AFFILIATION OF AUSTRALIAN WOMEN'S ADVOCACY ALLIANCES

Submission to the Australian Law Reform Commission
Review of Surrogacy Laws Discussion Paper 89
23 December 2025

We write to reaffirm AAWAA's position in favour of the prohibition of surrogacy, as detailed in the feminist coalition's 11 July submission to the Issues Paper, and to raise urgent concerns about the governance, impartiality, and international law compliance of this review process.

Our position remains unchanged

We maintain that all forms of surrogacy constitute sex-based violence against, and exploitation of, women and girls and must be prohibited. Our detailed submissions to both the Issues Paper and the UN Special Rapporteur on violence against women outline the medical, psychological, and economic harms inherent in surrogacy arrangements. The problems identified in the Discussion Paper – exploitation risks, inadequate safeguards, and legal uncertainty – are not remedied through regulation but rather disappear entirely when surrogacy is prohibited. We refer the Commission to our coalition submission for comprehensive evidence and analysis.

PROCESS FAILURES AND GOVERNANCE CONCERNS

The review process exhibits systematic failures that fall short of the standards expected for a Commonwealth statutory review.

Timing and consultation inadequacy

A stakeholder roundtable with feminist groups is held less than one day (18 December) before submissions close (19 December), after a highly detailed reform framework was proposed. This is consultation theatre: creating an appearance of democratic engagement whilst systematically excluding those most affected – particularly, women fighting for women's freedom from exploitation and violence – from influencing policy development.

When a dozen established feminist organisations are allocated one hour in total for consultation, meaningful articulation of our evidence-based concerns and analysis becomes impossible. This amounts to only a few minutes each, even after the Commission was pressed to extend to less than 1½ hours, with the first 20 minutes being taken up by opening remarks from the ALRC.

This mirrors the documented pattern where LGBTQIA+ organisations receive early access to policy development and closed-door briefings on matters affecting females whilst women's rights groups must monitor parliamentary websites and scramble to meet deadlines. Only

after protest were we invited to contact the Commission with requests for extensions – a fairer approach would have been for the Commission to provide a blanket extension to all the groups at the roundtable, rather than expect us to approach the secretariat one-by-one.

Predetermined outcome

The Commission appears to have interpreted the Terms of Reference directive to "reduce barriers to domestic altruistic surrogacy" as presupposing that surrogacy should be facilitated rather than prohibited. This framing by the Commission precludes genuine consideration of whether prohibition would eliminate exploitation entirely – the approach most likely to advance our equality. We assert that the Commission must analyse whether prohibition would satisfy Australia's international obligations under CEDAW, the CRC, and the ICCPR more effectively than regulation, as the Terms of Reference explicitly require recommendations to be consistent with international law.

Governance, conflicts of interest, and perceived bias

We are concerned that the current composition of the Advisory Committee and the review team undermines the independence and credibility of the Review. We question whether this review meets basic, democratic governance standards for impartiality.

Evidence of structural bias

The Advisory Committee for the ALRC's Review of Surrogacy Laws comprises individuals with direct financial or ideological interests in surrogacy expansion. It conspicuously excludes the broad set of views necessary for a robust review.

Of the eleven Advisory Committee members, at least eight (and arguably ten) hold professional or financial interests directly dependent on surrogacy expansion (fertility clinicians, specialist lawyers, and counsellors). No organisations representing prohibition approaches are included. This composition violates the public service principle that public processes should be free from relationships that put them at the behest of such groups – a principle that the ALRC would do well to emulate.

Specific conflict of interest concerns

Additionally, the Assistant Commissioner, Associate Professor Ronli Sifris, has previously published scholarship (2015, 2019) explicitly citing the very reforms (cost recovery, parentage transfer) this review is now proposing. Whilst her expertise in these specific areas may be viewed as qualifying her for the role, it simultaneously raises questions about potential conflicts of interest that may affect public confidence in the review process. This prior advocacy creates a reasonable apprehension of bias that has not been publicly managed.

Legal and governance requirements

We are not aware of transparent identification and management of conflicts of interest – material or perceived – for any member of the Advisory Committee, or for the Assistant Commissioner.

Such transparency is a fundamental requirement of the institutional integrity mandated by the *Australian Law Reform Commission Act 1996* (Cth), the *Public Governance, Performance and Accountability Act 2013* (Cth), and the *APS Code of Conduct* (which applies to the Assistant Commissioner). Even where advisory committee members are not public servants, we strongly suggest that the APS Values provide authoritative guidance on what Australians should expect from an ALRC review: integrity, accountability, and avoidance of conflicts.

Unanswered questions that go to the integrity of this review

In light of these governance concerns, there are basic questions[1] that must be answered transparently if this review is to retain any public credibility. At a minimum, the Commission should place on the record the following:

1. How was the advisory committee selected, and who was ultimately responsible for deciding its composition? What criteria were used to assess expertise, balance of perspectives, and independence from industry interests?
2. How were material and perceived conflicts of interest identified, documented, and managed for each advisory committee member and for the Assistant Commissioner, in line with the ALRC's own corporate governance framework, the PGPA Act, the APS Code of Conduct and the APS Conflict of Interest Management Framework?
3. How does the Commission reconcile any facilitation or expansion of surrogacy with Australia's international obligations, including under the Convention on the Rights of the Child, including the clear prohibition on the sale of children and on treating children as objects of contractual exchange?
4. Why does the Discussion Paper contemplate commercial surrogacy arrangements when the formal ToRs direct the ALRC to focus on altruistic surrogacy, and on what authority were those changes to the ToRs made?
5. On what legal and ethical basis does the Commission appear to contemplate that private contracts between commissioning adults can override fundamental human rights protections and enable coercive control over a woman's body and pregnancy?
6. What provision will the ALRC recommend that the Government make for future compensation and redress for women and girls harmed through surrogacy arrangements promoted or normalised under any law reform adopted on the basis of this review?
7. Given that the expansion of surrogacy goes well beyond technical tidying of existing law and raises profound questions of public ethics and human rights, how does the Commission propose to ensure that the Australian public, and women in particular, have a meaningful democratic say in any such reforms?

Until the Commission answers these questions clearly and on the public record, it cannot reasonably claim that this process meets even basic standards of impartiality, transparency, or compliance with Australia's international human rights obligations.

[1] These questions were raised by the Feminist Legal Clinic and may appear in the FLC's own submission to this review.

Call for a pause
Consequently, we call on the ALRC to pause the review to reconstitute the Advisory Committee with independent experts, as detailed in our separate correspondence to the President.

PROHIBITION FALLS WITHIN THE TERMS OF REFERENCE AND THE ALRC'S STATUTORY POWERS

At the 18 December roundtable consultation, Justice Mordecai Bromberg invited feminist organisations to set out in writing how a recommendation from the ALRC that surrogacy should be prohibited could fall within the ALRC's Terms of Reference. We welcome this invitation and respond as follows.

The ALRC's broad statutory powers under the ALRC Act 1996

Section 24(1)(b) of the *Australian Law Reform Commission Act 1996* (Cth) requires that in performing its functions, the Commission must aim at ensuring that the laws, proposals and recommendations it reviews, considers or makes are, as far as practicable consistent with Australia's international obligations that are relevant to the matter. Furthermore, Term of Reference 1 explicitly directs the Commission to identify legal and policy reforms that are consistent with Australia's obligations under international law and conventions.

Surrogacy inherently conflicts with key international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Covenant on Civil and Political Rights (ICCPR). The evidence is overwhelming: surrogacy involves the commodification of women's reproductive labour, intentional mother-child separation, and a profound violation of fundamental human rights.

Therefore, to fulfil its statutory obligation under s 24(1)(b), the Commission is not only empowered but arguably required to consider prohibition as the only recommendation consistent with these binding international obligations.

FAILURE TO MEET INTERNATIONAL OBLIGATIONS (CEDAW)

Australia's human rights obligations under CEDAW require more than procedural consultation; they demand substantive equality through rigorous assessment. The ALRC process comprehensively fails the below tests, which are central to the assessment of policy impacts on women.

Article 7: Meaningful participation CEDAW requires women to be fully and equally involved in decision-making at all levels, both nationally and internationally (General Recommendation 23, para 17) and the CEDAW Committee has repeatedly called for women's active and meaningful participation in designing, implementing, and monitoring laws and policies at all stages of decision-making, not just via late-stage consultation. The Advisory Committee's industry capture and late-stage consultation constitute tokenism if not formal exclusion rather than meaningful participation.

Articles 2 and 3: Active duty to eliminate discrimination Articles 2 and 3 of CEDAW require States parties to adopt all appropriate legislative, policy, and other measures to eliminate discrimination against women and to ensure women's full development and advancement, so that we can exercise and enjoy our human rights and fundamental freedoms on a basis of equality with men. Read together with CEDAW's reporting and monitoring practice (including the OHCHR/IPU Handbook), this is generally understood to require governments not only to avoid discriminatory laws, but to analyse and show that major reforms advance substantive equality in practice, particularly for women in vulnerable situations.

The ALRC Discussion Paper does not, for example:

- Present an analysis of how surrogacy expansion affects economically vulnerable women
- Assess whether allowing 18-year-old surrogates without birth experience creates exploitation risks
- Evaluate how automatic parentage transfer erases maternal identity and reinforces reproductive commodification

Article 5: Eliminate stereotypes and commodification Article 5(a) of CEDAW requires States to modify social and cultural patterns in order to eliminate practices based on women's inferiority or on stereotyped sex roles, and the preamble stresses that women's role in procreation must not be a basis for discrimination. Taken together, this obliges States to address practices that reduce women to our reproductive function or treat our reproductive capacity as a purchasable service.

The Discussion Paper's proposed framework expands and formalises payments to surrogates (aiming at more fully recovering the mother's costs and losses and allowing structured ongoing payments) without any analysis of whether this monetisation of pregnancy risks treating women's reproductive capacity as a commodity, or reinforcing harmful stereotypes about women's reproductive labour as something that can simply be bought and replaced.

General Recommendation No. 28: Results-oriented The CEDAW Committee's General Recommendation No. 28 requires rigorous, sex-disaggregated analysis that policy does not produce discrimination (para 28), not merely reporting that "we held a meeting with some women's groups." The ALRC's defence in an email to us that "1 hour is the standard" is precisely the tick-box compliance that GR 28 rejects.

RECOMMENDATIONS

We urge the ALRC to

1. **Disclose conflict management:** Demonstrate how perceived conflicts involving Professor Sifris and all advisory committee members have been managed in accordance with the ALRC's corporate governance framework (see s 39 of the ALRC Act).

2. **Conduct genuine impact assessment:** Commission independent analysis of how proposals affect women across intersectional vulnerabilities, including risks of economic coercion and maternal erasure.
3. **Extend consultation:** Provide adequate time for evidence-based consideration of whether prohibition, not regulation, is required to meet Australia's human rights obligations under CEDAW, and provide those with an prohibition approach with representation on the Advisory Committee.
4. **Address CEDAW compliance:** Demonstrate explicitly in the Final Report how recommendations satisfy each element of CEDAW Articles 2, 3, 5, and 7.
5. **Pause this review and reconstitute the advisory committee:** Ensure a balance of views, including not only feminist analysis but also women who have relinquished a child to adoption, family law experts independent of the fertility industry, adopted people, surrogate mothers with negative or complex experiences, and gamete donors who can speak to the long-term impacts of these practices.

CONCLUSION

We participate in this review in good faith to ensure our evidence-based position based on prohibition is formally recorded; however, we must register that the governance arrangements for this review fall well short of democratic standards expected for such a significant human rights matter. Without demonstrable impartiality and CEDAW compliance, the review's legitimacy is compromised.