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Review of Surrogacy Laws
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Or submitted online: <https://www.alrc.gov.au/inquiry/review-of-surrogacy-laws/make-a-submission/>

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Submission on Review of Surrogacy Laws

1. Introduction

Feminist Legal Clinic Inc. is a community legal service based in Sydney that works to advance the human rights of women and girls. Our casework and advocacy are specifically focused on defending women from male violence and human rights abuses. We welcome the opportunity to make this submission. Our brief responses to your key questions follow:

2. What reform principles should guide this Inquiry?

Surrogacy breaches fundamental human rights, is inherently exploitative and unethical, undermines the respect and dignity that should be accorded to motherhood by commodifying both women and children and failing to recognise the importance of the unique attachment between them. The Commonwealth Government should achieve consistency across all Australian jurisdictions by implementing a ban on all forms of surrogacy in accordance with its international human rights obligations.

3. What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements? How should these be addressed?

Surrogacy arrangements clearly offend against the prohibition on the sale of children and are not in any child's best interests. The right to parent should not be based on the ability to pay. Individuals should be discouraged from the idea that gestation is a task that can be outsourced. Society must instead spend resources investigating why infertility is on the rise and address the health and lifestyle factors responsible. Just as we do not condone or facilitate the sale of organs, Australia must resist the idea that anyone is entitled to buy a baby.

4. What information about the circumstances of their birth do you think children born through surrogacy should have access to? How should this be provided or facilitated?

Individuals should have a right to access all information relating to their health including all personal records surrounding the circumstances of their birth. This should be provided upon request with few barriers to access. Adults should not be encouraged to deceive children or withhold vital information about their origins.

5. What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome?

These barriers should not be overcome. We are concerned that the framing of this question suggests that increasing access to surrogacy is desirable and indicates that this inquiry is biased towards recommending a specific outcome.

6. Should there be eligibility requirements for surrogacy? If so, what should those requirements be?

Babies should not be for sale and no one should be eligible to obtain a baby via surrogacy. The notion of 'eligibility requirements' contradicts this fundamental human rights position. Like the previous question, this question predisposes an outcome in favour of surrogacy. It is akin to asking, what should be the eligibility requirements for owning a slave? To discuss which women should be exploited in this manner or who should be allowed to engage in this exploitation is fundamentally unethical.

7. Are there any eligibility requirements which should be introduced, changed, or removed?

Yes, all eligibility requirements should be removed because even so-called altruistic surrogacy should be banned.

8. Are there any requirements for a valid surrogacy agreement you think should be introduced, removed, or changed?

No contract should trump fundamental human rights. The idea of a 'valid surrogacy agreement' should have as much credence as a valid contract of sale for a human slave, or for a body part or organ from a living person.

9. Should surrogacy agreements be enforceable? You might want to consider:
a. if all parts of the agreement should be enforceable;
b. who should be able to enforce the agreement; and
c. how agreements could be enforced

No, there should be no valid surrogacy agreements and they should not be enforceable. Contract law should not trump fundamental human rights. Women and children are not commodities.

10. What process requirements should be in place for surrogacy arrangements?

As for question 8 and 9. Those proposing surrogacy arrangements should be prosecuted.

11. What are the gaps in professional services for surrogacy in Australia?

There should not be any professional services for surrogacy in Australia. Prevention is better than cure. A great deal of money will be saved on providing legal advice, counselling and compensation to victims, if the government acts now to decisively outlaw all surrogacy.

12. How should professional services operate in Australia?

As for question 11. People who profit from these exploitative arrangements should be prosecuted.

13. How should surrogacy advertising be regulated?

It should not be advertised and anyone who does advertise it should be prosecuted. What next – selling kidneys?

14. What entitlements, if any, should be available to surrogates and intended parents?

Surrogates and the children born through surrogacy should be assisted in bringing compensation claims against those responsible for the harm they have suffered, i.e., those commissioning the birth and the operators of professional surrogacy services. It is not desirable to make surrogacy more affordable – what price do you put on a life? Does decreasing the price of a kidney in any way improve the ethics of organ trafficking? Surrogacy must be banned.

15. How could the process for reimbursing surrogates for reasonable expenses be improved?

An improvement would be banning surrogacy altogether. No one should be exploited in this manner. It should be unlawful to contractually agree ahead of time to inflict untold suffering on a new born baby. Further there is copious evidence that this forced separation causes lifelong suffering for both mother and child. Women should not be driven to such desperate acts, whether out of financial desperation or misdirected selflessness. Any truly altruistic gesture should not require contractual enforcement.

16. Do you support a) compensated surrogacy and/or b) ‘commercial’ surrogacy?

Neither.

17. If Australia was to allow for compensated or ‘commercial’ surrogacy, how could this be implemented?

It should not be implemented.

18. What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

The main problem is that surrogacy is an inherently exploitative arrangement and it should not be normalised in this manner.

19. How could the process for intended parents to become the legal parents of children born through surrogacy be improved?

It should not be improved. The process should be abolished.

20. What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy:

- a. Australian citizenship;**
- b. an Australian passport; or**
- c. an Australian visa.**

The main problem is that these questions are all predicated on the idea that surrogacy is an acceptable practice. It is like asking what are the main problems with obtaining official documentation for a slave that you have purchased? The question itself is the problem because it conveys the impression that this is an acceptable practice that should be regulated, when it should be abolished.

21. How could the process for obtaining these documents be improved?

The process should not be improved. See answers above.

22. What is the best way to approach differences in surrogacy regulation between or within jurisdictions?

The Australian Government should rely on its external affairs power to pass a prohibition of surrogacy in accordance with its various international human rights obligations. This would ensure that all Australian jurisdictions are compelled to act in a consistent manner in rejecting the exploitation of women and children inherent in any and all surrogacy arrangements.

There are protections of maternity and prohibitions against trafficking in women within CEDAW, as well as the right to be cared for by one's parent in Article 7 of the Convention on the Rights of the Child. There are also general human rights provisions that could be leveraged, including the right to liberty and security of the person, the prohibition on slavery and servitude and the prohibition against torture, cruel, inhuman or degrading treatment (Articles 3,4 and 5 UDHR). Article 25 of the UDHR also states: *Motherhood and childhood are entitled to special care and assistance.*

23. Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach?

The existing criminal laws against surrogacy are not being enforced in Australia. Instead Australians have emerged as some of the keenest customers of the international surrogacy market. The Australian Government needs to take seriously its obligations to protect women and children from this unscrupulous trade rather than

turning a blind eye and facilitating it. The promotion of surrogacy in Australian media is unconscionable and flagrantly flouts existing laws. Any additional efforts (such as this) to normalise/decriminalise surrogacy are completely at odds with Australia's human rights obligations.

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

Finally, the question that should have been asked first and if answered correctly renders the remaining questions redundant. Yes, the law should prohibit surrogacy and penalise those that encourage it and who stand to profit from this unconscionable industry. Those already engaged in the surrogacy business for profit should not be involved in this inquiry due to their clear vested interest in decriminalising the industry.

25. Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices?

Laws play an educative role when publicised and actively enforced. If the government and courts were to conscientiously enforce existing laws against commercial surrogacy, broader public awareness and understanding of the illegal and unconscionable nature of these arrangements would follow. Ideally laws against advertising and promoting surrogacy in popular media should also be implemented.

26. Do you have any views about the issues we consider to be in or out of scope?

There should also be a ban on egg harvesting and so-called altruistic surrogacy. These practices are harmful and exploitative and only flourish due to misrepresentation of the risks involved for the woman. Detailed follow up research on the outcomes of surrogacy arrangements needs to be conducted by academics independent of the reproductive industry.

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

This review clearly has the regulation of commercial surrogacy as a predetermined outcome. Surrogacy does not require regulation, it needs to be banned.

We are happy to expand on any point if needed. We also attach our recent submission to the UN Special Rapporteur on Violence against Women and Girls on this topic for consideration.



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Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.