment remarks baby Gammy case.
6. Parentage legislation should respectfully align with the origins of the child.
7. Birth certificate documentation should carefully reflect the integrity of the biological origin and cultural and familial heritage of the baby.

Reform Principles

Question 2. What reform principles should guide this Inquiry?

The natural and internationally agreed rights of the child and the wellbeing of the child should guide the Inquiry since the 'best interests of the child are paramount,' as stated in the terms of reference.

These two principles are discussed here together under Question 3 since the right to health is one of the agreed rights of the child.

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 Rights of the Child

Surrogacy is mostly promoted as providing groups of people with children they otherwise could not have. The longing for a child is a situation described throughout history. This human desire is known and appreciated. It is a great sorrow for many, but it is neither a 'human right' nor a 'need'. Nor can this desire take precedence over the child's wellbeing and right to identity - to be held and loved by his or her mother before and after birth. It cannot justify the harm and violence done to the dignity of the women so used.

A] The best interests and right to wellbeing of the child

Under surrogacy a woman who is, or who will try to become, pregnant, enters an agreement that another person or couple will become the parents of the child she is bearing. In reviewing surrogacy, The Attorney General Mark Dreyfus has instructed the ALRC that 'the best interests of the children are paramount'[3] in its review of Surrogacy Law.

It is important to note when considering these paramount interests, that there is relevant and concerning paediatric research. Though long-term research is scant, due to the recency of both the medical technology and of the growing demand, surrogate children have already shown higher levels of adjustment difficulties at age seven years than children conceived by gamete donation.[4] Surrogacy has consequences for the ongoing continuum of development of the child.

Surrogacy abruptly disrupts the bonding which has begun in utero:

i) Mother-child interactions in the womb

1. Physiologic: Interplays between the unborn child and the mother are vast. The placenta is central to these earliest interactions physiologically. While the exact mechanism pathways are unknown, "the placenta senses and responds to changes in the maternal environment by altering its structure and function, which can lead to changes in blood flow, fetal nutrient supply, and secretion of hormones and other signalling molecules."[5]

2. Language and speech bonds: the communicative bonding and attachment of the unborn infant are also forming during the pregnancy.
   - The fetus has been shown to recognize and be excited at hearing the mother's voice in the womb.[6]

[3] Terms of Reference to Review of Surrogacy Laws given by Mark Dreyfus 6th December 2024.

[4] Golombok S, Blake L Casey P et al. Children born through reproductive donation: a longitudinal study of psychological adjustment. *Journal of Child Psychology and Psychiatry* Vol 54, Issue 6 pp 653-660. http://doi.org/10.1111/jcpp.12015

[5] Dimasuay KG, Boeuf P, Powell TL and Jansson T. Placental Responses to Changes in the Maternal Environment Determine Fetal Growth. Frontiers in Physiology. 2016; 7(12):1.

[6] Partanen E, Kujala T, et al. Learning-induced neural plasticity of speech processing before birth. Proceedings of the National Academy of Sciences. 2013; 110(37):15145-15150.

- Sixty babies were assigned to hear either tape recordings of the mother or a stranger reading a passage from a book. Fetal heart rate increased in response to the mother's voice but decreased when exposed to the stranger's voice.[7]
- Similarly, 40 babies at 36 weeks of pregnancy who heard their mother reading aloud demonstrated learning of maternal voice.[8]
- Premature babies born between 25 and 32 weeks of the pregnancy were exposed either to routine hospital sounds or to the recordings of maternal sounds (voice and heartbeat). Those infants exposed to their mothers' sounds showed significantly larger auditory cortices bilaterally by head ultrasound one month after birth as compared to the control infants.[9]
- The baby recognizes the native language of its mother in the womb and prefers it to other languages. At two days of age, 16 infants were evaluated while listening to either English or Spanish audiotapes and demonstrated preference for their mothers' native language.[10]
- The baby can remember words heard while in utero. Unborn babies exposed to new 'pseudowords' in utero demonstrated memory of those words when exposed to them after delivery as evaluated by EEG.[11]

3. Smells and taste: the unborn grow accustomed to and remember tastes they have been living with in the amniotic fluid of the uterus.
   - Researchers divided 56 pregnant women into three groups – those who drank carrot juice during pregnancy only, those who only drank carrot juice after the baby was born and those who never drank carrot juice. Infants at five months of age were presented with two types of baby cereal. One had carrot flavouring and one did not. The babies who had experienced the amniotic fluid taste of carrot juice in the womb were more preferring of the carrot flavoured cereal.[12]

4. Sleep Cycles: The baby's diurnal rhythm after birth reflects the in-utero experience and correlates with the rhythms of the mother.
   - Research demonstrates a day-night rhythm of fetal heart rate that is synchronized with maternal rest and activity, heart rate, cortisol, melatonin, and body temperature rhythms. This rhythm develops in the last 3 months of the pregnancy.[13]

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[7] (Kisilevsky BS, Hains SMJ, et al Effects of Experience on Fetal Voice Recognition. Psychological Science. May 2003 vol 14 3:220-224

[8] Voegtline KM, Costigan KA, et al. Near-term fetal response to maternal spoken voice. Infant Behavior and Development. 2013 36(4):

[9] Webb AR, Heller HT, Benson CB, Lahav A. Mother's voice and hearbeat sounds elicit auditory plasticity in the human brain before full gestation. PNAS. 2015; 112 (10)3152-3157.

[10] Moon C, Cooper RP, Fifer WP Two-day-olds prefer their native language. Infant Behavior and Development. 1993. 16(4):495–500.

[11] Partanen E, Kujala T, et al. Learning-induced neural plasticity of speech processing before birth. Proceedings of the National Academy of Sciences. 2013; 110(37):15145-15150.

[12] Mennella JA, Jagnow CP, and Beauchamp GK. Prenatal and Postnatal Flavor Learning by Human Infants. Pediatrics 2001; 107(6):E88.

[13] Mirmiran M, Maas YGH, Ariagno RL. Development of fetal and neonatal sleep and circadian rhythms. Sleep Medicine Review. 2003;7(4): 321-334.

- A diurnal rhythm in the baseline heart rate was found in 73% of babies in the womb during 24-hour recordings in the latter 3 months of pregnancy, and this was closely related to the maternal heart rhythm.[14]

ii] Bonding interactions in the womb form a continuum into the newborn period

1. The newborn is still attracted to the smell of amniotic fluid, but transitions to prefer the breast scent of the mother.
   In a study of 22 newborns up to 3 ½ days old, who had been breastfed 6-24 times, babies preferentially moved at least 13 cm to get nearer to breast pads with their own mother's scent on them, rather towards clean pads.[15]
   Newborns can be consoled and soothed by exposure to maternal odours, while breastfed infants have been noted to respond differently to maternal odours than do formula fed infants.[16,17]
2. Newborns show early preferences for hearing the voice of their mother. Babies have demonstrated recognition of their mother's voice 2 – 4 days after birth. Babies were able to cause a recording of their mother's voice or another woman's voice to play depending on how vigorously they sucked on a dummy. These infants preferentially chose maternal recordings to be played.[18,19]

3. Newborn babies are able to recognize songs parents have sung to them while in the womb and prefer to hear strangers who are speaking their mothers' native language rather than a foreign language.[20]

There are also concerning firsthand testimonies from the removed children of surrogates. This research and their stories are worthy of being heard and should not be dismissed. They are presented below.

The child at the centre of this marketing arrangement may or may not be genetically related to the birth mother and/or the intended parents, and conception may have used gametes of third-party donors. Regardless of the cellular ties to the birth mother - to the person whose womb nourished and held them, to the mother and family whose voices and heartbeat were heard daily and absorbed into the security of the developing baby - the child-mother bond flows from pregnancy into the newborn and childhood phases. It

[14] Lunshof S, Boer K, Wolf H, van Hoffen G, Bayram N, Mimiran M. Fetal and maternal diurnal rhythms during the third trimester of normal pregnancy: outcomes of computerized analysis of continuous twenty-four-hour fetal heart rate recordings. American Journal of Obstetrics & Gynecology. 1998;178(2):247-54.

[15] 24. Varendi H and Porter RH. Breast odour as the only maternal stimulus elicits crawling towards the odour source. Acta Paediatrica. 90:372 – 5, 2001.

[16] Sullivan RM and Toubas P. Clinical Usefulness of Maternal Odor in Newborns: Soothing and Feeding Preparatory Responses. Biology of the Neonate. 1998; 74(6):402-408.

[17] Vaglio S. Chemical communication and mother-infant recognition. Communicative & Integrative Biology. 2009; 2(3):279-281.

[18] DeCasper AJ, Fifer WP. Of human bonding: newborns prefer their mothers' voices. Science. 1980; 208(4448):1174-6

[19] Hepper PG, Scott D and Shahidullah S Newborn and fetal response to maternal voice. Journal of Reproductive and Infant Psychology. 1993 (11):147-153.

[20] Moon C, Cooper RP, Fifer WP Two-day-olds prefer their native language. Infant Behavior and Development. 1993. 16(4):495–500.

cannot be dissolved by mere words or contracts. It should not be dismissed or broken off. Removal of the child from the birth mother separates the child from a major element of their identity. This cannot be re-connected with. The child's right to his or her identity and to continue to flourish within the relationship bond already forged in utero is not acknowledged or respected by surrogacy. It is undermined and closed.

Furthermore, where there is an international arrangement, children of surrogacy can be left as orphans or even stateless if laws in the surrogate's country are in conflict with our own or change to be in conflict with our own.

B] Human Rights – International Conventions and Declarations defining and safeguarding the rights of the child

The Universal Declaration of Human Rights (***UDHR)*** issued by the United Nations in 1948 reaffirmed the unique and eminent value and dignity of every person in the world.[21] This dignity is social, moral, existential, and ontological. This is consistent with the affirmation of Paul the apostle that we ought to live 'according to the requirements of dignity and respect for the rights of all people (Rom 13: 8-10) according to the new commandment of love (1 Cor. 13:1-13).

The United Nations Convention on the Rights of the Child 1989 (CRC)[22] makes clear that children of every age are independent rights holders. They have the right to a nationality, and the right to know, and to be cared for by their parents.

- Article 3 of the CRC states
  'in all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration'

- Article 7 of the CRC further includes the right of children to know their parents.
- Article 6 of the CRC relates to the child's right to development.
  (This would be adversely affected if carers are caught up in disputes over parenthood.[23] Becoming aware of such disputation and conflict later in life could also have a negative impact. The disrupted continuum of bonding development is imposed by surrogacy)
- Article 8 ensures the Right to Identity, about which the UN Working Group referred to the '*true and genuine personal, legal and family identity*'.[24]

[21] United Nations, Universal Declaration of Human Rights, UN Doc. A/RES/217(III) (10 December 1948) Article 1.

[22] https://www.unicef.org.au/united-nations-convention-on-the-rights-of-the-child

[23] Asok A et al. Parental responsiveness moderates the association between early-life stress and reduced telomere length' 2013. *Development and Psychopathology* 577.

[24] Report of the Working Group on a draft convention on the Rights of the Child (1985) E/CN.4/1985/6 4 Annex 11 1 para 35 as cited in D Hodgson, 'The international legal protection of the child's rights to a legal identity and the problem of statelessness' (1993). International Journal of Law, Policy and the Family 255.
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5540169/

- The Committee's general discussion on Implementing Child Rights in Early Childhood states: '*young children's earliest years are the foundation for their physical and mental health, emotional security, cultural and personal identity*' [25]
- Article 35 states: '*Parties shall take all appropriate national, multilateral measures to prevent the abduction of sale of* ***or traffic in children for any purpose or in any form'***
- The Convention on the Rights of the Child (CRC) forbids "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration."[26] It prohibits both the sale of children and forms of human trafficking. A transaction is 'a business deal: an occurrence in which goods, services, or money are passed from one person, account, etc., to another.'[27] A deal procuring a child away from his or her mother is an affront to the natural rights of the child.

The European Court of Human Rights (ECtHR)

The ECtHR found that 'the right to an identity, which includes the right to know one's parentage, is an integral part of the notion of private life'.[28]

This right is not widely respected or upheld in the practice and culture of surrogacy. In a study of 42 parents using genetic surrogacy less than half did not disclose to the child that the surrogate mother was also the child's genetic mother.[29]

Furthermore, intercountry surrogacy transactions can limit the extent to which children's rights to know their genetic origins can be fulfilled.

International Regulatory Legislation

Italy was the first country in Europe to produce a bill banning surrogacy as a universal offence.

Responding to the truths of contracted baby procurement, other nations are increasingly regulating and disallowing commercial surrogacy amid a growing awareness of surrogacy as an affront to human dignity, an adjunct to the sexploitation of women, a form of human trafficking and the commodification of children. Several nations have observed the widespread exploitation and maltreatment of vulnerable parties in the acquisition of a child.

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[25] Committee on the Rights of the Child General Comment no 7 (2005), Implementing Child Rights in Early Childhood, (CRC/C/GC/7/Rev1, para 6(e).
https://www.refworld.org/legal/general/crc/2006/en/40994

[26] United Nations Human Rights Office of the High Commissioner. *Convention on the Rights of the Child* Article 2 (a) by resolution A/RES/54/263 at the fifty-fourth session of the General Assembly of the United Nations
Entry into force 18th January 2002

[27] Britanica dictionary definition

[28] Godelli vs Italy 25 sept 2012 para 52.
https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-113460%22]}

[29] V Jadva et al. Surrogacy families 10 years on: relationships with the surrogate, decisions over disclosure, and children's understanding of their surrogacy origins. *Human Reproduction* 2012 Oct;27(10):3008-14. doi: 10.1093/humrep/des273. Epub 2012 Jul 18. PMID: 22814484; PMCID: PMC3442632.
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3442632/

a) **European Union:** The Charter of Fundamental Rights of the European Union has banned commercial surrogacy.
   - In 2021, the European Parliament condemned the practice under Article 60, focusing on commercial surrogacy, which accounts for the bulk of the practice worldwide, and underlined the consequences of surrogacy for the health of surrogate mothers and its impact on equality between men and women.

     [It] "Condemns the commercial practice of surrogacy, a global phenomenon that exposes women worldwide to exploitation and human trafficking while targeting financially and socially vulnerable women in particular; highlights its severe impact on women, women's rights, women's health and gender equality, and underlines its cross-border implications; calls for a European legal framework to address the negative consequences of commercial surrogacy".[30]

   - On 6 October 2023 European members of parliament added surrogate motherhood to human trafficking crimes. MEPs want to include surrogacy for the purposes of reproductive exploitation. New crimes at EU level would include forced marriage, illegal adoption, and surrogacy for reproductive exploitation.[31]
   - On 22 April 2024, the European Parliament condemned surrogacy as a form of human trafficking by 563 votes to 7. This arose from revision to the 2011/36/UE directive against human trafficking. This revision was undertaken to harmonise modern data and take into account new developments. New crimes at EU level would include forced marriage, illegal adoption and surrogacy for reproductive exploitation[32]:

     "The text..would criminalise surrogacy in the context of trafficking. surrogacy carried out through the use of force, threat or coercion would fall under the directive." [33]

b) **Oviedo Convention:** The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine,[34] known as the Oviedo Convention, has been signed by 37 countries, and ratified by 29 countries. It condemns commercial surrogacy, stating at Article 21 "Prohibition of financial gain" that: "The human body and its parts shall not, as such, give rise to financial gain.

c) Commercial surrogacy is banned in many countries including The Netherlands, Japan, Brazil, Canada, Hong Kong, United Kingdom, Cuba, New Zealand etc.

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[30] https://www.europarl.europa.eu/doceo/document/TA-9-2022-0041_EN.html

[31] News European parliament. Human Trafficking: MEPs want strong focus on victims' rights. https://www.europarl.europa.eu/news/en/press-room/20230929IPR06110/human-trafficking-meps-want-strong-focus-on-victims-rights

[32] https://www.europarl.europa.eu/news/en/press-room/20230929IPR06110/human-trafficking-meps-want-strong-focus-on-victims-rights

[33] Lead Member of the European Parliament for the Civil Liberties, Justice and Home Affairs Committee Malin Bjork Press Release European Parliament 11th October 2023. https://www.europarl.europa.eu/news/en/press-room/20231011IPR06917/surrogacy-only-criminalised-in-the-context-of-trafficking-under-new-proposals

[34] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (Oviedo Convention, ETS No. 164),

India had been a popular choice for 'tourism surrogacy' and became about the exploitation of the woman and her child. It has therefore since banned paid surrogacy. Altruistic surrogacy is allowed for Indian couples and among relatives only. New Delhi's Centre for Social Research reported *'surrogacy degrades a pregnancy to a service and a baby to a product'.*

Thailand was also once a popular choice for surrogacy arrangements be international couples. The 'baby Gammy' incident led to the Thai *Protection of Children Born from Assisted Reproductive Technologies Act*. Only opposite-sex married couples as Thailand residents are allowed to have a commercial surrogacy contract arrangement.

d) Finland, Germany, Iceland, France, Malaysia, Serbia disallow commercial and altruistic surrogacy.

Endeavours to find 'practical' ways to 'reduce barriers to surrogacy' for Australians (Terms of Reference ALRC review of Surrogacy Laws), is to place the desire for a child above the rights of the child not to be transacted. The child is not a commodity. The rights of the child should not be outcompeted by wealthier and more legally equipped persons to obtain what they have no right to obtain. The desire for a child, the child of another, is neither a need nor a legitimate right.

C] Parentage Orders and Birth Certificate

Various state laws, such as the NSW Surrogacy Act, declare the surrogate child stops being the child of the birth mother. It declares the birth parent ceases to be the parent of the birthed child. While this legal requirement may exist for clear lines of responsibility, and 'certainty', nonetheless it contradicts nature and natural bonds and hence compromises the wellbeing of both. Consent to the process in either commercial, compensated, or altruistic surrogacy does not obviate the rights and needs of the mother and her birthed child, which are made subservient to the requirements of the process embarked upon.

Since motherhood and childhood identity cannot be obliterated, the surrogacy-arranged birth certificate belonging to the child should reflect the full integrity of the child's origins and parentage, including birth country. Relevant documentation should not be omitted from the birth certificate for apparently pragmatic reasons. These pragmatic reasons should not override the rights of the child by failing to include factual data that may be, or that may become, increasingly relevant to him or her.

Similarly, the parentage of the child conceived through IVF should be reflected and accurately represented on the birth certificate belonging to the child. It is not appropriate for the interests of others to take precedence over the child's right to identity and to the integrity of their birth certificate wherever possible. This is particularly necessary since a court may need to make a presumption at some stage about who a child's parents are or are not.

D] Perceived rights competing with the rights of the child

Claiming a 'right' to a child for/by those unable to have a child immediately declares commodity and ownership. Translating 'wishing' into a 'right' of ownership is an act of supreme selfishness. This overriding of the 'other's rights to attain one's perceived right underscores all of human trafficking, of which surrogacy – in all its forms – is one.

Lesbian journalist, author and feminist campaigner, Julie Bindel has identified the societal hypocrisy:

> *'The accelerating boom in surrogacy for gay couples … represents a disturbing slide into brutal exploitation of women who usually come from the developing world and are often bullied or pimped into selling their wombs to satisfy the selfish whims of wealthy gay or lesbian westerners.. This cruelty is accompanied by epic hypocrisy. People ... who would shudder at the idea of involvement in human or sex trafficking have ended up indulging in a grotesque form of "reproductive trafficking".'*
>
> *More and more people around the world, from gay couples and heterosexuals with fertility struggles to well-off women who simply do not want to be burdened by pregnancy, are choosing to pay for surrogacy services as a way of accessing parenthood. With "my body, my choice" feminists enthusiastically embracing surrogacy as an act of empowerment and inclusion, the abusive practice of outsourcing pregnancy to underprivileged and marginalised women is becoming widely accepted, and even mainstream.*[35]

What she has written taps into concerns for humanity, as expounded in the teaching of the Catholic Church:

> *A 'right to a child would be contrary to the child's dignity and nature. The child is not an object to which one has a right, nor can he be considered as an object of ownership: rather, a child is a gift, 'the supreme gift' and the most gratuitous gift of marriage'.*
>
> *'Surrogate motherhood represents an objective failure to meet the obligations of maternal love, of conjugal fidelity and of responsible motherhood; it offends the dignity and the right of the child to be conceived, carried in the womb, brought into the world and brought up by his own parents; it sets up, to the detriment of families, a division between the physical, psychological and moral elements which constitute those families'.*[36]

The Rights and Wellbeing of the Gestational Bearing and Birthing Mother

Rejection of surrogacy has been elsewhere found necessary not only to protect children from adverse sequelae and outcomes and safeguard their rights, but also to protect birth mothers from exploitation and subsequent pain, grief and regret, and to protect their families from the same harms.

Utilisation of the birth mother's material needs for the purpose of obtaining a baby places the surrogate mother into a coerced position and coerced decision-making. A surrogacy arrangement holds the woman, the mother, as nothing more than a vessel for the goods she is to supply. The woman's dignity and contribution of life, love, caring, heart, and voice is to be concluded and dismissed in the signing off. Her dignity of womanhood and motherhood is therein disregarded and violated. She is to exit when she is told to – whether within altruistic, compensated, or commercial surrogacy. The transaction is cold and closed.

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[35] Julie Bindel https://www.aljazeera.com/opinions/2023/9/8/surrogacy-human-right-or-just-wrong

[36] *Donum Vitae* Congregation for the Doctrine of the Faith. Instruction on Respect for Human Life in its origin and on the dignity of procreation. Replies to Certain Questions of the Day. https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html

For all forms of surrogacy there is vast potential for exploitation in these arrangements whether 'altruistic' or marketed. Where love is dismissed and contractually factored out, pregnancy and baby-bearing will appear just a menial task of the lower classes, or of those responding to approbation, or of those placing sympathy for others' desire for a child above the consequences for the child and the unknown future consequences for themselves. The power imbalance resting on socio-economic imbalance facilitates abuse, utilising and exploiting the mother's material needs. The emotional imbalance and discordance inherent in compensated or altruistic surrogacy arrangement is a powerful driver which is not inhabited by the input of the child concerned.

With the hiring out of the womb there is immediate exploitation. Australia currently prohibits commercial surrogacy but permits uncoerced, voluntary 'altruistic' surrogacy. However, money always changes hands. Whether as compensation, as medical invoices, as travel and food expenses for attending appointments down to the last jot, or whether as a marketplace agreement and drawn up deed, the child is the goods purchased from her womb. Her child is not to be bonded with. Some contracts stipulate the child is not to be held by the mother after birth. The woman becomes 'subservient to the arbitrary gain or desire of others'[37].

Mothers' claims that their child is 'always a part of them' are more than mental truth. The very DNA of the child she carries lives on in the mother for decades after the birth in a phenomenon known as microchimerism.[38] While the full effects of this are not yet known, the biological bondedness in bearing a child echoes the intensity and longevity of the mother-child relationship observed through millennia

Testimonies depict problems with altruistic and commercial and compensated surrogacy

1. Surrogate child Olivia Maurel spoke at the UN during the UN CSW 68 (Commission on the Status of Women) 11 to 22 March. She told a full room that she was born through surrogacy, and declared that she was

   'Ordered, fabricated, custom-made, sold and bought. The idea of being treated as an object slowly destroyed me during the majority of my life'. She said 'there is always money involved' and 'there is no ethical way of selling children, there is no ethical way to rent a woman's body'. Therefore, she said it is necessary to ban all kinds of surrogacy at an international level 'using an international treaty'.[39]

2. Testimony to Australian Parliament Inquiry into Surrogacy Submission 8 from mother whose first child was relinquished:[40]

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[37] Dicastery for the Doctrine of the Faith 'Dignitas Infinita' Surrogacy para 50. 2nd April 2024.

[38] Amy M. Boddy, Angelo Fortunato, Melissa Wilson Sayres Fetal microchimerism and maternal health: A review and evolutionary analysis of cooperation and conflict beyond the womb. *BioEssays*
28 August 2015 Vol 37,Issue 10 pp1106-1118.
https://doi.org/10.1002/bies.201500059

[39] UN Commission on the Status of Women 68, March 11th to 22nd 2024.
https://declaration-surrogacy-casablanca.org/the-casablanca-declaration-at-the-united-nations-in-geneva/

[40] Submission received by the Australian Government Parliamentary Committee Inquiry into Surrogacy 2016.
https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Inquiry_into_surrogacy/Submissions

'What is really happening is that if a vital organ is too diseased to function, the afflicted receives a donor lung or heart although the latter means another's death. Likewise infertility is not cured; a woman who IS fertile supplies the eggs, the womb, or the infant. As in the novel about organ donation, the fertile donors must also not be seen as human. Not to those who profit by receiving product and its outcome or a cash flow from it. Make no mistake, the infertility industry rakes in multiple billions per year. Like all industries, ambition and greed propel policies, not concern for the well being of children (the product) or those who provide them (mothers stripped of children or women whose eggs have been harvested or wombs or whatever they come up with next). As Phyllis Chesler writes, "We are stripmining the wombs of thepoor." We are privileged citizens and feel entitled. Life is not a commodity. Money should not buy everything. Every step taken in that direction only increases the demand for the next step and the next and the next.
I urge you NOT to take the surrogacy step.

3. Altruistic surrogacy adverse course from Sydney Morning Herald:[41]

'Diane, a mother of three who lives in south-west Melbourne, said she entered the agreement in 2010 and the first IVF cycle was in 2011.
The couple whose child she carried are god parents to her children and have power of attorney if anything happens to Diane. "That's how close we were,"
she said.
In 2000, her friend had a heart transplant and it was considered too risky for her to have a natural pregnancy. The couple wasn't allowed to adopt so they considered surrogacy. "They were thinking about going overseas and I thought that's ridiculous," Diane said. "I've got a uterus I am not using.
"I didn't want them spending hundreds of thousands of dollars. When they realised I was serious about it they took up my offer."
Everyone was fine and comfortable with it," said Diane. "It's surrogacy. It's IVF. No one had sex with each other, it was just a medical procedure."
She said the intended parents promised her the world. The friend said she would move in with her if necessary.
"I thought I was going to be supported," she said. "Then the morning sickness started. I think my friend came over twice during the whole pregnancy to cook me and the kids dinner. I had a bad back and asked them to do housework for Then concerns emerged about who would look after Diane's three young children during the delivery.
"It turned into a massive fight,'' Diane said. "I said, 'I've looked after your baby for nine months, the least you can do is look after my kids for four days while I'm in hospital'. That's what caused us not to talk for four weeks of the pregnancy."
There were disputes about $400 spent on maternity clothes, out-of-pocket expenses and a pram for the baby. The new parents took it in turns to be with Diane during the 10-hour labour at Freemasons Hospital in November.
''Her husband cut the umbilical chord [sic] *and took the baby to a corner of the room," she said. "He didn't talk to me once that baby was born. I didn't even get a thank you."*
An argument then ensued in the maternity room when Diane's boyfriend prepared to post on Facebook that she had successfully delivered. The couple wanted to tell their families first. Another row started about who could be in the photo with the baby, she said.
A month after the birth a row began over reimbursement of expenses of $648. "She wanted to be smart about it and said I was trying to receive material benefit from them," Diane said. "I said if you don't pay me my money I will come and get my baby and give it to someone else who deserves it. I went round to their place six days after I gave birth and her husband answered and said: 'You dont want to go in there'."

[41] https://www.smh.com.au/national/when-altruistic-surrogacy-goes-wrong-20140807-101bo5.html

Tbarlass@fairfaxmedia.com.au

Commercial surrogacy is illegal in Australia, apart from the Northern Territory, which has no laws governing surrogacy. NSW, Queensland and the ACT have made it an offence for residents to enter into commercial surrogacy abroad and can impose penalties of jail for up to two years.
Diane believes the system of altruistic surrogacy offers little protection for the surrogate.
"That's why people are going abroad," she said. "I carried the baby, I birthed it and I handed her over. I did three rounds of IVF. I always believed that Australian surrogates shouldn't be paid. Now I think it needs to be done like a business transaction. You pay the surrogate so there's no backlash afterwards."
Diane said she had recovered her costs and some of her legal fees but said there was still outstanding fees of about $2500. Stephen Page, one of Australia's most eminent surrogacy lawyers, is representing the couple. He said they were waiting for a court date for a judge to be satisfied it was appropriate for an order transferring parentage to be made, presuming everyone consented to that order being made.
He declined to comment on the detail of the allegations made by Diane.
"I would be hopeful in the next couple of weeks that this matter will be resolved amicably," he said.
"I do agree that there ought to be commercial surrogacy in Australia. If we reduce the demand for Australians going overseas with a highly regulated commercial surrogacy here then it will work." '
Sydney Morning Herald Author Tim Barlass

Judge's Summing Up Remarks in Baby Gammy case

In 2013 Wendy and David Farnell had contracted to buy twins (Pipah and Gammy) from Ms Chanbua who lived in Thailand. It became known that baby Gammy had trisomy 21. The Farnells were still wanting both twins, as Justice Thackray found in his judgment in 2016.[42] The Farnells did not abandon Gammy and had wanted to keep him.

However, at some time during the pregnancy, "it is clear that Mrs Chanbua had fallen in love with the twins she was carrying and had decided she was going to keep the boy."' (ABC News report 14 April 2016.)

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".

"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."

Proceedings before the WA Family Court are normally confidential, but Justice Thackray ruled the case could be made public because of the level of public interest.

[42] ABC News 14th April 2016
https://www.abc.net.au/news/2016-04-14/baby-gammy-twin-must-remain-with-family-wa-court-rules/7326196

Other Insights: Question 27.

Are there any important issues with regard to regulating surrogacy that we have not identified in the Issues paper? Do you have any other ideas for reforming how surrogacy is regulated?

The ALRC says the Issues paper 'explains what we know so far about the problems' of surrogacy. However, it pays no attention to the disrupted continuum of childhood development by surrogacy, or to the rights of the child as fully expressed in international Conventions and Law. This inattention to considerations of the wellbeing of the child and to the natural rights of the child is a major deficit and flaw in the ALRC surrogacy issues assessment. Surrogacy institutionalises the abandonment of the child from all that he or she knows, and the subservience of the mother. Whatever the surrogacy transaction by which a baby is relinquished from the bearing and birthing mother and is perhaps destined never again to hear her voice, feel her touch or receive her consolation, the practice of surrogacy constitutes a form of abuse. Even within the most benevolent arrangements the bearing and birthing mother will no longer be the mothering parent, no longer be there accessible to offer comfort, reassurance, or solace. All children have a right not to be sold or transacted away from their mother and family. Similarly, all women deserve protection from exploitation of economic needs, or of emotional needs and sympathies, however well intentioned.

The trading of human beings is illegal. The surrogacy trading of babies should similarly be illegal.

Conclusion

Commercial surrogacy is demeaning to the gestational mother and to the child she bears. It institutes subservience, financial coercion and exploitation of the contracted woman. Surrogacy also institutes the baby as transactable goods to which another then claims entitlement. The financial transactional arrangement contradicts the UN Convention on the Rights of the Child Article 35 which prohibits the *traffic in children for any purpose or in any form'.*

Similarly, all surrogacy contravenes Article 7 of the CRC declaring the right of children to know their parents, as opposed to reading their names on a pedigree certificate, and Article 6 of the CRC relating to the child's right to development. Surrogacy intends and imposes an irrevocable disruption of the continuum of bonding development and family connection. Excluding commercial surrogacy, prevents in some measure the exploitation of the bearing and birthing mother. However, altruistic surrogacy cannot protect from the issues of relinquishment for either mother or child. Nor can it provide for the rights of the child, such as the right to know their parents and be raised by them, or to know their identity genetically, familiarly or culturally and relate to these. These rights do not take precedence over the utilization of contracts by those unable to conceive (or safely conceive) a child, or single persons or where the intended parents may be two men.

Contractual protections for birth mothers cannot protect from social subservience, or from all the differing forms of coercion. Nor is there protection from, or consideration of, the nature of the broken mother-child bond effects on the mother of whom relinquishment is expected following 'compensation for medical bills'. Counselling cannot eradicate loss, regret, sadness grief or remorse

Seventy years before India became a multi-billion-dollar surrogacy centre using its poorest women, Gandhi discussed the 'things that will destroy us', particularly listing 'commerce without morality'. The antidote to such social destructiveness is an external standard based on Natural laws and principles.

Surrogacy arrangements and transactions can potentially affect children's general wellbeing and children's rights in many ways at all stages during their babyhood, infancy, and childhood. Surrogacy arrangements therefore cannot, inherently, prioritise the wellbeing and rights of the child nor align with the child's best interests. The inherent nature of surrogacy is to divide the bearing and birthing mother from birthed child to meet the desires and wants of those groups of people who are not able to bear a child themselves.

[redacted]

Dr Deirde Little MBBS DRANZCOG FACRRM GRAD CERT BIOETH
National Bioethics Convenor
Catholic Women's League Australia Incorporated

[redacted]

Ann Pereira
President
Catholic Women's League Australia Incorporated

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