AUSTRALIAN
CATHOLIC BISHOPS
CONFERENCE

General Secretariat

Bishops Commission for Life, Family and Public Engagement

18 December 2025

The Hon Justice Mordecai Bromberg
President
Australian Law Reform Commission

Associate Professor Ronli Sifris
Assistant Commissioner
Australian Law Reform Commission

surrogacy@alrc.gov.au

Dear Justice Bromberg and Associate Professor Sifris

**Surrogacy Discussion Paper**

This submission from the Australian Catholic Bishops Conference is made to contribute to the Review of Surrogacy Laws (the Review). This submission can be made public.

The Australian Catholic Bishops Conference (the Conference) is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

The Bishops Commission for Life, Family and Public Engagement (the Commission) is one of several commissions established by the Conference to address important issues both within the Church and in the broader Australian community. The Commission has responsibility for commenting on the regulation of surrogacy.

One in five Australians identify as Catholic. The Catholic Church and its agencies contribute in numerous ways across the spectrum of Australian society. As an integral part of its core mission, the Church seeks to assist people to experience the fullness of life. It is concerned with all that impacts on human dignity and wellbeing for the common good.

I would be happy to answer any questions the Law Reform Commission may have regarding this submission. I can be contacted via Branka van der Linden, Senior Public Policy Adviser at the Conference on [redacted] or policy@catholic.org.au.

Yours sincerely

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## Introduction

This submission responds to the Australian Law Reform Commission's November 2025 Discussion Paper and builds on our earlier submission to the Surrogacy Inquiry, in which we outlined our fundamental concerns about surrogacy as an unethical practice that breaches the human rights of children and vulnerable women. In addressing several of the proposals in the Discussion Paper, we do so from the position that we fundamentally disagree with both the direction and substance of the proposed framework. Nothing in the following analysis should be interpreted as endorsement or acceptance of the model being advanced.

The framework fails to give effect to the most critical elements of the Terms of Reference, namely that any reforms must comply with Australia's international human rights obligations and must protect and promote the rights of children born through surrogacy, recognising that **the child's best interests are paramount**. Despite this clear directive, the Discussion Paper proceeds from the assumption that surrogacy is an inherently desirable practice and that legal, economic, and social barriers should therefore be removed. It does so without demonstrating how this approach safeguards, prioritises, or even meaningfully considers the rights of the children and their mothers, who are the most vulnerable parties in these arrangements.

In relation to the Discussion Paper, we wish to express concerns in relation to five key areas.

## 1. A supported domestic surrogacy process

The framework proposed by the ALRC represents a radical shift in Australia's approach to surrogacy. It proposes moving the law away from its current protective foundations and towards a system that would facilitate, normalise, and ultimately entrench surrogacy as an accepted reproductive market. Despite asserting that the best interests of the child are paramount, the ALRC adopts a regulatory model that prioritises administrative efficiency and adult access over the rights and welfare of the most vulnerable parties: children and their mothers.

The framework proposes replacing current prohibitions in criminal law with an administrative process that paves the way for surrogacy as a regulated practice in Australia. It proposes "a supported domestic surrogacy process" that facilitates the formation of "compliant surrogacy agreements" between surrogate mothers and intending parents before a pregnancy takes place (Proposal 22), with approval required by a licensed Surrogacy Support Organisation ("SSO") (Proposal 4). It recommends that surrogacy agreements that meet the legislative requirements should be "enforceable" (Proposal 24). Upon the birth of the child in such arrangements, the intending parents automatically become the legal parents (Proposal 30).

The proposal to transfer legal parentage automatically at birth under compliant surrogacy agreements is a radical departure from the foundational legal principle that the woman who gives birth is the child's legal mother. This shift replaces a model of parenthood based on biological and relational reality with one based on a contract, where agreements made

before conception are treated as more important than the actual circumstances of birth and family connection.[1] Such a framework reduces pregnancy to a service and the child as the object of a pre-birth agreement.

The model assumes that an administrative body will be able to detect coercion, subtle exploitation, undisclosed payments, or power imbalances. In practice, regulators and administrative bodies lack the investigatory powers and day-to-day visibility to identify these risks. Surrogacy arrangements often involve private negotiations, informal transfers of money, and socio-economic vulnerabilities that are not captured in counselling sessions or documentation reviews. The ALRC provides no evidence that administrative oversight can reliably detect or prevent these harms yet relies on this assumption to justify significantly expanding surrogacy access.

In addition, the ALRC framework proposes streamlined pathways for recognising overseas surrogacy arrangements (Proposal 39), including those undertaken in jurisdictions with weak protections for women and children. Once a child is brought to Australia, the system would treat the birth as a pre-determined outcome requiring legal recognition, regardless of the commercial, coercive, or exploitative conditions under which the child was procured. This approach compromises Australia's obligations under the UN Convention on the Rights of the Child[2] (the UN Convention) and risks making Australia complicit in global reproductive markets.

If the government were to adopt such a framework, it would serve to legitimise a system that is fundamentally incompatible with the best interests of these children and with Australia's human rights obligations.

## 2. Removal of criminal penalties (Proposal 8)

The Discussion Paper proposes removing criminal penalties and instead replacing them with a civil penalty regime.

Criminal prohibitions serve not only as a deterrent but also as a clear statement of society's judgment about practices that risk exploitation, coercion, and the commodification of children. Although existing criminal sanctions have never been enforced, this does not justify replacing them with civil penalties, which are inherently less serious and less likely to be pursued. Retaining criminal offences signals that such conduct is fundamentally incompatible with the dignity and rights of women and children and must not be normalised or treated as a mere regulatory matter. The fact that existing offences have been under enforced is not an argument for their abolition.

[1] Britta van Beers, Laura Bosch, "A Revolution by Stealth: A Legal-Ethical Analysis of the Rise of Pre-Conception Authorisation of Surrogacy Agreements", The New Bioethics, Vol. 26 No. 4, 351-371.
[2] UN Convention on the Rights of the Chil. Article 3: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

## 3. Surrogate's right to bodily autonomy and integrity (Proposal 23)

Although the ALRC proposals state that a surrogate should retain full bodily autonomy and integrity under this model, the experience from comparable regulatory systems shows that such protections are largely symbolic once surrogacy operates within a contractual and payment-based framework.[3] The reality is that surrogates operate within a contractual framework, often with ongoing or promised payments and strong expectations from intended parents. Courts and regulators tend to give considerable weight to the pre-conception agreement and the common intention of the parties, particularly once the arrangement has been authorised, which places further pressure on the surrogate to adhere to what was agreed before pregnancy. In most cases, the surrogate is also in a socially and economically weaker position, making it difficult to resist pressure from commissioning parents, agencies or professionals. While she may legally retain the right to decide about abortion, medical treatment or the mode of birth, in practice she is likely to face strong and sometimes overwhelming pressure to comply with the wishes of those who are paying for and expecting the child.

In situations where adults have invested financially and emotionally in obtaining a child, significant pressure can be placed on the surrogate whenever the pregnancy or child does not meet their expectations[4], and there are documented cases of children abandoned overseas, left stateless, or surrendered when disability or relationship breakdown occurs[5]. In the most extreme and tragic cases, children acquired through surrogacy have been subjected to severe abuse, exploitation, and trafficking[6]. These harms do not stem from gaps in regulation but from the nature of surrogacy itself, which turns children into objects to be acquired and treats women as tools for reproduction.

## 4. Reimbursement for surrogates and reimbursement for hardship, at the surrogate's election (Proposals 25 and 26)

The proposals to expand payments to surrogates substantially increase the risk that surrogacy will be undertaken for profit rather than for genuinely altruistic reasons. Allowing a broad range of reimbursable expenses, monthly allowances, hardship payments, and compensation for pain or discomfort creates predictable and recurring financial benefits tied to pregnancy, and can function as incentives to participate in surrogacy. Although the ALRC states that commercial surrogacy will remain prohibited, expanding reimbursable categories and empowering a regulator to set further financial entitlements blurs the line between true cost-recovery and remuneration. These mechanisms introduce financial inducement into surrogacy arrangements and heighten the risk that economically vulnerable women may participate due to financial pressure. This directly challenges the

[3] Britta van Beers, Laura Bosch, "A Revolution by Stealth: A Legal-Ethical Analysis of the Rise of Pre-Conception Authorisation of Surrogacy Agreements", The New Bioethics, Vol. 26 No. 4, 351-371.
[4] https://theconversation.com/baby-gammy-case-reveals-murky-side-of-commercial-surrogacy-30081
[5] Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Human Rights Council, Thirty-seventh session 26 February – 23 March 2018 accessed here: https://docs.un.org/en/A/HRC/58/52/Add.1
[6] https://www.theguardian.com/world/2014/aug/14/police-hunt-japanese-man-suspected-human-trafficker-bangkok

claim that Australia will maintain a non-commercial regime and substantially increases the risk that surrogacy will operate as a market transaction involving the sale and transfer of children.

Experience in both domestic and international contexts demonstrates that it is overwhelmingly women in financially constrained or otherwise vulnerable circumstances who are drawn into surrogacy arrangements. More affluent or highly educated women rarely assume the significant physical, psychological, and long-term health risks of pregnancy on behalf of others. By contrast, women facing economic insecurity may feel compelled to undertake surrogacy as a means of financial relief, even when they would not otherwise choose to expose themselves to such risks. Expanding reimbursement schemes and introducing hardship payments are therefore likely to intensify this inequity by creating financial inducements that disproportionately influence more vulnerable women. This dynamic raises serious concerns about exploitation, coercion and abuse, and is inconsistent with Australia's obligations to protect women from practices that take advantage of economic vulnerability.

Public funding through Medicare rebates should not be extended to surrogacy-related assessments, treatments, or counselling, as doing so would require taxpayers to underwrite a practice that raises significant human rights concerns, risks commodifying children, and disproportionately exposes vulnerable women to physical and emotional harm.

## 5. Children's rights

The discussion regarding "Children's Rights" in the Discussion Paper on pages 10-11 is inadequate and does not meet the standard required under Article 3 of the UN Convention or the Inquiry's own Terms of Reference. It treats children's rights as secondary to adult expectations and administrative convenience.

Although the Discussion Paper lists several rights contained in the UN Convention, it does not adequately explain how the ALRC's proposed framework would avoid breaching those rights. Its suggestion that barriers to recognising intended parents as legal parents may violate children's rights reverses the Convention's logic, treating safeguards such as judicial oversight as 'obstacles' rather than essential protections. Its claims that administrative delays in citizenship or documentation constitute rights violations are unsubstantiated and misconstrue the nature of Convention's obligations.

Instead of a rigorous human-rights analysis, the Commission provides a brief reference to public opinion and generalisations about assisted reproductive technology in an attempt to normalise surrogacy and justify its adult-centred framework. Public support for surrogacy is irrelevant when considering the legality or ethics of practices that breach human rights, such as predetermining a child's parentage by contract, or administrative processes that facilitate the deliberate creation and then separation of a child from its birth mother. By reframing its mandate as improving laws "for everyone involved," the Discussion Paper positions children's rights as secondary rather than as the primary constraint on legal reform, as required by the Terms of Reference.

**Note of concern**

A final note we wish to make is to raise a concern regarding the composition of the Advisory Committee supporting this Inquiry. Several members on the Advisory Committee appear to represent organisations or professional interests that stand to benefit from expanded access to surrogacy or the liberalisation of existing laws and regulatory processes, creating a reasonable perception of conflict of interest in the context of recommending legislative change. Equally troubling is the absence of voices representing children born through surrogacy, women who have been harmed by surrogacy arrangements, and stakeholders who oppose surrogacy on ethical or human-rights grounds. This lack of balance risks limiting the breadth and depth of analysis required to fully assess the implications of surrogacy and to ensure that the best interests of the child remain the paramount consideration.