From: ADF International
To: **Australian Law Reform Commission**
Date: 19 December 2025
Re: **Review of Surrogacy Laws: Discussion Paper (2025)**

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1 Introduction

1. ADF International is a faith-based legal advocacy organisation that protects fundamental freedoms and promotes the inherent dignity of all people. We act before national and international institutions and hold special consultative status with the United Nations Economic and Social Council (registered name 'Alliance Defending Freedom'), accreditation with the Organization of American States, and registration with the European Union Transparency Register. ADF International is also a participant in the Fundamental Rights Platform of the European Union Agency for Fundamental Rights.

2. ADF International welcomes the opportunity to submit this written response to the proposals and questions put forward by the Australian Law Reform Commission (hereinafter, the 'ALRC') in its 2025 Discussion Paper entitlted 'Review of Surrogacy Laws'.

3. This submission opposes the proposals to decriminalise commercial surrogacy, repeal existing extraterritorial criminal offences in Australian states and territories relating to engagement in commercial surrogacy overseas, and permit the payment of so-called 'additional support payments' to surrogate mothers in Proposals 8, 9, and Question M, respectively.

4. While this written contribution focuses primarily on proposals relating to commercial surrogacy, it does so without prejudice to the human rights violations and abuses inherent in so-called 'altruistic' surrogacy, which is currently permitted in all Australian states and territories. ADF International maintains that no amount of regulation or purported safeguards can adequately address the harms to women and children intrinsic to surrogacy arrangements.

2 Decriminalisation of Commercial Surrogacy

5. In Proposal 8, the ALRC suggests decriminalising commercial surrogacy—currently a criminal offence in all Australian states and territories—and reclassifying it as an impermissible and unenforceable act under the civil law regime.

6. The Discussion Paper argues that criminal penalties, unlike civil sanctions, 'denounce and punish,' 'cause harm by stigmatizing surrogacy' and 'restrict reproductive choice.'[1]

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[1] Australian Law Reform Commission 'Discussion Paper, Surrogacy Law Review' (25 November 2025) paras 83-84.

Furthermore, it contends that civil sanctions are preferable because criminal sanctions allegedly 'criminalise the circumstances of birth' and may 'disadvantage children born through surrogacy.'[2]

7. These concerns are misplaced in the context of such a phenomenon. On the contrary, retaining commercial surrogacy within the criminal law framework is essential to duly reflect and address the full gravity of the human rights violations and abuses stemming from the practice.

8. As acknowledged inter alia by the UN Special Rapporteur on violence against women and girls, its causes and consequences in her report entitlted 'The different manifestations of violence against women and girls in the context of surrogacy', commercial surrogacy is an affront to human dignity, as it is predicated on a system of violence, commodifies the body of surrogate women and children and amounts to the sale of the child.[3] Criminal law is therefore necessary to not only convey a clear normative condemnation of this practice, but also to ensure effective deterrence, given its greater capacity to prevent participation in and profiting from commercial surrogacy than civil or administrative sanctions.

9. First, the right of the child not to be sold is a core component of the broader framework governing children's rights: when children are treated as commodities, they are not viewed as rights-holders whose inherent dignity and legal protections must be respected.[4] Criminalisation of commercial surrogacy is necessary to uphold the principle of the best interest of the child. A child rights impact assessment grounded in this principle must recognise that deliberately planning a pregnancy that will foreseeably result in severe violations and abuses of the rights of the child cannot be meaningfully distinguished from those occurring after birth under the same conditions.

10. Second, commercial surrogacy entrenches the notion that female biology and particularly women's reproductive capacities are delegable and marketable.[5] It is predicated on the harmful premise that women's bodies may be subjected to external control for the benefit of third parties. By requiring surrogate mothers to dissociate from their bodies and the children they carry in their wombs, surrogacy perpetuates a dehumanizing view of women as instruments of production, with their reproductive capabilities serving as the means, and the children conceived under such arrangements as the product.

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[2] Ibid, para 88.
[3] Report of the Special Rapporteur on violence against women and girls, its causes and consequences 'The different manifestations of violence against women and girls in the context of surrogacy' A/80/158 (14 July 2025) <https://docs.un.org/en/A/80/158>.
[4] UNICEF Innocenti Research Centre, Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, ix <https://www.refworld.org/reference/manuals/unicef/2009/en/67579>.
[5] Supra note 3 at para 20.

11. Moreover, the seriousness of the harms of commercial surrogacy requires robust deterrence. Criminal law provides a stronger deterrent effect than civil sanctions, particularly fines, which can easily be absorbed by commissioning parties and, especially, by the commercial actors involved in the surrogacy industry.

12. Reflecting these concerns, criminal sanctions—at least for organising or advertising surrogacy arrangements—exist in numerous jurisdictions, including Canada and several European countries such as Germany, Spain, France, the Netherlands, Italy, Bulgaria, and Slovakia. In Spain, surrogacy has notably been criminalised as contrary to public order, on the basis that it 'violates[s] the dignity and free development' of both the surrogate mother and her child by reducing them to 'mere objects'.[6]

13. In addressing the specific harms associated with commercial surrogacy, legal responses must take due account of the coercion, abuse, and exploitation to which surrogate mothers are subjected, and reflect their position as vulnerable parties within these arrangements.

3 Extraterritorial Criminal Offences Prohibiting Engagement in Commercial Surrogacy Overseas

14. Proposal 9 addresses the decriminalisation of international commercial surrogacy for Australian citizens, thereby permitting commissioning parties to travel abroad to acquire a child through commercial surrogacy arrangements in other countries. This would allow Australians to circumvent domestic prohibitions through so-called 'reproductive tourism' and, in effect, authorise the export of exploitation to vulnerable women overseas.

15. Cross-border commercial surrogacy forms part of a multi-billion-dollar global industry that prioritises financial gain over human dignity, health, and welfare. It predominantly operates in contexts marked by deep socioeconomic hardship, especially for women.[7]

16. The particularly grave exploitation associated with international commercial surrogacy is starkly illustrated by the experience of India, which was a popular destination until it prohibited foreign participation in surrogacy services in 2015. Prior to the ban, poor Indian women were recruited as surrogates under conditions of acute economic desperation and social marginalisation, often without receiving adequate information about the practice, medical oversight, or access to long-term healthcare. Investigations documented surrogate mothers housed in dormitories, subjected to coercive medical

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[6] European Association of Private International Law 'The Spanish supreme court on surrogacy contract and public policy' (27 January 2025) <https://eapil.org/2025/01/27/the-spanish-supreme-court-on-surrogacy-contract-and-public-policy/>.
[7] Yuko Nishitani 'Surrogacy under the Shadow of Globalization' NYU Journal of International Law and Politics, 308-324 (May 2024) <https://nyujilp.org/wp-content/uploads/2024/08/Nishitani_56-1-311-335.pdf>.

practices, and prevented from seeing their families during pregnancy.[8] In response to these widespread abuses, India prohibited foreign involvement in surrogacy. Following the ban, India experienced a significant decrease in the number of commercial surrogate pregnancies, alongside the associated exploitation by foreign commissioning parties and intermediaries.[9]

17. India is not an isolated example. Similar patterns of human rights violations emerged in other countries that became destinations for international commercial surrogacy, including Georgia, Thailand, Nepal, Cambodia, and Vietnam. In each case, the documented abuse and exploitation of women led these countries to close their borders to foreigners.[10]

4 Additional Support Payments to Surrogate Mothers

18. Question M inquires whether legislation should allow commissioning parties to pay surrogate mothers so-called 'additional support payments' beyond reimbursement for the costs and losses outlined in Proposals 25 and 26 'to recognize the surrogate's time, effort, inconvenience, and unique contribution to the surrogacy engagement'.

19. If the ALRC were to maintain the need to maintain the prohibition on commercial surrogacy while simultaneously introducing the modifications contemplated in this question, commercial surrogacy would, in practice, be rendered permissible in all but name. Adding a monetary value to the harms inherent in surrogacy conveys the misleading and dehumanizing message that they can be adequately addressed or legitimized through financial compensation. However, practices such as surrogacy cannot be rendered ethical or 'convenient' through compensation.

20. These harms have been widely documented. Research has found that women involved in gestational surrogacy face a higher risk of complications than other pregnant women, including two to three times the risk of postpartum haemorrhage, pre-eclampsia, and serious postpartum infection.[11] Comparative studies have also shown that "women […] were significantly more likely to experience postpartum depression following the delivery of surrogate children than after delivering their non-surrogate

[8] Nixon Joseph et al 'The legal and moral debate leading to the ban on commercial surrogacy in India' Medicina e Morale Vol 66, Issue 4, 513 (2017) <https://www.scielo.org.mx/pdf/mye/v30n3/2594-2166-mye-30-03-927-en.pdf>.
[9] K. Blaine 'The Dangerous Effects of Surrogacy: A Review of A Transnational Feminist View of Surrogacy Biomarkets in India' The Public Discourse (29 October 2018) <https://www.thepublicdiscourse.com/2018/10/42720/>.
[10] Supra note 7.
[11] Maria P. Velez, Marina Ivanova, Jonas Shellenberger, et al., 'Severe Maternal and Neonatal Morbidity Among Gestational Carriers: A Cohort Study' Ann Intern Med. (Epub 24 September 2024), <https://www.acpjournals.org/doi/10.7326/M24-0417>.

children."[12] A pioneering study on the psychological well-being and prenatal bonding of gestational surrogates in India revealed higher levels of depression among surrogate mothers during and after pregnancy,[13] alongside feelings of abandonment, loss, anger, and alienation following the birth and surrender of the child.[14]

21. The abovementioned harms are compounded by contractual clauses that require the surrogate mother to waive consent for key decisions affecting her and her child's life and health. These waivers are essential to fulfilling the terms of the arrangement and result in the deprivation of the surrogate mother's personal autonomy.

22. Surrogate children are also prone to suffering physical and psychological harm because of surrogacy. A growing body of evidence highlights the adverse health impacts of surrogacy on children born through this practice. In particular, perinatal research shows that the bonding process between mother and child begins in utero. A child learns to recognise the mother's voice, scent, and heartbeat in the amniotic fluid—sensory inputs that aid post-birth adjustment.[15] Hormonal bonding during labour further reinforces attachment. Moreover, surrogacy is associated with a significantly higher risk of premature birth.[16] Longitudinal studies on child development indicate that by age seven, children separated from their gestational mothers are more likely to experience adjustment difficulties and to be vulnerable to the effects of maternal distress.[17] Other research shows that maternal separation—an inherent aspect of surrogacy—can even disrupt brain development.[18] The distress caused by parental disputes in surrogacy can further compromise the health and well-being of the child.[19]

5 Conclusions and Recommendations

23. Surrogacy, including but not limited to its commercial form, is a practice fundamentally incompatible with the dignity and human rights of both women and children, and constitutes an egregious violation of international human rights law. No amount of

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[12] Jennifer Lahl et al, 'A Comparison of American Women's Experiences with Both Gestational Surrogate Pregnancies and Spontaneous Pregnancies' (2022) A Journal of Analysis of Exploitation and Violence, Dignity Vol.7 Issue 3 <https://digitalcommons.uri.edu/dignity/vol7/iss3/1/>.
[13] Lamba, Nishta, Vasanti Jadva, Kaushal Kadam, and Susan Golombok, 'The psychological well-being and prenatal bonding of gestational surrogates' (2018) Human Reproduction 33 (4): 646–53.
[14] Berk, Hillary L., 'The legalization of emotion: Managing risk by managing feelings in contracts for surrogate labor' (2015) Law and Society Review 49 (1): 143–77, 170.
[15] Sullivan et.al., 'Infant bonding and attachment to the caregiver: Insights from basic and clinical science' (2011) 38, 4 Clinics in Perinatology, 644.
[16] Maria P. Velez, Marina Ivanova, Jonas Shellenberger, et al, 'Severe Maternal and Neonatal Morbidity Among Gestational Carriers: A Cohort Study' Ann Intern Med. (Epub 24 September 2024), <https://www.acpjournals.org/doi/10.7326/M24-0417>.
[17] Susan Golombok et al., 'Children born through reproductive donation: a longitudinal study of psychological adjustment' (2013) 54, 6 Journal of Child Psychology and Psychiatry 653.
[18] Sara Mejía-Chávez et al, 'Maternal Separation Modifies the Activity of Social Processing Brain Nuclei Upon Social Novelty Exposure' (2021) Frontiers in Behavioural Neuroscience 15: 651263.
[19] Wade K, 'The regulation of surrogacy: a children's rights perspective' Child Fam Law Q. 2017;29(2):113-131<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5540169/>.

regulation can eliminate its severe human rights impacts, as they are intrinsic to the practice.

24. In light of the aforementioned, ADF International urges the Australian Law Reform Commission to adopt the following concluding recommendations:

    (a) Retain the criminalisation of commercial surrogacy in all Australian states and territories;

    (b) Retain existing extraterritorial criminal offences in the Australian Capital Territory, New South Wales, and Queensland prohibiting engagement in commercial surrogacy overseas;

    (c) Refrain from treating the payment of 'additional support payments' to surrogate mothers beyond reimbursement for costs and losses as a means of legitimising, normalising or mitigating the adverse impacts of surrogacy for surrogate mothers, as well as for the children conceived through such arrangements.