Human rights in action

The Surrogacy Inquiry Final Report contains 47 recommendations for reforming surrogacy laws in Australia. This information sheet shows how the ALRC's recommendations would, if implemented, uphold human rights. These rights are discussed in greater detail in Chapter 14 of the Report.

Children born through surrogacy

Best interests of the child

Article 3 of the Convention on the Rights of the Child

- Under the administrative pathway, legal recognition of parentage from birth to reduce uncertainty around parentage and allow for timely decision-making about the child's care and wellbeing
- Under the judicial pathway and overseas surrogacy arrangements, best interests are paramount in court determinations regarding parentage
- Criminal history checks for intended parents
- Requirements for independent legal advice and implications counselling
- Independent assessment of compliance with legislative safeguards before conception
- Requiring parties to comply with eligibility requirements such as a medical assessment

Right to identity

Article 8 of the Convention on the Rights of the Child

- Creating a National Surrogacy Register or equivalent containing information relating to the gestational origins of people born through both domestic and overseas surrogacy arrangements
- Providing access to this information via the National Surrogacy Register from age 16, or younger if it is in the child's best interests

Preventing harm and exploitation in overseas surrogacy

Article 35 of the Convention on the Rights of the Child

- Requiring all intended parents to register, and receive guidance and legal advice, before engaging in overseas surrogacy
- Requiring intended parents to exercise due diligence before entering an overseas surrogacy arrangement, to reduce the risk of the sale of a child, or denial of the rights of the child to identity and nationality
- Non-compliance may lead to a civil penalty

The ALRC's recommendations also address the child's rights to birth registration, nationality, and the parent-child relationship

Read the Final Report and Summary Report **here**

Human rights in action

Surrogates

Right to autonomy and reproductive freedom

Article 17 of the International Covenant on Civil and Political Rights
Article 12 of the International Covenant on Economic, Social and Cultural Rights

- Safeguarding the surrogate's free and informed consent, including through minimum age requirements, requirements for a previous successful pregnancy, independent legal advice, and counselling
- Requiring signed, compliant surrogacy agreements
- Prohibiting coercion or attempted coercion to act as a surrogate
- Improving oversight of surrogacy arrangements
- Requiring agreements to include a statement confirming respect for the surrogate's bodily integrity and autonomy
- Providing the option for surrogates to apply for legal parentage in the Federal Circuit and Family Court of Australia

Right to be free from discrimination

Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women

- Preventing surrogates from being financially disadvantaged as a result of the arrangement
- Requiring all intended parents to register, and receive guidance and legal advice, before engaging in overseas surrogacy
- Requiring intended parents to exercise due diligence before entering an overseas surrogacy arrangement, to reduce the risk of exploitation of surrogates