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Review of Surrogacy Laws
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Submitted online: https://www.alrc.gov.au/inquiry/review-of-surrogacy-laws/make-a-submission/

19 December 2025

Submission on Review of Surrogacy Laws: Discussion Paper

Feminist Legal Clinic Inc. is a community legal service based in Sydney that works to advance the human rights of women and girls.

We refer to our attendance at the round table consultation on Thursday 18 December and to our previous submission to this inquiry dated 11 June 2025. Other than receiving two mentions in footnotes, our concerns do not appear to have influenced those preparing the Discussion Paper, which seems intent on removing the existing barriers to commercial surrogacy rather than banning surrogacy altogether, as we advocate.

This is not surprising considering the composition of the expert panel and the background of the Assistant Commissioner tasked with overseeing this review of surrogacy. In this regard we refer to our correspondence to the Attorney General of 11 November 2025 in which we document that all the panel members listed have previously participated in and/or promoted the surrogacy industry (see details here) and cannot be regarded as capable of providing an impartial opinion on these matters.

The Hon Justice Mordecai Bromberg, as President of the ALRC, advised us at the round table consultation that he took full responsibility for these appointments. Justice Bromberg also challenged us to find a way to advance an abolitionist stance while addressing the Terms of Reference (TOR). Our response to the TOR follows.

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.

This question is akin to asking how to reduce barriers to the use of indentured labour, including by ensuring that individuals have adequate food, lodging and training. To answer the question is to dignify a practice that is in clear breach of fundamental human rights. The fact that the odd individual may be perceived to have flourished in indentured servitude does not redeem the practice.

How surrogacy arrangements made outside of Australia should be addressed by Australian law.

We understand it is illegal for Australians, or at least residents of NSW, QLD, and ACT, to seek and engage commercial surrogates outside Australia. Indeed, a number of the preliminary submissions appear to be from those who have entered into these unlawful arrangements. However, to our knowledge there has been a complete failure to prosecute these offences, and Australian courts instead appear to rubber stamp such arrangements. The relevant authorities should be upholding the law and prosecuting individuals who engage in this illegal activity – both the commissioning parents and even more importantly the services that facilitate surrogacy arrangements. It will not take long to nip this activity in the bud if prosecutions are conscientiously pursued.

Babies born in surrogacy should be raised, where possible, by their birth mothers, who should in turn be provided with generous financial and social support. A community education campaign should also be launched to undo the damage done by unchecked promotion of surrogacy in the popular press.

What is the appropriate recognition of legal parentage in Australia for children born of surrogacy overseas, and how may citizenship, visa and passport requirements for children born of surrogacy overseas be aligned?

Official documents should reflect accurate parentage details rather than perpetuate a legal fiction. Individuals purchasing a child should not be recorded as the child's parents. The mother who gave birth to the child should be recorded. If a baby is being trafficked into Australia without its mother, this needs to be apparent on their documents so the authorities can step in and investigate. History has demonstrated that the action of customs in stopping Truong and Newton[1] at the airport was not unreasonable discrimination but appropriate intervention by the authorities. Sadly, our laws are currently working to protect perpetrators rather than the vulnerable.

The information that should be available to children born from surrogacy arrangements, including what information should be included on a child's birth certificate in order to meet Australia's human rights obligations under the Convention on the Rights of the Child.

Accurate information, and specifically the details of the mother who gave birth, should be included on all birth certificates and be readily accessible. Children are entitled to the truth but in practice a child's access to information is constrained by the adults who control his or her life. The law should not be used as a tool to further

[1]https://www.abc.net.au/news/2013-07-10/gorman-second-thoughts/4809582

conceal the truth and facilitate human rights abuses. Those who are engaging in the illegal trafficking of a child should not be recognised as parents. The interests of selfish, entitled individuals should not be protected above the safety and well-being of mothers and their children.

I also attach to this letter our answers to the multitude of questions posed by the ALRC in its Discussion Paper.

As posed by Feminist Legal Clinic and others at the round table meeting, we have some questions of our own including:

- Why does the ALRC Discussion Paper effectively propose a move to commercial or compensated surrogacy when this was not part of the original Terms of Reference?

- How does the ALRC reconcile its apparent support for commercial surrogacy with the clear prohibition on sale of children under Articles 1, 2, 35 and 36 of the Convention on the Rights of the Child?

- Why does the ALRC contemplate fundamental human rights being trumped by contractual arrangements? Surely the role of the law should be to guard against exploitation rather than provide a tool for the coercive control of vulnerable women?

- What provision does the ALRC recommend that the Australian Government make to provide for the foreseeable cost of future compensation payments to the traumatised victims of surrogacy?

- With the sale and purchase of children clearly constituting a bigger ethical issue than same sex marriage, shouldn't there at least be a proposal to hold a plebiscite before considering any loosening of the laws in this area?

We are happy to expand on any point if required.

[redacted]

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Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.

Review of Surrogacy Laws
Questions in the Issues Paper

This document extracts the **27** questions contained in the Review of Surrogacy Laws Issues Paper released by the Australian Law Reform Commission ('ALRC').

Anyone is welcome to use this document when preparing a submission. You may wish to insert your responses to the questions here and submit it to the ALRC. It is not necessary to address all of the questions — you can answer as many or as few as you wish.

Read the Issues Paper

Make a submission

Insights from people with personal experience of surrogacy

Question 1 If you or someone close to you has had personal experience of surrogacy, please describe:

- What parts of your experience were positive?
- What parts of your experience were negative?
- What could be improved and how?

In your response, please let us know:

a. how you were involved in the process (for example, if you were a surrogate, intended parent, or child born through surrogacy);

b. if the process took place in Australia or overseas;

c. if the process took place overseas, the country in which the surrogacy arrangement took place and what was attractive about that country; and

d. if you think you faced barriers because of certain personal characteristics (for example, if you were in a same-sex relationship or from a culturally or linguistically diverse background).

You might also want to consider the issues discussed below in your response.

Response:

I have not had personal experience of surrogacy, but I have listened to, and read of, the experiences of those who have. I have also had the experience of giving birth four times and I have a very deep understanding of the extreme cruelty involved in removing a newborn infant from its mother. This is an understanding that is clearly not shared by any of the individuals and groups advocating in favour of surrogacy.

Of course, throughout the ages there have always been mothers willing to subject not only themselves but also their offspring to cruelty in their desperation to win male approval. You only need to study the phenomenon of foot binding or female genital mutilation for evidence of this. However, a willingness to subject themselves and their offspring to harm is clearly pathological and should not be regarded as a credible argument in favour of such treatment. There are also individuals who not only consent, but seek, to have healthy limbs amputated. A demonstrated predilection for self-harm should disqualify their submissions from being given any weight. They should be referred for counselling.

Reform principles

Question 2 What reform principles should guide this Inquiry?

Response:

Australia should be guided by its international human rights obligations that prohibit the sale of children. There is a clear prohibition on the sale of children under Articles 1, 2, 35 and 36 of the Convention on the Rights of the Child. We should do everything possible to eliminate the inhumane and exploitative practice of surrogacy

Human rights

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

Response:

Women and children are not commodities to be traded in financial, or even ostensibly altruistic, arrangements. They are not property to be given away or sold. Indeed, more must be done to support mothers in their crucial safeguarding role. Males are overwhelmingly the perpetrators of domestic and sexual violence and mothers must be educated and empowered to keep children safe from the current epidemic levels of child abuse. Children separated from their natural mothers are at heightened risk of child sexual abuse.[2]

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?

Response:

Children are entitled to know the truth about their origins, like everyone else. When they ask, the information should be forthcoming and not withheld by adults acting in their own interests. It is disturbing that a child may be exposed to highly sexualised content through social media and even in schools before they even have an interest in such things, but may not be able to get a simple answer to the question: 'Who is my mother?'

Insights about the key issues and potential reform options

Barriers to domestic surrogacy

Question 5 What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome?

You might want to consider the experiences of any groups who may face greater barriers to accessing domestic surrogacy than others, such as LGBTIQA+ people, people who are financially disadvantaged, or people from culturally and linguistically diverse backgrounds.

Response:

Any barriers should be maintained and increased. Humans are not 'entitled' to be parents, and the idea of taking someone else's infant should be abhorrent. Those who contemplate such arrangements are demonstrating a clear inability to prioritise the best interests of the child, which should automatically disqualify them.

[2] https://cspm.csyw.qld.gov.au/practice-kits/child-sexual-abuse/overview/the-importance-of-understanding-and-responding-to

Eligibility requirements for surrogacy

Question 6 Should there be eligibility requirements for surrogacy? If so, what should those requirements be?

Response:

No one should be eligible. It is like asking if there should be eligibility requirements for owning a slave. Anyone who would 'qualify' as morally and personally 'suitable' would not have any desire to be a slave owner, so the question is self-defeating.

Question 7 Are there any eligibility requirements which should be introduced, changed, or removed?

Response:

As above.

Surrogacy agreements — validity and enforceability

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

Response:

There should not be any such thing as a valid surrogacy agreement.

Question 9 Should surrogacy agreements be enforceable? You might want to consider:

a. if all parts of the agreement should be enforceable;

b. who should be able to enforce the agreement; and

c. how agreements could be enforced.

Response:

A surrogacy agreement should result in the prosecution of those commissioning it and drafting its terms. It should be regarded as an illegal contract, like a contract for the sale of someone's vital organs.

Process requirements for surrogacy

Question 10 What process requirements should be in place for surrogacy arrangements? You might want to consider:

a. if counselling should also be available after the child's birth;

b. what should happen if legal advice and counselling are not provided before entering a surrogacy agreement; and

c. if parentage applications should require proof of legal advice and/or counselling.

Response:

No amount of counselling or legal advice is going to correct the harm done by the unconscionable trafficking in human life that is at the core of surrogacy arrangements.

Professional services, including legal and counselling services

Question 11 What are the gaps in professional services for surrogacy in Australia? You might want to consider:

a. if surrogacy agencies should operate in Australia; and

b. the availability, accessibility, and subject matter to be covered in legal advice and counselling sessions.

Response:

Existing surrogacy agencies should be prosecuted for promoting and deriving commercial gain from an illegal activity.

Question 12 How should professional services operate in Australia? You might want to consider:

a. what their role should be;

b. if they should be for-profit or not-for-profit, or how they should be funded;

c. if different types of services should operate together or separately, for example, whether counselling services should be independent or integrated within agencies or fertility clinics; and

d. how they could best meet the diverse needs and experiences of people involved in a surrogacy arrangement.

Response:

As above.

Limits on advertising

Question 13 How should surrogacy advertising be regulated? You might want to consider:

a. if advertising should be allowed;

b. who should be allowed to advertise;

c. what advertising content should be allowed; and

d. where advertising should be allowed, for example via newspapers, social media, or by establishing a surrogacy register.

Response:

All media outlets that carry advertising or other promotional material in relation to surrogacy should also be prosecuted.

Access to Medicare and parental leave

Question 14 What entitlements, if any, should be available to surrogates and intended parents? You might want to consider:

a. Medicare rebates for fertility treatments;

b. access by surrogates to paid or unpaid parental leave, including through enterprise agreement terms; and

c. if it is desirable to make surrogacy arrangements generally more affordable, and how this could be achieved.

Response:

For mothers who have already entered surrogacy agreements, I would provide an amnesty from any prosecution in exchange for details of the individuals who commissioned the pregnancy and the agencies involved in facilitating the arrangement. The government should also offer adequate payment and support to enable these mothers to retain care of the baby and raise the child themselves.

Reimbursing and compensating surrogates

Question 15 How could the process for reimbursing surrogates for reasonable expenses be improved? You might want to consider:

a. what expenses should be reimbursable;

b. how payment should be calculated;

c. if there should be limits on any amounts;

d. the process for reimbursement (for example, whether money should be kept in trust, whether there should be a requirement to produce receipts, etc); and

e. any jurisdictions (either within Australia or overseas) that have processes for reimbursement worth learning from.

Response:

These women are victims of an unconscionable trade and should be released from all contractual obligations, reimbursed their expenses, compensated and freed from the threat of prosecution if they agree not to engage in it any further. The government should recover the costs of this exercise from the various professional services responsible for facilitating surrogacy arrangements. They should be prosecuted and their activities formally terminated.

Question 16 Do you support a) *compensated* surrogacy and/or b) '*commercial*' surrogacy? You might want to consider whether you agree with how we have described compensated and 'commercial' surrogacy.

Response:

If individuals are drawing a salary from the trade in babies, it is a commercial activity regardless of whether they are ostensibly set up as a not-for-profit enterprise or have a standard business structure. All surrogacy arrangements should be abolished rather than providing further loopholes for unscrupulous operators.

Question 17 If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented? You might want to consider:

a. how compensation should be calculated;

b. if there should be a limit on the amount of compensation;

c. who should set the amount of compensation;

d. the process for compensation (for example, whether it should be paid in monthly instalments, whether the money should be kept in trust etc); and

e. any jurisdictions (either within Australia or overseas) that have processes for compensation worth learning from.

Response:

The fact that commercial surrogacy is even being contemplated in this Discussion Paper when it did not form part of the Terms of Reference indicates that this Inquiry process has been corrupted by those with a vested interest in seeing the surrogacy industry expand further.

Legal parentage of children born through surrogacy

Question 18 What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

Response:

The main problem is that it involves using the legal system to facilitate an unconscionable lie. 'Legal parentage' should reflect biological reality, not a contractual arrangement. The Australian Government has already apologised to those removed from their mothers by forced adoption, why is it even contemplating creating yet another generation of individuals traumatised in this manner?

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

a. timing (for example, if the process happens before or after the birth of the child);

b. who makes the decision (for example, if it is an administrative or judicial decision);

c. if recognition should be automatic;

d. if the process should be different depending on the circumstances (for example, based on whether the surrogate has a genetic link to the child, the type of payment they received, and whether the surrogacy arrangement was in Australia or overseas);

e. whether intended mothers are or should be treated differently to intended fathers in legal parentage determinations;

f. whether the granting of legal parentage should depend on compliance with process requirements;

g. the importance of prioritising the best interests of the child; and

h. whether we can learn from the processes of any other countries.

Response:

It should not be improved; it must be prevented. These questions demonstrate a lack of impartiality on the part of the ALRC. If the best interests of children were being prioritised, these questions would never be raised.

Citizenship, passports and visas

Question 20 What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy:

a. Australian citizenship;

b. an Australian passport; or

c. an Australian visa.

Response:

No child should be born through international surrogacy commissioned by Australian parents. If such arrangements are banned, this question is academic.

Question 21 How could the process for obtaining these documents be improved?

Response:

It should not be improved. All these questions are skewed in favour of facilitating an activity that should continue to be unlawful.

Oversight and harmonisation – Inconsistent laws

Question 22 What is the best way to approach differences in surrogacy regulation between or within jurisdictions? You might want to consider:

a. the ways in which surrogacy regulation is inconsistent between jurisdictions;

b. if these inconsistencies are problematic;

c. any impacts of the differences between federal legal regimes (for example, citizenship law and family law);

d. if a judicial process for transferring legal parentage is retained, whether applications for parentage should be determined in state courts, the Federal Circuit Court and Family Court of Australia, or both;

e. how important it is that the approaches are harmonised or made more consistent; and

f. how any harmonisation could be achieved (for example, by regulating surrogacy at a federal level or through uniform or substantively consistent state legislation).

Response:

There needs to be an immediate public education campaign to raise awareness of the criminality and unethical nature of surrogacy arrangements, followed by a conscientious prosecution campaign targeted primarily at the service providers involved as well as individuals commissioning the purchase of babies. Since the expert committee appointed for this Inquiry is made up of many individuals drawn from these professional services, they have a clear conflict of interest in advancing an abolitionist agenda. Once these services are terminated, and individuals are prosecuted, there should be a rapid decline in this activity.

Oversight and harmonisation – Oversight

Question 23 Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach? You might want to consider:

a. the need for a regulator or oversight body and what it could look like (for example, an administrative body or a tribunal);

b. if oversight should be national or state and territory based; and

c. which groups need oversight (for example, health professionals).

Response:

The appropriate regulator is the Director of Public Prosecutions. These crimes must be prosecuted conscientiously by both federal and state DPPs.

The role of the criminal law

Question 24 Should the law have a role in discouraging or prohibiting certain forms of surrogacy? You may wish to consider:

a. if engaging in or facilitating certain forms of surrogacy, whether in Australia or overseas, should be sanctioned or criminalised;

b. the effect of using the criminal law to regulate certain forms of surrogacy; and

c. whether there are regulatory approaches preferable to the criminal law.

Response:

Yes, as stated above. There is also a place for bringing civil actions and thereby recouping the cost of compensating those individuals who have already been adversely impacted by this immoral industry.

Lack of awareness and education

Question 25 Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices? You might think about how people currently find out about surrogacy, or the particular groups or professions who could benefit from improved education and information.

Response:

Absolutely. A public awareness campaign is needed to counteract the endless pro-surrogacy propaganda stories that have been published in our media. The public needs to be educated about the very significant harm posed by surrogacy to women and children.

Issues we consider to be out of scope

Question 26 Do you have any views about the issues we consider to be in or out of scope?

Response:

You have not raised any questions about ways to effectively ban all surrogacy arrangements in Australia. However, I do not agree this is outside your scope. The best way to 'harmonise' Australian laws is to institute a blanket ban.

Other insights

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?

Response:

There are many further issues not recognised in the Discussion Paper. My previous responses clearly indicate the nature of these matters and their egregious impact on the rights of women and children.

I endorse the submissions of other abolitionist groups such as FINRAGE and ABSA and I am willing to be consulted on any further questions as the need arises.