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Question 2: What reform principles should guide this inquiry?

The best interests of all children should be of utmost importance. This means all children. It is not enough for Australian policy to consider the best interests of particular individual children already illegally commissioned through commercial surrogacy abroad then brought to Australia. Consistent with Article 35, Australian laws need to ensure that Australia does not become a ready market for such children. Furthermore, the rights of women from sexual and reproductive exploitation and abuse, and anti-slavery protections means that commercial surrogacy should be out of the question.

The inquiry should also be guided by the relevant articles of the Convention of the Rights of the Child (CRC), including the Articles mentioned in the Issues Paper (Articles 7, 8 and 16) and additional relevant CRC articles not mentioned, including Articles 9, 11, 21 and 35.

Question 3: What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements? How should these be addressed?

- Australia should prohibit all forms of surrogacy, including cross-border arrangements, particularly commercial surrogacy.
- The law should affirm that the welfare and rights of the child are paramount and cannot be overridden by adult desires or contracts. This should include the right of any children born through surrogacy to know their biological parents and the circumstances of the conception and birth.
- Where surrogacy does occur, legal frameworks must provide rigorous protections for surrogate mothers, including independent legal and psychological support. There should also be strong protections to ensure they are not subject to modern slavery arrangements.

Question 5: What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome?

Surrogacy arrangements pose considerable human rights concerns. The legal barriers and protections that currently exist are appropriate and should remain in place.

Question 13: How should surrogacy advertising be regulated?

Surrogacy advertising should not be allowed. It risks commodification of the bodies of women and children. It also risks normalising this practice and increasing the prevalence of surrogacy within society.

If allowed at all, only government-regulated, not-for-profit registries with strict oversight should be permitted to advertise.

Question 15: How could the process for reimbursing surrogates for reasonable expenses be improved?

It is important to ensure that only direct, documented costs related to medical treatment, legal advice, counselling and potentially also loss of earnings directly associated with the pregnancy should be reimbursable. Potentially, some consideration could be given to loss of earnings directly associated with the pregnancy but documentary evidence to demonstrate such loss would need to be presented in order to ensure altruistic arrangements do not become de facto commercial arrangements.

Question 17: If Australia was to allow for compensated or commercial surrogacy, how could this be implemented?

I am strongly opposed to commercial surrogacy and both commercial and compensated arrangements should continue to be illegal in Australia. Commercial surrogacy arrangements are outside the Terms of Reference provided by the Federal Government, which were limited to altruistic surrogacy.

Commercial surrogacy is currently illegal in Australia for very good reasons. The question has been reviewed multiple times with the same result. It is fundamentally incompatible with Australia's international human rights obligations under the CRC (particularly Article 35) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) to introduce either compensated or commercial surrogacy. The only difference between the two terms, as established by the Issues Paper, is that there is a cap set on compensated surrogacy. Both involve the commodification of children and the exploitation of women, which means that surrogates are paid less for their unique contribution. Both are ethically unacceptable.

I strongly oppose both compensated and commercial surrogacy on ethical, legal, and human rights grounds. Both practices risk commodifying women and children by treating reproductive capacity and human life as transactional. However, compensated surrogacy - where a surrogate is reimbursed strictly for reasonable, itemised expenses incurred during pregnancy (such as medical care, maternity clothing, and lost wages) - is comparatively more compatible with human rights standards than commercial surrogacy.

Question 21: How could the process for obtaining these documents be improved?

As outlined above, international surrogacy should remain illegal due to the rights of the child and of the birth mother.

This question assumes that the process of obtaining documents should be improved. Rather than incentivising this activity, consideration should be given as to why the existing prohibitions do not appear to be working in practice.

Question 24: Should the law have a role in discouraging or prohibiting certain forms of surrogacy?

Those who engage in compensated or commercial surrogacy, whether in Australia or overseas, for the purposes of acquiring a child or children should be prosecuted to the full extent of the law. If existing prohibitions were enforced, this would reduce the numbers of children for whom obtaining documents is a problem.

Regards Michael O'Reilly