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18 July 2025

Submission to Australian Law Reform Commission (ALRC) Inquiry into Surrogacy

My name is Karleen Gribble. I am an Adjunct Professor in the School of Nursing and Midwifery at Western Sydney University. My expertise includes children's rights, breastfeeding, foster care, adoption and the language of motherhood. I have published research on these subjects in peer-reviewed professional psychological, social work, and health journals. I have engaged in the training of health professionals, social workers, and humanitarian workers on these subjects in Australia and overseas. During the period 2010-2013 I was an advisor to the Federal Attorney General on intercountry adoption as a member of the National Intercountry Adoption Advisory Group. I am also a breastfeeding counsellor and have assisted many women who have become mothers via surrogacy in inducing lactation to breastfeed their infants.

Framing and language of the ALRC Surrogacy Issues Paper (Issues Paper)

The Issues Paper notes in several locations that the rights and interests of children should be a focus of regulation in surrogacy. However, rather than focussing on child rights, the Issues Paper is framed around how to remove barriers in order to facilitate the birth of more children via surrogacy arrangements in Australia. This is not a neutral framing and means that concerns related to child rights in surrogacy are skimmed across, overlooked, or actively excluded (e.g. child rights issues related to gamete donation).

The issues paper does not make it explicit that the desires of adults involved in surrogacy:

- those wanting a baby
- those agreeing to gestate and birth a baby in a surrogacy arrangement
- those who donate gametes to create a baby
- the people who make their living from facilitating surrogacy arrangements (legal, medical and in other ways)

are often in conflict with the rights of children born via surrogacy.

Children's rights appear only to be discussed any detail in the Issues Paper when this might be of benefit to those wanting a baby or assist in facilitating more surrogacy arrangements. For example, when commercial surrogacy is discussed, there is no comment on how those

born via commercial surrogacy might be impacted psychologically by the gestating and birthing mother being paid. Might they feel that their caregiving parents effectively bought them and that the mother who gestated and birthed them sold them? And further, what does this mean for the commodification of children generally (United Nations Human Rights Council, 2018)? Negative psychological repercussions of lack of formal parentage is described in some detail in the Issues Paper and this certainly has practical and psychological repercussions for those who become parents via surrogacy and is something likely to discourage surrogacy. However, the impact on children is less clear.

It will not be possible for the ALRC to recommend legislative reform that is focussed on the rights of children if there is not recognition that the rights of children and the desires of adults in surrogacy are often in conflict. I note that the advisory committee for the ALRC surrogacy inquiry is dominated by people who have benefited from surrogacy personally or professional. I do not see anyone representing individuals born via surrogacy or to speak to the experience of being donor conceived or separated from their mother and other family after birth. The relatively small number of people born via surrogacy and the fact that a mature understanding of complex origins often takes a long time may mean there are not many individuals born via surrogacy who are advocating in this space. However, there are adoption and donor conceived advocates who could provide very relevant advice.

The language used in the Issues Paper also obscures the experience of children and therefore their rights and needs. Those who become parents via surrogacy, those who donate gametes, and those who gestate and birth infants in surrogacy arrangements will use and advocate for language that minimises the importance to children of their biological parentage and of gestation and birth (Gribble et al., 2022). The women who gestate and birth babies in surrogacy arrangements are therefore referred to as “surrogates” and those who provide oocytes as “donors.” This sanitising language is for the benefit of the adults who are involved in surrogacy, not of children.

Women who gestate and birth a baby in a surrogacy arrangement are not simply a “surrogate uterus” to infants as American woman Mary Beth Whitehead was infamously described (Rowland, 1992) but are a type of biological mother to them. There is bidirectional flow of cells between foetuses and pregnant women which results in maternal microchimerism which may persist for decades (Boddy, Fortunato, Wilson Sayres, & Aktipis, 2015). Foetal cells also enter the pregnant woman via the placenta and migrate to a variety of locations including the lung, brain, breast during pregnancy with the amount increasing as the pregnancy proceeds (Boddy et al., 2015). While many foetal cells will be cleared from the body after birth, some integrate into tissues and persist for decades (Boddy et al., 2015). These migrations occur regardless of whether the foetus is formed using the woman’s own

oocyte or the oocyte of another woman (Saito, Nakabayashi, Nakashima, Shima, & Yoshino, 2016). This migration creates a minor genetic relatedness of the infant to the woman who gestated them even when the fetus has been conceived through a donor oocyte.

Connections are created through pregnancy as infants become familiar with the sound and smell of the mother gestating them. While in utero, they hear and prefer their gestating mother's voice over the voice of other women (Kisilevsky et al., 2003) and of their father (Lee & Kisilevsky, 2014). Infants recognise the smell of the mother in whom they were gestated and newborn infants preferentially orientate towards a sample of amniotic fluid of their gestating and birthing mother as compared to the amniotic fluid of another mother (Marlier, Schaal, & Soussignan, 1998; Schaal, Marlier, & Soussignan, 1998). The smell of amniotic fluid overlaps in chemistry with breastmilk and the smell of breast secretions is believed to assist infants to locate and attach to the breast immediately after birth (R. H. Porter & Winberg, 1999; Righard & Alade, 1990; H. Varendi, Porter, & Winberg, 1994). It is therefore unsurprising that young infants know and prefer the smell of breast secretions of their mother over those of other women (Richard H. Porter, Makin, Davis, & Christensen, 1992). Newborn infants separated from their mother cry less if they can smell her amniotic fluid and cry more if they can smell her breast secretions (Heili Varendi, Christensson, Porter, & Winberg, 1998). All of this is to say that the woman who gestated and birthed them is known to infants at birth and she is not insignificant to them, even if this woman did not provide the oocyte from which the foetus that became the infant was created.

We know from the history of adoption and donor conception that both genetic parentage and the woman who gestated and birthed are psychologically important to children. Many donor conceived people speak with distress of the significant of the loss of knowledge of their biological family and loss of relationships as a result of being donor conceived. Adoptees may have been separated from both their mother and their father but as a population they feel more deeply the separation from their mother and are more likely to search for her, signifying that it is not just genetics that is important but also the experience of gestation and birth.

Article 8 of the United Nations Convention on the Rights of the Child states that children's rights include "to preserve his or her identity, including nationality, name and family relations." This right cannot be properly upheld unless the nature of their family relations is clear in language. I would suggest that is the ALRC is serious in centering the rights of children, that the term "surrogate" should be avoided in future publications and be replaced with the "gestating and birthing mother." Similarly rather than "egg donor" it should be "donor egg mother." This language may be confronting for those who wish to have a child via surrogacy and those who have gestated and birthed infants in surrogacy

arrangements, however, it more accurately reflects the surrogacy experience from the child's perspective and therefore makes it easier to be clearer regarding children's rights. Use of such language may have the effect of reducing the willingness of individuals to participate in surrogacy (including via donation of oocytes). However, this should not be viewed as a detriment but rather as assisting in truly informed decision making.

Learning from adoption in preventing unethical practice

The discussion within the Issues Paper in terms of "shortage" of women willing to gestate and birth a baby for someone else is reminiscent of the language that was used in the mid-twentieth century in relation to adoption. In the 1950s, Australia newspapers regularly reported on the "shortage of babies for adoption" (e.g. "Latest shortage here is babies," 1951; "Shortage of babies: long wait for adoption," 1952). What followed was increasing pressure (and sometimes coercion and other immoral or illegal practice) for pregnant women and new mothers to place their babies for adoption. This was detailed in the report of the Commonwealth Inquiry into former forced adoption practices (Senate of Australia Community Affairs References Committee, 2012). The unethical practice that harmed women and children during the forced adoption period was a demand-driven process by people who wanted to adopt a child. I would suggest that it is inappropriate and not aligned with the rights of children for the ALFC inquiry to consider that there is a "shortage" of women willing to gestate and birth babies for others or that there is a need to create legal frameworks that enable more surrogacy arrangements in Australia. This reflects an adult-demand-driven focus that was harmful to women and children in relation to adoption and risks the same for surrogacy. Rather, the focus of the ALFC should be to consider how children's rights and the rights of women can be protected.

In adoption, we learnt over decades that it can be extremely distressing for people who are unable to conceive and birth a baby and that "baby hunger" is powerful. Individuals who are otherwise upstanding, moral citizens will compromise their ethics and even break the law if it means that they can become parents. We learnt from the forced adoption period and from intercountry adoption that there needs to be strong legal frameworks to protect pregnant women and new mothers from harm related to adoption. Adoption law in Australia now aims to prevent any coercion in adoption and to ensure that children's rights to identity and relationship with family are preserved when they are adopted. That adoptions in Australia are now open with not only knowledge of family but also ongoing contact in most circumstances is a reflection of learning from past harm.

In relation to intercountry adoption, the Australian government regularly makes what may appear to be harsh decisions to prevent unethical practice from flourishing. The Commonwealth simply will not provide a visa for a child who has been adopted overseas by

Australians outside of the conditions provided for in state/territory and Australian law, no matter that this might be detrimental to the individual child. This is in recognition that if the government did not do this, many more Australians would act outside of the law and vulnerable women and children would be harmed as a result. In management of Australia's intercountry adoption programs, it was also recognised that the Commonwealth needed to ensure that these programs were, as far as was within Australian control, operated ethically. I was an advisor to the Federal Attorney General at the time that the decision was made to close the Ethiopian adoption program. This program was closed because it was evident that the environment within which the program was operating made for a high risk of unethical practice. It was recognised that closing this program would harm some children but also that the risk of unethical practice and harm to more children and their mothers outweighed this harm. If the Australian government wishes to avoid a future inquiry in relation to surrogacy as was held in relation to forced adoption, the mistakes of adoption need to be learnt from.

The challenges that surrogacy poses to human rights generally should be recognised

The Issues Paper speaks about detriments that may be experienced as a result of children being born via overseas commercial surrogacy. It highlights that where caregiving parents are not able to obtain recognition of legal parentage because their parents have arranged their conception and birth via commercial surrogacy that this is detrimental to children and their rights. It seems that this is being presented as a reason to remove the disincentive inherent in legal provisions disallowing legal parentage recognition. The Issues Paper does not place sufficient responsibility upon those who have engaged in commercial surrogacy in acting detrimentally to the rights of the child whose conception and birth they have contracted and paid for. Parents do not always act in the best interests of their children and engaging in a surrogacy arrangement that means they cannot obtain legal parentage is often just one way in which such people have acted detrimentally to their children. For example, often they also use anonymously donated gametes and the identity of the woman who gestates and births their baby may also be unknown to them (and therefore to the child). These actions are in clear contravention of the rights of their child to identity and family relationships. It is through preventing overseas commercial surrogacy arrangements that the rights of children can be upheld rather than by endorsing unethical practice through removing impediments such as in relation to recognition of legal parentage. The ALRC should further explore how the Commonwealth and states and territories can better enforce legislation prohibiting commercial surrogacy.

The Issues Paper does not engage deeply with existing explorations of surrogacy and human rights. In particular, the content contained within the Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography

and other child sexual abuse material to the 37th Session of the United Nations Human Rights Council is only superficially considered. If the ALRC is serious about human rights, the Inquiry should take seriously the content of this report including the statement that *"[Surrogacy] involves direct challenges to the legitimacy of human rights norms, as some of the existing legal regimes for surrogacy purport to legalize practices that violate the international prohibition on sale of children, as well as other human rights norms. Moreover, many of the arguments provided in support of these legal regimes for commercial surrogacy could, if accepted, legitimate practices in other fields, such as adoption, that are considered illicit. Thus, if this type of governing legal regime becomes accepted, whether as international or national law, or through recognition principles, it would undermine established human rights norms and standards"* (United Nations Human Rights Council, 2018).

I commend the intent as stated in the Issues paper for the ALRC to focus their review of surrogacy legislation on the rights of children. However, as I outline here, this has not been achieved in the Issues Paper. I would urge the ALRC to consider how the framing of the Inquiry might be adjusted to enable children's rights and needs to be more properly considered. I would be happy to provide any further assistance if it is deemed worthwhile.

References

Boddy, A. M., Fortunato, A., Wilson Sayres, M., & Aktipis, A. (2015). Fetal microchimerism and maternal health: a review and evolutionary analysis of cooperation and conflict beyond the womb. *Bioessays, 37*(10), 1106-1118. doi:10.1002/bies.201500059

Gribble, K. D., Bewley, S., Bartick, M. C., Mathisen, R., Walker, S., Gamble, J., . . . Dahlen, H. G. (2022). Effective communication about pregnancy, birth, lactation, breastfeeding and newborn care: the importance of sexed language. *Frontiers in Global Womens Health, 3*. doi:10.3389/fgwh.2022.818856

Kisilevsky, B. S., Hains, S. M., Lee, K., Xie, X., Huang, H., Ye, H. H., . . . Wang, Z. (2003). Effects of experience on fetal voice recognition. *Psychol Sci, 14*(3), 220-224. doi:10.1111/1467-9280.02435

Latest shortage here is babies. (1951). Retrieved from https://trove.nla.gov.au/newspaper/article/55784709?searchTerm=shortage%20of%20babies%20for%20adoption

Lee, G. Y., & Kisilevsky, B. S. (2014). Fetuses respond to father's voice but prefer mother's voice after birth. *Dev Psychobiol, 56*(1), 1-11. doi:10.1002/dev.21084

Marlier, L., Schaal, B., & Soussignan, R. (1998). Neonatal Responsiveness to the Odor of Amniotic and Lacteal Fluids: A Test of Perinatal Chemosensory Continuity. *Child Development, 69*(3), 611-623. doi:https://doi.org/10.1111/j.1467-8624.1998.tb06232.x

Porter, R. H., Makin, J. W., Davis, L. B., & Christensen, K. M. (1992). Breast-fed infants respond to olfactory cues from their own mother and unfamiliar lactating females. *Infant Behavior and Development, 15*(1), 85-93. doi:https://doi.org/10.1016/0163-6383(92)90008-T

Porter, R. H., & Winberg, J. (1999). Unique salience of maternal breast odors for newborn infants. *Neuroscience & Biobehavioral Reviews., 23*(3), 439-449.

Righard, L., & Alade, M. O. (1990). Effect of delivery room routines on success of first breast-feed. *The Lancet, 336*(8723), 1105-1107.

Rowland, R. (1992). *Living Laboratories*. Sydney: Pan Macmillan

Saito, S., Nakabayashi, Y., Nakashima, A., Shima, T., & Yoshino, O. (2016). A new era in reproductive medicine: consequences of third-party oocyte donation for maternal and fetal health. *Seminars in Immunopathology, 38*(6), 687-697. doi:10.1007/s00281-016-0577-x

Schaal, B., Marlier, L., & Soussignan, R. (1998). Olfactory function in the human fetus: Evidence from selective neonatal responsiveness to the odor of amniotic fluid. *Behav Neurosci, 112*(6), 1438-1449. doi:10.1037//0735-7044.112.6.1438

Senate of Australia Community Affairs References Committee. (2012). *Commonwealth Contribution to Former Forced Adoption Policies and Practices*. Canberra: Commonwealth of Australia.

Shortage of babies: long wait for adoption. (1952). Retrieved from https://trove.nla.gov.au/newspaper/article/95685187?searchTerm=shortage%20of%20babies%20for%20adoption

United Nations Human Rights Council. (2018). Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material Retrieved from https://docs.un.org/en/A/HRC/37/60

Varendi, H., Christensson, K., Porter, R. H., & Winberg, J. (1998). Soothing effect of amniotic fluid smell in newborn infants. *Early Human Development, 51*(1), 47-55. doi:https://doi.org/10.1016/S0378-3782(97)00082-0

Varendi, H., Porter, R. H., & Winberg, J. (1994). Does the newborn baby find the nipple by smell? *The Lancet, 344*(8928), 989-990. doi:https://doi.org/10.1016/S0140-6736(94)91645-4