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Australian Law Reform Commission (ALRC)
Review of Surrogacy Laws, Policies and Practices
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To the Australian Law Reform Commission,

Re: *Issues Paper: Review of Surrogacy Laws* (Issues Paper 52, June 2025)

I appreciate the opportunity to respond to the *Issues Paper* in the context of your current Review of Australian Surrogacy Laws, Policies and Practices.

Nevertheless, I am disappointed – although not surprised – that the scope of the Review has been restricted to improving surrogacy regulation with a view to making it easier to access surrogacy arrangements in Australia. This is akin to the restricted focus of the Parliamentary Inquiry into Local Adoption conducted in 2018, which specifically excluded consideration of intercountry adoption.[1] The objective of that Inquiry was a partisan one – to make it easier to adopt children from the child protection and out-of-home care systems across all Australian states and territories. A few years prior to that Inquiry (in 2013-15), measures had been implemented in another partisan attempt to make it easier for Australians to adopt children from overseas.[2] The underlying goal of both those previous initiatives was the same as for the current Review of Australian Surrogacy Laws, Policies and Practices – to increase the supply of children through third-party means to Australian intending parents.

Please note that I consent to my submission being treated as a public document; that the views expressed in my submission are my own; and that I do not seek to represent the views of any other person or organisation with whom I am or have ever been associated.

This submission outlines my relevant professional expertise and personal experience; discusses several of my concerns in relation to surrogacy laws, policies and practices; and concludes with five recommendations for reform.

Relevant Expertise and Experience

I am a Social Worker with 40 years' professional experience, including in child and family welfare. I have both professional expertise in and direct personal experience of plenary adoption – the only type of adoption ever legal across Australia.

I also have direct personal experience of non-donor assisted reproduction treatment (ART) during the 1990s. I still recall being shocked by the ART provider's opportunism when one of their counsellors asked me and my husband before we had even commenced the IVF process if we would consent to 'donating' any 'leftover' embryos to help other couples with their infertility

[1] House of Representatives Standing Committee on Social Policy and Legal Affairs (2018, October). *Breaking barriers: A national adoption framework for Australian children: Inquiry into local adoption*.
[2] See Social Policy Research Centre, UNSW (2015, December). *Literature Review on Factors influencing Intercountry Adoption Rates* (Prepared for The Australian Government, Department of Social Services).

treatment. Far from being an act of altruism, from my perspective it would have been an act of parental irresponsibility and abandonment to 'give away' an embryo conceived from our gametes. Any such embryo would be our potential child – a potential human being who deserved to be raised by his/her genetic parents. Embryo donation – the same as plenary adoption, but without any judicial oversight – would enable the recipient parents to deceive the child about his/her genetic origins to prevent him/her from developing knowledge of and social connections with his/her genetic parents – in this case, us.

I worked with the Victorian Government's Intercountry Adoption (ICA) program for 12 years until December 2013. I resigned as a result of my ongoing professional and personal learning in regard to the negative long-term and inter-generational impacts of removing children from their natural community, culture, language, country, and too often also family of origin (i.e. contrary to popular belief, the vast majority of children adopted from overseas are not orphans, even though they are commonly adopted from orphanages[3]); and my frustration with intending parents viewing ICA as providing a child for their family, rather than as providing a family for a child. I had gradually formed the view that it was morally wrong to be involved in a program that facilitates and perpetuates the legal baby market which, despite worldwide bans on baby selling, has long been operating globally – including in Australia.[4] In 2010, it was reported that, globally:

> *Like many other markets, the baby trade can be divided into distinct market sectors. A robust and growing commercial market exists in each of these sectors, including the $3 billion assisted reproductive technology (ART) industry; the "donation" of sperm and eggs for prices ranging from under one hundred to over one hundred thousand dollars; the controversial, but growing, surrogacy industry; and the adoption market, including the highly commercial international and private domestic adoption sectors.*[5]

Since leaving ICA I have advocated on issues of concern in adoption, donor conception and surrogacy. Also, for five years until 2019 I served on the board, including as Chairperson, of **VANISH** – a community-based organisation funded by the Victorian Government since 1990 to provide information, search and support services to people separated from their natural family members through an adoption in Victoria. In that capacity I participated in the **Roundtable on Surrogacy** convened by the House of Representatives Standing Committee on Social Policy and Legal Affairs in March 2015.

In 2019 I completed **PhD research** on the introduction and implementation of Permanent Care Orders in Victoria – a permanency option introduced through legislation passed in 1989 for children in the child protection and out-of-home care system deemed unable to be safely returned to the care of their natural parents. Permanent Care was specifically designed as an alternative to the severity of plenary adoption. A Permanent Care Order legally preserves the child's natural identity (i.e. does not cancel and replace the child's original birth certificate as if

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[3] For example, see Save the Children (2020, February 17). 'Lifting the veil on orphanage tourism.'
[4] See Quartly, M., Swain, S., & Cuthbert, D. (2013). *The Market in Babies: Stories of Australian Adoption*, Monash University Publishing.
[5] Quoted from Krawiec, K. (2010). 'Price and Pretense in the Baby Market.' *Duke Law Scholarship Repository*.

the child were naturally born to their Permanent Care parents) and also preserves the child's social connections with their parents and family of origin.

I was adopted and raised with a non-genetically related adopted sibling, and we had seven adopted cousins. The results of an AncestryDNA test that I took in 2016 led me to discover that I had been misidentified soon after birth (in 1963) in a large maternity hospital in Melbourne, prior to my adoptive placement at 3 weeks of age. For the 20 years prior to 2016, I was in 'reunion' with the non-genetically and non-culturally related mother recorded on my original birth certificate and adoption court records. The hospital has been unable to locate its records relating to my mother and to my birth and time in hospital.[6]

Many aspects of my personal experience are relevant to the current Review. For example: (i) that individuals who join families through third-party means of having children – including those who maintain positive relationships with their legal parents and families – often strongly desire and actively seek information about and social connection with their natural parents and families where deprived of this while growing up; (ii) that such individuals face significant institutional and legal barriers if they wish to legally reclaim their natural identity following its erasure during infancy through a legal transfer of 'parentage' (my only option was to apply to the County Court of Victoria for discharge of my adoption order); (iii) that medical service providers sometimes misidentify babies, gametes and embryos[7]; and (iv) that such misidentifications have harmful impacts – including, for example, trauma and relationship disruption; identity crises; and difficulties achieving psychological and legal resolution following discovery.

Concerns in Relation to Surrogacy Laws, Policies and Practices

I have many concerns in relation to surrogacy. Those outlined below focus primarily on the human rights and best interests of the most vulnerable and powerless persons affected by surrogacy – the children born through surrogacy arrangements. Surrogacy-born children cannot provide their consent to a surrogacy arrangement, yet they will be the most impacted by such an arrangement throughout their entire lives.

Third-party means to have children are inherently morally contentious and prone to exploitation

Surrogacy, donor-ART and adoption are all third-party means to have children, and all third-party means to have children are inherently morally contentious and prone to exploitation. As such, the wider community has a valid and vital interest in third-party means to have children to ensure that the rights and best interests of the most vulnerable individuals involved are respected and protected.

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[6] My story screened on Episode 2, Season 4 of SBS's ***Every Family Has a Secret*** and is told in my latest book, ***Greek, Actually***.

[7] The numbers are likely to be much higher than reported in the media, and will likely increase with the increasing numbers of children being born through ART, donor-ART and surrogacy. [For example, see (i) Kinsella, E. (2025, June 16). 'Monash IVF bungles spark transparency, regulation questions in growing industry.' *ABC News*; (ii) Nunn, G. (2025, June 15). "The information you received is incorrect': The horror of being in an IVF mix-up'. *ABC News*; and (iii) Vidler, A., & Wilson, E. (2025, June 10). "Completely unacceptable': Victorian government slams Monash IVF after second embryo bungle.' *Nine News*.]

I have been deeply concerned for several years now that Australian laws, policies and practices in relation to having children are increasingly and unduly influenced by a small group of for-profit ART providers and legal practitioners, and LGBTIQA+ lobby groups and organisations – all seeking to normalise the making of substantial payments to surrogate mothers.

> *In Australia, the growing assisted reproductive technologies (ART) industry has recently received some public criticism. Much of this criticism centres on the concern that doctors are increasingly motivated by profit, rather than patient interests.*[8]
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> *IVF is big business in Australia. When Monash IVF was listed on the stock exchange in 2014, it raised more than A$300 million, with financial analysts noting the potential for massive profits, as "people will pay almost anything to have a baby".*[9]
>
> *commercial surrogacy. This industry is an offshoot of the very profitable reproductive technology industry, which created, through IVF, the possibility of persons buying children in the marketplace.*[10]

The composition of the Advisory Committee for the current Review illustrates my concern regarding conflicts of interest. Several members represent organisations or parties involved in the legal baby market with much to gain from a relaxation of Australian surrogacy laws. For example, a fertility specialist practicing with a large provider of fertility services in Australia; two intermediaries (i.e. surrogacy lawyers with private legal practices); and the Executive Officer of one of Australia's most influential LGBTIQA+ lobby groups, representing a large cohort of potential consumers (i.e. intending parents).

There is no universal human right to have or to acquire a child

The *Issues Paper* does not acknowledge that there is no human right to have a child enshrined in any international treaty or convention to which Australia is party, albeit that wanting to have a child is very often a strong human desire. Instead, the *Issues Paper* claims that "there is disagreement about whether" the right to found a family "extends to a right to engage in a surrogacy arrangement" (p. 10).

To be clear, the right to found a family does not equate to a universal human right to acquire a child through a third-party means, including surrogacy, for very good reasons. For example, while many intending parents may be "desperate for a child" (*Issues Paper*, p. 10), not all desperate intending parents have good intentions in seeking to access surrogacy. Take the case of Queensland man Mark Newton and his long-term boyfriend Peter Truong, whose "battle to have a child as a gay couple" was originally reported by the ABC in 2010. The couple were subsequently unsuccessful in their attempts through surrogacy in the US from 2002, but they acquired a non-genetically related infant from a surrogate mother in Russia in 2005. Within days of the boy's birth, the couple began sexual abusing him and offering him up for sex with

[8] Quoted from Blakely, B., Williams, J., Mayes, C., Kerridge, I., & Lipworth, W. (2017). 'Conflicts of interest in Australia's IVF industry: an empirical analysis and call for action.' *Human Fertility*, *22*(4), 230–237.
[9] Quoted from Bowman-Smart, H., & Stanbury, C. (2025, June 12). 'IVF is big business. But when patients become customers, what does this mean for their care?' *The Conversation*.
[10] Quoted from Jeffreys, S. (2014). 'Reject commercial surrogacy as another form of human trafficking.' *The Conversation*.

other men.[11] More recently, a Victorian man who had twin daughters through overseas commercial surrogacy sexually abused them from when they were one month old.[12] In both cases, the sexual abuse of the children born through commercial surrogacy also involved filming and uploading to share online.

If the 'desperation' of intending parents were a valid justification to broaden 'the right to found a family' to include the right to engage in third-party means to have a child, the legalisation of kidnapping children would also be justifiable on this basis.

Social infertility is not a medical problem

Social infertility is different from medical infertility. Social infertility is not, strictly speaking, a medical problem at all. To be clear, medical infertility refers to the inability to conceive a pregnancy after 12 months or more of regular, unprotected sexual intercourse between a genetic/biological man and a genetic/biological woman; whereas social infertility refers to the inability to conceive a pregnancy for social or societal reasons, such as being single or gay, rather than physiological reasons.

Despite the obviousness and immutability of these physiological facts, Australian governments have evidently made the contentious policy decision to medicalise social infertility. In other words, under the romantic guise of "providing Australians who are unable to give birth an opportunity to have a child"[13], Australian governments have enabled the ART industry (and also intermediaries) to profit from treating social infertility in addition to medical infertility.

The medicalisation of social infertility is inherently morally contentious for the same reasons that any other third-party form of having children is morally contentious – because it increases the risks of commodification of human gametes, embryos and children; of exploitation of young women for their reproductive capacity; and of men and women for their gametes and embryos. Relatedly, the medicalisation of social infertility also increases the risk of human rights violations – especially the human rights of the children.

All these issues would be exacerbated – not alleviated or avoided – were Australian laws changed to allow substantial payments to surrogate mothers in surrogacy arrangements (i.e. 'compensated' surrogacy). This is because making substantial payments for surrogacy arrangements also substantially increases the incentive for intermediaries to maximise their profits, thereby facilitating the slippery slope to normalisation of overtly commercial surrogacy and the shonky and exploitative practices that commonly accompany it.

Regardless, the availability of medical technology to overcome infertility – whether social or medical in nature – does not justify prioritising the interests/perceived human rights of intending parents above the universal human rights of children. As noted earlier, there is no universal human right to have/acquire a child. By extension, governments are not obliged to make it easier for socially infertile intending parents to acquire a child, especially where significant public expense is involved.

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[11] Quoted from Ralston, N. (2013, July 1). 'Couple offered son to paedophiles.' *The Sydney Morning Herald*.

[12] See Australian Associated Press (2016, May 19). 'Man who sexually abused surrogate twin baby daughters jailed for 22 years.' *The Guardian*.

[13] Quoted from the ALRC's webpage (2024, June 6). 'Terms of Reference: Review of Surrogacy Laws,'

Compensated surrogacy is the start of the slippery slope to commercial surrogacy

Compensated surrogacy is the same as commercial surrogacy in nature – both involve substantial payments to surrogate mothers and intermediaries. Compensated surrogacy and commercial surrogacy differ only in terms of the size of the sums paid to surrogate mothers. Presumably, the sums paid to the lawyers involved are equivalent in compensated and commercial surrogacy arrangements. Compensated surrogacy is effectively the start of the slippery slope to full commercial surrogacy and the shonky practices that are well known to accompany it – for example, human trafficking of vulnerable young women for the purpose of performing the role of surrogate mothers, and buying and selling (or otherwise unethically and/or illegally acquiring) human gametes and/or embryos.[14]

The Australian Government is well aware of the significant risks associated with commercial surrogacy.[15] In its own words[16]:

> *Australian states and territories prohibit commercial surrogacy in Australia to protect the rights of each of the people involved in a surrogacy arrangement.*
>
> *There is a growing body of evidence that commercial surrogacy can lead to exploitation of women and children, and focusses on the commissioning parents' wishes rather than the best interests of the child.*
>
> *Examples of issues that have arisen in commercial surrogacy arrangements can be found on Issues that have arisen from engaging in surrogacy overseas.*
>
> *Both the Australian Parliament and the United Nations (UN) have published reports on the issues, concerns and human rights risks that have arisen from commercial surrogacy.*

The Australian Government is also well aware that the realisation of these risks has been replicated numerous times in countries to which Australian intending parents have travelled to engage in commercial surrogacy. Appropriately, several of those countries – Cambodia, India, Nepal, Thailand and, most recently, Greece – now prohibit access to commercial surrogacy by foreigners as a result of human trafficking and other exploitative practices.

It would be extremely naïve to believe that Australian regulatory and policing bodies would ensure that compensated surrogacy would not morph into full commercial surrogacy in this country. This is because **Australia has an extremely poor record in regard to prosecuting illegal and exploitative practices associated with third-party forms of having children**. For example, private adoptions – that is, adoptions arranged directly between natural parents and adoptive parents, and adoptions facilitated by private lawyers or other intermediaries outside the auspices of an authorised adoption agency – have been prohibited across Australia since the mid-1960s. The reasons for this ban centre on recognition that privately arranged adoptions are inherently vulnerable to exploitation, including the opportunity for individuals to profit

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[14] For example, see the reports in 2023 regarding the IVF clinic on the Greek island of Crete. [e.g. Newsroom (10.08.2023). 'Eight arrests as baby-trafficking ring dismantled on Crete.' *ekathimerini.com*.]

[15] See the Australian Government's webpages: 'Surrogacy overseas', 'Issues that have arisen from engaging in surrogacy overseas', 'Risks for commissioning parents', 'Risks with using third party organisations', and 'Why Australia prohibits commercial surrogacy.'

[16] Quoted from the Australian Government webpage: 'Why Australia prohibits commercial surrogacy.'

financially from the placement of children for adoption, and for coercion of vulnerable natural parents into 'consenting' to such placements. Nevertheless, the national ban on private adoptions failed to halt coercive practices. Indeed, such practices seem to have flourished, including in (but not limited to) public and private maternity hospitals, and mothers-and-babies homes operated by religious organisations. Lived experience reports in relation to past adoptions indicate that, in fact, many adoptions cases that involved coercive and other illegal and unethical practices were reported to the police and other relevant authorities. However, the police chose not to pursue any criminal charges, and coercive practices in adoption persisted until the 1980s when plenary open adoption laws were introduced. Likewise, the Australian Government has neither pursued nor supported any legal action in relation to more recent intercountry adoption cases that involved legal violations.

Historically, it is abundantly clear that Australian authorities have been enormously reluctant to prosecute misconduct in relation to adoptions, even in the face of unequivocal evidence. This reluctance is being replicated in relation to surrogacy. There has been a glaring absence of enforcement in relation to the existing ACT, NSW and Queensland bans on accessing commercial surrogacy overseas. Meanwhile, the numbers continue to grow unchecked. In 2023-24, for example, presumably most, if not all, of the "361 children born through surrogacy arrangements [who] acquired Australian citizenship by descent"[17] were born through *commercial* surrogacy arrangements overseas. Given this record, it is not surprising that the Brisbane couple who recently "admitted to using a commercial surrogacy service to have a baby abroad" [18] will not be charged[19], despite that Queensland residents are also specifically banned from engaging in commercial surrogacy arrangements overseas. Australian authorities have long treated intending parents as if they have a right to have/acquire a child, even when they obviously violate laws in their endeavours to do so. Frankly, this is a deplorable situation and not something that the Australian Government should be proud of. I reiterate that **there is no universal human right to have/acquire a child through surrogacy or any other third-party means.**

Legislation alone does not deter "desperate" intending parents, or other parties involved in the adoption and baby-making industries, from engaging in illegal and/or unethical practices. Penalties must be enforced for the goals of a prohibition to be achieved – that is, to hold the violator(s) to account and so deter future cases of illegal and exploitative behaviour.

Regardless, it should not be made easier to access compensated-commercial surrogacy in Australia for similar reasons to why it should not be made easier to adopt a child in Australia – because surrogacy is a third-party means to have a child; because demand invariably outstrips supply[20]; and because this set of circumstances invariably leads to illegal and exploitative practices by greedy and/or unscrupulous operators to maximise their profit.

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[17] Quoted from the Australian Government Department of Home Affairs (2024, November). *The Administration of the Immigration and Citizenship Programs*, p. 41.
[18] See McKenna, K., & Miles, J. (2025, May 01). 'Australian couple could face prosecution after using commercial surrogacy service to have baby abroad.' *ABC News*.
[19] See McKenna, K., & Miles, J. (2025, June 20). 'Australian couple won't face prosecution after using alleged commercial surrogacy service to have baby abroad.' *ABC News*.
[20] Indeed, "Demand in the baby market often knows no limits." Quoted from Krawiec, K. (2010). 'Price and Pretense in the Baby Market.' *Duke Law Scholarship Repository*.

It is no accident that commercial surrogacy is prohibited in most European countries. Some allow 'altruistic' surrogacy, but **many European countries prohibit both 'altruistic' and commercial surrogacy due to the significant ethical concerns and frequently realised potential for exploitation**. The European Union (EU) has a general prohibition against using the human body as a source of financial gain (Article 3 of the *Charter of Fundamental Rights of the European Union 2000*), which has been appropriately extended to surrogacy arrangements in most European countries.

The paramountcy of the best interests of the child is rhetoric, not reality

Government rhetoric about laws and policies relating to children often emphasises that the principle of the 'best interests of the child' is the paramount consideration. The *Issues Paper* is no exception, claiming that the rights and best interests of the child are the paramount consideration in surrogacy arrangements in Australia (p. 8). But this is at best magical thinking, and at worst government misinformation.

In practice, **the rights and best interests of a child cannot be served through their deliberate conception for the expressed purpose of permanent separation from their biological mother at birth** – especially when also intended that the child will be raised by one or more genetic strangers who would likely prefer not to disclose to the child (or to anyone else, for that matter) the child's genetic/biological origins. **For a baby, surrogacy is akin to past mother-infant separation practices in the context of forced adoption. A baby does not deserve to be treated this way**.

Research shows that a newborn baby experiences separation from his/her biological mother as a toxic stress and neurological trauma.[21] This occurs irrespective of the reason for the separation – whether intentional or unintentional. Early mother-infant separation is always forced on the baby and, especially when permanent, has a significant – although often unrecognised – developmental impact. This impact is experienced not only during infancy and childhood but throughout the individual's entire adult life. Australian governments are thus responsible for harm inflicted on babies through current surrogacy laws, policies and practices in the same way they were responsible for the harm inflicted on babies through past adoption practices. This is reinforced by the routine absence of prosecution for illegal engagement in commercial surrogacy.

The trauma of a newborn baby's separation from his/her biological mother is likely to be exacerbated due to the two- to three-fold increase in the risk of severe maternal complications during a singleton 'gestational' pregnancy (the most common form of surrogacy in Australia) compared with other pregnancies. Research has found that gestational surrogate mothers are more likely to give birth prematurely, and to experience health problems during the pregnancy (e.g. pre-eclampsia) and haemorrhages post-partum.[22] The increase in complications is thought to be because the baby and the surrogate are genetically unrelated, causing an increased immune response in the mother's body in an effort to prevent the baby from being

[21] See, for example, Association for Psychological Science (2018, June 20). 'How Mother-Child Separation Causes Neurobiological Vulnerability Into Adulthood.' *Association for Psychological Science*.
[22] See Velez, M., Ivanova, M., Shellenberger, J., Pudwell, J., & Ray, J. (2024, September 24). 'Severe Maternal and Neonatal Morbidity Among Gestational Carriers: A Cohort Study.'

rejected. The study here referred to involved only singleton pregnancies. However, multiple embryo transfers are common in the commercial surrogacies arranged by Australian intending parents overseas, and these pregnancies have much higher rates of twin and triplet pregnancies. There are significantly higher rates of complications, and premature births (around 60%), in multiple pregnancies.[23] As such, there are significant practical, technical, financial, and transparency implications for the additional obstetric and neonatal care services required to safely manage any substantial increase in pregnancies through surrogacy in the context of Australia's already burdened hospital system.

The rhetorical, rather than real, prioritisation of children's best interests as the paramount consideration in surrogacy reflects a broader lack of commitment by all Australian governments to policies, laws and practices that effectively integrate, prioritise and protect the rights of the child as enshrined in the *United Nations Convention on the Rights of the Child 1989 (UNCRC)*. Since the Australian Government's ratification of the *UNCRC* in 1990, that instrument has not been incorporated into any specific laws enacted by the Australian Government, and its translation into relevant state and territory laws has been highly inconsistent and incomplete.[24]

Indeed, a study of legal implementation of the *UNCRC* in 12 countries conducted on behalf of UNICEF UK in 2012[25] found that "Australia has taken a distinctive route in the implementation of the CRC. It has chosen not to incorporate or, indeed, to attribute special status to the CRC compared to other UN treaties". The study concluded that, in Australia, "there is not yet a culture of children's rights" (p. 35). These findings remain accurate despite publication more than a decade ago, and despite the undertaking last year of a Parliamentary Joint Committee on Human Rights' Inquiry into Australia's Human Rights Framework – to which, as far as I am aware, the Australian Government is yet to formally respond. Meanwhile, despite all the government rhetoric, individuals who are surrogacy-born, donor-conceived or subject to adoption orders continue to be treated as **objects** of intending/legal parents' perceived human rights, rather than as **subjects** of their own ratified human rights. This is highly unsatisfactory.

If children's human rights and best interests are genuinely held as the paramount consideration in the current Review, the Advisory Committee would be significantly strengthened by the inclusion of: (i) at least one independent neonatal/paediatric practitioner and at least one neonatal/paediatric researcher with specialist expertise on the impacts on newborn infants' neurobiological functioning and development from pregnancy complications, prematurity and separation from their biological mother after birth; (ii) an obstetrician with specialist expertise in multiple and other complicated pregnancies; and (iii) a specialist child rights expert who does not first view child rights through the prism of commercial, property or contract law, or LGBTIQA+ rights.

[23] See Dahlen, H., & Gribble, K. (2024, September 24). 'Surrogacy is booming. But new research suggests these pregnancies could be higher risk for women and babies.' *The Conversation*.
[24] For example, even in the few jurisdictions that have a legislated Charter of Human Rights or equivalent, few rights relating directly to children are included, and those that are included are oriented primarily to families that include children.
[25] Kilkelly, U. (2012). 'The UN Convention on the Rights of the Child: A study of implementation in 12 countries.' *Academia*.

Some rights of the child enshrined in the *UNCRC* are wrongly interpreted

From my perspective, the *Issues Paper* wrongly interprets several children's rights in the context of surrogacy. For example:

- **Article 7.1 of the *UNCRC*: "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."**

As I understand it, the term 'parents' in the *UNCRC* essentially means a child's natural parents – that is, his/her genetic and/or biological mother and genetic father. It would be regressive to change the meaning of parents to refer to a child's 'intending parents' in the context of surrogacy, because inherent in the concept of a legally enforceable surrogacy agreement (i.e. a surrogacy contract) is the assumption that a child is personal property or a chattel. In the ALRC's own words[26]:

> *Historically, children were considered essentially as the property of their father, a construction which lingers in the use of the pronoun 'it' often used to refer to a child.*

To be clear, the term 'parentage' means the genetic/biological origins and identity of a child, whereas the term 'parenting' means the socio-legal arrangements for bringing up a child (i.e. parental responsibility). Unfortunately, the words 'parentage' and 'parenting' are often used interchangeably in Australian laws, policies and practices concerning children (e.g. 'parentage order'), which is conflating and confusing.

- **Article 8.1 of the *UNCRC*: "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."**

As I understand it, the term 'identity' in the *UNCRC* essentially means the child's natural identity (i.e. genetic/biological identity) – not the identity that may be imposed on the child through a legal mechanism to transfer 'parentage' (i.e. parenting arrangements/parental responsibility). Surrogacy unnaturally deconstructs the genetic and biological aspects of natural parentage. Even so, it is unfair to use a different meaning of the term 'parentage' in relation to a child's identity for the purposes of intending parents in a surrogacy arrangement.

The *Issues Paper* rightly notes that Article 8.1 has implications for the information provided to surrogacy-born persons, especially in relation to the information recorded on their birth certificates (p. 8). However, the origins information that should be recorded on a person's birth certificate and how that information should be validated is a broader matter than only as it pertains to surrogacy. The need for fundamental birth certificate reform across Australia is discussed in the next section.

The *Issues Paper* also states that, "If intended parents are prevented from accessing domestic surrogacy, and instead pursue international surrogacy, it may be challenging for a child to access genetic or gestational information" (p. 8). This statement is problematic for several reasons. First, its superficial reference to intending parents' pursuit of international surrogacy

[26] ALRC (2010, November 10). 'Child protection law: Historical development of child protection law.' [Child protection law | ALRC].

trivialises and obfuscates that they are engaging in commercial surrogacy. Second, the statement misleadingly suggests that intending parents are actively 'prevented' from engaging in ('altruistic') surrogacy in Australia to justify their choice to seek commercial surrogacy overseas. In reality, intending parents who seek to engage in commercial surrogacy overseas make a deliberate choice to disregard both the spirit and the letter of Australian surrogacy laws, possibly because they are unlikely to be prosecuted by Australian authorities. Third, the statement fails to acknowledge that those intending parents are, therefore, primarily responsible for creating the difficulties that children born through overseas commercial surrogacy face in accessing information about their origins. Australian research has shown that, despite a shift towards openness in professional attitudes, many parents who have used donor conception do not disclose this crucial fact to their subsequently born children. Parents often take advantage of the privacy provisions embedded in Australia's donor-ART legislation (i.e. legal provisions which enable legal lies about the child's genetic origins to be recorded on their official birth certificate) to keep their donor-conceived child's origins secret from the child. It is highly likely that the practice of keeping origins information secret from their child is replicated by many legal parents of surrogacy-born children.

- **Article 16.1 of the *UNCRC*: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation."**

The *Issues Paper* notes that the child has a right to privacy (p. 9). However, as discussed above, legal parents often take advantage of relevant legislative provisions to deny their child the right to know their genetic/biological identity. I emphasise that the privacy of the child is different from secrecy, even though the two concepts are frequently used interchangeably.

Australian birth registration and birth certificate laws have failed to keep pace with the fact and effects of rapidly evolving DNA technology

The *Adoption Act 1984* (Vic) was considered radically new when introduced, and was soon replicated across the other states and territories. Key changes from the previous plenary closed adoption laws enabled access for adopted adults to identifying information about themselves (i.e. their original birth certificate and adoption court records). However, for new adoptions, the *Adoption Act 1984* (Vic) has perpetuated one of the most severe secrecy provisions of past plenary closed adoptions – namely, the cancellation and replacement of the adopted child's original birth certificate as if the child were naturally born to their adoptive parents. **This practice violates the child's human right to preservation of their natural "identity, including nationality, name and family relations"** (Article 8.1 of the *UNCRC*). Despite the much touted 'openness' in adoption practices introduced through the *Adoption Act 1984* (Vic), the Act did not remove the opportunity for adoptive parents to keep the facts of their child's adoption and natural identity secret from the child.

In relation to donor conception, subsequent to more recent Victorian legislation, from the beginning of 2028 Victoria's BDM will provide additional information (an 'addendum') to persons who apply for their birth certificate if they were donor-conceived in a Victorian-registered fertility clinic; were born in Victoria on or after 1 January 2010; and are aged over 18

years when they apply. The addendum will alert the person that further information is available about their birth, but will not disclose the actual information.[27]

In practice, then, it remains common for adopted and donor-conceived children to not learn about their conception and birth history while growing up, either from their legal parent(s) or from BDM. Even the integrated birth certificate (IBC) recently introduced through adoption legislation across Australia is optional and, in any case, not generally available to the adopted child (i.e. not until they attain adulthood/18 years or some randomly specified middle teen age).

It is manifestly unfair that a child's access to accurate information about their own genetic/biological parentage is primarily contingent on the discretion of their legal parent(s). This child rights violation is the direct result of government prioritisation of intending/legal parents' interests. Such a choice deprives the child of information that is essential to their healthy identity development. This disadvantages the child and often causes them significant harm – including, for example, lifelong identity development and mental health challenges (associated with genealogical bewilderment, the absence of genetic mirroring, and a persistent sense of not belonging in their family); serious but often screenable/avoidable health conditions as a result of not knowing relevant genetic family health and medical history; trauma from late discovery of their conception and birth status; and risk of genetic sexual attraction (GSA) on eventually meeting closely genetically-related adults. Media reports from around the world demonstrate that many people have partnered, and even borne children, with an adopted or donor-conceived genetic sibling consequent to not having been told about their genetic origins by their legal parents while growing up. There may well be numerous instances of this in Australia which have not been reported in the media.[28]

Meanwhile, an increasingly common way in which adults with a third-party origins history discover this is through direct-to-consumer (DTC)-DNA testing, such as sold through consumer genetic genealogy companies AncestryDNA and MyHeritage. It has been estimated that, since DTC-DNA testing became available in 2000, more than 40 million people globally have taken such tests and that 5-10% (i.e. 2-4 million) of those tested have discovered a parent(s) they did not expect.[29] A 'not parent expected' (NPE) experience has the same life-changing negative impacts on identity, mental health, medical history, and relationships for the person concerned, regardless of their country of residence.

The fact and effects of DTC-DNA testing provide the most compelling grounds for fundamental reform of laws concerning birth certificates – both in regard to their primary purpose and to the 'parentage' information recorded on them. The simplicity, efficiency and accuracy of DTC-DNA testing means that a person can discover their true parentage within a few weeks of taking a spit test and returning it to the company via post. The results expose any legal lies recorded on the person's official birth certificate – whether through a legal presumption concerning their 'parentage'; the exercise of a legal 'parentage' transfer mechanism; or the provision of intentionally or unintentionally incorrect parentage information when their birth was originally

[27] See the Victorian BDM's webpage, 'Donor-conceived births.'
[28] For example, see Meacham, S. (2024, July 3). 'Incest fears after sperm donor's 200-plus visits.' *The Canberra Times*.
[29] See Webster, D. (2025, June 14). 'I thought a DNA test would reveal my heritage – instead it shattered my world.' *The Australian*.

registered. **Australian birth registration and birth certificate laws have clearly failed to keep pace with the fact and effects of rapidly evolving DNA technology**. It is absurd that for-profit consumer genetic genealogy companies hold more accurate information about the genetic identity of many Australians than do their respective governments. This takes the notion of 'government misinformation' to a whole new level.

However, Australian governments have the power to institute measures to ensure the genetic/biological accuracy of their citizens' identity information from the time that a birth is registered – from before a newborn child's development can be detrimentally influenced by false parentage information.

In fact, the ALRC had an opportunity to make recommendations to deal with this important matter in 2003 when it undertook an Inquiry into "the ethical, legal and social implications" of the rapid development of genetic science. The final report, *Essentially Yours: The Protection of Human Genetic Information in Australia*, noted several common themes that were raised in a substantial number of submissions – including that children "have a right to know their biological parents" (p. 864). The report also discussed several negative consequences of deliberately misattributed paternity and/or maternity, and of accidental discoveries concerning genetic parentage that were beginning to occur through then newly-available DTC-DNA tests. Nevertheless, these matters were effectively ignored. Twelve of the report's 144 recommendations concerned parentage testing, but not one of them addressed the use of DNA testing to ensure that children grow up with accurate information about their natural parents and so prevent occurrence of the various problems resulting from deliberately misattributed parentage that were identified by the Inquiry.

I emphasise that a birth certificate is a person's primary legal identity document throughout their entire life – not only during their childhood while they are dependent on their legal parents. For children who are adopted or born through donor-ART procedures or surrogacy arrangements, the accuracy and completeness of their official birth certificate contains the key to them accessing and integrating identity and medical information associated with their natural parents and family members while they are growing up – information that is important to them throughout their entire life, and also to their future descendants. **As enshrined in Article 7.1 of the *UNCRC*, children have a universal human right to know their natural parents**. It is unacceptable that Australian children in particular cohorts continue to be discriminated against through the erasure and/or obfuscation of their genetic/biological heritage on their official birth certificates. This discriminatory treatment often prevents them from even knowing about their genetic/biological heritage, let alone knowing their genetic/biological parents. Australian children and adults alike should not have use DTC-DNA testing to confirm or discover the true facts of their genetic and/or biological origins. DNA does not lie or obfuscate, even though government-issued identity documents currently too often do.

Summary and Recommendations

This submission has intentionally focused on the human rights and best interests of the most vulnerable and powerless persons affected by surrogacy – the children born through surrogacy arrangements. Surrogacy-born children cannot provide their consent to a surrogacy

arrangement, yet they will be the most impacted by such an arrangement throughout their lives. In this context, several relevant concerns have been discussed:

- that third-party means to have children are inherently morally contentious and prone to exploitation,
- that there is no universal human right to have or to acquire a child,
- that social infertility is not a medical problem,
- that compensated surrogacy is the start of the slippery slope to commercial surrogacy,
- that the paramountcy of the best interests of the child is rhetoric, not reality,
- that some rights of the child enshrined in the *UNCRC* are wrongly interpreted, and
- that Australian birth registration and birth certificate laws have failed to keep pace with the fact and effects of rapidly evolving DNA technology.

I emphasise that surrogacy has numerous parallels with other third-party means of having children, and that there are many relevant lessons to be learned from issues and developments in plenary adoption and donor conception. With these factors in mind:

I strongly recommend that the Australian Government:

1. **Introduce a nationally consistent birth certificate, which:**
    - **accurately records and preserves the facts of the person's genetic/biological origins** [i.e. gamete donor(s), embryo donors, and mitochondrial donor, as applicable] – regardless of the circumstances of the person's conception and birth, or their legal parent(s);
    - **incorporates biometric authentication with DNA** – at the time of registration of a new birth, and at the time of re-issue of a birth certificate for persons born prior; and
    - **is available to the person concerned from early childhood** (i.e. from when their birth certificate is first issued) for new births.
2. **Ensure full integration of the human rights of the child** – (as enshrined in the *UNCRC* and ratified by the Australian Government in 1990) into laws, policies and practices across all Australian jurisdictions, including prioritisation of the human rights and best interests of the child above the interests of intending/legal parents.
3. **Ensure that judicial responsibility for all transfers of parenting arrangements for a child be retained, including in the context of surrogacy arrangements** – In other words, that the process for obtaining a 'parentage order' not be replaced with an administrative procedure directly through the respective state/territory BDM. Independent legal oversight and decision-making is crucial to minimise the opportunity for illegal and unethical practices in all third-party means to have/acquire a child.
4. **Consider issues relating to any particular third-party means of having children together with all the other third-party means of having children** – rather than in isolation from each other, to ensure:
    - cross-learnings, and
    - consistency and fairness in legislation, policies and practices across all Australian jurisdictions, especially in regard to the children.

5. **In relation to commercial surrogacy:**

    a) **extend the existing state/territory bans to a nationwide ban on accessing commercial surrogacy that applies both domestically and overseas; and**

    b) **enforce the penalties associated with this ban.**

I would be pleased to further discuss any aspect of this submission with you, and look forward to the release of your *Discussion Paper* in November 2025.

Yours sincerely,

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