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Comments on ALRC Issues Paper 52: Surrogacy Law Review, 11/7/25

Submitted to: Info ALRC <info@alrc.gov.au>; Surrogacy <surrogacy@alrc.gov.au>

1. Introduction

GeneEthics welcomes the opportunity to review and comment on the Australian Law Reform Commission's Issues Paper 52 on behalf of our 14,000 members, donors, and constituents. We would welcome an opportunity to further discuss the Paper and our critique of it with the ALRC reviewers.

GeneEthics is a national network of people opposed to the genetic manipulation and engineering of living organisms, including humans. Surrogacy is an arrangement in which a woman is induced to be impregnated and carry a child (or children) for people who will become the children's parents after birth. This is within our brief as the main beneficiaries of the practice are the global IVF, baby farming, and human trafficking industries which disrespect human rights and disregard the integrity of living systems, contrary to our core principles.

We strongly oppose all forms of surrogacy as they inherently violate the fundamental human rights, dignity, and safety of all women who participate in the procedures and of all the children born. For these reasons we reject all forms of surrogacy - commercial, compensated, and so-called "altruistic" and they must be banned.

GeneEthics' comments rest on the secular ethical principles in human rights law and ethical declarations. From local to global, jurisdictions have precautionary laws on a range of human rights and related issues, including surrogacy, with overwhelming public support. Thus, people trafficking is universally prohibited but it is often not prevented. GeneEthics' chief concern is family support, protection, and welfare for all women and children, as governments, religious, and welfare organisations fail to protect those in their care from exploitation. Surrogacy has inevitable deleterious impacts on the autonomy, health, and wellbeing of all participants, including the children who cannot give informed consent, at every step of the process. Our comments are neutral on gender issues, gender identities, and gender politics.

GeneEthics urges the ALRC to fundamentally interrogate the presumption that surrogacy has legitimacy and benefits, regsrdless of its form. Instead, we ask the ALRC to propose and implement legal reforms aimed at surrogacy's total abolition in Australia. This would be consistent with Australia's international and domestic human rights obligations and would also emulate the effective surrogacy bans in other countries, including France, Germany, Italy, Spain, Bulgaria, India, Nepal and Thailand, based on their experiences. Australia, the UK, Canada, New Zealand, and Brazil already prohibit commercial surrogacy but that does not go nearly far enough to protect the health, rights, and relationships of all those who engage in surrogacy arrangements or are born as a result of them.

2. Recommendations

GeneEthics urges the ALRC to propose the following policies for enactment:

- Initiate a more public national review process
    - Aim for nationwide uniform legislation that bans surrogacy of all kinds.
    - Seek to introduce surrogacy ban laws in all jurisdictions to augment the national scheme.
- Affirm human rights, gender equality, and children's dignity
    - Acknowledge that all forms of surrogacy are incompatible with these principles.
    - Explicitly reject surrogacy of every kind and recommend a permanent national ban.
    - Do not legitimise surrogacy through incremental regulatory reforms as this would fail again to protect egg donors, surrogates, and children.
- Prohibit All Forms of Surrogacy
    - Repeal all laws that permit altruistic surrogacy.
    - Reject all processes that move towards legalising compensated and commercial surrogacy.
    - Initiate a national review towards national uniform legislation that bans surrogacy of all kinds.
- Criminalise Overseas Commercial Surrogacy nationally
    - Penalise Australians who engage in surrogacy abroad, targeting the facilitators and brokers.
    - Maintain and strengthen the voluntary bans that already exist under the Surrogacy Act.
    - Maintain New South Wales, Queensland, and ACT laws that make it a criminal offence for residents to engage in commercial surrogacy in the state or overseas.
- Ban Surrogacy Advertising and Incentives
    - Prohibit advertising, promotional campaigns, and financial incentives.
    - Deny Medicare and employment-related benefits to intended and actual surrogate parents.
- Enforce Accurate Birth Certificates
    - Require birth certificates to reflect a child's biological maternity and paternity.
    - Ban pre-birth parentage orders and legal fictions that disempower and erase the birth mother and her legitimate rights and interests.
- Strengthen Border and Citizenship Controls
    - Deny automatic citizenship to children born through illegal surrogacy.
    - Emulate Spain's refusal to issue passports or recognise parentage in commercial surrogacy cases.
- Conduct National Public Education Campaigns
    - Dispel the myth that adults have the "right to a child", whatever it takes.
    - Promote and support ethical family-building alternatives (e.g. adoption, foster care, co-parenting) including through legislation.
- Support International Human Rights Norms
    - Ratify and implement the Oviedo Convention in which Article 21 says: "The human body and its parts shall not, as such, give rise to financial gain." [1]
    - Sign on to the Casablanca Declaration.[2]
    - Align domestic laws with Article 3 of the Charter of Fundamental Rights of the EU, "prohibition on making the human body and its parts as such a source of financial gain." [3]

[1]Committee on Bioethics (DH-BIO) 10th Meeting Strasbourg, 5-8 December 2016. https://rm.coe.int/0900001680726b2e

[2] Declaration of Casablanca, For the universal abolition of surrogacy. https://declaration-surrogacy-casablanca.org/text- of-declaration/

[3] Charter of Fundamental Rights of the European Union (2000). https://en.wikisource.org/wiki/Charter_of_Fundamental_Rights_of_the_European_Union

- Reject a National Surrogacy Regulator
    - Oppose establishing any regulatory or other body to facilitate or legitimise surrogacy.
    - If such a body were created, its sole purpose must be enforcing a surrogacy ban.
- Facilitate alternatives to surrogacy
    - Back well-supervised and managed adoptions and fostering children already in need of care.
    - Avoid manufacturing humans to satisfy the wants of cashed up intending parents.

3. Critique of Issues Paper 52

Presumption of Legitimacy

The paper presupposes surrogacy is a legitimate practice, just in need of regulatory reform. This framing excludes consideration of whether surrogacy should be permitted at all. It also biases the inquiry toward expanding or facilitating the practices, rather than assessing and ameliorating fundamental harms.

Incomplete Human Rights Analysis

It does not fully or fairly address various human rights violations associated with surrogacy. It omits serious engagement with and analysis of UN instruments and expert interpretations e.g. CRC Articles 7, 8, 35) that establish children's rights to identity, origins, and protection from trafficking. The intense vulnerability of surrogates and their children to slavery, coercion, and exploitation are un-recognised.

Poor Evidence Base and Data Gaps

Insufficient data and testimony are reported or referenced on surrogacy's profound life-changing consequences for egg donors, children, surrogates, mothers, and others. The paper lacks peer-reviewed, child-centred longitudinal studies and relies heavily on the unverified claims of industry advocates.

Women and Children's Rights Erased

The surrogate's role is reduced to a service provider, and the child's right to be raised by their birth mother is subordinated to the acquisitive and transactional desires of adults. Proposed parentage transfer methods override post-birth informed consent, violating maternal and child rights.

Lack of Comparative Analysis

The paper ignores the legal precedents and the history of countries that ban all surrogacy outright e.g. France, Germany, Italy, Spain, Sweden, India, Thailand, Bulgaria, Nepal. Such bans embody substantial, enforceable, protections for women and children. The ALRC must require an analysis of their reasons and uses in its review of the laws here.

Abolition's Ethical and Legal Purposes

- Surrogacy commodifies women and children, reducing pregnancy to labour and delivery, and children to contracted commercial objects and commodities.
- Both so-called altruistic and commercial modes of reproduction can facilitate violent and persuasive coercion through economic, familial, or emotional pressures that harm those targeted.
- Surrogacy deliberately severs maternal and family ties, violating a child's right to know its own unique identity and have full knowledge of its genetic and social origins.

- Legal commercial surrogacy would embolden and facilitate an assisted reproduction industry that hugely profits from exploiting social inequalities, selfishness, and the objectification of human lives.
- Surrogacy cannot be ethically or effectively regulated under well-intentioned but ineffectual regulation. International experience confirms that regulation tolerates abuse, exploitation, and human trafficking.
- Surrogacy itself can be viewed as a form or prostitution where the product sold is a baby, rather than sex, so it may be seen as a form of child trafficking. Surrogacy is emotionally charged, rife with power imbalances and the potential for abuse. [4]

4. GeneEthics' critique in other Fora

Our comments to the NSW Surrogacy Inquiry 2/8/24 [5] are relevant to our critique of ALRC Issues Paper 52.

Surrogacy Violates Human Rights

> "Surrogacy of any kind inevitably infringes the human and civil rights of everyone who engages in it, willingly and very often unwillingly." – GeneEthics.

- Both altruistic and commercial surrogacy inherently violate the rights and autonomy of women and children. It reduces pregnancy to a service industry and commodifies human beings.
- Surrogacy contributes to the profits of the global IVF, baby farming, and human trafficking industries that violate bodily integrity, human rights, and social justice.

False Assumption that Surrogacy is Legitimate

- ALRC Issues Paper 52 assumes surrogacy is legitimate but we strongly contest this on the basis of voluminous evidence of unacceptable harm. Its focus on incremental regulatory reform, pre-determines that the practices should be allowed, with constraints. They will be unmonitored and unenforced.
- This is a basic flaw in how the discussion paper frames its assumptions. So it fails to consider the substantial body of evidence of systemic harm and abuse in the surrogacy industry, here and globally.
- GeneEthics strongly rejects any notion that anyone has the "right to a child". We argue strongly against commodifying children to meet adult whims, acquisitiveness, and emotional deficits.

Human Rights Conventions Contravened

The paper under-rates the many international agreements Australia has ratified, that surrogacy contravenes:

- UN Slavery Convention**:** Surrogates often meet the definition of being under "ownership-like control" that exists in slavery.
- UN Convention on the Rights of the Child (CRC)**:**
    - Article 2: Prohibits the sale of children.
    - Article 35: Obliges states to prevent trafficking in children.
- Protocol to CRC**:** Requires criminalisation of child sale.
- Oviedo Convention (Art. 21)**,** EU Charter (Art. 3): Ban financial gain from human bodies or body parts.

[4] Ekman, K. (2013) Being and Being Bought. ISBN 978-1742198736, Spinifex Press.
[5] GeneEthics submission, NSW Inquiry, 2/8/24. https://dcj.nsw.gov.au/documents/about-us/engage-with-us/public-consultations/statutory-reviews/review-of-surrogacy-act-2010/advocacy/gene_ethics_submission.pdf

Commercial and Altruistic Surrogacy are Both Unethical

Surrogacy is "child commodification, human trafficking, and marketing children to those who can afford them."

- So-called altruistic surrogacy also often results from familial or social coercion and exploitation.
- Advertising, bribery, coercion, and other recruitment of parents, egg donors, or surrogates, turns women's reproductive materials, capacities, and biological functions into marketable commodities.

Exploitation and Coercion Are Systemic

- Financial hardship drives the participation of many surrogates, especially in developing countries.
- In Australia, "altruistic" surrogates may still be economically or emotionally bribed or manipulated.
- The ALRC fails to admit or address these coercive contexts, ignoring power imbalances which cannot be positively improved or resolved by any amendments to existing laws.

Legalisation Would Embolden Predatory Industries

- Legalising or expanding surrogacy would produce profits for the $ multi-billion IVF, legal, and international child trade sectors which back deregulation, not surrogates or their children.
- Surrogacy "creates and trades children for profit," prioritising consumer desires over dignity.

Empirical Evidence of Harm and Abuse

- ALRC's paper minimises the embedded hazards and risks of the surrogacy industry which are routine, not isolated incidents. These cases are only the most public tip of a very large body of documented abuse and its consequences which have been researched and reported.
- A study of 96 US women with surrogate and other pregnancies, were compared. The surrogates were found to be at higher-risk of early delivery, more cesareans, more post-partum depressions, and more chronic health problems later. This "confirms that health disparities exist for women with surrogate pregnancies compared to non-surrogate pregnancies, which can lead to long-term complications after a surrogate pregnancy." [6]
- Numerous real-world cases also demonstrate some of the other dangers and trauma of surrogacy:
    - Baby Gammy: Abandoned due to Down Syndrome.
    - Truong and Newton: Bought and abused a child.
    - Davis-Charles: Jailed for running a surrogacy "baby farm" in Cambodia.
    - Sexual abuse plans of US-based surrogate fathers.
    - Google "negative surrogacy cases" for reports of other cases e.g. Seto & Poon FamCA 288; Qld case, Lamb and Anor and Shaw; Mennesson and Labassee in the European Court of Human Rights (ECHR), and re Baby M, 537 A.2d 1227, 109 N.J. 396 (N.J. 1988) about an infant whose legal parentage was in question. [7]

[6] Lahl, J; Fell, K; et al. (2022) A Comparison of American Women's Experiences with Both Gestational Surrogate Pregnancies and Spontaneous Pregnancies, Dignity. https://digitalcommons.uri.edu/dignity/vol7/iss3/1/

[7] Baby M. https://en.wikipedia.org/wiki/Baby_M

Ukraine: a Worst-Case Scenario

More than 2,000 babies are born through commercial surrogacy in Ukraine each year, making it the greatest single country supplier of surrogates globally. A large majority are born to foreign couples, who may seek international surrogacy for many reasons including illegality or great expense in their home jurisdiction. [8]

Google "problems with surrogacy in Ukraine" for an extensive, referenced, account of the dark underbelly of that country's surrogacy industry, booming because of very weak regulatory framework and relatively low cost, achieved through multiple exploitations including: women's financial disadvantage, lack of informed consent and control, substandard living conditions, underpayment or non-payment, and legal vulnerability. Children lack long-term support, may suffer child trafficking abroad, and have an ambiguous legal status. Egg donors can also be scammed. [9] Tougher laws would not solve these systemic flaws and failures.

The war with Russia exacerbates the problems for surrogates and their children. "Women are choosing between staying to give birth in a war zone and fleeing to countries where surrogacy is illegal." Emma Lamberton, Former Foreign Language and Area Studies Fellow, U of Pittsburgh. [10]

Child Welfare is Undermined

"Erasing the birth mother's and egg donor's identities would likely create identity crises, health issues, and psychological problems." GeneEthics

- Surrogacy-born children may have identity erasure, psychological trauma, and health impacts.
- ALRC's proposal to simplify and expedite the transfer of legal parentage prioritises the intended parents' ambitions far ahead of the child's rights to known identity, origins, and kinship.

Surrogacy Cannot Be Effectively Regulated

- A total prohibition is the only enforceable, ethical, and rights-compliant solution to surrogacy.
- Attempts to regulate surrogacy, through enforceable contracts, clearer reimbursement rules, or advertising regulation, are all likely to fail due to e.g.
    - Cross-border legal complexities and disputes between jurisdictions with different laws.
    - Lack of resources and practical inability to police international transfer arrangements.
    - Lack of reliable oversight and enforcement even in current systems.

Legal Experts Opposing Surrogacy

GeneEthics position aligns with some legal experts who also question surrogacy. For example:

- Sonia Allan, Senior Lecturer in Law Macquarie University, writes "The majority of nations that regulate surrogacy worldwide, prohibit commercial surrogacy. … what we must not forget are the realities of this "business". We so often do not hear about the number of abortions it took to get the final product right, or the miscarriages, the early births, the pregnancy complications, the babies left behind, or the reasons why the surrogate entered the arrangement for money in the first place. Whenever commercial surrogacy takes

[8] Sophie Cameron, 29/7/22. Ukraine conflict highlights legal issues surrounding international commercial surrogacy, International Bar Association. https://www.ibanet.org/Ukraine-conflict-highlights-legal-issues-surrounding-international-commercial-surrogacy

[9] Inside a Ukrainian Baby Factory, Politico Special Report, 23/7/23. https://www.politico.com/news/2023/07/23/ukraine-surrogates-fertility-00104913

[10] Ibid. Int. Bar Assoc.

place, there are risks and power imbalances. … we should focus on how to protect the rights and welfare of children and women in line with global human rights standards. This includes the continued prohibition of commercial surrogacy arrangements." [11]

- Patricia Fronek asserts that "Ethical concerns about conflicts of interest, fundamental freedoms, autonomy, informed consent, self-determination, privacy, and protecting children are shared across countries. International commercial surrogacy is predicated on profit made by service providers and intermediaries where producing a healthy, desired child for the consumer of services is the goal. As such, business models conflict with the well-being of women and children." [12]

GeneEthics Policy Recommendations

- Prohibit all forms of surrogacy in all states and nationally.
- Uphold and strengthen bans on commercial surrogacy.
- Reject the claims of any "right to a child" as a basis for policy.
- Focus on improving systems for nurturing children already in need of care.
- Retain birth mothers on birth certificates and avoid severing maternal ties.
- Increase monitoring, penalties, and compliance with anti-trafficking laws at all levels government and institutions.

Summary

GeneEthics' offers a factual, rights-based, and ethically robust case for banning all surrogacy. We counter the assumptions and reform ideas in ALRC Issues Paper 52. "All surrogacy must be banned. Regulations and regulators cannot meet the challenges of a global marketplace where human beings are bought, sold, and traded."

5. Critique of Pro-Surrogacy Arguments

We expose the ideological, evidentiary, and ethical weaknesses and hidden agendas of pro-surrogacy proponents and their arguments. Our robust rebuttal of their self-serving arguments deserves to be adopted.

Advocates argue for regulated, compensated, surrogacy, repeal of criminal penalties, and inclusive language that blurs any distinctions between altruistic, compensated, and commercial surrogacy. Others seek full legal recognition of LGBTIQ+ parents and children, including those from overseas commercial surrogacy. Some even seek the legalisation of capped commercial surrogacy, claiming that current laws violate children's rights.

Critical Flaws in Yes Case

Proponent Claim: Commodification and market assumptions produce their conclusion that where surrogacy is 'altruistic' it should allow "reasonable" compensation.

Our Rebuttal:

- They seek to normalize the commodification of women's reproductive labour by comparing surrogates to professionals e.g. lawyers, doctors, fertility clinics, who are paid and also operate for profit.

[11] Sonia Allan, Submission to NSW Inquiry, 2/8/24. https://dcj.nsw.gov.au/documents/about-us/engage-with-us/public-consultations/statutory-reviews/review-of-surrogacy-act-2010/legal/sonia_allan_submission.pdf
[12] Patricia Fronek, Law Futures Centre, Griffith University. Current perspectives on the ethics of selling international surrogacy support services, Medicolegal and Bioethics 2018:8 11–2

- This ignores the embodied, relational, and emotional nature of gestation and childbirth, reducing it to the mere status of a market service.
- Capped payments would institutionalise a price on pregnancy and introduce full commercialisation under regulatory pretexts.

Proponent Claim: Minimising exploitation and global inequality through repeal of s11 (ban on offshore commercial surrogacy) would be in children's best interests.

Our Rebuttal:

- Submissions overlook the systemic economic inequalities between surrogates - many from the global South or impoverished under-classes - and intended parents – usually wealthy middle or upper classes.
- Normalising commercial surrogacy abroad would sanction global reproductive tourism and neo-colonial exploitation, as evidenced in countries like Thailand, India, and Ukraine.
- Legalisation in Australia is claimed to reduce overseas surrogacy, but this merely shifts and hides the zones of exploitation instead of dismantling an inherently exploitative system that exploits every person involved in it, except the organisers, agents, and profiteers.

Surrogates' Rights and Voices Erased

Proponent Claim: Surrogates are autonomous, rational actors who need "choice" and "recognition".

Our Rebuttal:

- Most lawyers and surrogacy activists present scant first-hand accounts or systematic evidence from surrogate mothers whose experiences often include coercion, regret, and trauma.
- Proposals to legally enforce parentage transfers post-birth undermines surrogate autonomy and discredits claims that non-enforceable contracts protect surrogates.
- Proposals for interim parentage orders before birth effectively strip surrogates of all maternal rights from the moment they deliver.

Child's Rights Subordinated to Parental Desires

Proponent Claim: Legal recognition of intended parents is in the "best interests of the child".

Our Rebuttal:

- The child's right to know and be raised by their biological family (UNCRC Articles 7–9) is subordinated to adult strangers' demands, especially for genetically-related offspring.
- Arguments that claim surrogacy protects child welfare ignore its deliberate creation of a motherless child, violating relational and identity rights.
- The mantra of "all families are valid" obscures the structural injustices built into reproductive markets**.**

Claims of Strong Demand and Short Supply

Proponent Claim: There is a shortage of surrogates because surrogacy is altruistic, unpaid, and criminalised.

Our Rebuttal:

- They present no independent empirical evidence on surrogate's motivations or disincentives.
- Supply shortage derives from a market-based framework that defines babies as products.

- We reject a human supermarket concept that assumes a consumer's entitlement to children and a business's right to meet the market. Rights-based ethics must be universally applied.

6. No Surrogacy: GeneEthics' Summation

- Reject all proposals for "compensated surrogacy" payments for pregnancy and a child. However defined, commercialisation violates women's and children's human rights.
- Oppose repeal of s11 of the Surrogacy Act in Australia as it must not legitimise or enable reproductive trafficking behind a fictitious legal fig leaf.
- Reject interim or automatic parentage orders as they undermine a surrogate's fundamental right to revoke her decision and keep he child, reflecting maternal and infant necessities.
- Prioritise rights-based frameworks that respect the rights of children and their mothers, their personal identities, and relational integrity, and subjugate adult wants, desires and preferences.
- Call for a permanent ban on all forms of surrogacy, altruistic or commercial, as they are all inherently exploitative, coercive, and incompatible with human rights norms.

Inside a Ukrainian Baby Factory [13]

A nurse cares for newborn babies at Kyiv's Venice hotel on May 15, 2020. In 2016, the Swiss NGO International Social Service estimated that 20,000 babies annually were born via surrogacy. | Sergei Supinsky/AFP

[13] **Inside a Ukrainian Baby Factory.** https://www.politico.com/news/2023/07/23/ukraine-surrogates-fertility-00104913