WOMEN'S FORUM AUSTRALIA

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SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION ON ITS REVIEW OF SURROGACY LAWS DISCUSSION PAPER, DECEMBER 2025

1. Introduction

Women's Forum Australia welcomes the opportunity to make a further submission to the Australian Law Reform Commission (ALRC) in response to its Discussion Paper on the Review of Surrogacy Laws. However, given the relatively short timeframe with which to make submissions, it is not as comprehensive as we would have liked.

This submission must be read together with our earlier submission responding to the Issues Paper. That submission set out in detail our opposition to all forms of surrogacy, grounded in concerns for the human rights, dignity and wellbeing of women and children.

Regrettably, the Discussion Paper does not meaningfully engage with, nor respond to, the fundamental concerns we and other submitters have raised. Instead, it proceeds on the same underlying premise that surrogacy is a legitimate social practice that merely requires better regulation, greater facilitation, and expanded access.

Women's Forum Australia rejects this premise. We remain firmly opposed to all forms of surrogacy, whether described as altruistic, compensated, or commercial. We maintain that surrogacy is inherently exploitative of and harmful to women and children, and that no regulatory framework can resolve these fundamental ethical and human-rights violations.

2. A Review Proceeding on Outdated Assumptions

Since the Terms of Reference were issued in December 2024, a highly significant development has occurred in international human rights law: the publication in July 2025 of United Nations Special Rapporteur on Violence against Women and Girls Reem Alsalem's report on the practice of surrogacy. That report draws on submissions from states, experts, civil society organisations, women with lived experience of surrogacy, and affected children, and assesses surrogacy against international human rights instruments.

The Special Rapporteur concludes that surrogacy, in all its forms, is characterised by exploitation and violence against women and children; that it commodifies women's bodies and children; and that regulatory frameworks have failed to prevent serious and systemic human-rights violations. The report expressly calls on states to work towards the abolition of surrogacy and to reject regulatory models that seek to normalise or expand the practice.

Notwithstanding the central relevance of this report to an inquiry expressly framed around human rights, the Discussion Paper neither substantively engages with the Special Rapporteur's findings nor explains why its conclusions are rejected. Instead, the Discussion Paper proceeds as though the international human-rights landscape has remained unchanged and proceeds on the assumption that:

- surrogacy is a legitimate social practice,
- the principal problem is insufficient access,
- regulatory refinement can neutralise harm.

At minimum, the publication of the Special Rapporteur's Report should have prompted reconsideration of the scope, assumptions, and direction of this inquiry. Proceeding without doing so undermines confidence in the integrity of a review that purports to adopt a human-rights-based approach.

3. Failure of Procedural Fairness

3.1 Non-publication of Issues Paper submissions

The ALRC received a large volume of submissions to the Issues Paper, including many from Australian and international organisations, academics, advocates, surrogate mothers, and adults born through surrogacy who oppose the practice.

The failure to publish the bulk of submissions responding to the Issues Paper before the release of the Discussion Paper has materially compromised transparency and meaningful participation, with submitters having to respond to proposals without access to the arguments raised by others or the reasoning that shaped the Commission's direction.

This is particularly concerning given the scale and significance of the proposed reforms.

3.2 Composition of advisory and decision-making structures

The Discussion Paper does not meaningfully address concerns about the composition of the advisory and consultative structures guiding this review.

Notably absent from those structures are:

- women who regret acting as surrogates,
- adults born through surrogacy who oppose the practice,
- feminist scholars critical of reproductive commodification,
- child-centred advocates focused on the harms of intentional maternal separation.

By contrast, voices associated with legal, academic, and medical sectors that stand to benefit from the expansion of surrogacy appear to be well represented.

This imbalance is reflected in the direction of the Discussion Paper and contributes to the impression that outcomes were largely predetermined.

4. Disregard for Substantive Ethical Objections

The Discussion Paper acknowledges that many submissions opposed surrogacy on ethical and human-rights grounds, yet proceeds as though those objections are merely ideological preferences rather than serious critiques. Indeed, those objections have had no discernible impact on the reform proposals.

Rather than grappling with whether surrogacy itself is compatible with women's and children's rights, the Discussion Paper focuses almost exclusively on:

- reducing "barriers" to surrogacy,
- increasing the availability of surrogates,
- normalising surrogacy as a routine form of family creation,
- embedding surrogacy more deeply into Australia's legal, medical and bureaucratic systems.

This approach effectively sidelines dissenting views and fails to treat abolitionist concerns seriously, despite their strong grounding in international human-rights law, feminist analysis, and lived experience.

5. Surrogacy as Inherently Harmful to Women

Surrogacy, in all its forms, fragments motherhood into biological, gestational and social roles, and requires a woman to gestate and give birth to a child, which she must relinquish at birth to satisfy the intentions of others.

This is not a peripheral feature of surrogacy – it is its defining characteristic.

The Discussion Paper attempts to manage this reality through:

- counselling requirements,
- reimbursement frameworks,
- hardship payments, and
- contractual protections.

However, no regulatory mechanism can alter the fundamental fact that surrogacy instrumentalises women's bodies, separates mother and child at birth, and carries serious risks of physical and psychological harm.

So-called altruistic surrogacy does not eliminate coercion. Instead, it often relocates it into:

- family pressure,
- emotional obligation,
- unequal relational dynamics,
- expectations that women subordinate their own wellbeing to others' desires.

Expanding permissible payments and formalising compensation further erodes the already thin distinction between altruistic and commercial surrogacy.

6. Minimum Age Requirements and the Erosion of Safeguards

Proposal 14 to allow discretionary exemptions from the 25-year-old minimum age requirement for surrogate mothers if “approved by an accredited counsellor” is deeply concerning.

Minimum age thresholds are intended as protective safeguards, recognising that surrogacy involves significant medical risk, psychological impact, and irreversible consequences. Introducing mechanisms to bypass those thresholds, particularly through discretionary approval processes, undermines their protective purpose. In practice, such discretion is likely to expose younger women to pressures and risks they are ill-equipped to navigate.

This approach exposes a fundamental contradiction in the reform agenda: surrogacy is treated as sufficiently serious to warrant extensive regulation, yet safeguards are relaxed on an ad hoc basis. That is not a principled or ethical basis for law reform.

In addition, the fact that that intended parents can be as young as 18-years-old is manifestly inappropriate, given that many 18-year-olds are still developing in maturity – indeed many are still at high school – despite legally being adults. Brain development, especially the prefrontal cortex for decision-making, often continues until around age 25.

7. Dispensing with the Requirement for a Previous Successful Pregnancy

Proposal 16 allowing the requirement that a woman must previously have carried a pregnancy and successfully given birth to be dispensed with removes one of the few remaining substantive safeguards for women acting as surrogates.

Allowing women with no prior pregnancy experience to act as surrogates exposes them – and the children they carry – to heightened physical and psychological risk, undermines informed consent, and reflects an expansion-driven approach rather than a protective one.

8. Harm to Children and the Normalisation of Maternal Separation

Surrogacy deliberately creates children with the intention that they will be separated from the woman who carried and birthed them.

The Discussion Paper repeatedly invokes the “best interests of the child”, yet fails to confront the central contradiction: surrogacy requires intentional mother-child separation by design.

Children born through surrogacy are:

- deprived of the right to remain with the woman who carried and birthed them,
- subjected to contractual arrangements governing their existence,
- exposed to risks of physical and psychological harm,
- often denied meaningful access to their gestational and genetic origins,

- treated as outcomes of an adult-driven process rather than as rights-holders in their own right.

No amount of post hoc record-keeping or registries can undo the foundational harm caused by the intentional severance of the mother-child bond. Moreover, the indecision around the need for criminal checks under Proposal 19, further highlights the failure to prioritise the best interests of the child.

The Discussion Paper also relies on a limited body of research to suggest that outcomes for children born through surrogacy are comparable to natural conception. This reliance is misplaced given the studies' significant methodological limitations.

9. Birth Certificates and the Erasure of the Birth Mother

Proposal 30 to automatically recognise intended parents as legal parents on the birth certificate at birth raises serious concerns.

Birth certificates serve a fundamental public function: they record the circumstances of a person's birth, including who gave birth to them. Replacing this factual record with a pre-determined legal arrangement obscures biological and gestational reality and erases the woman who carried and gave birth to the child from the child's legal identity.

Such an approach undermines the child's right to identity under international human-rights law.

10. Institutionalising a Surrogacy Industry

Proposal 3 to establish Surrogacy Support Organisations (SSOs) is among the most concerning features of the Discussion Paper and represents a significant escalation in the institutionalisation of surrogacy in Australia.

These entities would:

- act as intermediaries,
- approve surrogacy arrangements that comply with legal requirements,
- provide support for parties to a surrogacy arrangement,
- manage funds and payments,
- facilitate matching and advertising,
- effectively operationalise a national surrogacy market.

This represents the institutionalisation of surrogacy brokerage in Australia, whether or not it is labelled as such.

Experience internationally shows that such intermediary structures:

- generate conflicts of interest,
- normalise commodification,
- create financial incentives to approve arrangements,
- reduce accountability over time.

This expansion goes well beyond the Terms of Reference. It represents a substantive policy shift towards growth and normalisation of surrogacy, rather than caution or restraint. It is also difficult to reconcile the creation of SSOs with claims that the ALRC seeks to minimise exploitation.

11. Advertising and the Recruitment of Women

Proposal 11 to permit advertising for surrogacy arrangements raises serious concerns.

Advertising inevitably reframes surrogacy as:

- a desirable opportunity,
- a form of service provision,
- a solution to others' unmet desires.

This raises an unavoidable question: from which population of women will surrogates be recruited, and under what social and economic conditions?

The Discussion Paper does not address this question, despite its central importance.

12. Removing Criminal Offences for Domestic Commercial Surrogacy

Proposal 8, which would remove criminal offences for domestic commercial surrogacy in favour of a civil penalty regime, represents a profound and deeply concerning shift in the legal and moral framework governing surrogacy in Australia.

Criminal prohibitions on commercial surrogacy exist for a reason. They reflect long-standing recognition that commercial surrogacy is inherently exploitative, commodifies women's reproductive capacity, and treats children as objects of transaction. Removing criminal sanctions does not eliminate these harms; it removes one of the few remaining legal mechanisms that expresses societal condemnation of them.

The Discussion Paper appears to treat criminal offences as an impediment to regulatory coherence rather than as a deliberate safeguard. This reverses the proper role of criminal law. Where conduct is recognised as involving serious exploitation and harm, the appropriate response is enforcement, not repeal.

Decriminalisation would have several serious consequences:

- it would signal state tolerance of the commercial use of women's bodies,
- it would weaken deterrence and embolden intermediaries and commissioning parties,
- it would further normalise the treatment of children as contractual outcomes rather than rights-bearing persons,
- it would undermine Australia's stated commitment to combating exploitation, trafficking, and modern forms of servitude.

The persistent failure to prosecute commercial surrogacy offences is not evidence that those offences are unjustified. It is evidence of enforcement failure. Removing criminal sanctions in response to non-enforcement collapses the distinction between what is

unlawful and what is merely inconvenient to regulate. Commercial surrogacy should remain a criminal offence, and existing prohibitions should be enforced rather than dismantled.

13. Concerning Proposals Regarding International Surrogacy

The Discussion Paper's approach to overseas surrogacy is internally inconsistent and both ethically and legally unjustifiable.

On the one hand, it acknowledges the risks of exploitation and trafficking. On the other, it proposes registration and facilitation mechanisms for overseas commercial surrogacy that risk legitimising practices Australia otherwise condemns.

This approach risks:

- exporting exploitation rather than preventing it,
- undermining Australia's stated opposition to commercial surrogacy, and
- creating legal uncertainty for children, women, and families.

In Proposal 9, the Discussion Paper proposes removing criminal sanctions for overseas commercial surrogacy arrangements and introducing civil penalties for failing to register overseas surrogacy arrangements, while offering administrative pathways to recognition.

This approach:

- rewards non-compliance,
- undermines existing prohibitions,
- incentivises offshore exploitation,
- sends a clear signal that enforcement is optional.

In practice, weak enforcement combined with post-hoc recognition mechanisms functions as a de facto encouragement to engage in overseas commercial surrogacy, particularly in jurisdictions with lower costs and fewer safeguards.

14. IVF, Embryos and Emerging Genetic Risks

Surrogacy is inseparable from IVF and related reproductive technologies. This brings with it:

- known error rates in embryo handling,
- the creation and indefinite storage of surplus embryos,
- commercial incentives driving medical advice,
- emerging practices of sex-selection and trait-selection.

Expanding surrogacy necessarily expands these risks. The Discussion Paper does not grapple with the ethical and regulatory instability of this broader technological ecosystem.

15. The Myth of Informed Public Support

The Discussion Paper relies on assertions of public acceptance of surrogacy. However, such claims must be treated with caution.

Public opinion on surrogacy is often shaped by:

- superficial media portrayals,
- lack of exposure to harms experienced by surrogates and children,
- limited awareness of human rights concerns.

Where members of the public are presented primarily with sanitised images of happy commissioning parents and healthy babies, support reflects incomplete information, not informed consent. Law reform should not rely on shallow acceptance when fundamental human-rights interests are at stake.

16. Allowing Medicare Rebates for Surrogacy Arrangements

Proposals 28 and 29 would compel Australian taxpayers to fund surrogacy through Medicare.

Surrogacy is not a medical treatment for the person(s) seeking a child. It is a contractual arrangement that relies on a third-party undergoing pregnancy and childbirth for the benefit of others.

Medicare exists to provide universal access to health care. It is not designed to fund ethically contested practices that involve the intentional separation of a child from the woman who gave birth to them, and raise serious and unresolved human-rights concerns.

Requiring Australian taxpayers to subsidise this practice is inconsistent with the purpose of Medicare and inappropriate given the serious ethical and human-rights concerns associated with surrogacy.

17. The Erasure of Women and Mothers

Throughout the Discussion Paper, women are routinely referred to as “surrogates” or “persons”, and motherhood is avoided as a descriptor.

This is not a neutral linguistic choice. It:

- obscures the reality that only women can gestate and give birth,
- sanitises the physical and emotional reality of pregnancy and birth,
- facilitates the legal erasure of mothers at the moment of birth.

Law reform should clarify reality, not obscure it.

18. International Trends and Human Rights Obligations

Globally, there is increasing recognition that surrogacy raises serious human-rights concerns. A growing number of jurisdictions prohibit all forms of surrogacy on the basis that it violates human dignity and facilitates the exploitation and commodification of women and children.

Australia should not be moving in the opposite direction by entrenching and expanding surrogacy through law reform. Doing so risks placing Australia at odds with emerging international human-rights norms and undermines its obligations to protect the most vulnerable.

19. The Appropriate Direction for Reform

Women's Forum Australia submits that:

- The harms of surrogacy are inherent, not incidental,
- Regulatory expansion will increase harm, not reduce it,
- Institutionalising surrogacy normalises and entrenches exploitation,
- In surrogacy, children's best interests are subordinated to adult desires,
- Ethical responses to infertility must not rely on the use of another person's body or the intentional creation and separation of children from their birth mothers.

Law reform in this area must prioritise the protection of those who are most vulnerable to harm – women and children – rather than defaulting to a principle of least restriction on adult desires. This requires a commitment to reducing and ultimately abolishing surrogacy, not expanding it.

20. Conclusion

The Discussion Paper represents a wholesale re-orientation of Australian law towards the expansion and normalisation of surrogacy despite mounting evidence of harm and international condemnation.

By proceeding as though surrogacy is a settled and legitimate practice, the ALRC has failed to meaningfully engage with the substantial body of ethical, feminist, and human-rights critique presented in earlier submissions, while proposing an extensive infrastructure designed to grow surrogacy in Australia.

Women's Forum Australia urges the ALRC to reconsider its approach and to acknowledge that the only position consistent with the dignity and rights of women and children is the rejection – not expansion – of surrogacy.

No regulatory framework can make surrogacy ethical. The only just path forward is its abolition.