



Anglican Church Diocese of Sydney

Social Issues Committee

18 December 2025

Australian Law Reform Commission
PO Box 209
Flinders Lane VIC 8009.

Submitted via email to: surrogacy@alrc.gov.au;

Submission: Review of Surrogacy Laws Discussion Paper 89

Who are we?

1. This submission is on behalf of Anglican Church Diocese of Sydney (the Diocese). The Diocese is one of twenty three dioceses that comprise the Anglican Church of Australia. The Diocese is an unincorporated voluntary association comprising about 260 parishes and various bodies constituted or incorporated under the *Anglican Church of Australia Trust Property Act 1917* (NSW) and the *Anglican Church of Australia (Bodies Corporate) Act 1938* (NSW). These bodies include 40 Anglican schools, Anglicare Sydney (a large social welfare institution, which includes, among its services, foster care and adoption), Moore Theological College, Anglican Youthworks and Anglican Aid (which focusses on overseas aid and development). The Diocese, through its various component bodies and through its congregational life, makes a rich contribution to the social capital of our State, through programs involving social welfare, education, health and aged care, overseas aid, youth work and not least the proclamation of the Christian message of hope for all people.
2. We welcome the opportunity to make this submission and we give consent for this submission to be published. Our contact details are as follows.

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3. This submission is prepared by the Social Issues Committee of the Anglican Church of the Diocese of Sydney, and endorsed by the Archbishop of Sydney.

Misalignment Between the ALRC’s Discussion Paper and the Terms of Reference

4. We remain extremely concerned that—just as with the ALRC’s Issues Paper No 52 of June 2025—the ALRC’s Discussion Paper No 89 does not accurately report or reflect the Terms of Reference set out for it by Mark Dreyfus KC MP, the Attorney General at the time of the reference.
5. In particular, we remind ALRC Commissioners that in his Terms of Reference, the Attorney General asked the ALRC to consider “*how to reduce barriers to domestic altruistic surrogacy arrangements in Australia, including by ensuring surrogates are adequately reimbursed for legal, medical and other expenses incurred as a consequence of the surrogacy*”.¹
6. However, when the ALRC’s Discussion Paper summarises its Terms of Reference, it simply says it has been asked to report on “*how to reduce barriers to accessing domestic surrogacy and issues*” (para. 4). That is, it omits the limiting direction to focus on **altruistic** surrogacy.

The ALRC’s Reframing of Altruistic vs Commercial Surrogacy

7. The ALRC appears to justify its omission of the Terms of Reference’s express focus on **altruistic** surrogacy by attempting to erase any meaningful distinction between altruistic and commercial categories. In doing so, it relies on a conceptual reframing that collapses the legally operative boundary between arrangements permitted under Australian law and those expressly prohibited as involving profit or reward. This conflation represents a significant and unwarranted reframing of the current legal landscape.
8. The Discussion Paper itself acknowledges that Australian surrogacy laws currently operate on a clear, foundational distinction: arrangements that are not for “*profit or reward*” (altruistic surrogacy) are lawful, while arrangements involving “*profit or reward*” (commercial surrogacy) are prohibited, often attracting criminal sanctions. This distinction is not merely descriptive but forms the backbone of Australian regulatory policy aimed at preventing exploitation (para. 19-20). The ALRC accepts this in principle but quickly moves to dismantle it, without adequate justification.
9. The ALRC attempts to remove this distinction by asserting that the altruistic–commercial binary is “*problematic*” and a “*fiction of law*” (para. 33). A single journal article published more than a decade ago is given in support of this claim. Notably, the Discussion Paper acknowledges receiving many submissions that expressed profound ethical concerns about the practice of surrogacy (cf., p. 6). Yet, it sidesteps these perspectives entirely when rejecting the altruistic–commercial framework.
10. In disregarding these submissions, the ALRC’s Discussion Paper presents an unbalanced analysis. It neither demonstrates that the existing distinction is unworkable nor provides empirical evidence that abandoning it would better promote the welfare of children or protect surrogates from exploitation—objectives that the current legislation explicitly

¹ <https://www.alrc.gov.au/inquiry/review-of-surrogacy-laws/terms-of-reference/>. Emphasis added

seeks to serve and which the Terms of Reference direct the ALRC to prioritise.

11. Contrary to the ALRC's suggestion, the legal distinction between altruistic and commercial surrogacy is not based on an assumption that motivations fall into neat or "*mutually exclusive*" categories (para. 33). The law instead recognises that altruistic surrogacy involves a surrogate who willingly and graciously bears physical and psychological hardships associated with pregnancy and childbirth, **without expectation of financial reward or compensation**, seeking only reimbursement for reasonable and directly related expenses.
12. By contrast, commercial surrogacy necessarily **involves financial compensation for a surrogate's time, effort, labour or inconvenience beyond the reimbursement of actual costs**, thereby transforming the surrogate's role into a market-based service. Australian parliaments have consistently rejected this model because it introduces commercial norms and incentives into an arrangement where the risks of coercion, exploitation, and commodification are particularly acute.
13. The ALRC would effectively abolish this long-standing and purposeful distinction:
 - a. **In principle**, by calling the altruistic-commercial categories "*unhelpful*" and proposing to abandon them altogether (para. 33).
 - b. **In practice**, by proposing forms of compensation that plainly exceed reimbursement. For example:
 - i. Proposal 25 broadly expands "reasonable costs" so that no surrogate is any way "*financially disadvantaged as a direct result of their role as a surrogate*" (para. 160). This introduces commercial compensation for some losses not considered "reasonable costs" in the context of altruistic surrogacy (which, by definition, willingly undertakes to graciously bear some level of personal loss for the sake of others).
 - ii. Proposal 26, introduces discretionary payments for a surrogate's "*time, effort, inconvenience and unique contribution to the surrogacy arrangement*" (p. 51). In the commercial world, this same language is used to remunerate a worker for their efforts. Furthermore, these payments are expressly framed as a form of "*respect for the surrogate within a highly monetised system*" (para. 165) and to "*dignify the surrogate's role*" (para. 168). Proposal 26 is entirely consistent with commercial surrogacy and so wholly inconsistent with Australia's existing legislation.
14. In substance, these proposals amount to the legalisation of commercial surrogacy under another name. The ALRC's approach therefore represents a profound reversal of Australia's legislative position, undertaken without parliamentary direction and in clear tension with the Attorney-General's Terms of Reference.

The ALRC's Failure to Uphold the Human Rights Priorities Mandated by the Terms of Reference

15. At the time of the original reference to the ALRC, Mr Dreyfus also
 - a. highlighted that the review must "*protect and promote the human rights*" of children and surrogates, and not just intending parents,

- b. underlined that “*the best interests of children are paramount*”, and
 - c. indicated attention was needed to “*the risks commercial surrogacy can pose to vulnerable women and children*”.
16. We believe the ALRC has failed to respect the instructions, priorities and concerns that the Attorney General at the time had underlined and foregrounded. (We especially do not consider that permitting what is in clear effect commercial surrogacy in Australia, nor aiding commercial surrogacy overseas will uphold these priorities indicated by Mr Dreyfus in his reference.) This is troubling to our Committee, since it portends final recommendations that may deliberately ignore or minimise the framework and ‘guard rails’ set for it by the highest legal officer of our nation, the Australian Attorney General.
17. For this reason, we reiterate our conviction that there are concerns of principle throughout the paper and process.

Our Ethical Framework

18. Having outlined our concerns with the Discussion Paper’s framing, we now turn to the ethical principles that underpin our position.
19. Legislative approaches to topics as intimate as the bearing of children cannot be considered outside the ethical implications of the actions involved. Furthermore, all submissions that address the ethical implications of surrogacy will be grounded in the authors' particular worldview.
20. We approach this subject in the context of the following Christian and biblical understanding of family and parenthood, a view which is still widely held in our community. As Christians, we believe that every human life is ultimately a gift bestowed by God as the wise and sovereign creator and sustainer of all things. All humans are created in the image of God and each has an inherent dignity and natural interests, from conception. This sanctity of life, as we often term it, should never be disregarded or diminished.
21. We believe marriage (lifelong commitment by solemn public promises between a man and woman) is the ideal and intended foundation for a family, whereby through the act of sexual intercourse, the child is conceived by a mother and begotten by a father, creating continuity between biological and social roles. While the vicissitudes of life can prevent this ideal from being realised, we nonetheless believe this should be the aim in the creation of new families.
22. We also believe that parenthood is a blessing, not a right, and that children are not commodities to be commissioned at will. We believe that the privileges and responsibilities of parenthood extend beyond the provision of gametes and/or gestation to the ongoing nurture of offspring.
23. Further, we believe that every child has a natural and self-evident interest in being raised, wherever possible, by his or her own biological parents, preferably in an intact relationship. Both mother and father play a unique role in the life of children.

Ethical Concerns Relating to Surrogacy Practices for Children

24. Our ethical framework leads us to concur with international human rights instruments and this inquiry's Terms of Reference, that the welfare of the child should be paramount in any and all surrogacy arrangements. We are concerned that the trajectory of the ALRC's Discussion Paper effectively reverses this order of priority and strenuously object to surrogacy arrangements that prioritise the preferences of commissioning parents thereby promoting the model of children as commodity.
25. We are certainly aware of the great pain experienced by those who suffer from infertility and long for a child of their own. We deeply sympathise with their plight and, in our churches, regularly minister to women and men experiencing this kind of profound grief.
26. However, we do not believe that a 'right' to have a child exists, and can see no grounds by which such a right would be established. Certainly no such right has been identified by the ALRC in its discussion of international human rights' instruments. In this respect, we refer you to our previous Submission to the ALRC in response to Issues Paper No 52, which is dated 11 July 2025, especially paragraphs 32-49.
27. Rather than a right to be demanded, parenthood is a privilege and responsibility that may come to some individuals, but not to all, who would use the ordinary means of procreation, namely, sexual intercourse between a man and woman.
28. We therefore do not accept the premise that any existing means to obtain offspring should be made available to any individual suffering from infertility or some other unwillingness or inability to enter into ordinary human processes of procreation. In fact, there are already many children in our society in need of nurture and parental care, which can be given through other means, such as adoption or fostering, that can be pursued in an ethically appropriate way.
29. Our view of the value of the human embryo also leads us to support, wherever possible, the transfer of all embryos created through Artificial Reproductive Technology (ART) into a uterus. Once a child is conceived, the child's life should be preserved regardless of any change of preferences by the adults involved.
30. Furthermore, given that the distress of ART offspring who do not know their biological origins and family lineage is well understood, we consider it essential that all children be able to know about their biological parents to the maximum degree possible. As such, our laws should not permit surrogacy where ambiguity of origins would be increased by design or clear effect.

Ethical Concerns Relating to Surrogacy Practices for Women

31. In regard to the welfare of mothers, we have some concerns about all forms of surrogacy, since it divides motherhood into two or even three parts: genetic, gestational and intended. A surrogate mother is invited to carry a baby in her womb for nine months and then (usually) encouraged to limit or even sever any emotional connection with that child. The failure by many advocates of surrogacy to recognise fully the importance of pre-natal attachment of gestational mother and unborn child suggests a desire to minimise the importance of attachment, separation and loss for the baby and his or her gestational mother.

32. With respect to the risks of female exploitation in surrogacy practices, it is crucial to recognise that there can be pressures (including the potential for coercion towards surrogacy) even in altruistic arrangements, not least in familial settings. Even where motivated by a self-sacrificial desire to give the gift of life, a surrogate may be forced to minimise or suppress her own maternal desire to raise the children born of her own womb.
33. However, our gravest concerns regarding the exploitation of women are reserved for commercial surrogacy. This practice inevitably allows commercial norms and market value into the realm of the child-parent relationships. This can result in formal conditions or informal pressure being placed upon the surrogate mother (for example, her diet, work, exercise habits, housing and medical care), especially where she is being financially compensated for her time, efforts and inconvenience.
34. Moreover, because commercial surrogacy (in either name or effect) introduces the motivation of financial benefit into the consideration of surrogates, the risk to women who come from a background of considerable need (even within Australia) is significantly heightened.
35. In relation to international surrogacy arrangements, it is evident that the potential for exploitation of women is high, even if the commissioning parents undertake the process with good intentions. Such arrangements are often conducted through for-profit third parties operating in jurisdictions where regulation and legal oversight is weak.
36. Commercial surrogacy—whether in name or effect—should not be introduced into Australia. The Australian legal framework must strengthen, not weaken, discouragements towards citizens accessing arrangements (domestically or internationally) that so clearly heighten the risk of vulnerable women being exploited for profit.

Consultation Period and Scope of Response

37. We note that the proposals and questions in the ALRC's Discussion Paper are numerous, significant in scope, and exceed its Terms of Reference. In our view, a five-week period between its release and the submission deadline is inadequate in providing opportunity for sufficient community engagement.
38. Given this short time frame and the fact that our previous submission on the topic expresses our views with sufficient clarity, we do not intend to offer specific responses to the proposals and questions in the Discussion Paper (beyond those we have already addressed).

Conclusion

39. In summary, our previous submission and our discussion above has argued that:
 - a. In all arguments about surrogacy, the rights of the child must remain paramount;
 - b. A child has a natural interest in knowing and being raised, wherever possible, by his or her own biological parents, preferably within an intact family relationship;
 - c. The rights of surrogates and potential surrogates are important;

- d. There is no “right to a child”, nor any “right to become a parent”, certainly not outside the normal process of procreation (preferably within the context of marriage);
 - e. Surrogacy should not be expanded into commercial or compensated categories within Australia nor be encouraged beyond Australia’s shores.
40. We particularly reiterate that we do not wish to see any diminishment in the distinctive meaning, or the conflation of the practice of altruistic and commercial surrogacy; nor any introduction of commercial surrogacy within Australia; nor any decrease in the legal or practical discouragement of Australians entering into commercial surrogacy arrangements overseas.
41. We also assert that should commercial surrogacy be introduced into Australia (either in name or effect), our existing concessive support for surrogacy on an altruistic basis and in very limited circumstances would likely become unsustainable.
42. We thank the Australian Law Reform Commission for the chance to make this submission. We would welcome the opportunity to further engage in person, should that be helpful. I can be contacted at [REDACTED]

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