Anglican Church Diocese of Sydney

Social Issues Committee

11 July 2025

Australian Law Reform Commission
PO Box 209
Flinders Lane VIC 8009.

Submitted via email to: **surrogacy@alrc.gov.au**;

Submission: Review of Surrogacy Laws

Who are we?

1. This submission is on behalf of Anglican Church Diocese of Sydney (the Diocese). The Diocese is one of twenty three dioceses that comprise the Anglican Church of Australia. The Diocese is an unincorporated voluntary association comprising over 260 parishes and various bodies constituted or incorporated under the *Anglican Church of Australia Trust Property Act 1917* (NSW) and the *Anglican Church of Australia (Bodies Corporate) Act 1938* (NSW). These bodies include 40 Anglican schools, Anglicare Sydney (a large social welfare institution, which includes, among its services, foster care and adoption), Moore Theological College, Anglican Youthworks and Anglican Aid (which focusses on overseas aid and development). The Diocese, through its various component bodies and through its congregational life, makes a rich contribution to the social capital of our State, through programs involving social welfare, education, health and aged care, overseas aid, youth work and not least the proclamation of the Christian message of hope for all people.

2. We welcome the opportunity to make this submission and we give consent for this submission to be published. Our contact details are as follows.

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3. This submission is prepared by the Social Issues Committee of the Anglican Church of the Diocese of Sydney, and endorsed by the Archbishop of Sydney.

Preliminary concerns

4. We are extremely concerned that the ALRC's Issues Paper No 52, dated June 2025[1], does not accurately reflect the Terms of Reference set out for it by Mark Dreyfus KC MP, the Attorney General at the time of the reference.

5. In particular, we note that in his Terms of Reference, the Attorney General asked the ALRC to consider "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" (emphasis added).[2]

6. However, when the ALRC's Issues Paper summarises its Terms of Reference, it simply says it has been asked to report on "how to reduce barriers to surrogacy arrangements within Australia" (para. 4). That is, it omits the direction to focus on ***altruistic*** surrogacy.

7. Notably, the discussion paper very quickly starts exploring options both for commercial and compensated surrogacy within Australia (para. 49-54), despite not being tasked to do this.

8. Even if the ALRC may argue Mr Dreyfus' Terms of Reference may be read more expansively, Mr Dreyfus also

    a. highlighted that the review must "protect and promote the human rights" of children and surrogates, and not just intending parents,
    b. underlined that "the best interests of children are paramount", and
    c. indicated attention was needed to "the risks commercial surrogacy can pose to vulnerable women and children".

9. By contrast, in the Issues Paper's summary of its Terms of Reference,

    a. the interests of children are downgraded to a mere point of emphasis – not paramountcy,
    b. the priority of upholding the human rights of surrogates is unmentioned, and
    c. the risks of commercial surrogacy are unmentioned.

10. We believe these are strange minimisations and omissions of the concerns and limits the Attorney General had underlined and foregrounded. Though these concerns are explored at later stages of the paper, this initial framing is very troubling to our Committee, since it portends an inquiry that may deliberately ignore or minimise the framework and 'guard rails' set for it by the highest legal officer of our nation, the Australian Attorney General.

11. For this reason, we believe there are concerns of principle over the entire paper.

[1] PDF accessed via https://www.alrc.gov.au/publication/review-of-surrogacy-laws-issues-paper-2025/
[2] https://www.alrc.gov.au/inquiry/review-of-surrogacy-laws/terms-of-reference/

Our Ethical Framework and Conclusions

12. Legislative approaches to topics as intimate as the bearing of children cannot be considered outside the ethical implications of the actions involved.

13. We are certainly aware of the great pain experienced by those who suffer from infertility and long for a child of their own, and sympathise with their plight.

14. However, we do not believe that a 'right' to have a child exists, and can see no grounds by which such a right would be established. Certainly no such right has been identified by the ALRC in its discussion of international human rights' instruments. So rather than a right to be demanded, parenthood is a privilege and responsibility which may come to some individuals, but not to all, who would normally use the ordinary means of procreation, via sexual intercourse between a man and woman.

15. We therefore do not accept the premise that any means available to obtain offspring should be made available to individuals suffering from infertility or some other unwillingness or inability to enter into ordinary human processes of procreation. In fact, there are already many children in our society in need of nurture and parental care, which can be given through other means, such as adoption or fostering, that can be pursued in an ethically appropriate way.

16. All submissions to this inquiry will be grounded in the particular worldview of the authors. We approach this subject in the context of the following Christian and biblical understanding of family and parenthood, a view which is still widely held in our community.

17. As Christians, we believe that every human life is ultimately a gift bestowed by God as the wise and sovereign creator and sustainer of all things. All humans are created in the image of God and each has an inherent dignity and natural interests, from conception. This sanctity of life, as we often term it, should never be disregarded or diminished.

18. We believe marriage (lifelong commitment by solemn public promises between a man and woman) is the ideal foundation for a family, whereby through the act of sexual intercourse, the child is conceived by a mother and begotten by a father, creating continuity between biological and social roles. While the vicissitudes of life can prevent this ideal from being realised, we nonetheless believe this should be the aim in the creation of new families.

19. We also believe that parenthood is a blessing, not a right, and that children are not commodities to be commissioned at will. We believe that the privileges and responsibilities of parenthood extend beyond the provision of gametes and/or gestation to the ongoing nurture of offspring.

20. Further, we believe that every child has a natural and self-evident interest in being raised, wherever possible, by his or her own biological parents, preferably in an intact relationship. Both mother and father play a unique role in the life of children.

21. In contrast to arrangements made following the tragedies of death or the sadness of relationship breakdown, surrogacy arrangements – ***by design*** – almost always deny the

child so born the presence of either one or both of its biological parents in its home. As such, surrogacy cannot easily be defended as upholding the best interests of the child.

22. Therefore we maintain, consistent with international human rights instruments, that the welfare of the child should be a priority in any arrangements, if any, made for surrogacy.

23. We object to surrogacy arrangements that prioritise the preferences of commissioning parents, as this promotes the model of offspring as commodity.

24. Our view of the value of the human embryo also leads us to support, wherever possible, the transfer to a uterus of all embryos created through ART. Once a child is conceived, the child's life should be preserved regardless of a change of preferences by the adults involved.

25. The failure by advocates of surrogacy to recognise fully the importance of pre-natal attachment of birth mother and unborn child also suggests a desire to minimise the importance of attachment, separation and loss for the baby and the gestational mother.

26. The distress of the offspring of Artificial Reproductive Technologies who do not know their biological origins and family lineage has been clearly expressed. Therefore, we think it is essential that children are able to know about their biological parents to the maximum degree possible. Our laws should not permit surrogacy where ambiguity of origins would be increased by design.

27. In regard to the welfare of mothers, we have some concerns about all forms of surrogacy, since it divides motherhood into two or even three parts: genetic, gestational and intended. Surrogate mothers are invited to carry a baby in her womb for nine months assuming no significant or long-lasting psychological impact, and they are encouraged to limit or even sever any emotional connection with the child.

28. There can be pressures or even the potential for coercion towards surrogacy even in altruistic arrangements, not least in familial settings. Even where motivated by a self-sacrificial desire to give the gift of life, a surrogate is forced to minimise or suppress her own maternal desire to raise the children born by her in the womb.

29. However our gravest concerns are reserved for commercial surrogacy which inevitably allows 'commercial norms' and market value into the realm of the child-parent relationships. Formal conditions or informal pressure may be placed upon the surrogate mother's diet, work or exercise habits, and medical care. It introduces the motivation of financial benefit into the consideration of surrogates, who may come from a background of considerable need even within Australia. Neither commercial nor 'compensated' surrogacy should be introduced into Australia.

30. In relation to international surrogacy arrangements, it is evident that the potential for exploitation of women is high, even if the commissioning parents undertake the process with the best of intentions. Such arrangements are often conducted through for-profit third parties operating in jurisdictions where regulation and legal oversight is weak. The Australian legal framework should strengthen - rather than weaken - discouragements towards citizens from accessing such arrangements, which are very likely to exploit vulnerable women for profit.

Responses to ALRC Questions

31. Our responses to selected ALRC Discussion Paper questions follow.

32. In regard to question 2 and reform principles. We are guided by our ethical framework above. We believe that the primary principles that must be upheld in reform are:

    a. Human rights - especially the best interests of children;

    b. Harm minimisation - prevent/minimise potential harm to children and surrogates;

    c. Respect and dignity - avoid commodification.

33. Harmonisation should only be applied as a principle where there is not lessening of the protections for the prior principles mentioned above.

34. Accessibility and pragmatism are not, in our mind, established as justifiable as "overarching principles" to guide reform. At the least they should not be used to 'balance out', as competition, for the priorities identified above.

35. In regard to question 3, we agree that "children's rights" are quite well identified under this heading in para. 31, helped by further reference to the Convention on the Rights of the Child. Such rights of children are primary, and must not be played off against or discounted by other allegedly 'competing' rights later identified or claimed.

36. As a corollary, it is worth quoting the United Nations Human Rights Council:

> *[It] is recognized that there is no "right to a child" under international law. A child is not a good or service that the State can guarantee or provide, but rather a rights-bearing human being. Hence, providing a "right to a child" would be a fundamental denial of the equal human rights of the child. The "right to a child" approach must be resisted vigorously, for it undermines the fundamental premise of children as persons with human rights."* [3]

37. We therefore challenge a section in paragraph 31 of the Discussion Paper. By saying some people are denied access to surrogacy, it posits a supposed right of access to surrogacy, which itself implies some kind of "right to a child" or "right to become a parent", which has not anywhere been established by the paper itself.

38. We do not believe there is any "right to become a parent" in any international human rights instruments we are aware of, and certainly not outside of the normal context of procreation between a woman and a man (expected, in those instruments that address the matter, usually to be in the context of marriage).

39. The Universal Declaration of Human Rights does not list the right to become a parent nor any category of rights applying to "intended parents". Neither does the International Covenant on Economic, Social and Cultural Rights.

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[3] United Nations Human Rights Council, "Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material" (15 January 2018; accessed, via https://digitallibrary.un.org/record/1473378?ln=en&v=pdf)

40. By slight contrast, The International Covenant on Civil and Political Rights (ICCPR), in its Article 23, provides as follows:

> *"1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
>
> *2. The right of men and women of marriageable age to marry and to found a family shall be recognized."*

41. Clearly in ICCPR, the founding of a family is assumed to occur in the context of procreative activity of a man and a woman within marriage. The wording agreed here certainly cannot be automatically assumed to extend to infertile couples, single people, or to same-sex couples.

42. The Convention on the Elimination of All Forms of Discrimination against Women does discuss issues to do with parenthood. But it also does so in the context of assuming that both a man and a woman are required in order to become parents. Of particular significance, it specifically notes:

> *"[the] social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole".*

43. There is strong support here for the idea that a child has a natural interest in experiencing the care in upbringing that both parents, mother and father, are responsible for.

44. In addition, the "social significance of maternity" must remind us that where there are surrogate mothers, their involvement in gestation cannot be treated as a mere provision of a good or service, and so their rights too must be upheld.

45. Likewise, the Convention On The Rights Of Persons With Disabilities, in its Article 23, "Respect For Home And The Family", speaks, in regard to marriage, family, parenthood and relationships, of the importance of:

> *"The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses", [which includes the ability to] "decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education…"*

46. Again, we conclude, there is nothing stated here about the right to become a parent, nor of any "rights of intending parents" outside of the normal context of procreation between a woman and a man.

47. Nor can such rights be claimed to be self-evidently derivable from the wording of these rights instruments by necessary implication.

48. We repeat that a child, from birth, has a natural right and interest in knowing, and wherever possible being raised by, his or her own mother and father.

49. In regard to Question 4, the rights of children clearly extends to knowing their biological origins and family lineage, wherever possible.

50. In terms of applying the right asserted for "intended parents""…to receive and impart information" to information about international commercial surrogacy, we maintain this is certainly not an unlimited right. The second instrument cited for this claim in the footnote shows there can be reasonable limits on such a right to receive information. But at any rate, in the internet age, for better or worse, there is little trouble with the flow of information across many borders.

51. Likewise a right is asserted for "intended parents" "… to share in and benefit from scientific advancements" and is applied to reducing "barriers to accessing domestic surrogacy [which] may infringe on intended parents' enjoyment of this right". This appears to assume that surrogacy made possible by scientific advance is good in all circumstances. But not all applications of scientific advance are always good. For example, the use of technology to damage or deprive others of their rights is not acceptable.

52. Question 5 asks about identifying and overcoming the main barriers that prevent people from entering surrogacy arrangements in Australia. This assumes a conclusion that more people should be able to enter surrogacy arrangements within Australia. It also assumes that the existing barriers such as eligibility requirements, which Questions 6 and 7 raise, should be overcome. All this needs to be established and not assumed by mere assertion.

53. If, as our framework above implies, surrogacy is not often a good, let alone optimal, arrangement, and should only be a rare and carefully controlled exception, then one might reasonably argue in response to Questions 6 and 7 that the stricter eligibility provisions of some states (e.g. requirements for medical and social reason, surrogate already to have been a mother, etc.) should be made to apply in a nationally consistent way.

54. In regard to Questions 8, 9 and 10, about surrogacy agreements and process requirements, we argue that such agreements should probably be enforceable, most of all as applicable to the rights and interests of the child and then of the surrogate. We continue to argue that process requirements should be tight, and agreement about entry into such surrogacy arrangements as are permissible should occur before conception.

55. Questions 11 and 12 about professional services raises the possibility of allowing surrogacy agencies to operate in Australia, on a commercial or not-for-profit basis. We categorically reject the possibility of commercial surrogacy within Australia. We are also cautious even about not-for-profit services, if they target the facilitation of the newly emerging category of "compensated surrogacy" (about which see below).

56. Question 15 deals with the question of the reimbursement of expenses, presumably in regard to such altruistic surrogacy that is already permitted. We appreciate that arguments for better defining what reasonable expenses are and improving processes for reimbursement are well worth considering.

57. Questions 16-17 deal with compensated and commercial surrogacy. Again, we reject entirely the possibility of commercial surrogacy within Australia, since the commodification of children, the potential detriment to their natural rights, and the potential for exploitation of surrogates is just as real within Australia as elsewhere.

58. We also view as significantly problematic the introduction of the idea of compensated surrogacy. Once again, the motivation for introducing such a category is the lack of supply of surrogates to meet the alleged demand. However, we also reject the premise that there is any "right to parenthood" or "right to a child", and therefore "demand" does not imply that "supply" must increase.

59. In addition, the introduction of compensated surrogacy for the time, effort and risk that inheres in the role of the surrogate removes the concept of altruism from the relationship, with the personal sacrifice implied and involved in such.

60. In conclusion we argue that better defined reimbursement, and not any kind of compensation, is appropriate, for altruistic surrogacy only.

61. We have no particular insights we wish to offer on the remaining questions in the Discussion Paper, and understand the need to discuss such matters, so long as it is understood that we do not want any decrease in the legal or practical discouragement towards Australians entering into commercial surrogacy arrangements overseas in other jurisdictions, nor any introduction of commercial or compensated surrogacy within Australia.

Conclusion

62. We are concerned that the ALRC Discussion Paper exceeded its terms of reference.

63. We have argued, both from our classical Christian ethical framework, and also from an examination of international human right instruments, that:

    a. In all arguments about surrogacy, the rights of the child must remain paramount;
    b. A child has a natural interest in knowing and being raised, wherever possible, by his or her own biological parents, preferably within an intact family relationship;
    c. The rights of surrogates and potential surrogates are important;
    d. There is no "right to a child", nor any "right to become a parent", certainly not outside the normal process of procreation (preferably within the context of marriage);
    e. Surrogacy should not be expanded into commercial or compensated categories within Australia nor be encouraged beyond Australia's shores.

We thank the Australian Law Reform Commission for the chance to make this submission. We would welcome the opportunity to further engage in person, should that be helpful. I can be contacted at [redacted]

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Anglican Church Diocese of Sydney
11 July 2025