WOMEN'S FORUM AUSTRALIA

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SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION ON ITS REVIEW OF SURROGACY LAWS ISSUES PAPER, JULY 2025

Introduction

Women's Forum Australia is an independent think tank established in 2005 that undertakes research, education and public policy advocacy about economic, social and health issues affecting women and girls, with a particular focus on addressing behaviour and practices that are harmful and abusive to them. Such issues include the sexualisation and objectification of women and girls particularly in media and advertising, violence against women, pornography, prostitution and trafficking, abortion, surrogacy, and the erasure of sex-based rights and protections.

Women's Forum Australia welcomes the opportunity to make a submission to the Australian Law Reform Commission (ALRC) in response to its Issues Paper on the Review of Australia's Surrogacy Laws.

At the outset, we must express our deep concern that the Review's Terms of Reference, and consequently the Issues Paper, appear to have been drafted with the biased presumption that surrogacy is a generally positive or at least ethically neutral practice. This assumption is evident in both the framing of the questions posed and the language employed throughout the Issues Paper, which fails to meaningfully engage with the significant human rights concerns and harms intrinsic to all forms of surrogacy.

In 2016, a Federal Inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements recommended that commercial surrogacy remain illegal, finding that "Even with the best of regulatory intentions, there is still significant potential for the exploitation of surrogates and children to occur."[1] Not only does this reality still stand, but it is clearer than ever that the potential for exploitation also applies to 'altruistic' surrogacy arrangements.[2]

Women's Forum Australia is opposed to all forms of surrogacy, whether commercial/compensated[3] or altruistic. We believe that surrogacy exploits women by

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[1] House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Surrogacy Matters Inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements* (2016) <https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/SPLA/Surrogacy_Inquiry/FullReport.pdf?la=en&hash=72CD8BA7B391048191998CAF827D3EE22DD6722B>

[2] See for example the stories of countless women who regret their surrogacy experiences in the book: Jennifer Lahl, Melinda Tankard Reist, Renate Klein (eds), *Broken Bonds: Surrogate Mothers Speak Out*, 2019, Spinifex Press, Victoria.

[3] We note the Issues Paper distinguishes between 'compensated' and 'commercial' surrogacy, but in our submission, we will use the term 'commercial' to refer to any kind of paid surrogacy, and 'altruistic' to refer to surrogacy undertaken without any financial compensation beyond expenses related to the surrogacy.

deliberately fracturing motherhood into biological, gestational and social roles, with disadvantaged women being particularly vulnerable to exploitation. It objectifies and exploits children by treating them as commodities to be traded. It also involves the deliberate separation of a child from its birth mother and preferences the desires of the commissioning parents over the most vulnerable parties involved in the "transaction". As Australian academic and feminist health activist Dr Renate Klein succinctly and aptly puts it, "surrogacy is a human rights violation of women and children".[4]

Proponents of surrogacy present it as a relatively uncomplicated issue that assists those who cannot have children to build families, including couples who struggle with fertility, same-sex male couples, single men, and women who want children without the inconvenience of pregnancy, in many cases for the sake of their career. Although infertility is a heartbreaking and devastating diagnosis for couples, it does not justify the use of surrogacy, given the human cost to both women and children. Contrary to what some seem to suggest, there is no 'right to have a child'.

While the ALRC is tasked with reforming the regulatory frameworks around surrogacy in Australia, we assert that no amount of regulation can make an inherently exploitative practice ethical. Indeed, as we have consistently argued, the only truly ethical position is to prohibit surrogacy altogether.

In this submission, we will:

1. Address the Review's inherently flawed process;
2. Outline the harms and human rights violations inherent in all forms of surrogacy;
3. Address the misleading distinction between 'altruistic' and 'commercial' surrogacy;
4. Advocate for a complete prohibition of surrogacy in Australia, including participation in overseas arrangements;
5. Suggest support for women and families that upholds the dignity and rights of all parties without recourse to exploitative practices.
6. Make some key recommendations.

Many of the questions in the Issues Paper are either addressed in the context of these sections, or have not been addressed, as they assume the legitimacy of surrogacy and are geared towards expanding it.

1. Inherently Flawed Review Process

The foundational problem with the ALRC's Issues Paper is its failure to adopt a neutral and balanced approach to the ethical, social, and legal dimensions of surrogacy. From the outset, the Issues Paper presumes the legitimacy of surrogacy and frames the discussion primarily around how to improve access, streamline regulation, and address procedural inconsistencies across jurisdictions. The Issues Paper fails to question whether surrogacy itself – in any form – is justifiable in a society committed

[4] Renate Klein, "Surrogacy is violation of women", *Daily Telegraph*, 8 February 2024 <https://www.facebook.com/photo?fbid=706990944964478&set=a.410700511260191>

to the human rights and dignity of all persons, particularly women and children.

While the framing of the Issues Paper may reflect the desires of commissioning parties, it brushes over the ethical reality that surrogacy involves using a woman's body as a means to an end and treating children as products to be acquired. The Issues Paper's framing largely centres adult desires, with insufficient attention to the harms to surrogate mothers and children born through these arrangements.

We note, with concern, the influence of industry and pro-surrogacy voices in the review process. The framing of the Issues Paper gives disproportionate weight to the perspectives of those with a vested interest in facilitating surrogacy, while failing to adequately incorporate voices of women who have been harmed by the practice, children of surrogacy, and those critical of surrogacy. Indeed, several times, the Issues Paper mentions "initial", "preliminary" or "early" "consultations", which do not appear to have included the voices of those critical of surrogacy. Furthermore, members of the Advisory Committee and even Assistant Commissioner Professor Ronli Sifris, are well-known for their pro-surrogacy positions.

It is imperative that the Australian Labor Government and the ALRC reorient this Review to give serious ethical and human rights scrutiny to surrogacy itself – not just its regulation. Failure to do so risks further entrenching an exploitative practice within Australian law and policy, under the guise of legal reform.

2. Harms and Human Rights Violations Inherent in Surrogacy

The harms of surrogacy are not incidental or occasional. They are intrinsic to the practice itself. Surrogacy arrangements, by their very nature, violate the rights and dignity of both women and children, regardless of whether they are undertaken for commercial profit or under the guise of altruism. To suggest, as the Issues Paper does, that Australian taxpayers facilitate this exploitation via Medicare rebates is repugnant.

2.1 Harm to Women

"I am so sad about what has happened with this surrogacy – but also angry. I feel betrayed, hurt, and I am still suffering mentally and physically from what I have been through. I have great trouble sleeping. Not a day goes by that I do not regret handing over Mitchell in the hospital. I regret not fighting for him after his birth. Not a day goes by where I do not think about him and wonder if he is safe."[5] –Odette, an Australian altruistic surrogate mother for a family member.

The Issues Paper notes a key issue as being "a lack of available surrogates in Australia". But is this any wonder given the harms and exploitation of women involved?

Commodification of the Female Body

As the European Parliament has noted, surrogacy – whether commercial or not – "undermines the human dignity of the woman since her body and its reproductive

[5] Jennifer Lahl, Melinda Tankard Reist, Renate Klein (eds), *Broken Bonds: Surrogate Mothers Speak Out*, 2019, Spinifex Press, Victoria.

functions are used as a commodity".[6]

Surrogacy reduces women's reproductive capabilities to a service to be contracted, regulated, and exchanged. Even in so-called altruistic contexts, the surrogate women's body is treated as a womb for rent. This instrumentalisation is deeply degrading and undermines the fundamental principle that persons should never be treated as objects or tools for the fulfilment of others' desires. Such objectification is further underscored by the fact that throughout the Issues Paper women are merely referred to as "surrogates", with the word "women" appearing only once in the body of the Issues Paper.

Health Risks and Lack of Long-Term Care

The Issues Paper euphemistically uses the demeaning phrase the "surrogate's unique contribution" to refer to the physical, mental, and emotional toll on a surrogate mother and the risks they incur, but it does not go into the increased health risks surrogates face.[7]

Both egg extraction with powerful hormones and a pregnancy with a 'foreign' embryo are dangerous for so-called surrogate mothers, leading to higher pregnancy complications such as gestational diabetes, pre-eclampsia and placenta praevia which can be life-threatening.[8] Drugs like Lupron, used to transfer embryos to the surrogate woman, have so many adverse effects that Lupron is unapproved by the US Food and Drug Administration (FDA) for purposes of pregnancy.[9] Birth is mostly by C-section, introducing another risk factor. Women are also at a heightened risk of postpartum mental health issues, including postnatal depression. Post-birth medical and psychological care is frequently inadequate or absent, particularly in cases where the surrogate mother is no longer deemed "useful" once the child is delivered.

Psychological Trauma and Maternal Separation

The experience of gestating and giving birth to a child only to relinquish him or her is psychologically traumatic for many women, even when entered into voluntarily. Numerous testimonies reveal feelings of loss, grief, confusion, and postnatal depression.[10] This trauma is not mitigated by the intention or contract. The maternal-infant bond begins in utero and is real, physiological, and emotional. Surrogacy requires the severance of this bond by design – a profound violation of maternal integrity.

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[6] European Parliament, Resolution 2015/2229(INI) <https://www.europarl.europa.eu/doceo/document/A-8-2015-0344_EN.html>

[7] Woo et al., 2017, Perinatal outcomes after natural conception versus in vitro fertilization (IVF) in gestational surrogates: a model to evaluate IVF treatment versus maternal effects, *American Society for Reproductive Medicine,* Elsever Inc. <https://www.fertstert.org/article/S0015-0282(17)31941-6/fulltext#articleInformation>

[8] Jacqui Wise, Surrogates have higher risk of pregnancy complications, research finds, *BMJ*, 2024 <https://www.bmj.com/content/386/bmj.q2100>

[9] Kallie Fell, "Let's talk about Lupron", *Centre for Bioethics and Culture Network*, 2020 <https://cbc-network.org/2020/04/lets-talk-about-lupron/>

[10] See for example: Jennifer Lahl, Melinda Tankard Reist, Renate Klein (eds), *Broken Bonds: Surrogate Mothers Speak Out*, 2019, Spinifex Press, Victoria.

Social and Economic Exploitation

Surrogacy targets women in vulnerable social or financial positions. In both domestic and international settings, it is disproportionately poorer women who become surrogates for wealthier commissioning individuals or couples. This dynamic is one of exploitation, not empowerment. Where payment is permitted, it commodifies the woman's body; where it is prohibited, other coercive factors – including family pressure, social obligation, or informal compensation – still render the arrangement ethically fraught.

Despite the formal prohibition on commercial surrogacy in Australia, many Australians continue to pursue cross-border arrangements in jurisdictions where commercial surrogacy is permitted. In countries such as India, Nepal, Ukraine, and Thailand, surrogate mothers have been recruited under conditions of economic desperation, with little informed consent, minimal medical oversight, and no long-term health care. Investigations have found surrogate women living in dormitories, subjected to coercive medical practices, and prohibited from seeing their families during pregnancy.[11]

In many cases, these women are left without recourse when commissioning parents abandon the arrangement, as occurred in the high-profile *Baby Gammy* case, where an Australian couple rejected a twin boy born with Down syndrome in Thailand, while taking home his healthy sister (it was also later discovered that the commissioning father was a convicted paedophile).

These outcomes are not aberrations – they are the natural result of a system that prioritises adult consumer demand over the rights and welfare of women and children.

Trafficking of Women

The exploitation of surrogate women and crimes of human trafficking is well documented especially in countries such as Greece,[12] India[13], Thailand[14] and Ukraine[15]. In 2023, a popular clinic used by Australians in Greece made headlines after local authorities discovered trafficked women were being held in “prison-like” conditions.

In a deeply disturbing case, a surrogacy clinic in Thailand was involved in trafficking at least 13 Vietnamese women. After being brought to Thailand, the women were imprisoned and forcibly impregnated using the genetic material of intending parents.

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[11] K. Blaine, “The Dangerous Effects of Surrogacy: A Review of A Transnational Feminist View of Surrogacy Biomarkets in India”, *The Public Discourse*, 2018 <https://www.thepublicdiscourse.com/2018/10/42720/>
[12] Jacquelin Magnay, “Women locked in Greece baby factory jail”, *The Australian*, 27 August 2023 <https://www.theaustralian.com.au/nation/women-locked-in-greece-baby-factory-jail/news-story/499aec75d8edf857ef5cf85efe991e0e>
[13] Daily Mail Reporter, “The baby factory: In a huge clinic in India, hundreds of women are paid £5,000 each to have Western couples' babies”, *Daily Mail*, 1 October 2013 <https://www.dailymail.co.uk/news/article-2439977/The-baby-factory-In-huge-clinic-India-hundreds-women-paid-5-000-Western-couples-babies.html>
[14] Kate Hodal, *“Suspected human trafficker and Thai 'baby factory' under investigation”, The Guardian*, 15 August 2014 <https://www.theguardian.com/world/2014/aug/14/police-hunt-japanese-man-suspected-human-trafficker-bangkok>
[15] Lamberton, 2020, Lessons from Ukraine: Shifting International Surrogacy Policy to Protect Women and Children, *Journal of Public & International Affairs,* Princeton University <https://jpia.princeton.edu/news/lessons-ukraine-shifting-international-surrogacy-policy-protect-women-and-children>

In certain instances, this involved rape by the commissioning father.[16]

2.2 Harm to Children

"All too often we forget the people most affected by surrogacy, the children who are ripped from their mothers at birth and sold to strangers."[17] –Olivia Maurel, a child born from surrogacy.

The Issues Paper notes the best interests of the child as being "the most important consideration". We agree that this should be the overreaching consideration, but surrogacy, whether commercial or altruistic, is never in the child's interests – they are born in circumstances to fulfil the needs of commissioning adults under the most distressing circumstances for a baby that will carry lifelong ramifications. This is why even in situations where the woman consents to be a surrogate, commercial surrogacy will always be synonymous with human trafficking. Children cannot consent to being bought or traded.

Intentional Separation from the Birth Mother

Surrogacy mandates the deliberate separation of a child from his or her birth mother – the woman whose voice, heartbeat, and care the child has known from conception (in traditional surrogacy, as opposed to gestational surrogacy, the birth mother is also the child's biological mother). This separation is not a tragic accident, but by design. It denies the child the natural right to remain with the woman who bore them, and with whom they have already begun forming an attachment before birth.

Under the laws of several Australian states and territories, puppies and kittens cannot be separated from their mothers for at least eight weeks after birth[18] due to the distress and long-term effects it can have on their development. Yet when it comes to human babies, there is no such consideration in either altruistic surrogacy arrangements in Australia or commercial surrogacy arrangements overseas. Once born, babies are handed over to the commissioning parents, shattering the mother-baby bond that is developed in the womb.

One study[19] on the impacts of early maternal separation found that stress can lead to an increased risk of instability, anxiety, depression and a range of other mental health issues for the child. Medical research shows maternal bonds play a vital role in a child's life, including their brain development, cognitive function, and ability to form healthy attachments. Adults born via surrogacy arrangements are starting to share their struggles with feelings of abandonment, displacement and identity issues, such as anti-surrogacy advocate Olivia Maurel, who has publicly shared her story.

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[16] James O'Toole and Mom Kunthear, "Baby sellers spark alert", *The Phnom Penh Post*, 1 March 2011 <https://www.phnompenhpost.com/national/baby-sellers-spark-alert>; see also AFP, "Women freed from 'inhuman' baby ring" *ABC News,* 25 February 2011 <https://www.abc.net.au/news/2011-02-25/women-freed-from-inhuman-baby-ring/1956588>

[17] Olivia Maurel, Czech Parliament, 21 November 2023 <https://www.youtube.com/watch?v=b0qJi0WQRDA >

[18] RSPCA, *How old should a puppy be before they are adopted/purchased*? 2024 <https://kb.rspca.org.au/knowledge-base/how-old-should-a-puppy-be-before-they-are-adopted-purchased/>

[19] Indiana University-Purdue University Indianapolis School of Science, Even brief maternal deprivation early in life alters adult brain function and cognition: Rat study, *ScienceDaily*, 3 May 2018 <www.sciencedaily.com/releases/2018/05/180503142724.htm>

Couching reforms around legal parentage for commissioning parents in the best interests of the child rings hollow, as not only is a surrogate child created with the intention of separating them from their birth mother against their best interests, if the child was never brought into existence through the ethically fraught practice of surrogacy in the first place, there would be no need for parentage orders.

Violation of the Right to Identity and Origins

Children born through surrogacy are often subject to gamete donation and contractual arrangements that obscure or deny their genetic and gestational lineage. This contravenes Article 7 of the UN Convention on the Rights of the Child, which affirms every child's right "to know and be cared for by his or her parents." Surrogacy treats children not as persons with rights, but as outcomes to be delivered to adult clients.

Commodification and Conditional Acceptance

The commodification inherent in surrogacy is not confined to the treatment of women's bodies. It extends to children themselves, who are conceived, gestated, and delivered as the fulfilment of a contract. Surrogacy arrangements – even so-called 'altruistic' ones – are contractual in nature. This legal framing casts the child as an object whose existence and care depend on the satisfaction of adult expectations, rather than on the child's inherent worth. Regardless of intent, surrogacy necessarily reduces children to objects of procurement.

The Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, to which Australia is a signatory, prohibits the sale of children, which is defined "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration".[20] According to a 2018 report by the Special Rapporteur on the sale and sexual exploitation of children, commercial surrogacy as currently practised meets this definition.[21]

With a contractual arrangement, there are issues that arise both from an ability or an inability to enforce, for surrogate women and children. For example, in many cases, surrogacy arrangements include clauses that allow commissioning parents to refuse custody or demand abortion in the event of disability or undesired sex. There have also been documented instances where children born through foreign surrogacy arrangements have been rejected and abandoned.[22] Abandonment has happened in situations where there are issues such as disability, an unexpected twin, the breakdown of a relationship between the commissioning couple, or the wrong sperm has been used.

These scenarios can result in the child becoming a 'surrogate orphan' and also

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[20] Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child pornography (25 May 2000) 2171 UNTS 227, Art 2 (entered into force 18 January 2002).
[21] Ms. Maud de Boer-Buquicchio, Special Rapporteur, *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material* UN Doc A/HRC/37/60 (15 January 2018) 12.
[22] Samantha Hawley, "Damaged babies and broken hearts: Ukraine's commercial surrogacy industry leaves a trail of disasters", *ABC*, 20 August 2019 <https://www.abc.net.au/news/2019-08-20/ukraines-commercial-surrogacy-industry-leaves-disaster/11417388>

stateless, particularly in countries like India or Ukraine where the surrogate mother is not recognised as a legal parent. This demonstrates the profound vulnerability of the child when their very existence is subject to the contractual expectations of others. The child's inherent dignity and unconditional worth are replaced with a conditional, commodified status.

Trafficking of Children

In a 2018 lecture on the ethical minefield of surrogacy that we recommend reading in full,[23] former Chief Justice of the Family Court of Australia, The Hon John Pascoe AC CVO, notes that "Trafficking and the sale of children through surrogacy has led to horrific instances of abuse."

> *"A particularly awful instance is that of Peter Truong and Mark Newton. This American/Australian couple had several failed attempts at international commercial surrogacy before buying a new-born child from Russia for US$8,000. The child was groomed and sexually abused from the age of 21 months to 6 years old. Often the abuse was recorded and shared. The boy himself was shared with paedophiles around the world through online forums and the abuse only stopped with the arrest of the boy's "fathers".*[24]
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> *In the Pennsylvanian case of Huddleston*[25] *a young man commissioned a surrogate child as the sole parent. Six weeks after being delivered to the man, the child died due to of severe physical abuse.*[26] *In 2016, an Australian man was sentenced to 22 year in prison for sexually assaulting his specifically-commissioned-for-abuse twin daughters when they were only 27 days old."*[27]

His Honour concluded the lecture with the reminder: "it is clear we must keep returning to the best interests of the child. It is the child who is the ultimate victim and the innocent victim. We need to be fully awake, alert to the dangers and let the best interests of the child guide us through the minefield."

3. The False Distinction Between 'Altruistic' and 'Commercial' Surrogacy

One of the flawed assumptions currently underpinning Australian surrogacy law is that 'altruistic' surrogacy is ethically distinct from 'commercial' surrogacy. While commercial surrogacy openly involves financial exchange and has arguably involved more severe forms of harm (i.e. trafficking of women and children), altruistic surrogacy

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[23] The Hon John Pascoe AC CVO, *Walking through a minefield: Commercial surrogacy and the global response*, 2018 Blackburn Lecture, 15 May 2018 <https://www.actlawsociety.asn.au/article/sleepwalking-through-the-minefield--commercial-surrogacy-and-the-global-response>

[24] Department of Justice, United States Attorney Joseph H. Hogsett, Southern District of Indiana 'Hogsett announces charges against four men in international child exploitation conspiracy' (28 June 2013); United States District Court, Southern District of Indiana Indianapolis Division, *United States of America v Mark Jonathan Newton*, United States Sentencing Memorandum Case 1:12-cr-00121-SEB-TAB, Doc 39, Filed 06/25/13.

[25] Huddleston v Infertility Center of America, Inc., 700 A.2d 453 (Pa. Super. Ct. 1997).

[26] Hague Conference on Private International Law, *Private International Law Issues Surrounding the Status of Children, Including Issues Arising from International Surrogacy Arrangements*, Preliminary Document No 11 of March 2011 for the attention of the Council of April 2011 on General Affairs and Policy of the Conference (March 2011) 19.

[27] Nino Bucci, "Man pleads guilty to sexually abusing his twin surrogate babies" *Sydney Morning Herald,* 22 April 2016 <https://www.smh.com.au/national/man-pleads-guilty-to-sexually-abusing-his-twin-surrogate-babies-20160421-goc83m.html>

often involves subtler forms of coercion and compensation that similarly commodify women and children. It also carries with it the same health risks and separation trauma for both mother and child.

3.1 Coercion and Pressure in Altruistic Surrogacy

Unlike commercial surrogacy, which is often market-driven and financially incentivised, altruistic surrogacy is generally confined to close family or friendship circles. This proximity, however, does not eliminate coercion – it often amplifies it. Women may be pressured to become surrogates out of a sense of familial duty, emotional indebtedness, or fear of disappointing loved ones.

Altruistic surrogacy is often coercive by its very nature. There is significant risk that a woman will feel pressured to 'help' a sister, friend, or family member out of love or obligation, particularly when they are emotionally invested in the commissioning person's desire for a child.

Surrogate mothers in altruistic arrangements often experience pressure and regret, particularly when the emotional and physical toll of pregnancy is underestimated or disregarded by the commissioning parties.

3.2 Material Benefit in Altruistic Arrangements

Even in jurisdictions where payment is formally prohibited, material benefit is common. These may take the form of "reimbursements," gifts, waived debts, future favours, or changes in familial or financial relationships that amount to indirect compensation.

As noted by the UN Special Rapporteur on the sale and sexual exploitation of children, even in cases labelled as 'altruistic,' the thin line between compensation and commercial transaction can be easily blurred.[28]

The suggestion that surrogacy is morally unproblematic if no money changes hands fails to grapple with the structural and relational power imbalances that exist in both types of arrangements.

3.3 Commodification Occurs Regardless of Payment

The ethical problem with surrogacy is not limited to the presence of payment – it lies in the commodification of reproduction and the transformation of both women and children into means to an end. Whether paid or unpaid, a surrogate's pregnancy is contractually bound to the expectations of others, and the child is treated as the object of a transaction.

This commodification breaches human dignity and undermines the integrity of the mother–child relationship. It is not mitigated by altruism – it is embedded in the very structure of surrogacy itself.

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[28] Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, UN Human Rights Council, A/HRC/37/60, 2018 <https://docs.un.org/en/A/HRC/37/60>

4. Advocating for a Complete Prohibition of Surrogacy in Australia

Given the irremediable harms and human right violations inherent in surrogacy, Women's Forum Australia strongly advocates for the full legal prohibition of all forms of surrogacy within Australia, including so-called altruistic arrangements, through a national law applied consistently across the country.

In addition to banning all forms of domestic surrogacy, Australia must also enforce laws prohibiting its citizens and residents from entering into or facilitating international surrogacy arrangements and consider whether those laws are fit for purpose in deterring the exploitation of women and ensuring the bests interest of children are upheld. This would align Australia's domestic law with its international human rights obligations, including those under the *Convention on the Rights of the Child*.

Turning a blind eye to Australians procuring children through international commercial surrogacy, effectively exports exploitation to poorer women overseas and permits Australians to circumvent domestic safeguards through reproductive tourism. Our country's failure to enforce laws prohibiting this has not only weakened the integrity of Australian law, but has also contributed to a global system of inequality, in which the bodies and reproductive capacities of vulnerable women are used to satisfy the reproductive desires of wealthier foreigners.

Commercial surrogacy continues to be prohibited in many countries including Canada, Denmark, New Zealand, Brazil, and Britain, whereas countries like France, Germany, Italy, and Spain have enacted total bans on all forms of surrogacy on the basis that it violates human dignity and the rights of women and children. Australia must follow the latter and adopt a prohibitionist framework that reflects the full gravity of the ethical concerns involved.

5. Supporting Women and Families Without Exploitation

Prohibiting surrogacy does not mean abandoning support for those experiencing infertility. On the contrary, a just and compassionate society must provide support that affirms the dignity of all involved – without relying on the exploitation of others.

Women's Forum Australia recommends the following measures as ethical alternatives to surrogacy:

5.1 Adoption Reform

Improve accessibility and transparency in adoption processes, ensuring that the best interests of the child remain paramount.

As child advocate Katy Faust notes, while in both adoption and surrogacy the child experiences a familial loss, "adoption exists to meet the needs of children who have lost families. Surrogacy creates loss to meet the demands of adults." She goes on to note several key differences between the two: "(1) Adoption heals loss; surrogacy inflicts it (2) In adoption, the child is the client; in surrogacy, the adult is (3) Adoption supports the child's grief; surrogacy causes it (4) Adoption is sometimes necessary; surrogacy never is (5) Adoption screens parents, bans payments to birth moms; in

surrogacy, payments to genetic and birth mothers are the business model. No vetting, no safeguards. It isn't adoption, it's legalized child trafficking."

5.2 Fertility Health and Research Support

Increase investment in fertility research, including preventive health care and early intervention strategies that may reduce infertility rates over time.

5.3 Support for Childless Individuals and Couples

Provide emotional, relational, and spiritual support for individuals and couples who face involuntary childlessness, including access to counselling and support groups.

5.4 Economic and Social Empowerment for Women

Address the root causes that drive women to participate in exploitative practices like surrogacy, including poverty, lack of education, and limited economic opportunity, through long-term social investment and empowerment initiatives.

Ethical family policy must begin with respect for all human persons, not the commodification of some for the benefit of others. It is only by rejecting surrogacy and investing in holistic, rights-based alternatives that Australia can live up to its human rights commitments and protect the most vulnerable.

6. Recommendations

Women's Forum Australia submits that the Australian Law Reform Commission must radically reconsider the ethical framing of its Review. Regulatory reform cannot resolve the inherent injustices of surrogacy. Accordingly, we recommend the following:

1. Prohibit All Forms of Surrogacy in Australia

Enact federal legislation that prohibits both commercial and so-called altruistic surrogacy, recognising that both forms involve the exploitation and commodification of women and children.

2. Enforce Bans on Overseas Surrogacy Arrangements

Enforce criminal laws that prohibit commercial surrogacy arrangements by Australian citizens and residents overseas, consistent with efforts to prevent child trafficking and sexual exploitation abroad.

3. Redirect Resources Toward Ethical Family Support

Provide support for families and individuals experiencing infertility through ethical alternatives, such as adoption reform, fertility health research, and psychosocial support, rather than surrogacy.

4. Launch a Public Education Campaign on the Harms of Surrogacy

Promote awareness of the psychological, emotional, and physical harms of surrogacy for both women and children through public education initiatives.

Conclusion

Surrogacy is not a solution to infertility or family formation. It is a practice that objectifies women, commodifies children, and violates basic human rights. That the ALRC Issues Paper presupposes its legitimacy is itself a troubling indicator of how deeply embedded adult desires at the expense of the vulnerable – in this case children and women – have become in policy discourse.

Women's Forum Australia urges the ALRC to resist these prevailing assumptions and instead centre the dignity, rights, and wellbeing of those most vulnerable in surrogacy arrangements – the women whose bodies are used, and the children who are bought and sold.

No regulatory reform can make surrogacy ethical. The only just path forward is the full legal prohibition of surrogacy in Australia, and an unequivocal stance against its practice both here and abroad, including deterrent measures that are actually enforced.

Law should have at its heart respect for the dignity of every human being. It should not be an instrument for legally exploiting women and children.