



**International Coalition for the Abolition of Surrogate Motherhood**

Paris, 18 December

The Attorney-General  
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Dear Attorney-General,

On behalf of the International Coalition for the Abolition of Surrogate Motherhood (ICASM) uniting 50 organisations across 17 countries and three continents, we are writing to you to express our serious concern regarding the trajectory taken by the Australian Law Reform Commission (ALRC) in its review of surrogacy regulation.

The ALRC was mandated to propose a regulatory framework that harmonises Australian legislation, aligns with international human rights obligations, and places the rights and best interests of the child at its centre. However, the approach outlined in the Discussion Paper departs significantly from this mandate. Rather than strengthening protections, it expands the reproductive industry and institutionalises a practice that inherently violates the rights of women and children. By treating surrogacy as a practice to be operationalised rather than critically examined, the reform risks prioritising market and contractual interests over human dignity.

The Discussion Paper asserts that the proposed reforms will better prevent exploitation of surrogates, intended parents, and children, and will promote the best interests of children. Yet, if these goals are truly central, the logical conclusion cannot be the expansion of surrogacy; it must be its rejection.

On this basis, we submit that surrogacy is exploitative by its very nature, insofar as it constitutes:

- 1. A STRUCTURAL VIOLATION OF WOMEN'S RIGHTS AND THE ULTIMATE EXPRESSION OF PATRIARCHY**
- 2. A VIOLATION OF THE FUNDAMENTAL RIGHTS OF CHILDREN**
- 3. A COMMERCIAL DYNAMIC INCOMPATIBLE WITH HUMAN RIGHTS**

## 1. A STRUCTURAL VIOLATION OF WOMEN'S RIGHTS AND THE ULTIMATE EXPRESSION OF PATRIARCHY

→ **Surrogacy rests entirely on the use of the female body and on the extraction of reproductive capacity.**

Yet the Australian reform increasingly relies on a gender-neutral vocabulary—“pregnant persons,” “carriers,” “surrogates”—that erases the reality of women’s embodied experience. This linguistic strategy is not incidental but it obscures the gendered power dynamics at the core of the practice : Male domination. ‘Male domination’ refers to a social system, patriarchy, which is an organisational structure in which societies have functioned for over 5,000 years. In fact, since the shift from nomadic life to sedentary societies, agriculture and the creation of surplus led to private property, competition, and the need to defend accumulated resources. In this emerging social order, women were increasingly confined to reproduction in order to secure lineage, population growth, and the stability of the territory. Women’s bodies thus became a central site of power. Because the capacity to reproduce determines whose names, heritage, and property are transmitted, men sought to control this capacity. Over time, women’s reproductive power was confiscated, absorbed into a system where men monopolised lineage, inheritance, and authority. Women were reduced to their biological function, treated as bodies rather than full subjects, deprived of autonomy and political agency. This historical dynamic of expropriation is the foundation of patriarchy—and it explains why any system built on the use of women’s reproductive capacities, such as surrogacy, cannot be detached from millennia of structural domination.

→ **As in any system of domination, the oppressed must give their consent to their own oppression.**

While A imposes constraints on B, the dominated, B also approaches A willingly. The most effective way to secure this consent is through cultural and social conditioning, which teaches that this is how things ought to be. In this way, women have been socialized to be “generous,” “altruistic,” and “available.” Marital obligations reflect this expectation of availability: men were entitled to sex, while women were expected to be constantly accessible and at their disposal. This logic is evident in contemporary surrogacy discourse. By claiming that current laws “unnecessarily prohibit the extent to which surrogates can be reimbursed, resulting in surrogates being unable to fully recover financial and non-financial costs and losses — this likely contributes to the lack of surrogates available in Australia,” the Australian Law Reform Commission reproduces the same patriarchal mindset. Referring to a “lack of surrogates available” reduces women to a supply problem, as if they were products rather than human beings with rights, bodies, and lives of their own. This phrasing exposes a fundamental rupture in how women are perceived within the surrogacy framework: not as rights-holders whose integrity must be protected, but as resources to meet market demand. Describing women in terms of “availability” reveals the logic of commodification that no regulatory reform can disguise and reflects the patriarchal dynamics that continue to objectify and instrumentalize women’s bodies.

→ **Pregnancy cannot be reduced to a service. It is a profound and total transformation involving the body, hormones, immune system, psyche, and social identity of the woman who carries the child.**

To characterise pregnancy as a contractual task fundamentally misrepresents its nature and obscures the extent of the physical and emotional commitment it entails. Yet, within surrogacy arrangements, this deeply embodied experience is systematically fragmented and subordinated to contractual obligations enforced by medical and legal authorities. Women are subjected to dietary controls, restrictions on movement, mandatory medical procedures, invasive interventions, and, in some cases, non-consensual caesarean sections, while often receiving little to no adequate postpartum care. Far

from embodying bodily autonomy, surrogacy institutionalises the right of third parties to exert control over another person's body. Intended parents, clinics, and intermediaries acquire de facto authority over the pregnant woman, placing contractual expectations and external desires above her bodily integrity and well-being.

This loss of autonomy is compounded by the medical risks inherent in surrogacy protocols. The process frequently begins with the administration of Lupron to suppress ovulation — a drug classified as hazardous, whose handling normally requires protective equipment, yet which surrogate mothers are routinely instructed to self-inject. As pregnancy progresses, the health risks increase substantially, including higher rates of ectopic pregnancy, gestational diabetes, hypertension, preeclampsia, placenta praevia, and a significantly elevated likelihood of caesarean delivery ([Velez et al., 2024](#)).

Empirical data further confirms the severity of these risks. Severe maternal morbidity — defined as life-threatening complications occurring during pregnancy or childbirth — affects 7.8% of surrogate mothers, compared with 4.3% in pregnancies conceived through IVF and 2.3% in spontaneous pregnancies. In concrete terms, a surrogate mother faces a risk more than three times higher than that of a woman who conceives naturally. Similarly, postpartum haemorrhage occurs in 13.9% of surrogate pregnancies, compared with 5.7% in non-assisted pregnancies, representing a 2.4-fold increase ([Velez et al., 2024](#)).

Finally, the harms of surrogacy extend beyond the individual woman to her family unit as a whole. The medical risks expose families to sudden crises, long-term health consequences, and psychological trauma. Moreover, the programmed separation from the child — intrinsic to surrogacy arrangements — places a significant emotional burden on the surrogate's existing children, disrupting attachment bonds and undermining their sense of security and emotional stability.

→ **Therefore, invoking “choice” is far more complex, since women have been conditioned into selflessness for millennia, and surrogacy rests on deep socio-economic inequalities.**

Indeed, as UN Special Rapporteur Reem Alsalem notes, women who become surrogate mothers globally overwhelmingly come from vulnerable situations, such as debt, immigration precarity, and lack of economic alternatives — in stark contrast to commissioning parents. Importantly, economic vulnerability is precisely what the Palermo Protocol identifies in Article 3 as a defining factor in exploitation within human trafficking. In this context, consent becomes a legal tool to sanitize exploitation: one cannot meaningfully consent to one's own commodification. Therefore, moving beyond the binary of “altruistic” versus “commercial” arrangements, as proposed in the reform, effectively normalizes disguised remuneration and renders financially compensating a pregnancy acceptable. However, pregnancy is not a service, whether it is free or not. Furthermore, broadening the scope of reimbursable costs mechanically increases economic incentives, disproportionately affecting women in vulnerable situations. This dynamic is precisely the mechanism of exploitation highlighted by the Palermo Protocol.

## 2. A VIOLATION OF THE FUNDAMENTAL RIGHTS OF CHILDREN

- **Surrogacy programmes involve separating the child from the woman who carried it, because this separation is inherent to the very purpose of the contract: children are conceived for transfer.**

This reality places surrogacy in direct contradiction with the Convention on the Rights of the Child (CRC), particularly Article 7, which affirms the right to know and be raised by one's parents, as well as the right to access one's origins. Furthermore, surrogacy establishes a logic of commissioning in which the child is anticipated, ordered, produced, and delivered, and no amount of care provided afterward can undo the fact that the child originated as a contractually promised outcome. By design, this violates the international human rights principle that rests on the non-commodification of the human body and the person. This is also why the notion of the "best interests of the child," frequently invoked to justify the recognition of parentage after overseas surrogacy or to regularize contractual arrangements, cannot serve as a legitimizing principle. Courts around the world have repeatedly emphasized that the best interests of the child cannot be used to validate systems that inherently instrumentalize children. In other words, this principle cannot be invoked to legitimize a market that treats children as transferrable goods.

- **Likewise, surrogacy can never serve the best interests of the child, given both the heightened risk of abandonment and the eugenic logic built into the process.**

This is the structural effect of a system that treats children as the end product of a contract—one in which commissioning parents may reconsider their desire when they encounter personal difficulties or deem the child insufficiently "conforming." Because embryos are created, manipulated, triaged and implanted according to the preferences of future parents, the fetus becomes a site of optimization. Moreover, because embryos are created, selected, and transferred according to the preferences of intended parents, the fetus becomes a site of optimization. Documented practices such as sex selection, the discarding of embryos deemed insufficiently viable, and the termination of pregnancies when the fetus does not meet expectations, reveal an explicitly eugenic dynamic. Surrogacy thus establishes a system where children are produced, evaluated, and potentially rejected, all under the rhetoric of reproductive choice.

In order to avoid traumatic consequences such as abandonment and to protect the best interests of the child, the ALRC does not prohibit surrogacy, which would be the most consistent decision. On the contrary, proposal 30 aims to make the commissioning parents the legal parents of the child from birth. Even more worrying is the proposal's stipulation that it is up to the mother to request within three months of the birth whether she wishes to regain her rights, a declaration concerning legal filiation affirming that

Nonetheless, this is incompatible with existing legal frameworks: Any affection of a child to others before birth is considered child sale, which is strictly prohibited (Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993). This prohibition rests on a basic distinction in law between persons and objects. A person is a subject of rights, whereas objects are things that subjects of rights can possess or control. Recognising this distinction is essential to safeguarding human dignity, ensuring equality, and preventing practices akin to slavery. A child is defined as "any person under eighteen years of age" (CETS No. 197, Article 4) and is therefore a subject of rights. As a subject of rights, the child possesses fundamental entitlements as affirmed by the Verona Principles and by the article 7 and 8 of the UN Convention on the Right of the Child. Therefore, treating a child as transferable before birth would reduce a person to the status of an object

which makes the “right to a child” legally void of meaning; no one may claim ownership of a human being.

Moreover, adoption law explicitly requires that the birth mother’s consent to transfer parental rights occur after the birth (HCCH, 1993 : Article 4, §4). This rule was established to protect both the child and the mother, ensuring that parental rights are granted only when the child exists as a separate legal subject. Allowing pre-birth transfers of parental rights to commissioning parents would therefore violate both international legal standards designed to prevent exploitation and to guarantee the child’s rights and welfare. In short, the very mechanism that surrogacy relies upon — pre-birth assignment of parental rights — is incompatible with the legal and ethical framework that protects human beings as subjects, not objects. Therefore, regulation cannot anticipate every disengagement, every divorce, every shift in desire — yet a single lapse is enough to leave a child without a family.

→ **Children also incur heightened risks of sexual exploitation and this is terrifyingly concrete.**

In Australia, a man commissioned twin girls from a surrogate with the explicit intention of sexually exploiting them. This is the logical outcome of a system that grants contractual access to a child without any of the safeguards required in adoption. Adoption subjects prospective parents to lengthy psychological evaluations precisely to prevent such risks. Surrogacy, by contrast, allows anyone, including predators, to obtain parental rights through financial means. Once again, regulation cannot resolve this contradiction, because the market logic at the core of surrogacy is fundamentally incompatible with the principle of protecting children.

→ **Surrogacy entails significantly higher physical health risks ([Schieve et al., 2002](#))**

According to the studies of Velas, children born via surrogacy face significantly higher rates of prematurity, metabolic disorders, low birth weight and congenital malformations. ART technologies, which represent just 0.6% of births, account for a disproportionate share of low birth weight and very low birth weight infants — 3.5% and 4.3% respectively. Research also shows that hormonal treatments and ovarian stimulation result in children presenting higher risks of hypertension, elevated blood glucose and increased fat mass. These medical risks — which would be unacceptable in any other context — directly contradict the fundamental principles of child protection.

### **3. A COMMERCIAL DYNAMIC INCOMPATIBLE WITH HUMAN RIGHTS**

- **The ALRC’s push to expand advertising (proposal 11), claiming current rules are “too restrictive,” reveals that surrogacy inevitably serves commercial and profit-driven interests.**

Once economic actors are involved, their financial interests inevitably take precedence over all other considerations. This is the beginning of exploitation. As the phrase “lack of available surrogates” illustrates, surrogacy is a system that operates the consumption-driven mentality characteristic of capitalism: the belief that everything can be obtained or purchased. If something is known or desired, it must be acquired, and there are no inherent limits. The system is therefore compelled to maximize “production” by any means necessary. This dynamic is comparable to industries such as fast fashion, where human labor and natural resources are exploited to constantly generate new products for consumption, regardless of ethical or social consequences. In surrogacy, women’s bodies are positioned as the resource to be mobilized and optimized, mirroring this capitalist imperative to commodify and extract value.

- **Even when framed as “altruistic,” surrogacy inevitably develops into an industry, because it is grounded in payments, legal services, agency coordination, and medical interventions that form a commercial chain.**

The composition of the ALRC’s Advisory Committee reinforces this trajectory: several members are drawn from law firms or IVF clinics with a direct financial interest in expanding reproductive markets in Australia. Such an advisory structure inevitably privileges industry perspectives and risks sidelining the human rights concerns of women and children, who are the ones affected by surrogacy practices.

Furthermore, the third proposal that would require all surrogacies to be registered through SSOs, private entities tasked with overseeing medical and psychological screening, counselling, and legal advice, would create a nationwide cottage industry of competing surrogacy businesses, from cities to rural towns. The dangers here are clear: profit-driven actors would dominate a deeply personal process, preying on women’s altruism under the guise of compassion. SSOs would normalize and expand surrogacy across Australia, ensuring the system spreads even further—and all on the premise that enough women can be recruited into this “kindness trap.” This proposal institutionalizes exploitation, disguising it as support.

Australia’s own social landscape, marked by strong racial and economic disparities, heightens these risks. Migrant women, particularly those from the Philippines, Vietnam, India, and other Asian communities, as well as Indigenous women already disproportionately represented in undervalued care and service sectors, could become the primary targets of this new reproductive marketplace. The belief that Australia could build an “ethical” surrogacy system when other countries with stronger regulation have failed is a dangerous illusion

## CLOSING REMARKS

At a time when the European Parliament, the United Nations, and numerous States — including Italy, France, Germany, Spain, and Slovakia — are reaffirming that surrogacy constitutes a violation of the rights of women and children, Australia appears to be moving in the opposite direction. This divergence undermines Australia’s alignment with international human rights standards and risks positioning the country as an outlier in the global movement toward the abolition of reproductive exploitation.

The proposed reform of surrogacy in Australia does not represent progress. On the contrary, it constitutes a significant regression for women’s rights, children’s rights, and the fundamental principle of human dignity.


Accordingly, we respectfully request that the Australian Government reject any expansion of surrogacy and to align instead with the growing international consensus calling for its restriction and eventual abolition. A society grounded in human rights cannot permit women’s bodies to be treated as reproductive resources, nor children to be reduced to contractual outcomes.

In addition, we urge the Attorney-General to review the continued appointment of [REDACTED] to the ALRC Advisory Committee, in light of [REDACTED]. Such conduct is incompatible with the standards of integrity and expertise required of an advisory body tasked with law reform.

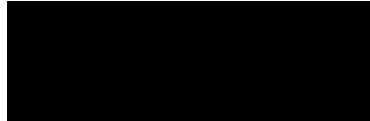
Finally, we would appreciate it if you could inform the ALRC that their ‘politically correct’ language should be reconsidered. The Discussion Paper consistently avoids using the words “*mother*” and “*her*” throughout its documents which contributes to the invisibilisation of women. It also defines surrogacy as “the practice of a person carrying and giving birth to a child for another person or people.” This definition is misleading. In practice, the woman is typically recruited and does not participate in surrogacy entirely of her own initiative. We recommend using the following definition of surrogate motherhood: “*Surrogate motherhood is defined as the practice of recruiting a woman, whether paid or unpaid, to carry one or more children, conceived with or without her own oocytes, with the aim of handing them over to one or more persons who wish to be designated as the parents of these children*”.

We thank you for your attention to these matters and for considering this submission.

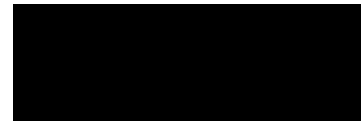
Yours sincerely,



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