World Youth Alliance (WYA)
Submission to the Australian Law Reform Commission
Review of Surrogacy Laws

The World Youth Alliance (WYA) welcomes the opportunity to provide a submission to the Australian Law Reform Commission's Review of Surrogacy Laws (ALRC). This submission proceeds from the position that surrogacy should not be legal in any form, whether commercial or altruistic. While ethical concerns surrounding surrogacy are well documented, WYA's submission focuses primarily on the practical, legal, and structural problems inherent in surrogacy arrangements. These problems cannot be resolved through improved safeguards or regulatory refinement. Rather, they arise from the nature of surrogacy itself.

As articulated in WYA's *Surrogacy White Paper*, surrogacy cannot be adequately treated as an ordinary contractual or family law matter, because "the subject of the contract is a human being", raising serious human rights concerns that general contract law is ill-equipped to manage. Surrogacy therefore occupies a legally anomalous space that consistently generates conflict between adult expectations, women's embodied experiences, and children's rights.

Surrogacy differs fundamentally from other areas of family law. As the White Paper explains, "surrogacy is essentially different from adoption, because it gives away a future child before she has been conceived." Adoption responds to an existing situation of vulnerability; surrogacy deliberately creates one.

This foundational distinction is not merely conceptual but has concrete legal consequences. **ALRC Proposal 1**, which frames the inquiry around how surrogacy should be regulated rather than whether it should be permitted, presupposes that surrogacy is a legitimate practice capable of being rendered safe through legal reform. This framing narrows the scope of the inquiry and forecloses consideration of whether surrogacy is compatible with foundational principles of human dignity, child welfare, and the non-commodification of the human body. Where a practice gives rise to persistent and unresolvable conflicts of interest, law reform must remain open to the conclusion that the practice itself is incompatible with the legal system's underlying values.

In surrogacy arrangements, the child is conceived for the purpose of transfer, not care by the birth mother. Surrogacy agreements are not merely contracts for services, but arrangements that culminate in "the delivery of a child to the intended parents." This structure pre-determines the child's legal and social identity by agreement rather than lived relationships.

This design gives rise to persistent legal tensions. Questions of parentage, custody, and identity are resolved by reference to pre-birth intentions rather than the child's

evolving needs or the reality of gestation and birth. These conflicts are not incidental; they are inherent to a practice that requires the intentional separation of reproduction, pregnancy, and parenthood.

A central difficulty with surrogacy is that “the best interests of the child” are not primary at the point of the child’s creation. International law does not recognise a “right to a child”, but rather protects children as rights-holders in their own regard. Surrogacy inverts this logic by bringing the child into existence pursuant to a prior arrangement designed to satisfy adult expectations.

Surrogacy fragments parenthood into genetic, gestational, and social components. The White Paper explicitly warns that “children born through surrogacy — especially international surrogacy — are at high risk of having their rights violated,” including rights to identity, nationality, and parental care under the *Convention on the Rights of the Child*. Even where disclosure regimes exist, surrogacy arrangements intentionally obscure a child’s origins at birth. Legal identity is shaped by design rather than reality. These harms are not accidental; they flow directly from a system that must sever gestation from parenthood in order to function.

Proposal 2, which seeks greater national consistency across state and territory surrogacy laws, is presented as an administrative objective. However, harmonisation is not value-neutral. Where the underlying practice is harmful, consistency risks entrenching injustice rather than resolving it. As demonstrated in comparative jurisdictions, regulatory convergence in surrogacy has often facilitated expansion and normalisation rather than protection. National consistency cannot resolve the intrinsic conflict between contractual expectations and the realities of pregnancy, birth, and maternal attachment.

Proposal 13 states that to access surrogacy, intended parents must be “unable to conceive, gestate, and birth a child for a medical, biological or psychological reason”, and that this requirement “may be dispensed with by the National Regulator (or alternative).” Unlike medical infertility, “psychological” reasons are broad, subjective, and undefined. Therefore, it introduces a loophole, with no firm legal explanation or delimitation, which risks transforming surrogacy from an exceptional response to medical incapacity into a broadly available alternative to pregnancy.

As the *WYA Surrogacy White Paper* cautions, frameworks that treat reproductive capacity as transferable based on adult preference rely on assumptions of voluntariness that do not reflect lived realities, particularly where emotional pressure and moral obligation operate. This concern has been expressly echoed by the **UN Special Rapporteur on Violence Against Women and Girls**, who has warned that in surrogacy arrangements, “consent cannot be understood in isolation from the structural conditions in which it is obtained,” and that women’s agreement to participate may occur in contexts of “economic need, social pressure, or relational dependency.”

The Special Rapporteur further notes that practices which rely on formal consent risk obscuring exploitation, emphasising that “the existence of consent does not preclude the presence of coercion or negate the responsibility of the State to prevent violence and exploitation against women.” Granting a regulator unfettered discretion to “dispense with” eligibility criteria therefore does not strengthen safeguards, but effectively eliminates them, by formalising a legal fiction of voluntariness that international human rights law explicitly cautions against.

Proposal 11, which contemplates pre-approval or administrative authorisation of surrogacy arrangements, similarly assumes that future harms can be mitigated through prospective assessment. This assumption is misplaced. No authority can meaningfully assess in advance how a woman will experience pregnancy, attachment, or relinquishment, nor how intended parents will respond if circumstances change. Pre-authorisation risks functioning as legal endorsement of arrangements whose most significant harms materialise only over time, while entrenching expectations that intensify pressure on women to proceed regardless of distress.

Proposal 14 requires that a surrogate must be at least 25 years old “unless otherwise approved by an accredited counsellor”. **Proposal 16.2** provides that the requirement for a previous successful pregnancy “may be dispensed with in circumstances where a medical practitioner or a psychologist is satisfied that the surrogate and intended parent(s) understand the potential risks and are making a free and informed decision.” Both provisions create discretionary gateways undermining the remedial intent of eligibility requirements. Experience across jurisdictions shows that once exceptions exist, they tend to expand in practice, weakening safeguards and normalising the very practices they were designed to restrain.

Proposal 25(4), which addresses counselling and informed consent, reflects an acknowledgement of the emotional and relational risks inherent in surrogacy. However, counselling cannot cure structural injustice. As the White Paper makes clear, informed consent presupposes an ability to anticipate the physical and emotional consequences of pregnancy and relinquishment. Pregnancy is a uniquely embodied experience whose effects cannot be fully predicted or neutralised through information provision. Over-reliance on counselling risks shifting responsibility onto women to consent away from the harm that the legal framework itself creates.

Advocates often distinguish between commercial and altruistic surrogacy, suggesting that the absence of payment resolves ethical and practical concerns. But practice has shown the complex experiences which directly challenge this assumption. While altruistic surrogacy avoids explicit financial incentives, it does not eliminate coercion, inequality, or harm.

Pregnancy cannot be rendered ethically neutral by law. The White Paper emphasizes that surrogacy agreements implicate women’s bodies in ways that cannot be reduced

to service provision. Pregnancy entails significant physical risk, potential long-term health consequences, and profound emotional attachment that cannot be regulated away.

Consent obtained in contexts of family loyalty, dependency, or moral pressure cannot be assumed to be fully free or practically revocable. When disputes arise, courts are left to adjudicate deeply personal conflicts that resist contractual resolution.

Commercial surrogacy intensifies all existing risks. Commercial surrogacy contracts "can lead to manipulation of the woman who carries the child," particularly where economic vulnerability is present. Women's reproductive capacities risk being treated as services for purchase, while children risk being viewed as deliverables subject to specifications.

These concerns have been echoed at the international level. The **UN Special Rapporteur on Violence Against Women and Girls** has identified surrogacy as an emerging form of sex-based exploitation, noting that it can involve "the direct and exploitative use of a woman's bodily and reproductive functions for the benefit of others," and, in some cases, amount to the sale of children under international law.

WYA acknowledges that **Proposal 9.3**, which seeks to restrict intermediaries and profit-driven facilitation, reflects a legitimate concern about commercialisation. Such measures may mitigate some surface-level harms. However, as research demonstrates, removing intermediaries does not remove coercion, power imbalance, or emotional pressure. Structural injustice persists even in informal or family-based arrangements.

Moreover, **Proposal 9.1**, which provides that legislation should facilitate the legal recognition of intended parents, including by removing criminal prohibitions and establishing registration mechanisms for surrogacy arrangements, particularly when read in conjunction with **Proposal 37**, risks entrenching surrogacy by streamlining legal recognition of intended parents, including in cross-border contexts. Proposal 37 contemplates that a registration entity may approve overseas surrogacy arrangements or designate certain foreign jurisdictions as permitted destinations for surrogacy. Together, these proposals prioritise adult intention and administrative approval over gestation and birth.

As the White Paper explains, this weakens the legal maxim *mater semper certa est*, which recognises the woman who gives birth as the child's mother. It also destabilises maternal protections and increases the risk of coercive outcomes, particularly where circumstances change during pregnancy or where women are exposed to unequal power dynamics in cross-border arrangements.

Recent international developments illustrate a growing recognition that surrogacy cannot be safely regulated. In Italy, surrogacy has long been prohibited under Law No. 40/2004. In 2024, Italy extended this prohibition extraterritorially, criminalising

surrogacy as a “universal crime” and allowing prosecution of citizens who engage in surrogacy abroad. This is a legislative judgment that surrogacy constitutes a violation of human dignity irrespective of location.

Similarly, India, once a global hub for commercial surrogacy, enacted the Surrogacy (Regulation) Act, 2021 following extensive documentation of abuse, abandonment, coercive medical practices, and exploitation of economically vulnerable women. While strongly limited altruistic surrogacy remains permitted in exceptional cases, this legislative reversal acknowledges that commercial surrogacy was fundamentally incompatible with women’s rights and child protection.

These developments mirror concerns raised by the **UN Special Rapporteur on Violence Against Women and Girls**, who has identified surrogacy as an emerging form of sex-based exploitation, emphasizing that consent does not negate structural coercion or harm.

WYA submits that the harms associated with surrogacy are not the result of insufficient regulation, but of the practice itself. Surrogacy relies on assumptions of equality, consent, and separability that do not reflect lived realities. Law cannot reconcile the competing claims of bodily autonomy, contractual expectation, and child welfare without subordinating at least one fundamental interest.

For the reasons set out above, WYA proposes rejecting the ALRC Proposals since the problems are too numerous and they do not address the issue adequately. WYA urges the Australian Law Reform Commission to recognise that not all practices can or should be accommodated within a legal framework. Surrogacy should not be expanded, harmonised, or normalised in Australian law. Legislative efforts should instead focus on protecting children already born through surrogacy, supporting ethical alternatives, and upholding the principles of human dignity and the best interests of the child.

Footnotes

- For foundational legal and structural critique of surrogacy contracts and human rights concerns; see World Youth Alliance – Surrogacy White Paper (2015)[1] and the Addendum[2].
- UN Special Rapporteur on Violence Against Women and Girls, Thematic Report on Emerging Forms of Violence (A/80/158)[3].

[1] https://wya.net/wp-content/uploads/WYA_White_Paper_Surrogacy_Final-US-Letter.pdf
[2] https://wya.net/wp-content/uploads/2020-06-14_Surrogacy-Addendum.pdf
[3] https://docs.un.org/en/A/80/158