Adoptee Rights Australia

Adoptee Rights Australia (ARA) Inc.

Submission to the

Australian Law Reform Commission's

Review of Surrogacy Laws

Issues Paper

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Introduction

Adoptee Rights Australia (ARA) Inc. is providing this submission in response to the Australian Law Reform Commission's (ALRC) Review of Surrogacy Laws.

Adoptee Rights Australia (ARA) Inc. is the peak body and national advocacy association raising awareness of systemic inequity and providing support for adopted persons in Australia. ARA advocates for the human rights of adopted people to be restored and protected by promoting the examination of issues around the lived/living experience of adoption in Australia.

We have made this submission because the adopted can provide critical perspectives on surrogacy, including those drawn from common experiences which are at the heart of both adoption and surrogacy arrangements.

Please note:

While our submission engages with the regulatory focus of the Inquiry, this should not be taken to imply that ARA supports surrogacy. As the Terms of Reference for this Inquiry are based on the assumption that surrogacy will continue, our submission responds within those terms. We wish to make clear, however, that ARA's position is not one of harm minimisation or regulation. Our position is that surrogacy should be abolished rather than facilitated or expanded.

ARA's opposition to surrogacy is not based on discrimination against any group, but on the principle that the rights of the child must take precedence over the desires of adults for a child. ARA supports equal rights for LGBTIQA+ people, including equal consideration in guardianship and foster care applications.

- We wish this submission to be treated as public.

- In addition to this submission, we also endorse and affirm the points raised in the submission by ARMS (Vic).

Recognition of Adopted Persons as Key Stakeholders

We call on the ALRC to identify and consult with adopted persons as part of the group of key stakeholders in this Inquiry. We also recommend that other cohorts with "*surrogacy-like lived experience*" should be similarly identified as key stakeholders.

The Terms of Reference for this Inquiry explicitly require the ALRC to:

> "…*identify and consult with key stakeholders, including relevant government departments and agencies, legal advocacy and human rights bodies in Australia, members of the legal profession and other experts who specialise in surrogacy or human rights matters, members of the medical, psychology or counselling profession who specialise in surrogacy matters, fertility industry bodies and lived experience cohorts, including surrogates, intended parents and individuals born from surrogacy arrangements.*"

The number of individuals born through surrogacy arrangements - and the number of individuals who have acted as surrogates in Australia - is small. Although the Issues Paper notes increases in both domestic and international surrogacy births in recent years, the overall cohort remains limited. The Issues Paper reports an estimated 76 children were born via domestic surrogacy in 2020, and 275 through international surrogacy in the same year, with international births rising to 375 in 2023. Prior to 2010, only a few hundred Australians were born through surrogacy. The majority of those born through surrogacy were born comparatively recently. Correspondingly, individuals in this cohort are overwhelmingly young, with limited capacity to contribute to this Inquiry or provide longer-term perspectives.

By contrast, adopted persons represent a much larger and older cohort with directly comparable experiences. Adoption and surrogacy share core dynamics: separation from gestational and often biological origins, disruption and erasure of kinship connections, and lifelong impacts on identity. Adopted adults can speak to these dynamics in a way the Inquiry could not access if it relies solely on those born through surrogacy. Similarities and accompanying concerns were also raised by the Commonwealth Government's Forced Adoptions Implementation Working Group in their final report in December 2014.

Most of the mothers of current Australian adoptees were effectively unwilling surrogates. Donor-conceived individuals often experience similar kinship disruption. These cohorts also represent *"surrogacy-like lived experience"* and can provide essential insight into the lifelong consequences of gestational separation and/or loss of biological connection.

Excluding cohorts with surrogacy-like lived experience - specifically, adopted persons, donor-conceived individuals, and mothers,from recognition as key stakeholders would significantly limit the Inquiry's ability to understand the human rights implications and lifelong

outcomes of surrogacy. This would be inconsistent with the Terms of Reference, including that the best interests of the child are paramount.

We also note that - aside from the very small pool of people with lived experience of surrogacy, most of the other groups identified as “key stakeholders” are professionals or organisations with vested interests in the continuation or expansion of surrogacy. This creates an inherent imbalance in consultation, as voices of those working within the surrogacy industry itself are structurally overrepresented compared to those with lived/living experience. This structural imbalance is mirrored within the Committee itself, where a majority of members have publicly expressed positions promoting surrogacy growth and the surrogacy industry. Recognising and including cohorts with surrogacy-like lived experience as key stakeholders would go some way towards correcting this imbalance and ensuring that the Inquiry appropriately includes and considers all voices that can provide insight into surrogacy and its lifelong human-rights consequences.

Question 4: Right to Information

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?

Numerous human rights and mental health implications arise from this issue that need to be addressed.

Question 4: Part 1. What Information?

What information about the circumstances of their birth do you think children born through surrogacy should have access to?

Parents have a responsibility to act in the child’s best interests. Social parents can choose how information is shared in an age-appropriate way, but withholding origin information breaches the rights of the child. Article 8(1) of the UN Convention on the Rights of the Child (CRC) protects every child’s right to preserve their identity. Understanding one’s biological, medical, and cultural heritage is essential to forming an integrated identity, and withholding this information undermines that right. Identity formation does not begin at 18, it develops throughout infancy, childhood and adolescence.

Those born through surrogacy must have full and unrestricted access to all information about their origins including their heritage and ancestry, and the circumstances of their conception, gestation, and birth provided as soon as it is age appropriate to do so. This includes:

- The identities, photographs of, and opportunities for contact or meetings with their biological parents and gestational mother
- Information, photographs, and contact or meetings with siblings, grandparents, and members of the broader biological family or families

- Details of the social and legal arrangements that led to their conception
- Information about motivations, payments, and contractual elements involved in the arrangement
- Medical and psychological histories of all relevant parties
- Access to all original records, including court files and agency documents

Telling a child they are born from surrogacy and giving them an ability to apply for information when they are 18 is not in their best interests, it is inhumane. Access to information should not be delayed until adulthood. Age-appropriate disclosure must begin in early childhood and continue progressively. The Terms of Reference of this Inquiry include the requirement to "protect and promote 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."

O'Callaghan (2021) states that the European Court of Human Rights (ECHR) has found through several cases that "respect for private life requires that everyone should be able to establish details of their identity as individual human beings and that an individual's entitlement to such information is of importance because of its formative implications for his or her personality."

In *Mikulić v. Croatia*, the ECHR found that leaving a child in *prolonged uncertainty* about their parentage breached Article 8 ECHR (right to respect for private life). "The Court found that there was a violation of the applicant child's right to private life under Article 8 as the courts in Croatia had 'left the applicant in a state of prolonged uncertainty as to her personal identity." (O'Callaghan, 2021). Restricting origin information of children born from surrogacy to non-identifying details mirrors the "prolonged uncertainty" the Court condemned.

Being given no, or non-identifying information means a full picture of identity cannot be formed, undermining the ability to form a secure sense of self. This was found to be contrary to the obligations set out in Article 8 ECHR which mirrors Article 17 of the International Covenant on Civil and Political Rights (ICCPR): that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
(and Articles 7 and 8 of the CRC).

The child in the *Mikulić v. Croatia* case was 5 years and 8 months old at the time of judgment in that case, so suggested ages of 18, 16, and even 7 for children of surrogacy to find out their origins are clearly inconsistent with the principle that prolonged uncertainty about one's identity is harmful and violates fundamental rights.

Delaying access to origins information until adulthood prevents children from knowing about aspects of themselves when this is most critical. It also has implications for the child's right to express their views on any matter that affects them as required by the principles set out in Article 12 of the CRC. If they have no knowledge of the matter affecting them, they cannot express their views on it.

Claims are made that if a child is told earlier, then they are “better able to process” the information. While we are in full agreement that the child should be given as much information as is age appropriate as early as possible, the claim that knowing earlier makes the process easier to handle for the child is not evidence-based. Being told later in life is more readily recognised as painful, due to the shock and the capacity to articulate and verbally remember that shock. The contrast has been described as the difference between a sudden, raging, shocking bushfire that burns everything down that person thought was true, and a slow, smouldering burn that quietly spreads uncertainty through every cognitive stage of childhood. Can either one of these fires truly be said to be “better”?

Anecdotal evidence from the adoption community suggests that the inner world of someone who is “told as early as possible” often does not align with common assumptions that they are coping easily with the information. For many, the information affects them intensely, but there either is no way of communicating this, or they are silenced by other factors specific to disclosure of their status. This highlights the need for public education and more research, rather than mere assumptions, so there can be support for the child.

Silencing of the child’s voice in these situations can be caused by conflicted loyalty to the social parents, and/or fear of abandonment. Children often absorb the unresolved grief and emotional tensions arising from their social parents' experience of infertility (Rickarby, 1998). Where infertility was not the issue that instigated surrogacy, often anything that might threaten the concept of family is perceived by the child to be taboo. In both cases, the identity as a parent is (or is perceived as) dependent on the child performing the required supporting role, and this perception has the effect of silencing the child.

In *Lost in translation: The reality of implementing children’s right to be heard*, Carol Robinson (2021) discusses unequal power relations as affecting the voice of the child: “the power dynamics that exist in relationships can be subtle and can serve to steer, or even silence, the perspectives of some children. We need to acknowledge that ‘power inhabits all processes of social communication’ and that forms of communicative power are not equally available to all” (Robinson & Taylor, 2007). “Thus, through recognising that some groups have privileged access to certain forms of communication, consideration needs to be given to how to challenge structures and processes that curtail opportunities for some to have their voices heard.”

While they do not replace the child’s voice, where children cannot safely or meaningfully express their views, the perspectives of adults with lived experience of the same situation are a relevant source of insight.

Question 4: Part 2. How should this be provided or facilitated?

The answer to this part also includes reference to

> **Question 23.**
>
> **Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach? You might want to consider:**
>
> **a. the need for a regulator or oversight body and what it could look like (for example, an administrative body or a tribunal);**
>
> **b. if oversight should be national or state and territory based; and**
>
> **c. which groups need oversight (for example, health professionals).**

There needs to be an oversight body to protect the rights of the child then adult born as a result of a surrogacy arrangement.

The question of enforceability of notification needs to be comprehensively investigated. There needs to be a legal requirement for disclosure to happen, along with the requirement for facilitation of information and connection to be ongoing and active. No-one wants punitive requirements, but once again in this area, it is essential to learn from the history of adoption. Too many adopted people have found out they are adopted later in life, because they were never advised by their adopters.

While finding the best way to enforce disclosure may raise concerns about interference with family privacy, this must be weighed against the paramountcy of the child's best interests. This issue also connects to the needs for research to create an evidence base which can provide further insight into the experience of being a child then adult of surrogacy, and broader public education about the effects of surrogacy on the child then adult - whether as a standalone issue or within the scope of Question 25.

Independent rights-based mechanisms for accessing records should also be established, with no gatekeeping by commissioning parents, agencies, or medical institutions, or any other part of the surrogacy industry. This requires a publicly accountable framework.

In 2017, the Victorian Law Reform Commission (VLRC) Review of the Adoption Act 1984 recommended establishing a new access to information scheme grounded in principles of transparency, accountability, and fairness in managing adopted people's personal information in alignment with the principles of FOI. These principles are not only central to ethical public administration but are also essential to upholding human rights under international law. In particular, these principles give practical effect to the rights protected under Articles 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR), which Australia has ratified.

Article 16 guarantees that "every person has the right to recognition as a person before the law"- a right that is absolute and cannot be limited. Article 26 affirms that "all persons are equal

before the law and are entitled without any discrimination to the equal protection of the law," including protection against discrimination based on birth or other status. Ensuring adopted persons have equal and fair access to information about themselves is critical to fulfilling these obligations, and the same legal and ethical principles must apply to children/adults born through surrogacy, whose right to access information about their origins is no less fundamental.

Any departure from this must meet strict tests of necessity, legitimacy, and proportionality, in line with the Siracusa Principles (United Nations Economic and Social Council's Siracusa Principles,1984).

There should be administrative oversight, similar to - or incorporated within - existing Freedom of Information (FOI) frameworks, with enforceable review rights and independent appeal mechanisms through bodies such as an Ombudsman. Consideration should be given to whether these rights can be included under existing Federal or State FOI legislation, rather than creating a separate legislative scheme that is not subject to the same level of scrutiny as frameworks established under FOI law (as has happened with Adoption information release legislation).

As with - or part of - an FOI framework, there should also be the opportunity for relevant case law to develop, so that access to information about the circumstances of one's birth is not left to private industry, discretion or policy alone, but supported by legal precedent and accountable mechanisms.

Question 27: Additional Issues

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?

Additional Issue 1: Centring the Rights of the Child then Adult.

The idea of truly centring the child then adult in the area of transfer of the rights to a child appears to require a paradigmatic shift. This has become starkly obvious from the recent report: Human Rights of Adult Adoptees in South Australia, A Review of the Provisions of the Adoption Act 1988 (SA) - a document that finds South Australian Adoption Legislation to be inherently incompatible with human rights. Many of the human rights violations identified are analogous to those occurring under surrogacy law. It is telling that the human rights concerns raised in this report have generally not been noticed up to now, despite most of the relevant legislation having been in place for between 60 and 100 years, as well as having been subject to numerous reviews and amendments.

A similar lack of recognition of the rights and viewpoint of the child then adult can be seen in surrogacy. The Issues Paper defines the 'work' required of the surrogate, but no mention is made of the child then adult's unique 'work'. The physical, mental and emotional exertion of the surrogate is noted as the 'surrogate's unique contribution' but nowhere is the physical, mental

and emotional exertion of the child then adult recognised. Yet the child then adult is expected to navigate the psychological and developmental impacts of separation, identity disruption, and the long-term consequences of a legal status that comes with significant limitations on rights others take for granted. Mention of child rights and effects on the child only seem to occur when their effects align with the needs of the prospective carers. For example, Number 61. in the Issues Paper notes that for the child "A lack of formal parentage can have negative emotional and psychological repercussions." This is the only point in the Issues Paper where any negative effects on the child then adult are mentioned.

There should be a focus on identifying potential rights limitations, and any other potential negative outcomes that may affect the child then adult who is born via surrogacy, so that legal and policy reforms can be implemented that protect and promote the human rights of persons born as a result of surrogacy arrangements.

Additional Issue 2: Need for Research, Awareness and Public Education

Independent research and public education about how surrogacy affects the resulting child then adult needs to be required and regulated, independently of the surrogacy industry.

This is necessary:

- to support the right of a child to express their views in every decision that affects them
- to ensure the right of the child to have their best interests taken as a primary consideration
- to ensure that those offering their services for surrogacy are able to provide informed consent, by being able to access full information about how surrogacy may affect the child they are donating and/or gestating. Without relevant information about possible and likely risks and outcomes for the child then adult, the surrogate cannot make a truly informed decision.
- so that those commissioning surrogacy know how surrogacy may affect the child then adult they are commissioning, and also have full information on best ways to support that child if they make an informed decision to proceed.

General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)* states

> (a) The child's views
> 53. Article 12 of the Convention provides for the right of children to express their views in every decision that affects them. Any decision that does not take into account the child's views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests.

> 54. The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests. The adoption of specific measures to guarantee the exercise of equal rights for children in such situations must be subject to an individual assessment which assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation and support, where necessary, to ensure their full participation in the assessment of their best interests.

As discussed above in relation to the right to information on origins, there are many reasons a child created by surrogacy may not be able to communicate their real views on their situation, including perceived taboos, power imbalances and not being told about their origins. This has implications for the child's right to express their views on any matter that affects them, as required by the principles set out in Article 12 of the CRC.

General Comment 14 at point 54 talks about children in a vulnerable situation, and this arguably easily applies to the situation of all children created by surrogacy. This supports the need for the "adoption of specific measures to guarantee the exercise of equal rights for children in such situations". Although this is supposed to be applied on an individual basis, it also provides justification for the need for research about these specific issues affecting children born via surrogacy, so that appropriate individual measures can be applied accordingly.

Another category of child who may need extra assistance to exercise their equal rights in expressing their views is stated at point 54 of General Comment 14 as being the "very young child".

Adopted person, Julie Rist, writing in the 2002 article "Happy Adoptees", states:

> We know that much of who we are today was created in the womb. We know that mother and child are a single entity, profoundly connected physiologically, emotionally and spiritually - even through early infancy. A baby does not understand that he or she is an individual until at least 9 months after birth.
>
> It is difficult, emotionally, to imagine a tiny baby's very real feelings about the loss of his or her mother - the terror of losing all that is familiar, all that is comfort - the unique heartbeat, scent, taste, voice, rhythms and vibrations. Babies are born needing and expecting these familiar things which only their natural mothers can provide.

Research has shown that when a baby is separated from their mother (or the gestational carrier they consider to be their mother) and does not experience her maternal contact, oxytocin release is absent, depriving the infant of its calming and bonding effects. Without oxytocin to buffer stress, the baby's hypothalamic-pituitary-adrenal (HPA) axis is activated, leading to elevated cortisol levels, the primary stress hormone. Cortisol prepares the body for a "fight or flight" response, increasing heart rate and arousal. In a newborn, this manifests as distress, crying, or withdrawal, as they lack the ability to self-regulate. Prolonged or intense cortisol elevation due to separation can dysregulate the HPA axis, making the infant more susceptible to stress-related responses later in life.

Unfortunately, this research is ignored by the surrogacy industry, meaning there has been no consideration of the rights of the child under Article 12 of the CRC - and there won't be, unless research and public education is required and regulated.

The Terms of Reference for this Inquiry state the intention to review Australian surrogacy laws, policies and practices to identify legal and policy reforms, particularly proposals for uniform or complementary state, territory and Commonwealth laws, that:

> are consistent with Australia's obligations under international law and conventions; and protect and promote 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.

Again, independent research and education about how surrogacy affects the resulting child needs to be required and regulated - independently of the surrogacy industry, so that surrogacy laws in Australia can move towards consistency with Australia's obligations under international laws and conventions.

And even if the inhumane treatment of human removal at birth is to continue once an evidence base has been established, at least those who are contributing genetic and or gestational services will finally be able to provide truly informed consent.

Another reason for the need for independent research and education about how surrogacy affects the resulting child then adult is the general understanding of the public.

The ALRC notes a widespread lack of awareness about surrogacy in Australia, and Question 25 asks:

> Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices? You might think about how people currently find out about surrogacy, or the particular groups or professions who could benefit from improved education and information.

The lack of understanding of the issues faced by those born via surrogacy is glaring. Even among those pursuing surrogacy, there is a strong preference for having genetically related offspring. Yet simultaneously there is an absolute blindness about that being a fundamental need of the human condition in general. The fact that it is highly likely to also be a need of the child created by surrogacy, who generally loses half, if not all of their biological connections, as well as their gestational mother - never appears to be taken into account.

Those who are embedded in the privilege of at least some, if not many natural family relatives are like fish in water who don't even realise that water exists - and how important it is to their lives. Unless they find out late in life that they are adopted, they will never have to experience life out of the water.

So many people say "I could never have a child unrelated to me" But turn this to the child then adult's viewpoint where they are expected not only to have an unrelated one-on-one relationship, but often an unrelated one-to-all relationship. If they ever show distress about this, or even comment on this situation, it is treated as a betrayal - if not by the commissioning

parents then through wider social vilification. There is a critical need for public education on the reality of this experience, and so many more that are specific to the child then adult created by surrogacy - and yet none of this was mentioned at all in the Issues Paper.

This issue also engages the right to non-discrimination in Art 2 of the CRC with a requirement for awareness raising and education to counteract it. Part 76 of the *Implementation Handbook for the Convention on the Rights of the Child* states:

> "In particular, the Committee notes with concern that, in some societies, customary attitudes and practices undermine and place severe limitations on the enjoyment of this right. States parties shall take adequate measures to raise awareness and educate the society about the negative impact of such attitudes and practices and to encourage attitudinal changes in order to achieve full implementation of the rights of every child under the Convention" (Hodgkin & Newell, 2007, p. 19).

In the adoption community, it's often said that adoption is a failed experiment - but an experiment is something where findings are analysed. No-one seems to want to know the findings of this particular experiment on humans. That our damage has been explained as being because our mothers were forced makes no logical sense. We are adopted because our mothers were forced, but the commonalities of damage in the adoption communities are because of adoption itself. Our mothers - most of those that were fed through the unmarried mothers homes especially - were the equivalent of surrogates (and in some homes this was what they were actually known as). The adoption industry would never have reached the proportions it did - and never would have needed to develop the illegal methods of removal it did, if there was no demand for infants. Our mothers were needed to provide the supply. We were the goods.

There are so many of us, sadly, that there is a plethora of data on the adoption registers and there is potential for valuable retrospective studies that can help to give insights and inform best practice in many forms of surrogacy.

International studies have been done. Petersen et al. (2010) found that adoptees had an estimated 1.30 times higher all-cause mortality before age 65. Elevated mortality was also found for infections, vascular disease, cancer, alcohol-related deaths, and suicide. After age 65, excess mortality was slightly reduced but remained significant for all-cause mortality, cancer, alcohol-related deaths, and suicide.

The myth that providing "enough love" plus telling the child young enough will fix all potential issues they may have has carried over from adoption to surrogacy.

But if there is a genuine intention to protect and promote the human rights of children born as a result of surrogacy arrangements, and if the best interests of children are actually paramount - then requiring and regulating research and providing public education about the effects of surrogacy is necessary to fulfil Australia's obligations under international human rights law.

Additional Issue 3: Legal Recognition and the Lifespan Perspective

The Issues Paper does not address the rights or experiences of the person born once they reach adulthood. This mirrors a significant problem in adoption law, where many state and territory acts define an adopted person as a ‘child’ regardless of age — perpetuating paternalistic assumptions and limiting recognition of adoptees as autonomous adults. The language used in the Issues Paper suggests a similar conceptual limitation: the person born through surrogacy is referred to only as a child, with little recognition that they will grow into an adult whose rights and identity will continue to be shaped by the decisions made at birth. This framing requires closer scrutiny.

Additional Issue 4: Discharge Rights in Surrogacy Arrangements

Many adopted people identify more strongly with their genetic history than with the social history imposed by adoption. Since finding it was possible in the mid-2010s, increasing numbers of adoptees have sought discharge of the adoption orders made about them so they can restore legal recognition of their original kinship ties. This is often misunderstood as a reflection on the quality of relationships with the adopters, but that is not correct for many. Instead it is a deep need to be recognised as related to their biological family and ancestry, and to have their birth certificate reflect their identity.

While discharge is possible for adopted people, it’s not straightforward, and Grant (2025) makes the point that:

> “[T]he Births, Deaths and Marriages Registration Act 1996 (SA) (s. 29I- 29R) allows individuals, including those under the age of 18 years, to apply to change their gender identity or sex on their birth certificate, recognising their right to make legal decisions about their identity. This stands in stark contrast to the restrictions placed on adult adoptees under the Adoption Act, highlighting the need for reform to better align adoption law with contemporary human rights standards.”

If reform is recommended to align adoption law with contemporary human rights standards in this context, the same principle should apply to people born through surrogacy. If they identify with their genetic heritage, they should have the option to reclaim it. So, their rights would also be better protected if they had a similar ability to make legal decisions about their identity.

This is the type of issue that comes from the paradigm shift of genuinely centring the child born as a result of surrogacy arrangements.

Additional Issue 5: Immediate Post-Birth Separation

Another critical issue not adequately addressed in the Issues Paper is the practice of removing the child from the surrogate immediately after birth. This approach neglects both the physical and emotional needs of the infant and disregards their rights under international human rights law.

The bond between the child and gestational mother is already formed prior to birth - it is the only relationship the newborn recognises. Sudden separation disrupts this connection at a time when the infant is entirely dependent and undergoing rapid neurological and emotional development. Research in developmental psychology and infant mental health confirms that early skin-to-skin contact with the mother, breastfeeding, and relational continuity are critical for healthy regulation and attachment.

Separating a newborn immediately for the sake of administrative convenience or adult expectations disregards the rights of the child under Article 3 of the CRC, which requires that the best interests of the child be a primary consideration in all actions concerning them. It also engages the child's right under Article 6 to survival and development - a right that includes not just life in a biological sense, but the conditions needed for healthy emotional and psychological growth.

It also intersects with Article 12 of the CRC, which protects the child's right to express their views in all matters affecting them, with those views given due weight in accordance with age and maturity. As discussed above, a newborn cannot verbalise their needs - but this does not mean they do not have them, and the inability of the child to articulate distress due to age, powerlessness, or being uninformed of their origins cannot be used as a reason to dismiss those needs. The UN Committee on the Rights of the Child has made clear that children in vulnerable situations - including those too young to speak for themselves must still be afforded appropriate accommodations to ensure their rights are respected.

Reform Proposal: Post-Birth Care Protocols

Regulation should be introduced to include post-birth care protocols that prioritise the rights and wellbeing of the child, not just the arrangements of adults. These should include a period of postnatal care with the gestational mother to allow physiological and emotional stabilisation, with transfer occurring only after this has been safely established. Rather than forcing immediate separation for the convenience or preference of the commissioning parents, the law should prioritise minimising harm to the infant - even if that means short-term discomfort for the adults involved.

Such provisions would reflect the child's rights under Articles 3, 6, and 12 of the CRC and recognise that the child is not an object in a legal contract, but a rights-bearing person with immediate, pressing developmental needs.

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