Active Watchful Waiting Inc.

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The Commissioner
Australian Law Reform Commission
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Dear Commissioner,
Please accept our submission to your Review of Surrogacy Laws, Policies and Practices as referred to in the ALRCs Issues Paper 52, June 2025. This submission can be made public.

Submission to the Review of Surrogacy Laws

Active Watchful Waiting Inc. and our division, 'In Defence of Children,' appreciate the opportunity to present this public submission for the Australian Law Reform Commission's review of surrogacy laws. Our stance is grounded in profound ethical and human rights concerns regarding both altruistic and commercial surrogacy practices.

Our organisation works with parents who have experienced the unwilling removal of their children. Our members have supported parents whose children were removed when they refused to consent to controversial medical and surgical procedures associated with gender affirmation ideology—many of these children have subsequently been trafficked. We have also worked with young Māori mothers whose children were removed for adoption with white families against their will, a practice that continued until 2022.

We got involved in the surrogacy issue as we have found all forms of surrogacy are inextricably linked to issues of child trafficking, financial exploitation, emotional manipulation, and the commodification of fertility and childbearing. These concerns extend beyond the immediate parties to encompass the broader impacts on families and society.

Personal Testimony

As the Māori author of this document, I carry the trauma of witnessing my youngest sister taken by strangers when I was five years old. I remember screaming and running down the driveway, desperately trying to stop her from being bundled into a car and driven away. I have witnessed the debilitating grief of my older sister, who had her baby forcibly taken from her at 15 years old.

Two years ago, I spoke with a young girl whose mother had been a surrogate. She expressed the same profound upset about having her baby sister "taken away" that I have carried throughout my life. Yet the impact of surrogacy on siblings receives scant attention in policy discussions.

At its heart, the surrogacy debate represents a conflict between the sanctity of family bonds and the interests of those who seek a profitable supply of what becomes, in practice, a living commodity.

Key Terms and Definitions

Clarification is necessary for understanding our arguments clearly:

- **Commercial surrogacy:** Contractual arrangements involving financial compensation beyond expenses.
- **Altruistic surrogacy:** Surrogacy without direct financial compensation but includes expense reimbursement.
- **International surrogacy:** Surrogacy where intended parents reside in Australia and surrogate mothers reside abroad, it is clear from the submission papers that this can involve commercial, 'compensated' surrogacy, altruistic or forced surrogacy abroad.

Bias and Financial Interest in the Current Inquiry

We express deep concern about apparent biases within the ALRC's current issues paper. The paper appears predisposed toward reducing barriers and possibly legalising compensated or commercial surrogacy. We note that the Advisory Committee consists of industry representatives—surrogacy lawyers and IVF clinic specialists—who would see increased profits from a larger surrogacy industry in Australia. Hence, there is an undeniable financial interest among its members in both expanding altruistic surrogacy in Australia and removing bans on compensated/commercial surrogacy.

We list several **key flaws** and **biases** in the Australian Law Reform Commission's (ALRC) review of surrogacy, that we will address through this submission:

1. **Key Flaws:**
Inadequate Scope of Inquiry: The ALRC's review appears biased toward removing barriers to altruistic surrogacy and even considering compensated or commercial surrogacy. It fails to adequately consider abolishing all forms of surrogacy as a potential outcome.

Failure to Acknowledge Serious Harms: The ALRC does not fully address or highlight the profound harms surrogacy can cause women, children, and families. It overlooks documented health, emotional, and psychological harms, as well as the potential for exploitation and human trafficking involved in surrogacy arrangements.

Absence of Affected Voices: The ALRC Advisory Committee notably excludes the voices of donor-conceived individuals, adopted people, siblings of surrogate mothers, or relinquishing mothers, who would offer vital insights from their personal experiences.

Misrepresentation and Use of Language: The ALRC adopts gender-neutral language by defining surrogacy as involving a 'person' rather than explicitly acknowledging that only women can become pregnant and give birth, thereby erasing women's specific experiences and biology from the discussion.

2. Identified Biases:

Composition of the Advisory Committee:

- The inclusion of industry representatives—such as surrogacy lawyers and IVF specialists, and academics who have previously advocated for compensated or commercial surrogacy—suggests a strong bias towards expanding the surrogacy industry rather than objectively evaluating its impacts.

Appointment of Pro-Surrogacy Assistant Commissioner:

- The appointment of Professor Ronli Sifris as Assistant Commissioner, who has publicly supported compensated surrogacy, indicates an institutional bias towards legalising compensated surrogacy.

Economic Interests:

- There is a perceived conflict of interest with the involvement of professionals who would financially benefit from a larger surrogacy industry. This creates a scenario where decisions made could be influenced by potential profit rather than unbiased consideration of human rights and ethics.

While we recognise that advisory committees require relevant expertise, the current composition lacks balance and excludes critical perspectives.

Clarifying the Core Issues of Surrogacy

Surrogacy, though sometimes perceived as a compassionate solution for infertility, is fundamentally an exploitative industry that raises severe ethical and human rights concerns, particularly regarding the welfare of surrogate mothers and children.

Commercial surrogacy is illegal in all states in Australia. However, last year's NSW Equality Bill revealed endeavours to remove bans on commercial surrogacy arrangements if they take place outside of Australia. We viewed this as an attempt to circumvent the federal ban on commercial surrogacy within Australia by offering a back-door option. As we have reviewed the Surrogacy Issues Paper, we have identified the same suggestions in the framing of this Australian Law Reform Commission (ALRC) review.

We state that any amendments to the surrogacy laws that erode existing legal safeguards do not consider the best interests of women and children and will enable the commercialisation and exploitation of women and children.

The justification frequently offered is that it serves the "best interests of a child" to legitimise children created overseas, because people have a right to make a baby—whether due to infertility, same-sex couples, or single people seeking parenthood. However, it does not serve the "best interests of a child" if one is creating a child with the express goal of separating that child from their birth mother. There is significant harm in that process. Nor should the buying and selling of babies be tolerated wherever it occurs. No one has a "right" to be a parent at the expense of trauma, ill health, or the death of others. Commercial surrogacy is happening in Australia, yet penalties have not been applied. To the extent that any state or country regularises the status of families created through such trade, it becomes complicit in a form of child trafficking.

The Surrogacy Process

Many may not understand the basics of what surrogacy entails. Surrogacy is a contractual arrangement involving a surrogate mother who has chosen to "rent out" her womb to a couple who desires a baby. The surrogate mother is impregnated with embryos created from the eggs of the intended mother, an egg donor, or herself, and a sperm donor or the sperm of the intended father. The surrogate mother is then paid expenses only in the case of altruistic surrogacy, plus financial compensation in the case of commercial/compensated surrogacy, by the couple to carry the baby in her womb to term. Once born, the baby is given to the couple to raise and care for as their own.

While it may seem like a compassionate solution for infertility, surrogacy practices are first and foremost open to exploitation, raising significant ethical and human rights concerns, particularly regarding the impact on children and surrogate mothers.

The Requirement for an Egg Donor

In gestational surrogacy scenarios, particularly those involving same-sex couples, the use of an egg donor is a common requirement. The egg must be obtained from an independent third party to ensure that the surrogate mother retains no legal parental rights. By separating the roles of the egg donor and the surrogate mother, the law recognises neither as the biological mother, and neither has any legal rights to the child.

The Challenges of Surrogate Pregnancy

To enable successful embryo implantation, surrogates undergo extensive medication regimens, including immunosuppressants to prevent rejection of the embryo. These conditions categorise the surrogate's pregnancy as high-risk, elevating the chances of complications such as gestational diabetes, high blood pressure, restricted foetal growth, pre-eclampsia, premature labour, and even maternal

mortality. The overlooked tragedies of surrogate mothers like [redacted], and [redacted] highlight the urgent need for ethical scrutiny in surrogacy practices.

Commercial surrogacy contracts usually enforce provisions for abortion and "selective reduction," compelling surrogates to adhere to the intended parents' wishes under potential threats of legal action and financial hardship, as experienced by [redacted] and [redacted], who were coerced into aborting one of the triplets they were carrying. This illustrates that commerce takes priority over humane or ethical concerns in these arrangements.

Postpartum Issues

Following the birth in surrogacy arrangements, there are profound impacts on both the infant and the surrogate. Such infants are at higher risk for low birth weights and a four- to five-fold increase in stillbirths associated with the use of assisted reproductive technologies.

The practice of separating the baby from the surrogate mother at birth prevents the natural bonding process, which is crucial for the baby's emotional and physical development and the mother's psychological recovery. This lack of initial bonding and skin-to-skin contact, which is vital for stabilising the baby's physiological functions and promoting brain development, may contribute to long-term developmental challenges. Studies, including one in the Journal of Child Psychology and Psychiatry, highlight potential adjustment difficulties in surrogacy-born children at age 7, suggesting that the lack of a biological connection during gestation could have lasting effects.

Overall Key Issues

Global Exploitation in Surrogacy

Surrogacy is a global industry that generates billions of dollars annually and predominantly exploits women from impoverished communities in countries like India and Thailand, purportedly offering them a way out of poverty. For commissioning couples, it is far less expensive to employ surrogates from less developed nations than to engage local surrogates.

An HBO documentary exposed the realities and ethical dilemmas of the surrogacy industry in India and Thailand, revealing that women are often recruited from poor areas, made to sign unreadable contracts, and required to live away from their homes in facilities for a year. Babies are invariably delivered via Caesarean section to maximise the number of births doctors can manage each day. Furthermore, doctors in these countries typically implant multiple embryos to increase pregnancy chances. Unbeknownst to commissioning parents, surplus infants are either sold on the black market or trafficked for forced labour, sexual exploitation, or forced marriage if not purchased by families from wealthier nations.

Global and National Legal Frameworks

Many countries, including France, Germany, Switzerland, and Austria, have banned surrogacy due to its ethical and human rights implications. Surrogacy contravenes several UN Conventions and international treaties, including the UN Slavery Convention and CEDAW.

International Stance: The global community is increasingly recognising the harms associated with surrogacy and taking steps to ban the practice.

National and International Laws and Agreements

Commercial surrogacy is illegal in all states in Australia. If this review results in the removal of bans on commercial (compensated) surrogacy arrangements taking place outside an Australian state, this would represent an underhanded move to circumvent the federal ban on commercial surrogacy within Australia by offering a back-door option.

Any form of surrogacy is incompatible with international legal instruments, including:

- **Article 35 of the UN Convention on the Rights of the Child**, which requires: "State Parties shall 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"
- **United Nations Global Plan of Action to Combat Trafficking in Persons**
- **Optional Protocol on the Sale of Children**
- **CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women)**
- **United Nations Slavery Convention**

Surrogacy practices inherently violate multiple articles within these conventions, including the child's right to know their parents and protection from economic exploitation.

Violation of International Agreements

Australia has ratified the United Nations Convention on the Rights of the Child (UNCRC), which emphasises the rights and needs of children. Commercial surrogacy, however, violates many articles of this international convention.

Key Violations Include:

- The right to know and be cared for by one's parents
- Protection from economic exploitation and from performing any work that is likely to be hazardous
- Protection from trafficking and abandonment

Case Examples: Babies born overseas via surrogate are often abandoned. Baby Gammy was abandoned in Thailand by his intended parents in Australia because he had Down syndrome. In another case, Australian fertility law specialist [redacted] and [redacted] had recommended shipping genetic material to a clinic

based on the Greek Island of Crete. In 2023, the management of this clinic was convicted of human trafficking for surrogacy and egg harvesting (182 cases). Around 60 Australian couples were involved.

The Importance of Maternal-Infant Bonding

Research over the past fifty years has demonstrated the critical importance of gestational mother-infant interactions in mammals, including humans. Studies show that maternal separation is profoundly stressful for neonates, affecting their physiological and psychological well-being.

Key Findings:

- Short-term maternal-neonate separation increases heart rate variability and decreases quiet sleep duration by 86% compared to when the baby is with the mother
- Preterm babies separated from their gestational mothers often face bonding difficulties, regardless of subsequent parental sensitivity

Historical Context and Apologies

Throughout history, forced separations of mothers and babies have led to significant trauma. National apologies have been issued to individuals separated from their mothers at birth, such as the Stolen Generations and children of single mothers in the twentieth century. These historical lessons underscore the long-term negative impacts of maternal-infant separation.

Lessons Learned:

- Creating a new generation of traumatised individuals through surrogacy mirrors past mistakes and should be avoided
- According to real testimonies, young adult children born via gamete donation suffer serious genealogical bewilderment

Impact on Surrogate Mothers

Commercial surrogacy affects the health and autonomy of surrogate mothers. Women who become surrogates often face medical and psychological risks, as well as social and ethical challenges.

Risks and Impacts:

- Increased likelihood of pregnancy complications such as gestational diabetes and placenta praevia
- Surrogate mothers' lives are dictated by the desires of the commissioning parents, affecting their diet, activities, and medical decisions

- Many surrogate mothers experience exploitation and coercion, feeling pressured to part with their babies

Right of the Child to Identity

Children have an inviolable right to full knowledge of their origins, including the identities of surrogate mothers, egg donors, and sperm donors. Birth certificates must truthfully reflect these details, preserving children's right to their full biological heritage.

Scientific and Medical Findings

The trauma of early childhood separation has long-term neurodevelopmental effects. Stress experienced by infants due to separation from their mothers can lead to adverse effects on memory, learning, and behaviour throughout life.

Scientific Evidence:

- Early childhood stress influences neurobehavioural and neurohormonal changes.
- Skin-to-skin contact and breastfeeding are crucial for neonatal well-being and long-term mother-infant bonding.

Ethical Implications of Altruistic and Commercial Surrogacy

Regardless of whether surrogacy is altruistic or commercial, the practice is ethically problematic. The commodification of both women's reproductive capabilities and children's lives cannot be justified.

Ethical Concerns:

- Surrogacy is a human rights violation of the child who never consented to be a "take-away baby".
- Surrogacy treats women as mere vessels and commodifies human life.
- Contracts are weighted toward the protection of the commissioning parents but offer little protection to the mothers.
- Mothers can be forced to abort children if multiple pregnancies are unwanted by the buyer.

Advocacy and Policy Recommendations

To protect the rights and well-being of children and surrogate mothers, it is essential to advocate for the abolition of all forms of surrogacy. Alternative family-building options should be encouraged that do not exploit women or commodify children. We suggest a government-driven educational campaign is essential to inform the public about surrogacy's ethical violations and

human rights abuses, highlighting alternative, ethical family-building options that respect human dignity.

Recommendations:

Legislative Action: Support legislation explicitly banning all forms of surrogacy, both altruistic and commercial, domestically and internationally.

Legal Enforcement: Strengthen existing laws with clear penalties against Australians participating in overseas surrogacy arrangements.
Ensure all surrogacy arrangements remain closely monitored for adherence to international human rights standards.

Maintain Geographical Nexus for Offences: Ensure that Section 11 is retained to maintain clarity and effective legal recourse against cross-border surrogacy exploitation.

Public Education: Initiate a comprehensive public education campaign highlighting surrogacy's ethical and human rights issues.

Protective Measures: Implement protective legal measures ensuring children's full biological heritage and identity transparency through truthful birth certificates.
Prioritise protection of surrogate mothers and children from exploitation and harm
Reject any expansion of altruistic or compensated surrogacy.

Alternative Family-Building: Actively promote ethical alternatives to surrogacy, such as permanent care orders and ethical adoption practices.

Conclusion

The ALRC Issues Paper explicitly seeks ways to reduce barriers to domestic altruistic surrogacy and openly entertains possibilities for introducing compensated or commercial surrogacy. This paper is notably oriented towards accommodating the desires of intended parents, rather than genuinely engaging with or thoroughly examining the considerable ethical, psychological, and human rights harms inherent in all forms of surrogacy. Consequently, we have intentionally refrained from addressing questions clearly driven by financial interests or ideological agendas.

Surrogacy, regardless of whether it is labelled altruistic or commercial, fundamentally raises serious ethical dilemmas and violates essential human rights. The practice inevitably involves the traumatic separation of infants from their gestational mothers, resulting in profound, long-term developmental and psychological impacts. Additionally, surrogate mothers are exposed to substantial physical, emotional, and psychological risks, often facing coercion and exploitation.

Surrogacy must be recognised primarily as an industry inherently prone to exploitation, systematically causing harm to women and children while predominantly benefiting intended parents, industry professionals, and associated intermediaries.

We assert that public policy must prioritise the protection and dignity of both children and women above commercial interests or individual demands for family-building. Therefore, we strongly advocate for the implementation of legal frameworks and societal practices that firmly uphold human dignity, guard against exploitation, and rigorously protect the human rights of all parties involved, particularly the most vulnerable—women and children.

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We ask you to examine following evidence:

Effects of Early Life Trauma and Separation

1. Early Life Trauma and Neurobehavioral Development

- Millie Rincón-Cortés and Regina Sullivan, "Early Life Trauma and Attachment: Immediate and Enduring Effects on Neurobehavioral and Stress Axis Development" (2014). Link

2. Maternal Separation and Long-Term Effects

- Xiaoli Feng et al., "Maternal separation produces lasting changes in cortisol and behaviour in rhesus monkeys" (2011). Link
- A. Dettling, J. Feldon, and C. Pryce, "Repeated parental deprivation in the infant common marmoset (Callithrix jacchus primates) and analysis of its effects on early development" (2002). Link
- Seymour Levine, "Developmental determinants of sensitivity and resistance to stress" (2005). Link
- Luisa Diehl et al., "Long-lasting effects of maternal separation on an animal model of post-traumatic stress disorder: effects on memory and hippocampal oxidative stress" (2012). Link

3. Physiological and Psychological Stress in Infants

- Elsevier, "Maternal separation stresses the baby research finds" (2011). Link

4. Long-term Impacts of Early Childhood Adversity

- Jack Shonkoff et al., "The lifelong effects of early childhood adversity and toxic stress" (2012). Link

- Zero to Six Collaborative Group, National Child Traumatic Stress Network, “Early Childhood Trauma” (2010). Link

5. Excessive Stress and Brain Development

- National Scientific Council on the Developing Child, “Excessive Stress Disrupts the Architecture of the Developing Brain: Working Paper 3” (2014). Link

6. Epigenetic Effects of Early Stress

- Tamara Franklin et al., “Epigenetic Transmission of the Impact of Early Stress Across Generations” (2010). Link

Mother-Infant Bonding and Attachment

1. Neonatal Sleeping Arrangements

- Barak Morgan, Alan Horn, and Nils Bergman, “Should Neonates Sleep Alone?” (2011). Link

2. Very Preterm/Very Low Birthweight Infants ’Attachment

- Dieta Wolke, Suna Eryigit-Madzwamuse, and Tina Gutbrod, “Very preterm/very low birthweight infants ’attachment: infant and maternal characteristics” (2014). Link

3. Eye Contact and Mother-Infant Bonding

- Noboru Kobayashi, “Eye-to-eye Confirmation of the Mother-infant Love Bond - Part 1” (2002). Link

4. Behavioural Development and Mother-Infant Interaction

- Sandra Pipp and Robert Harmon, “Attachment As Regulation: A Commentary” (1987). Link
- Jay Rosenblatt, “Behavioural development during the mother-young interaction in placental mammals” (2010). Link
- J. Winberg, “Mother and newborn baby: mutual regulation of physiology and behaviour-a selective review” (2005).
- Stephen Brake, Harry Shair, and Myron Hofer, “Exploiting the Nursing Niche: Infant's sucking and feeding behaviour in the context of the mother-infant interaction” (1988).

Recognition and Preference for Maternal Stimuli

1. Newborns ’Preference for Mother’s Voice

- Anthony DeCasper and William Fifer, “Of Human Bonding: Newborns Prefer Their Mothers ’Voices” (1980).
- Maude Beauchemin et al., “Mother and Stranger : An Electrophysiological Study of Voice Processing in Newborns” (2011).

2. Prenatal Olfactory Learning

- H. Varendi, R. Porter, and J. Winberg, “Attractiveness of amniotic fluid odour: evidence of prenatal olfactory learning?” (1996). Link

2. Foetal Voice Recognition

- Barbara Kisilevsky et al., “Effects of experience on foetal voice recognition” (2003). Link

- D. Querleu et al., “Reaction of the newborn infant less than 2 hours after birth to the maternal voice” (1984).
- E. Ockleford et al., “Responses of neonates to parents ’and others ’voices” (1988).

Breastfeeding and Early Contact

1. Importance of Early Breastfeeding

- Global Health Media Project, “Breastfeeding in the First Hours After Birth – Breastfeeding Series” (2015). Link
- Rachel Eddie, “Heartwarming video reveals newborn baby's natural instinct to 'breast crawl'” (2016). Link

2. Long-term Effects of Breastfeeding

- Bernardo Horta and Cesar Victora, “Long-term effects of breastfeeding: a systematic review” (2013). Link
- World Health Organization, “Breastfeeding” (2017). Link

3. Early Contact and Interaction

- K. Bystrov et al., “Early contact versus separation: effects on mother-infant interaction one year later” (2009). Link

Historical and Policy Context

1. Forced Adoption Policies and Practices

- The Senate Community Affairs References Committee, “Commonwealth Contribution to Former Forced Adoption Policies and Practices” (2012). Link

2. Historical Account of Newborn Separation

- St Margaret Hospital Ward Report for “Girl Rheinberger - BFA (Baby For Adoption)” (1972).

3. Coping with Trauma in Adoptive Families

- American Academy of Paediatrics, “Helping Foster and Adoptive Families Cope With Trauma” (2015). Link

Integration of Neuroscience and Psychology

1. Neuroscience and Early Experiences

- Megan Gunnar, “Integrating Neuroscience and Psychological Approaches in the Study of Early Experiences” (2003). Link

The Dark Side of the Surrogacy Industry

- https://www.standingforfreedom.com/2022/04/the-dark-side-of-the-surrogacy-industry/
- https://www.thecut.com/2015/03/dark-side-of-international-surrogacy.html
- https://www.abc.net.au/news/2023-08-24/parents-left-in-limbo-after-raid-at-surrogacy-clinic/102773230
- https://www.abc.net.au/news/2023-09-09/greek-surogacy-scandal-australian-intended-parent/102819796

- https://medium.com/@babymoonfamily/the-surrogacy-crisis-in-greece-and-how- the-world-should-respond-d66f53eb0cc5
- https://www.abc.net.au/religion/invasion-of-ukraine-reminds-us-of-the-cost-of-surrogacy/13787532
- Surrogacy is a social and commercial practice based on a medical technique.
- https://www.theguardian.com/australia-news/2016/may/19/man-who-sexually-abused-surrogate-twin-baby-daughters-jailed-for-22-years
- https://archive.ph/24SQi (Ukraine's Surrogacy Industry Has Put Women in Impossible Positions)
- Collateral damage": The invasion of Ukraine reminds us of the cost of surrogacy, and who pays the price
- Fresh surrogacy concerns over boy abandoned in India
- 50% of children taken to orphanages in Ukraine are born through surrogacy