Australian Law Reform Commission

Review of Surrogacy Laws

Women's Bioethics Alliance

July 2025

Summary:

- International commercial surrogacy has been accessed in Australia with impunity for many years. It has been aided and abetted by Australian authorities, lawyers, fertility clinics and agencies, and practiced openly, despite being illegal in every State.
- The surrogacy market has proven lucrative for fertility professionals and lawyers who are well represented on the ALRC Committee.
- State legislation should uniformly outlaw the practice with enforceable bans.
- Commercial surrogacy is the sale of babies. Compensation for a mother's expenses, time, difficulties, and risks are only ancillary to the true aim of transferring legal parentage of the baby she gestates and delivers to the paying commissioning buyers/s.
- There is no way to ensure that mothers in international surrogacy arrangements are not coerced, enslaved, or mistreated.
- There is a fundamental deception created by the surrogacy industry that the "intended parents" are *the* parents of the child they purchase, with the pursuant argument that any denial of their desires represents a denial of the child's right to their "family." "Parent" is not a concept defined by law, but rather a natural reality that should be recognised in law.
- The practice of surrogacy is inconsistent with Australia's obligations under international law and conventions, with Australia's progress in gender equality and maternal-neonatal healthcare, and with Australian community expectations.
- Surrogacy intrinsically exploits and abuses the reproductive capacities of women, particularly impoverished and vulnerable women, and perpetuates systemic exploitation.
- Surrogacy pregnancies are risky and a danger to women's health.[1] Regardless of health or social conditions faced by intending parents, these risks to a woman's life and health are

[1] Klein, R. (2017), *Surrogacy: A Human Rights Violation.* Spinifex Press, Australia.

unjustified and an abuse of women's reproductive capacities. This is not addressed in the Discussion Paper.

- Surrogacy intrinsically violates the human rights of children born as a result and cruelly taken from their mothers at birth. Even puppies and kittens cannot be removed from their mothers before eight weeks under Australian state laws; it is considered animal cruelty, and penalties include fines or disqualification from owning animals.

- In many cases, surrogacy arrangements deliberately deny children a relationship with the mother who carried them for nine months. The Australian government has already committed to never again separating babies from their mothers in the National Apology For Forced Adoptions. With every surrogacy, this promise is broken.

- Most Western, Asian and Islamic countries have banned commercial surrogacy. The European Union has condemned it. Why would Australia, an otherwise progressive nation, seek to legalise and expand commercial surrogacy?

- The fundamental 'problem' addressed by this Review is the shortage of Australian women willing to be used as surrogates, and the dilemma of finding legal ways to separate children from their mothers.

- Legalising domestic commercial surrogacy will not decrease demand for international surrogacy. Rather it will increase demand for babies, leading to increased trafficking and exploitation of women both here and abroad. For example, Americans have access to commercial domestic surrogacy but many choose to buy babies overseas as they are much cheaper.[2] A large Ukrainian surrogacy agency openly offers to transfer the mother to the country of the commissioning parents at the time of delivery.[3]

- Commissioning 'parents' are choosing to break Australian laws and use the body of a woman with less resources in a country with fewer protections for women and children.

- Recognition of "parentage" of children born through international surrogacy arrangements must not be the priority when considering upholding of various human rights, because this is only the final step that legitimises the entire illegal and exploitative process.

- Increasingly, adults born through surrogacy arrangements and donor conception are speaking out about the deep harms caused by this industry. There is no human right to have or acquire a child via a third party.

Recommendations:

[2] Herweck, A., DeSantis, C., Shandley, L.M. et al. (2024). International gestational surrogacy in the United States, 2014-2020. *Fertility and Sterility* 121(4):622-630. https://doi.org/10.1016/j.fertnstert.2023.12.039
[3] Devillers, M.J. (2021). The Geography of Surrogacy. In Devillers, M. J. and Stoicea-Deram, A.L. (eds.), *Towards the Abolition of Surrogate Motherhood*, Spinifex Press, North Melbourne, 2021.

- The Australian Government re-enforce its rejection of commercial surrogacy, as have many countries including France, Italy, Germany, Spain, Switzerland, Sweden, Norway, Austria, Japan, China, and most Islamic countries.

- The Australian Government honour its commitments to international human rights instruments by preventing and punishing the sale of children and the reproductive exploitation of women.

- Australia continue to uphold the recommendation of the House of Representatives Standing Committee on Social Policy and Legal Affairs in 2016 that "the practice of commercial surrogacy remain illegal in Australia" and the Review's finding that even if commercial surrogacy was legal and regulated in Australia "the risk of exploitation of both surrogates and children remains significant."

- Laws across Australia be harmonised with new penalties introduced for violations of these laws by all third parties - lawyers, fertility clinics, businesses, immigration agents etc. - who are involved in the contracts and transactions. We recommend no penalties for the surrogate mother.

- A criminal offence of aiding and abetting international commercial surrogacy be introduced into the Federal Crimes Act, with similar offences created within State legislation in relation to domestic surrogacy.

- Amendments be made to the Legal Profession Act in all States and Territories such that lawyers who engage in practices that aid and abet unlawful surrogacy have committed acts of serious professional misconduct.

- Medical professionals involved in facilitating and obtaining financial benefits in the surrogacy process and who contribute to health risks to mother and baby[4] face disciplinary procedures and, if acting against the law, criminal penalties.

- The Australian Government enshrines in Family Law the reality that a woman who gives birth to a child is the child's mother. It is misogyny and a legal fiction to claim she is not the mother.

- Under no circumstances should surrogacy contracts be enforceable, and no pre-birth parentage orders should be granted. Australians should be warned before travelling overseas that visas will not be issued for any children acquired via surrogacy abroad.

- Australian birth certificates clearly state each child's genetic heritage and birth mother. The birth certificate is the primary legal document for the entirety of that child's life; it should not serve the interests of the intending parents. Children have a right to continuing connection to heritage language and culture, but this major plank of the modern Australian State is ignored in the case of children born via surrogacy and brought to Australia.

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[4] Fell, K. (2024). *A Comprehensive Report on the Risks of ART.* The Center for Bioethics and Culture Network. https://cbc-network.org/wp-content/uploads/2023/05/Comprehensive-Paper-on-ART-Final.pdf

- The Australian Government enforce current prohibitions on commercial surrogacy in order to reduce demand for surrogacy, in line with its international commitments and domestic strategies to ensure equality and dignity for women and the rights of children.

- Judicial assessments are a critical safety check and must remain as a protective function for children born under surrogacy arrangements. We note that Australian Courts never prosecute those who break the law, and always allow them to keep the babies bought from overseas. This gives us little confidence that any new laws would be enforced even by Australian police, immigration, and judges.

- Immigration and Border Force officials automatically refer to the Australian Federal Police any persons reasonably suspected of engaging in international commercial surrogacy. This must be made a criminal offence under Federal law and enforced.

- States establish a five-year limitation period during which third parties can be prosecuted for aiding or abetting illegal commercial surrogacy arrangements.

- Mothers or children who can show harm done to them by surrogacy arrangements have access to compensation with a limitation period extending to at least three years after age 18.

- Tracing laws be enacted to help children born from surrogacy arrangements locate their mothers.

Introduction

A Human Rights Approach to Surrogacy Law Reform in Australia

The Terms of Reference (TOR) for this Review ask the ALRC to review Australian surrogacy laws, policies, and practices and to recommend harmonised reforms that:

- Align with Australia's obligations under international law and conventions; and
- Protect and promote the human rights of children born through surrogacy, the women who carry them, and the intending parents, while recognising that the best interests of the child are paramount.

Our submission is premised on a human rights-based approach to surrogacy reform, based on community values and ethical obligations—not commercial interests. We expect the Federal Government to uphold international human rights, prevent human trafficking and modern slavery and place the best interests of children above all else. Current surrogacy practice in Australia fails on all counts.

Australian inquiries and reviews have consistently reached the same conclusion over several decades: that commercial surrogacy must remain illegal. This position has been reinforced by:

- The Joint Working Group of the Standing Committee of Attorneys-General, Australian Health Ministers' Conference, and Community and Disability Services Ministers' Conference (2009);
- The 2016 Parliamentary report by the Standing Committee on Social Policy and Legal Affairs; and
- The 2019 review of surrogacy laws in Western Australia.

Each of these was the result of a democratic process, led by elected representatives. In contrast, the current ALRC Committee is unelected and unrepresentative. Its composition raises serious concerns. The Advisory Committee includes individuals with direct financial interests in expanding the surrogacy and fertility industries - fertility specialists, lawyers, and surrogacy advocates. There are no experts in maternal health, neonatal development, relinquishment trauma, or the experiences of donor-conceived or adopted adults. No feminist critics are represented on the Committee to defend women's rights to bodily autonomy and protection from exploitation.

It is a disgrace that the Australian Federal Government, the courts, and law enforcement have routinely failed to uphold the current prohibitions. Australians who commission illegal international surrogacy arrangements have done so with impunity, including in egregious cases such as *Baby Gammy*, where the intending father had over 20 child sex offence convictions. Despite clear breaches of law, there were no consequences.

Additionally, some professionals have been operating in plain sight, apparently assisting commissioning individuals to break Australian laws.

Surrogacy contradicts International Human Rights Standards

As clearly stated in the TOR, reforms must be consistent with Australia's international legal obligations. Commercial surrogacy, particularly cross-border arrangements, cannot meet this standard. They:

- Exploit women, especially those who are poor, vulnerable, and without other options.
- Violate the rights of the child, including the right to be cared for by their parents and to know their biological identity.
- Reduce human life to a commodity, bought and sold through contracts, monetary exchange, and maternal separation.

The Review's claim that surrogacy should be facilitated simply because it is increasingly being used is deeply flawed. Increased demand does not justify legalisation. By that logic, human trafficking could be legitimised if there were sufficient demand. If 'desperate' people are allowed to buy babies, then why not buy them from financially desperate mothers and sell them to rich families as Indonesian traffickers were found to be doing?[5]

[5] Renaldi, E. (17 Jul 2025). Indonesian police bust baby-trafficking syndicate that allegedly sold at least 24 infants. *ABC News.*

Surrogacy is a market driven by supply and demand. The supply of women willing to carry babies for others has not kept pace with rising demand. Women almost universally do not want to do this. This is the real reason for this Review: to find ways to reduce “barriers” to surrogacy by expanding the supply of women and removing protections for the children born.

There is no human right to acquire a child. Australia’s obligation is to reduce demand for surrogacy, protect women from exploitation, and uphold children’s rights.

Systemic failures and abuses

Surrogacy arrangements, especially international arrangements, have been shown to be rife with abuse:

- Young, economically disadvantaged women are recruited and sometimes trafficked to be used as surrogates.
- Gametes and embryos are bought and sold.
- ART practices which facilitate surrogacy are often hidden, unregulated, and unethical.

This system persists because:

- Demand always exceeds supply;
- The ART industry and intermediaries stand to make significant profits;
- Surrogates are often recruited from the most desperate, least protected populations;
- The children involved are the least able to consent or defend their rights;
- The process relies on normalising the sale of babies and the use of women’s reproductive labour for others’ gain.

Upholding Australian and International Standards

Australia must maintain and enforce its current commitment[6] to protecting women and children by:

- Retaining and enforcing the criminal status of commercial surrogacy and international surrogacy arrangements;
- Imposing substantial penalties for third parties who aid and abet desperate people to breach these laws;
- Rejecting any reforms that normalise the commodification of children and the exploitation of women’s bodies.

Other nations including France, Germany, Sweden, Switzerland, Japan, China, and many Islamic countries have banned commercial surrogacy. Spain will no longer allow its embassies and consulates to register children born through foreign surrogacy arrangements after its

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https://www.abc.net.au/news/2025-07-17/24-babies-sold-police-uncover-indonesian-trafficking-ring/105541144

[6] https://www.surrogacy.gov.au/human-rights-and-surrogacy/why-australia-prohibits-commercial-surrogacy

Supreme Court ruled in December 2024 that surrogacy is “an attack on the moral integrity of the pregnant women” and treats children as “mere commodities.”[7] Italy has enacted a similar policy.[8]

The European Parliament has recognised exploitative surrogacy as a form of human trafficking, affirming that the human body must never be a source of financial gain.

Countries like Thailand, Nepal, and India, after witnessing widespread abuse, have banned international surrogacy to protect their citizens. Australia must do the same to ensure that vulnerable women overseas are not exploited by Australians seeking a child at any cost.

Question 2 What reform principles should guide this Inquiry?

> Commercial international surrogacy has been practiced by Australians with impunity for many years. It has been aided and abetted by Australian authorities, lawyers, fertility clinics and agencies and practiced openly, despite being illegal in every State.
>
> The fundamental ‘problem’ addressed by this Review is the shortage of Australian women willing to be used as surrogates, and the dilemma of finding legal ways to separate children from their mothers.

The proposed law reform is regressive.

Advocates for surrogacy law reform are lobbying for change on the grounds that dozens of “desperate” people break the law each year without facing prosecution or penalty. Their main argument is not necessarily that the law is unjust, but that it is routinely ignored. In essence, they seek to legalise a practice that violates children's and women’s rights because it is happening anyway.

However law reform must never be built on the systematic denial of children’s rights or the exploitation of women’s bodies. Legalising commercial or international surrogacy would do exactly that, enshrining into Australian law the commodification of children and the financial coercion and contractual control of women, transforming human life into a commercial transaction.

Violations of International Law

Australia is a signatory to several international human rights treaties, including the United Nations Convention on the Rights of the Child (CRC). Under Article 7, children have the right to be registered at birth, to a name, a nationality, and to know and be cared for by their natural parents. The term “Parents” does not refer to the wealthier party to a contract.

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[7] Louisa Gehvaert Associates (2 May 2025). Spain cracks down on International Surrogacy. https://louisaghevaertassociates.co.uk/spain-cracks-down-on-international-surrogacy/

[8] Davies, M. (16 Oct 2024). Italy bans couples from travelling abroad for surrogacy. *BBC*. https://www.bbc.com/news/articles/c62rmv63069o

Article 2 of the CRC also requires that States take all appropriate measures to prevent the sale or trafficking of children. Article 1 of the Optional Protocol on the Sale of Children requires governments to criminalise any transaction where a child is transferred to another party for remuneration or gain. Surrogacy, especially when commercialised or conducted transnationally, meets that definition.

However courts appear reluctant to penalise those involved, citing the best interests of the children born into these arrangements. This logic is deeply flawed. No other crime is excused on the basis of parental status. It appears there are no consequences for all who contribute to breaking Australia's laws for this purpose.

Adult entitlement before child rights.

Surrogacy advocates claim that children born through surrogacy are discriminated against due to lack of legal clarity. However we have seen no evidence of this discrimination, in schools or hospitals or other settings. The language of "children's rights" and "non-discrimination" is being co-opted to open the door to US-style commercial surrogacy in which children become commodities.

What is being pursued is legal cover for intended parents and profit for those facilitating the arrangements, not protection for the child. This framing deliberately downplays the exploitation of women, ignores the medical risks to surrogates (not even mentioned in the Discussion Paper), and glosses over the legal and psychological implications for the children. Meanwhile, lawyers, fertility specialists, and agencies will profit.

The Baby Market

This Review responds to the shortage of women willing to surrender their bodies and their babies domestically. It focuses on how to make it easier, legally and logistically, to remove children from the women who birthed them, across international borders.

The Questions for Discussion indicate that the Committee is considering:

- Expanding methods of coercing women into surrogacy, including commercial payment and binding contracts;
- Making parentage orders automatic and pre-birth, thereby erasing the birth mother before the child is even born;
- Reducing safeguards like judicial review, counselling, and screening.

This represents a move toward normalising the severance of the mother-child bond and institutionalising the idea that a baby can be created and sold under contract.

Protecting biological realities and bodily autonomy

Australian law must defend two fundamental biological truths:

1. The woman who gives birth to a baby is the baby's mother.
2. No financial transaction or contract should ever override a woman's bodily autonomy or the mother-child relationship.

The surrogacy industry, through organised and well-funded advocacy, has mounted a campaign to reverse this by using stories of hardship and legal confusion. However it ultimately seeks the legalisation of a profit-driven industry which trades in women's reproductive capacity and the sale of children.

A direct contradiction to Australia's anti-trafficking laws

Australia has taken significant steps to combat trafficking and modern slavery. Federal and State laws prohibit slavery, forced labour, deceptive recruitment, and the transnational movement of people for exploitative purposes. The Modern Slavery Act 2018 (Cth) and the National Action Plan to Combat Modern Slavery (2020–25) reflect Australia's commitment to ending these abuses.

In stark contradiction, proposed surrogacy reform would legalise and facilitate an industry that functions on exactly these forms of exploitation, particularly of women in vulnerable socio-economic conditions.

Global context: This is not progress

Most developed nations have banned commercial surrogacy—including France, Germany, Italy, Spain, Sweden, Norway, Austria, Switzerland, Japan, China, and the majority of Islamic nations, because of documented human rights abuses. These include exploitation of poor women, child trafficking, and legal uncertainty for children.

Why would Australia—known for its gender equality initiatives—even consider legalising such a regressive and dangerous practice? To do so would undermine decades of progress.

Risks to women and children

Calls to "pay the surrogate" because "everyone else is paid" reveal the transactional mindset behind this agenda. We believe no party - including lawyers, fertility specialists, doctors, or surrogates - should be paid to participate in the commodification of human life.

Australia's obligations under CEDAW require the Committee to consider harms done to women and girls from the practice of surrogacy. However there is no mention of this in the Questions and Discussion Paper. Surrogacy is an inherently high-risk process for women, requiring invasive procedures with no medical benefits to them. It strips women of the ability to breastfeed or bond with their newborns, deliberately undermining the mother-infant dyad, which Australian public health programs rightly promote.

Australian health and social services are developing best practice in fostering the mother-baby dyad and recognising the importance of early months for child development, including the National Perinatal Mental Health Initiative promoting early bonding through skin-to-skin contact, rooming-in, and early initiation of breastfeeding, the Baby Friendly Health Initiative[9] in which hospitals can be accredited to actively promote maternal-infant attachment (run by UNICEF and the Australian College of Midwives), the Aboriginal and Torres Strait Islander Maternal and Infant Health Services aiming to restore cultural birthing practices, provide community-led care, and strengthen family and kinship bonds from birth,[10] and state-based postnatal home visiting programs that support early attachment and promote breastfeeding.

We cannot justify encouraging surrogacy arrangements that deliberately sever these vital connections.

Enslavement by contract

Enforceable contracts and pre-birth parentage orders are being promoted as a way to provide "legal clarity" but what they really do is strip women of the right to change their minds. These contracts effectively enslave women to their reproductive role, in violation of their fundamental rights. Rather than clarity, this is coercion.

A painful history of child removal should not be repeated

There have been shameful periods throughout history when women were denied recognition as the legal mothers of their own children. In slavery, children born to enslaved women were considered property. During the Stolen Generations and Forced Adoptions in Australia, Indigenous and unwed mothers had their children taken away under the guise of "child welfare."

We now recognise those actions as inhumane. It will not be 'progress' to repeat those injustices.

A call for ethical law reform

Australia must continue to prohibit the payment of women to surrender their babies, both here and overseas. We need a uniform, national approach that prioritises the welfare of women and children over commercial interests. It is never in a child's best interest to be bought, sold, or severed from his or her mother at birth.

Legal contracts and pre-birth orders are not protections for the child. Rather, they are mechanisms for enforcing adult desires and safeguarding the industry that profits from them.

Human rights

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[9] Baby Friendly Health Initiative, by UNICEF and the Australian College of Midwives. https://bfhi.org.au/about/

[10] Aboriginal and Torres Strait Islander Maternal and Infant Health Services such as Birthing on Country, by Charles Darwin University and Molly Waraguga Institute for First Nations Birth Rights https://www.birthingoncountry.com/; Child and Maternal Health programs delivered by the National Aboriginal Community Controlled Health Organisation https://www.naccho.org.au/child-maternal-health/.

- The practice of surrogacy is inconsistent with Australia's obligations under international law and conventions, with Australia's progress in gender equality and maternal-neonatal healthcare, and with Australian community expectations.

Recommendations:

- The Australian Government honour its commitments to international human rights instruments by preventing and punishing the sale of children and the reproductive exploitation of women.

- The Australian Government enforce current prohibitions on commercial surrogacy in order to reduce demand for surrogacy, in line with its international commitments and domestic strategies to ensure equality and dignity for women and the rights of children.

Children's rights

- Surrogacy intrinsically violates the human rights of children born as a result, who are cruelly taken from their mothers at birth. Even puppies and kittens cannot be removed from their mothers before eight weeks under Australian State laws; it is considered animal cruelty, and penalties include fines or disqualification from owning animals.

- In many cases, surrogacy arrangements deliberately deny children a relationship with the mother who carried them for nine months. The Australian government has already committed to never again separating babies from their mothers in the National Apology For Forced Adoptions. And yet, with every surrogacy, this promise is broken.

Recommendations:

- Judicial assessments are a critical safety check and must remain as a protective function for children born under surrogacy arrangements. We note that Australian Courts never prosecute those who break the law and always allow them to keep the babies bought from overseas. This gives us little confidence that any new laws would be enforced even by Australian police, immigration, and judges.

- Tracing laws be enacted to help children born from surrogacy arrangements locate their mothers.

Children come into the world through the generative capacities of women's bodies. Therefore, protecting the rights and interests of women must come first because - only then can the rights and best interests of the child be genuinely upheld.

Surrogacy, by its very nature, violates children's rights. Lawyers, agents and clinicians achieve this by deliberately arranging the separation of a baby from their mother, whether by exploiting

financial vulnerability, appealing to a woman's compassion, enforcing a legal contract, or issuing parentage transfer orders. If we were truly putting children's rights first, surrogacy would have no place in law or practice.

Surrogacy violates the right of a child to know his or her mother by severing this relationship:

> *The connection between birth mother and the new parents is either non-existent from the day of birth, or, mostly, short-lived. The child(ren) only rarely will have a connection to the woman who grew them from her own flesh, bones and blood and retains some of her baby's cells for decades.*[11]

This practice also violates everything we know about best practice in childbirth and postnatal care. It denies the mother the opportunity to breastfeed and bond with the baby she carried, and denies the child the profound biological benefits of maternal contact. In animal research, maternal separation is routinely used to induce stress in newborns to study its harmful effects. We know the trauma caused by this separation, both for mothers and their young. Babies know only the woman who nurtured them for nine months, whose voice, language, heartbeat, extended family, and scent they have come to know.[12]

Surrogacy agencies, lawyers, and advocates should be held accountable for this. Some, like Sun Legal, boast about facilitating "countless" surrogacy cases, many involving Australians who broke surrogacy laws but who were able to secure parentage orders "without any issues." These same advocates argue that the law must change to accommodate children left without a legal parent to sign school or hospital documents. But it was the intended parents - and all who assisted them for financial gain - who created this situation. And now they demand the law be changed to legitimise what was being done all along.

Australia has already said "never again" to the forced separation of mothers and babies. In the National Apology to those affected by forced adoptions, the Government acknowledged the "lifelong legacy of pain and suffering," and the "persistent tension between loyalty to one family and yearning for another." It promised to remember these lessons. It promised to protect the fundamental rights of children including the right to know and be cared for by their own parents.

Under proposed changes to surrogacy law, we are asked to condone arrangements that cause harm to children. Discussion questions proposed in surrogacy counselling reflect scenarios potentially harmful to the intended child.

According to the Reproductive Technology Council, these discussions must include:

- Whether prenatal testing will be used, and what happens if a serious fetal defect is found;
- Payment and reimbursement of expenses for gamete donors;
- How and when the child will be separated from the birth mother;
- What happens if the child is born with a disability;

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[11] Klein, R. (2017), *Surrogacy: A Human Rights Violation.* Spinifex Press, Australia.
[12] Ibid.

- What if the intended parents separate or die before the birth?
- What will the child be told, when, and by whom?
- What contact will the child have with the birth parents and their families?
- What contact with the donor and their family?
- How will it affect the other children of the birth parents or intended parents?
- How will the birth mother's partner be impacted?
- And what happens if the birth parents change their mind?

Surrogates mothers' rights

- Surrogacy intrinsically exploits and abuses the reproductive capacities of women, particularly impoverished and vulnerable women, and perpetuates systemic exploitation.

Recommendation:

- The Australian Government enshrine in Family Law the reality that a woman who gives birth to a child is the child's mother. It is misogyny and a legal fiction to claim she is not the mother.

Surrogates Mothers' Rights Are Women's Rights

The term "surrogate" is a legal fiction created to facilitate the removal of a baby from the woman who birthed it. But women cannot be reduced to wombs-for-rent. Surrogacy is not a separate category of reproduction—it is women's reproductive labour being commodified, controlled, and sold. Surrogates mothers' rights are women's rights.

Australia has been a leader in advancing gender equality and women's safety, from the Sex Discrimination Act (1984) and the positive duty to prevent sexual harassment, to the National Plan to End Violence Against Women and Children (2022–2032). Internationally, we are party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Beijing Platform for Action, and the UN Sustainable Development Goals, especially SDG 5: Gender Equality.

It is therefore deeply regressive that the ALRC is considering expanding the surrogacy industry and decriminalising commercial or "compensated" surrogacy. Such reforms would violate multiple binding human rights obligations and dismantle long-fought protections for women.

Like Norway and Belgium, where surrogacy is prohibited and birth mothers are legally recognised, Australia must retain this foundational legal principle.

Surrogacy Violates International Human Rights Instruments

CEDAW Article 6 obliges States to suppress all forms of trafficking in women. Commercial surrogacy exploits the reproductive capacities of women, particularly poor women, as a market commodity. It is a form of reproductive trafficking.

CEDAW Article 11(1)(f) affirms women's right to health and safety in working conditions, including safeguarding reproductive function. Surrogacy arrangements expose women to increased risks, in particular preterm delivery, placental complications, postpartum haemorrhage, and cannot be considered safe or ethical work. CEDAW Article 12 protects women's health and reproductive autonomy. Surrogacy contracts dictating terms of abortion, labour, delivery, or pre-birth parentage orders override this autonomy, constituting reproductive coercion.

CEDAW Article 16 ensures equality in matters of family and motherhood. Any contract that strips a woman of her maternal rights contradicts this fundamental protection.

CEDAW General Recommendation No. 24 underscores that women must be free to make autonomous reproductive decisions and be protected from coercion. Surrogacy, especially in commercial or international arrangements, undermines this principle.

Beijing Platform for Action (1995), Section D calls for eliminating all forms of exploitation and coercion, including reproductive coercion. Surrogacy's financial and legal frameworks often pressure women into compliance.

UN SDG Target 5.1 aims to end discrimination against all women and girls. Surrogacy exploits gender and economic inequality, recruiting poor women to bear children for wealthier clients, often across borders.

UN SDG Target 5.2 targets the elimination of violence and trafficking of women. Surrogacy commodifies women's bodies and reproductive labour, a clear breach of this goal.

The European Union has condemned surrogacy in its Resolution of 17 December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter (2015/2229(INI)), Paragraph 115 of the resolution, under Rights of Women and Girls:

> *The European Parliament condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity; considers that the practice of surrogacy, which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, should be prohibited and treated as a matter of urgency in human rights instruments.*[13]

[13] European Union (24 Dec 2017). Resolution of 17 December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter (2015/2229(INI)), Paragraph 115 of the resolution. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52015IP0470&

The Real Motivation: Increased Supply

This review has one core driver: demand for women's reproductive labour far exceeds supply. Australian women overwhelmingly do not volunteer for surrogacy. Sam Everingham, board member of Surrogacy Australia, admits this:

> *"The idea that a woman will take on the potential risk of death and… willingly put her hand up and be a surrogate, I think is fanciful."*[14]

To bridge this gap, reforms will likely increase domestic payment or outsource risk to poor women overseas which will open up ways to coerce more women into entering into risky surrogate pregnancies and relinquishing their babies.

As the Indian journalist who exposed recent forced surrogacy cases observed:

> *"This is a racket that's evolved in the shadow-zones of modern life to cater to demand… The laws of the market dictate that supply will rise up to meet demand."*[15]

Global Evidence: Exploitation, Coercion, Abuse

The exploitation of women and babies in India's notorious surrogacy clinics led to a ban on commercial surrogacy in 2017. However, the abuse continues according to reports from India. Investigations in 2024 revealed baby farms where young girls were enslaved, repeatedly impregnated, and their babies sold.[16] These are not isolated incidents. They are the logical outcome of a system built on reproductive commodification. An undercover journalist in India reported this conversation:[17]

> *Divya: Will the surrogate ever refuse to give us the baby?*
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> *Doctor: We have a contract with her, and we immediately put the baby in the NICU, where she can't reach. She doesn't know who she gave birth to. Anyway, she just needs the money… She's like a bag in which your belongings are kept.*

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[14] McKenna, K. and Miles, J. (30 Apr 2025). Australian couple could face prosecution after using commercial surrogacy service to have baby abroad. *ABC News*. https://www.abc.net.au/news/2025-05-01/queensland-couple-commercial-surrogacy-court-application-baby/105227774

[15] Singh, P. (7 Feb 2024). Cops call it forced surrogacy. *Outlook*. https://www.outlookindia.com/national/cops-call-it-forced-surrogacy-news-298841

[16] https://www.outlookindia.com/national/cops-call-it-forced-surrogacy-news-298841

[17] Nagari, A. (27 Jul 2024). Ground Report: The dark side of surrogacy industry. Womb Traders Part 1. *India Today*. https://www.indiatoday.in/india/story/surrogacy-delhi-ncr-fertility-clinics-illegal-human-trafficking-hospitals-2572480-2024-07-27

Human trafficking in a clinic in Greece, a destination country recommended by [redacted], was shut down for human trafficking and mistreatment of dozens of women.[18] This same clinic was a sponsor of conferences [redacted].

The case of Baby Gammy shocked the nation - and with no convictions. But it was not an anomaly. These horrors are not fringe abuses; they are symptoms of an industry that treats babies as products and women as containers.

Medical Realities: Surrogacy Is Not Safe

Even among pre-selected healthy women, surrogacy pregnancies are far riskier than spontaneous pregnancies.

One large meta-analysis (2024) of over 28,000 surrogate pregnancies compared to 1,270,662 non–gestational carrier pregnancies found increased risks even when compared to other ART pregnancies.[19]

It is important to remember that women undertaking surrogacy arrangements are usually healthy and screened pre-pregnancy compared to spontaneous or other ART pregnancies. They are a preselected low-risk cohort. Additionally these women do not experience infertility and its associated risks and morbidities. However there are still increased odds of preterm delivery (nearly twice as likely), placental abnormalities, and postpartum haemorrhage (12.2% vs 4.1%, even in singleton pregnancies).[20]

Maternal mortality was no different between the two groups – this is striking, because of the much healthier cohort undergoing surrogate pregnancies. It certainly does not demonstrate that surrogate pregnancies are equally safe.

In a systematic review and meta-analysis of Gestational Carrier pregnancies (2024)[21] (n=28,300 GC pregnancies and 1,270,662 non-GC pregnancies), even among comparable artificial reproductive technology pregnancies, women were exposed to higher risks in surrogacy pregnancies.

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[18] Stott, F. (8 Sep 2023). Australian woman fears Greek surrogacy scandal jeopardises her dream of motherhood. *ABC News*. https://www.abc.net.au/news/2023-09-09/greek-surogacy-scandal-australian-intended-parent/102819796

[19] Matsuzaki S, Masjedi AD, Matsuzaki S, Anderson ZS, Erickson KV, Mandelbaum RS, Ouzounian JG, Paulson RJ, Matsuo K. Obstetric Characteristics and Outcomes of Gestational Carrier Pregnancies: A Systematic Review and Meta-Analysis. *JAMA Netw Open.* 2024 Jul 1;7(7):e2422634. doi:10.1001/jamanetworkopen.2024.22634

[20] Masjedi, A. D., Mandelbaum, R. S., Erickson, K. V., Anderson, Z. S., Matsuzaki, S., Ouzounian, J. G., Matsuo, K., & Paulson, R. J. (2025). National-level assessment of gestational carrier pregnancies in the United States. *Journal of Assisted Reproduction and Genetics*, *42*(1), 201–211. https://doi.org/10.1007/s10815-024-03320-5

[21] Matsuzaki, S., Masjedi, A. D., Matsuzaki, S., Anderson, Z. S., Erickson, K. V., Mandelbaum, R. S., Ouzounian, J. G., Paulson, R. J., & Matsuo, K. (2024). Obstetric Characteristics and Outcomes of Gestational Carrier Pregnancies: A Systematic Review and Meta-Analysis. *JAMA Network Open*, *7*(7), e2422634. https://doi.org/10.1001/jamanetworkopen.2024.22634

Women delivering babies commissioned by same-sex or single male IPs had significantly higher rates of adverse perinatal outcomes (25.6% vs. 9.9%) and lower gestational age (38.7 vs. 39.4 weeks), compared with pregnancies spontaneously conceived by the same women (n=895, data from a fertility centre).[22]

A recent study of surrogacy outcomes of pregnancies commissioned by Single and Coupled Intended Fathers (SCIFs) cited the above study and noted the increased maternal and fetal risks associated with ART, and warned neonatal ICUs to prepare for more men with surrogate mothers presenting for care. The authors mention that the SCIF population has described a perceived loss of control in the pregnancy and delivery process, and is susceptible to role confusion; however, despite all this, the conclusion is that "this population is successful at achieving a live birth when using egg donation and a gestational carrier."[23] In this industry, women are very much sidelined.

There is no human right to have or acquire a child via a third party

We affirm the statement by Stop Surrogacy Now:

> "Together we affirm the deep longing that many have to be parents. Yet, as with most desires, there must be limits. Human rights provide an important marker for identifying what those limits should be. We believe that surrogacy should be stopped because it is an abuse of women's and children's human rights."[24]

The IVF industry depends on desperation, and offers a very expensive form of hope:

> *Women who are in their 40s and have gone through IVF ten to fifteen times (and are deep in financial debt already) are not allowed to stop. Another woman will now 'gift' them an egg cell, and a second woman will carry 'her' baby (and the fee paying - as well as the anxiety - will continue). Their ultimate 'uselessness' as a 'proper' woman confirmed by their family as well as society at large, they must now welcome this arrangement, be thankful to the IVF clinic for their miracle work - and hide their pain. And of course then be the perfect and joyful mother to another woman's child - if there is one. Or repeat the process until a baby is born.*[25]

All adults have the same human rights. One is to marry and found a family. But there is no right to third party reproduction or to acquire a baby by any means. Without women's bodies, the industry of surrogacy would not be possible.

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[22] Pavlovic, Z., Hammer, K. C., Raff, M., Patel, P., Kunze, K. N., Kaplan, B., Coughlin, C., & Hirshfeld-Cytron, J. (2020). Comparison of perinatal outcomes between spontaneous vs. commissioned cycles in gestational carriers for single and same-sex male intended parents. *Journal of Assisted Reproduction and Genetics*, *37*(4), 953–962. https://doi.org/10.1007/s10815-020-01728-3

[23] Monseur B, Lee JA, Qiu M, Liang A, Copperman AB, Leondires M. Pathways to fatherhood: clinical experiences with assisted reproductive technology in single and coupled intended fathers. *Fertility Sterility Reports*. 2022 Aug 5;3(4):317-323. doi: 10.1016/j.xfre.2022.07.009. PMID: 36568926; PMCID: PMC9783155.

[24] https://cbc-network.org/stop-surrogacy-now/

[25] Klein, R. (2017). *Surrogacy: A Human Rights Violation.* Spinifex Press, Australia.

Feminist critics excluded

Instead of following international protections, the ALRC appears to be responding to the demands of the fertility industry, commissioning parents, and those with financial or ideological stakes in expanding surrogacy.

The Discussion Paper fails to mention the medical risks to women. Feminist voices are absent from the Committee. Those appointed represent legal, academic, and industry interests, not the women being asked to undergo risky pregnancies for others. This is not accidental. It makes clear that women's health and rights are no longer central to the conversation. The proposed reforms will primarily benefit the profitable industries making money from the surrogacy industry.

Question 3: What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements? How should these be addresse**d**?

- Commercial surrogacy is the sale of babies. Compensation for a mother's expenses, time, difficulties, and risks are only ancillary to the true aim of transferring legal parentage of the baby she gestates and delivers to the paying commissioning buyers/s.
- There is no way to ensure that mothers in international surrogacy arrangements are not coerced, enslaved, or mistreated.
- There is a fundamental deception created by the surrogacy industry that the "intended parents" are the parents of the child they purchase, with the pursuant argument that any denial of their desires represents a denial of the child's right to their "family." "Parent" is not a concept defined by law, but rather a natural reality that should be recognised by law.
- The practice of surrogacy is inconsistent with Australia's obligations under international law and conventions, with Australia's progress in gender equality and maternal-neonatal healthcare, and with Australian community expectations.
- Surrogacy intrinsically exploits and abuses the reproductive capacities of women, particularly impoverished and vulnerable women, and perpetuates systemic exploitation.
- Surrogacy pregnancies are risky and a danger to women's health. Regardless of health or social conditions faced by intending parents, these risks to a woman's life and health are unjustified and an abuse of women's reproductive capacities.
- Surrogacy intrinsically violates the human rights of children born as a result, who are cruelly taken from their mothers at birth. Even puppies and kittens cannot be removed from their mothers before eight weeks under Australian State laws; it is considered animal cruelty, and penalties include fines or disqualification from owning animals.

- In many cases, surrogacy arrangements deliberately deny children a relationship with the mother who carried them for nine months. The Australian government has already committed to never again separating babies from their mothers in the National Apology For Forced Adoptions. And yet, with every surrogacy, this promise is broken.

- Most Western, Asian and Islamic countries have banned commercial surrogacy. The European Union has condemned it. Why would Australia, an otherwise progressive nation, seek to legalise and expand commercial surrogacy?

- The fundamental 'problem' addressed by this Review is the shortage of Australian women willing to be used as surrogates, and the dilemma of finding legal ways to separate children from their mothers.

- Legalising domestic commercial surrogacy will not decrease demand for international surrogacy. Rather, it will increase demand for babies, leading to increased trafficking and exploitation of women both here and abroad. For example, Americans have access to commercial domestic surrogacy but many choose to buy babies overseas as they are much cheaper.

- Commissioning 'parents' are choosing to break Australian laws and use the body of a woman with less resources in a country with fewer protections for women and children.

- Recognition of "parentage" of children born through international surrogacy arrangements must not be the priority when considering upholding of various human rights, because this is only the final step that legitimises the entire illegal and exploitative process.

- Increasingly, adults born through surrogacy arrangements and donor conception are speaking out about the deep harms caused by this industry.

- There is no human right to have or acquire a child via a third party.

Stop Surrogacy Now explains:

> Surrogacy often depends on the exploitation of poorer women. In many cases, it is the poor who have to sell and the rich who can afford to buy. These unequal transactions result in consent that is under informed if not uninformed, low payment, coercion, poor health care, and severe risks to the short- and long-term health of women who carry surrogate pregnancies."[26]

Couples or individuals who travel abroad to buy a baby via surrogacy are intentionally putting that child in a precarious situation. It signals a disrespect for the law of their own country, a misunderstanding of the mother-child relationship, and a disregard for the child's safety in favour

[26] https://cbc-network.org/stop-surrogacy-now/

of their own desperation to purchase a child. Often such actions are rewarded by being granted parentage of the children because courts and governments have compassion for the child's situation and see no other option.[27]

But this is misguided. France, for example, refuses to recognise a legal parent-child relationship between children born abroad as the result of a surrogacy agreement, even though Californian law had defined the commissioning couple as the parents, because this law will deter French citizens from using women abroad to breed babies. The law, though it may seem harsh, functions to protect children and surrogate mothers.[28]

Ultimately, laws to prevent and deter surrogacy are laws that protect families, because surrogacy ruptures biological family units and disposes of those no longer useful in the transaction. From a feminist analysis of women's stories of their surrogacy experiences:

> *Surrogacy agencies and clinics love to display photographs of couples with babies born of surrogacy. Invariably, everybody is beaming with happiness so that we should all feel delighted for them too; after all, a new baby is cause for celebration.*
>
> *But in reality, these photos hide more than they reveal. Missing is the woman who carried and gave birth to the baby, the egg 'donor' who contributed half her genes, and perhaps even the sperm 'donor'.*
>
> *In addition, each individual involved in surrogacy is a member of family groups. They carry their own history, their kin and place, their memories and their secret hopes.*
>
> *The aspiring parents may indeed have been on a difficult journey: multiple IVF failures with its physical and psychological suffering for the women.*
>
> *Was it the nice surrogacy stories in glossy magazines that convinced them to continue their harrowing journeys of becoming parents? Had life without their 'own' children really become an impossibility to face?*
>
> *We wonder how the beaming woman in the photo, holding the baby, arrived at the decision that another woman should grow and hand over a child for her. And still more perplexing is the question of what the commissioning male (or the two intending 'fathers') know of the profundity of pregnancy and birth. How do men expect a woman to give up a baby she grew in her own body?*
>
> *As for the baby, who can know what she has heard, felt, tasted and smelled before being given away to these new people? Despite her circumstances, she wants the breast milk and the warm*

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[27] Labassee v. France, June 2014. https://hudoc.echr.coe.int/eng#{%22sort%22:[%22kpdate%20Descending%22],%22itemid%22:[%22002-9780%22]}

[28] European Court of Human Rights (June 2014). Mennesson v. France - 65192/11 Judgment 26.6.2014 [Section V]. https://hudoc.echr.coe.int/fre#{%22sort%22:[%22kpdate%20Descending%22],%22itemid%22:[%22001-145389%22]}

skin of her mother, like all babies do. Will anybody tell her how she was made and transferred at birth, and at what cost?[29]

The Australian Government appears unwilling to enforce current laws against commercial surrogacy, even when exploitation of vulnerable women is extremely likely. As reported recently, a Queensland couple agreed to pay a foreign company $140,000 to “make all necessary arrangements” to purchase a baby. The couple brought this baby home to Australia and filed an application to be recognised as the legal parents. The mother spoke no English, lives in “country G”, and was not present during proceedings. Clearly the law has been broken. However the Australian legal firm representing the couple says it had handled many similar cases and had been obtaining parentage orders “without any issues.”

Those who advocate for compensated, commercialised surrogacy similar to California are inviting Australian women into the Wild West of the multi-billion-dollar surrogacy industry. Right now, Californian authorities are investigating a wealthy couple who have bought 21 children, aged 2 months to 13 years, most between 1 and 3, via surrogacy - through their own surrogacy agency. No charges have been filed, although police are investigating concerns that the couple may have misled women in their dealings, and there is potential for a felony conviction of child endangerment. This “family” only came to the attention of police when one of the infants was brought to hospital with head injuries, raising suspicions of abuse. It is possible that no laws pertaining to surrogacy have been broken in California.[30]

For women, many horrors await (via Reddit) in these carefully regulated, contracted, compensated legal surrogacy arrangements:

Coercion and regret:

[redacted]

Control over women’s bodies:

[redacted]

[29] Lahl, J., Tankard Reist, M. and Klein, R. (2019). *Broken Bonds: Surrogate Mothers Speak Out,* Spinifex Press.
[30] Ding, J. and Golden, H. (19 July 2025). Two surrogates speak out about California couple under investigation. *ABC News.* https://abcnews.go.com/US/wireStory/surrogates-speak-california-couple-investigation-123885006
[31] [redacted]

[redacted]

Commissions and the fake facade of surrogacy:

[redacted]

Invasion of privacy:

[redacted]

The public face of surrogacy:

[redacted]

The social expectations of women to be a “good person”:

[redacted]

[redacted]

[redacted]

The mother looks for the baby:

[redacted]

Trauma for mothers and babies:

[redacted]

Jealousy toward the birthing mother:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Recommendation:

- The Australian Government honour its commitments to international human rights instruments by preventing and punishing the sale of children and the reproductive exploitation of women.

Question 4: What information about the circumstances of their birth do you think children born through surrogacy should have access to? How should this be provided or facilitated?

Recommendation:

- Australian birth certificates to clearly state each child's genetic heritage and birth mother. The birth certificate is the primary legal document for the entirety of that child's life; it should not serve the interests of the intending parents. Children have a right to continuing connection to heritage language and culture, but this major plank of the modern Australian State is ignored in the case of children born via surrogacy and brought to Australia.

Children should have access to all information about the circumstances of their birth. Secrecy and deception are extremely harmful to children, with consequent psychological and mental health harms. This question illustrates perfectly that the rights and wellbeing of the child are a very low priority for the surrogacy industry.

The Draft Convention on the Rights of the Child (1985) emphasises that children have a fundamental right to their identity including name, nationality, family relationships, and wherever possible, to know and be cared for by their parents. The Working Group on the CRC explained that this concept refers to 'true and genuine personal, legal and family identity'.[42]

Children's birth certificates should accurately reflect all information on the circumstances of their birth, including gestational, genetic, and intended parents. Children have a right to contact with

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41 [redacted]

42 Report of the Working Group on a Draft Convention on the Rights of the Child (1985) E/CN.4/1985/6 4 Annex 11 1, at para 35 as cited in D Hodgson, 'The international legal protection of the child's rights to a legal identity and the problem of statelessness' (1993) *International Journal of Law, Policy and the Family* 255, at 265. Cited in Wade K. The regulation of surrogacy: a children's rights perspective. *Child Fam Law* Q. 2017;29(2):113-131. PMID: 28781570; PMCID: PMC5540169. https://pmc.ncbi.nlm.nih.gov/articles/PMC5540169/#S7

their birth mother, siblings, and genetic donors if the child wishes. Many parents using reproductive technologies choose to conceal details of their child's genetic parentage or birth circumstances, therefore we also recommend that children's right to know their origins cannot be dependent on adults to disclose.

More broadly, Australia's laws that allow deception on birth certificates are completely out of step with modern DNA technology. Every child now has the opportunity to take a commercial DNA test and quickly discover their genetic origins.

Frequently, children born of ART are denied details of potential health problems that their genetic parents experience later in life, and thus denied the chance to monitor their health, for example in the case of breast cancer. To provide full disclosure, egg and sperm sellers would need to continually update agencies of any developments in their own health.

Anonymity for sperm and egg sellers, and surrogate women, should not be allowed. Everyone has the right to know their genetic heritage and the circumstances of their conception and birth. They will find out anyway, thanks to commercial online DNA tests.

Question 8: Are there any requirements for a valid surrogacy agreement you think should be introduced, removed, or changed?

Surrogacy agreements should not be valid. The use of the word 'agreement' rather than 'contract' in this question reveals the bias of the Committee.

Question 9: Should surrogacy agreements be enforceable?

Recommendation:

- Under no circumstances should surrogacy contracts be enforceable, and no pre-birth parentage orders should be granted. Australians should be warned before travelling overseas that visas will not be issued for any children acquired via surrogacy abroad.

Under no circumstances should surrogacy agreements be enforceable. As per the APH recommendations in 2016, surrogacy agreements should never be binding. If there is confusion about who is the mother of the baby, ask the most vulnerable member of the group – the baby. The baby always knows who her mother is.

Women and children are commodified by surrogacy contracts, because contractual arrangements are then prioritised over the rights and welfare of women and children.

Contracts do not necessarily reflect free and informed consent, and furthermore, free and informed consent do not necessarily reflect what is good for all parties involved.

Question 15: How could the process for reimbursing surrogates for reasonable expenses be improved?

We do not agree with the premise of this question because we do not support any kind of surrogacy. Payment does not make the risks and ethical objections less so. To quote critic Phylis Chesler:

> *The women who say: 'Oh, we're happy surrogates'? Like the so-called sex worker, she has to dissociate from what's happening to her body. This is not mentally healthy. If it was such a wonderful thing to do, then why don't the wealthy do it for the poor, who are as infertile? As for the woman who thinks this is the most productive or significant or powerful thing she can do – this tells me everything I need to know about her alternatives, which are zilch.*[43]

Question 16: Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy?

- Commercial surrogacy is the sale of babies. Compensation for a mother's expenses, time, difficulties, and risks are only ancillary to the true aim of transferring legal parentage of the baby she gestates and delivers to the paying commissioning buyers/s.
- Commercial international surrogacy has been practiced by Australians with impunity for many years. It has been aided and abetted by Australian authorities, lawyers, fertility clinics and agencies and practiced openly, despite being illegal in every State.
- There is no way to ensure that mothers in international surrogacy arrangements are not coerced, enslaved, or mistreated.
- The surrogacy market has proven lucrative for fertility professionals and lawyers who are well represented on the ALRC Committee.
- State legislation should uniformly outlaw the practice with enforceable bans.
- Surrogacy intrinsically exploits and abuses the reproductive capacities of women, particularly impoverished and vulnerable women, and perpetuates systemic exploitation.
- Most Western, Asian and Islamic countries have banned commercial surrogacy. The European Union has condemned it. Why would Australia, an otherwise progressive nation, seek to legalise and expand commercial surrogacy?
- Legalising domestic commercial surrogacy will not decrease demand for international surrogacy. Rather, it will increase demand for babies, leading to increased trafficking and

[43] Phylis Chesler, cited by Kleeman, J. (1 Oct 2022). 'We are expected to be OK with not having children': how gay parenthood through surrogacy became a battleground. *The Guardian*. https://www.theguardian.com/lifeandstyle/2022/oct/01/how-gay-parenthood-through-surrogacy-became-a-battleground

exploitation of women both here and abroad. For example, Americans have access to commercial domestic surrogacy but many choose to buy babies overseas as they are much cheaper.

Recommendations:

- The Australia Government re-enforce its rejection of commercial surrogacy, as have many countries including France, Italy, Germany, Spain, Switzerland, Sweden, Norway, Austria, Japan, China, and most Islamic countries.

- The Australian Government honour its commitments to international human rights instruments by preventing and punishing the sale of children and the reproductive exploitation of women.

- The Australian Government continues to uphold the recommendation of the House of Representatives Standing Committee on Social Policy and Legal Affairs in 2016 that “the practice of commercial surrogacy remain illegal in Australia” and the Review’s finding that even if commercial surrogacy was legal and regulated in Australia “the risk of exploitation of both surrogates and children remains significant.”

- Laws across Australia be harmonised with new penalties introduced for violations of these laws by all third parties - lawyers, fertility clinics, businesses, immigration agents etc. - who are involved in the contracts and transactions. We recommend no penalties for the surrogate mother.

Question 19: How could the process for intended parents to become the legal parents of children born through surrogacy be improved?

- There is a fundamental deception created by the surrogacy industry that the “intended parents” are the parents of the child they purchase, with the pursuant argument that any denial of their demands represents a denial of the child’s right to their “family.” “Parent” is not a concept defined by law, but rather a natural reality that should be recognised by law.

- In many cases, surrogacy arrangements deliberately deny children a relationship with the mother who carried them for nine months. The Australian government has already committed to never again separating babies from their mothers in the National Apology For Forced Adoptions. And yet, with every surrogacy, this promise is broken.

- Recognition of “parentage” of children born through international surrogacy arrangements must not be the priority when considering the upholding of various human rights, because this is only the final step that legitimises the whole illegal and exploitative process.

In the Discussion Paper, “parentage” presumes that whoever bought the child and has the child in their possession is the “parent” and this presumption allows all sorts of human rights violations.

Courts have traditionally provided a protective function for children born under commercial and contractual arrangements, providing a judicial assessment of each case. Children should not be denied this protection. Under no circumstances should this happen before birth, or be automatic, or be granted in cases where required process has not been followed.

Surrogacy advocates have noted that obtaining parentage orders, requiring criminal history and child protection histories (as in Victoria) is “cumbersome, costly and slow” according to clients and the owners of IVF clinics.[44] These are not good enough reasons to abandon critical safety checks for the children involved, nor to abandon efforts to ensure women are not exploited or abused.

Question 24: Should the law have a role in discouraging or prohibiting certain forms of surrogacy?

Recommendations:

- Laws across Australia be harmonised with new penalties introduced for violations of these laws by all third parties - lawyers, fertility clinics, businesses, immigration agents etc. - who are involved in the contracts and transactions. We recommend no penalties for the surrogate mother.

- A criminal offence of aiding and abetting international commercial surrogacy be introduced into the Federal Crimes Act, with similar offences created within State legislation in relation to domestic surrogacy.

- Amendments be made to the Legal Profession Act in all States and Territories such that lawyers who engage in practices that aid and abet unlawful surrogacy have committed acts of serious professional misconduct.

- The Australian Government enforce current prohibitions on commercial surrogacy in order to reduce demand for surrogacy, in line with its international commitments and domestic strategies to ensure equality and dignity for women and the rights of children.

- Immigration and Border Force officials automatically refer to the Australian Federal Police any persons reasonably suspected of engaging in international commercial surrogacy. This must be made a criminal offence under Federal law and enforced.

- States establish a five-year limitation period during which third parties can be prosecuted for aiding or abetting illegal commercial surrogacy arrangements.

- Mothers or children who can show harm done to them by surrogacy arrangements have access to compensation with a limitation period extending to at least three years after age 18.

[44] https://pageprovan.com.au/an-overview-of-surrogacy-legal-dramas/

Criminalisation has not failed in Australia - it has simply never been enforced. As Australia takes stronger action against gender-based violence, modern slavery, and human trafficking, we see that meaningful progress is possible when there is political will and public backing. The failure to curb surrogacy stems not from flaws in the law itself, but from a determined network of individuals who have consistently disregarded it and enabled its violation.

It is deeply concerning that intended parents consistently avoid imprisonment after engaging in illegal surrogacy arrangements, with the justification often being the welfare of the child. In our view, this leniency has only encouraged more Australians to pursue such arrangements, potentially with backing from advocacy groups. Yet in many other situations, parents are imprisoned for criminal offences despite having children, and parenthood does not exempt them from legal consequences. To our knowledge, no Australian has ever been jailed for illegal surrogacy, nor have there been domestic prosecutions resulting even in non-custodial sentences.

Iceland has a pragmatic and woman-centred approach to surrogacy. In the case of Valdís Fjölnisdóttir and Others v. Iceland (2021)[45] an Icelandic couple travelled to California and bought a baby from donor gametes and a surrogate. Upon their return to Iceland, they applied for the baby's registration in the national register. This request was denied, because Icelandic legal provisions on a child's parentage were not applicable and in fact the baby was considered to be a foreign national and an unaccompanied minor. Under Icelandic law, the woman who gave birth to the child was always considered its mother, regardless of conception. The District Court stated that recognising the couple as the parents would create a legal loophole around the ban on surrogacy, which was considered a legitimate reason to refuse to recognise parentage established in another State.

A Brisbane couple were investigated and not charged after paying $140,000 to an overseas surrogacy agency.[46] Surrogacy Australia board member and activist Sam Everingham says Australia's laws "aren't workable" because "we don't have a good enough surrogacy system here in Australia" – what he means is that Australians are not supposed to buy babies but nobody has the heart to punish them for doing it. Australians are not forced to "resort to international surrogacy." Australia has laws that recognise the great injustice of paying vulnerable women to undertake the risks in surrogacy, to give up the child they give birth to, and for the children to be severed from their birth mothers.

The lawyer involved in the Brisbane couple's case was suspected of breaching her obligations to provide competent legal services, according to Justice Carew – applying for a parentage order after the intended parents had broken the law – however, as already mentioned, the legal

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45 https://hudoc.echr.coe.int/fre#{%22sort%22:[%22kpdate%20Descending%22],%22itemid%22:[%22001-209992%22]}

46 https://www.abc.net.au/news/2025-06-21/australian-couple-not-charged-after-alleged-commercial-surrogacy/105440884

firm Sun Legal says they have handled “countless similar” cases “without any issues.”[47] It is therefore routine for the law to be broken in Australia. This does not indicate that the law should be abandoned – it requires that the law be enforced.

We recommend new penalties at Federal and State levels to deter lawyers, fertility clinics, agencies, immigration and other third parties from aiding and abetting Australians to undertake commercial surrogacy contracts and agreements.

Question 27: Are there any important issues with regulating surrogacy that we have not identified in the Issues Paper? Do you have any other ideas for reforming how surrogacy is regulated?

- Surrogacy pregnancies are risky and a danger to women’s health. Regardless of health or social conditions faced by intending parents, these risks to a woman’s life and health are unjustified and an abuse of women’s reproductive capacities.

This Issues Paper completely fails to engage with the issue of serious short and long term health risks to women and children involved in surrogacy. In fact the paper barely mentions women at all.

It fails to mention and consider the very serious harms experienced by children throughout their lives after being separated from their mothers at birth.

It does not offer any explanation or suggestions to tackle the current widespread violations of Australia’s current laws.

Conclusion

This Review must not be used as a vehicle to deregulate surrogacy or to prioritise the interests of those who profit from it. Instead, it must recognise that the best interests of the child cannot be served in a system that begins with maternal separation and ends in commercial gain. And it must re-establish the rule of law in Australia as it pertains to surrogacy.

We urge the Australian Government to:

- Reject the normalisation of surrogacy as a legitimate path to parenthood;
- Maintain and enforce existing prohibitions;
- Create and enforce criminal offenses for those who aid and abet illegal surrogacy arrangements;
- Commit to real protections for women and children, not the interests of the surrogacy industry.

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47 https://www.abc.net.au/news/2025-05-01/queensland-couple-commercial-surrogacy-court-application-baby/105227774

There is no ethical justification for turning the reproductive capacities of women into commodities, nor for treating children as products to be acquired.

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Appendix: Further Reading

To obtain a deeper understanding of women's experiences of surrogacy, we recommend the Committee consider *Broken Bonds: Surrogate Mothers Speak Out* (edited by Jennifer Lahl, Melinda Tankard Reist and Renate Klein, published by Spinifex Press, 2019), a compilation that shares the personal accounts of surrogate women from the USA, UK, Canada, Australia, India, Austria and Russia.

For detailed analysis of surrogacy's violations of human rights, and its detrimental impacts on women and children, *The Abolition of Surrogate Motherhood* (eds. Marie-Josephe Devillers and Ana-Luana Stoicea-Deram, Spinifex Press 2021) is a diverse collection of feminist perspectives on surrogacy and lays out the Feminist Convention for the Abolition of Surrogacy, developed by the International Coalition for the Abolition of Surrogate Motherhood.

Renate Klein, in *Surrogacy: A Human Rights Violation* (Spinifex Press, 2017), details objections to surrogacy by examining the short- and long-term harms done to women, egg providers, and the female partner in a heterosexual commissioning couple. She explores the rights of children, the practice of forced adoption, and forms of resistance to surrogacy.

Kajsa Ekis Ekman, in *Being and Being Bought: Prostitution, Surrogacy and the Split Self* (Spinifex Press, 2014), argues that women must split the Self from the body to sell themselves in both prostitution and surrogacy, shattering the great wall of lies about these two institutions.

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