

Opening statement
Select Committee on Fertility Support and Assisted
Reproductive Treatment
NSW Parliament
21 April 2026

Chair, members of the committee, we appear before you today not only as women's advocates but as co-guardians – with you – of women's welfare. We also appear as monitors of the constitutional and human-rights order in New South Wales and as the people who entrusted you with the authority to uphold that order. Members, your office carries significant powers and we honour that in speaking to you today in the hope that you will use your powers for the protection of those of us who are most vulnerable to state and structural harm.

As guardians, you have accepted on our behalf the burden to limit what can be done in our name, and we thank you for taking on this work. But as citizens – and here we speak especially as women and as mothers – we hold rights against parliament: rights to not have our bodies or our children treated as resources in a market, however strong the demand, and rights to your protection from state and structural harms that individuals cannot prevent alone.

A core question for this inquiry, then, is how parliament understands its role in relation to women and surrogacy. The starting point we offer is guardianship. Applied to women and girls as a sex class, this means legislators hold a duty to protect us from laws that license the exploitation and commodification of our reproductive capacity.

This is why guardianship, properly understood, is not paternalism. Women do not lack capacity or competency. We lack protection. Paternalism assumes that adults lack capacity and uses that as a justification for overriding our wishes 'for our own good'. Guardianship instead recognises that adults have agency, but also that some social arrangements are so structurally exploitative that the state must not endorse them, even when some citizens step into them. A parliament that refuses to construct and manage a market that depends on women's inequality is not denying women's agency; it is honouring a duty to ensure that our agency is not used as raw material for exploitation.

In this inquiry, however, parliamentarians are being invited into a different self-image: as stewards of a policy domain now being termed 'fertility support', managing sets of consumer and industry interests. Within that stewardship frame, purchasers, clinics, brokers, 'surrogate mothers' and children all appear as 'stakeholders' whose claims must be balanced. We press the committee to step out of that comfortable stewardship frame and into the space

that guardians inhabit, where there are hard limits on what may be organised as a service and commodity market. A steward of a reproductive market is, by definition, working for that market's continuity and stability; a guardian of women and children can, and sometimes must, recommend that the market not exist at all.

Seen through this lens, your Terms of Reference embrace not just technical questions. They go to whether this committee will recommend removing protections in the name of 'access', or will instead affirm that the only coherent safeguard for an inherently exploitative practice is prohibition.

'Barriers to accessing surrogacy' are not inconveniences to be removed; they are essential, minimal protections against the commodification of women as a sex class. And where harm is inherent in the structure of an arrangement, no amount of regulation can cure it. A framework built on stewardship will only ever treat women's bodies as sites of managed risk. A framework built on guardianship, however, will prohibit surrogacy, extend that prohibition extra-territorially, criminalise facilitation and brokerage, and integrate surrogacy into anti-trafficking and women's-rights protections.

Our request to you is simple and it is serious: to remember, in this inquiry, that the parliament must not primarily steward an industry but instead guard women and children in its role as trustee of the community's power. We are asking you to live in that role on which we rely and that you have promised to us to uphold. The authority you possess is considerable and we lend it to you on terms.

Surrogacy: The Case for Guardianship and Prohibition

INTERNATIONAL LEGAL FRAMEWORK



Core Human Rights Treaties

International obligations are grounded in CEDAW, the Convention on the Rights of the Child (CRC), the Palermo Protocol, and the ICCPR.

UN Rapporteurs Call for Prohibition

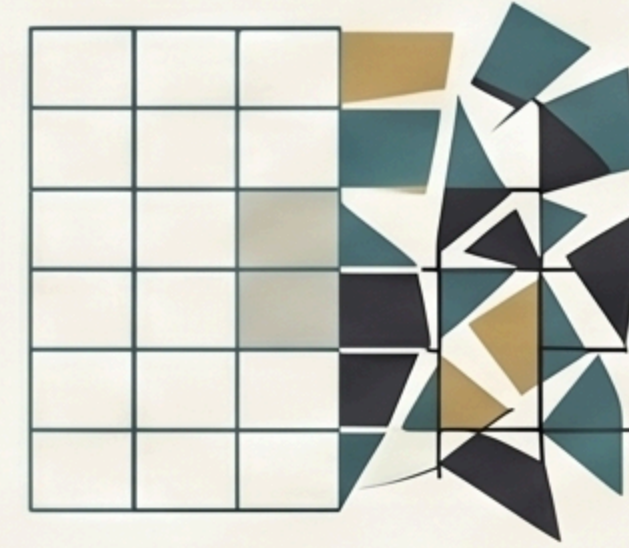
The UN Special Rapporteur on violence against women and girls has explicitly called for a binding international instrument to prohibit surrogacy.



The Emerging European Position

The European Parliament has condemned surrogacy as reproductive exploitation, with countries like Italy and Slovakia implementing restrictive measures.

THE REALITY OF "STRUCTURAL EXPLOITATION"



Regulation vs. Sanitization

Screening and safeguards do not cure exploitation; they merely "sanitize" the trade in women and children to make it appear orderly.



The Use-and-Relinquishment Structure

Surrogacy is defined by contracting a woman's body for gestation with engineered mother-child separation at its core.

The Myth of Altruistic Surrogacy

Even "altruistic" models rely on coercive social conditions, gendered expectations of sacrifice, and economic pressures.



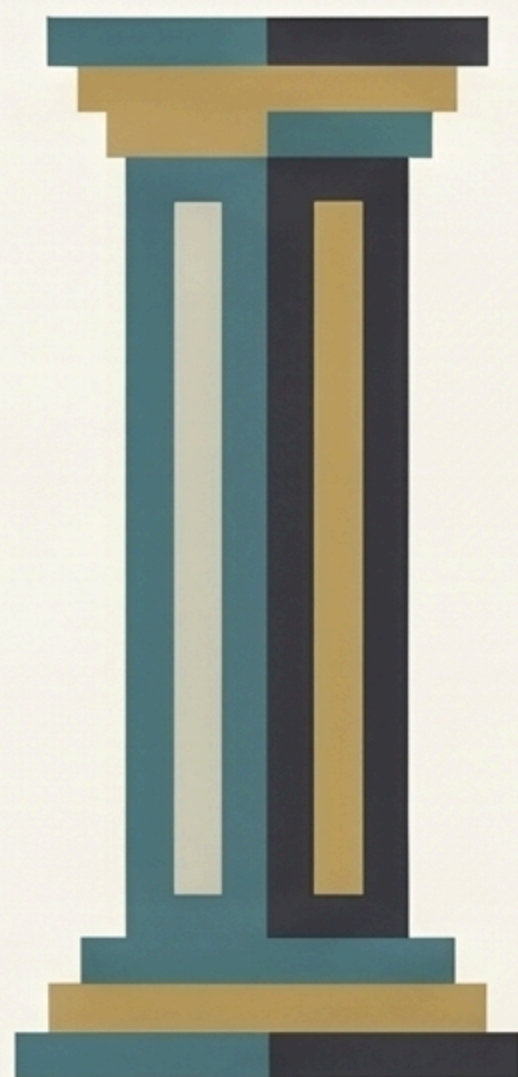
THE GUARDIANSHIP MANDATE

Stewardship

Balances stakeholder interests (industry/adults).



Stakeholder Interests
(industry/adults).



Guardianship

Inherent duty to protect women and children from structural violence.



Structural Incompatibility

A parliament cannot simultaneously guard women as a sex class while also facilitating a market for their reproductive labor.

Rights Against Commodification

Children hold the right not to be sold or deliberately separated from their mothers, regardless of adult "entitlements" to family.

IDENTIFIED GOVERNANCE FAILURES



Exclusion of Women's Voices

Women's organizations have been consistently excluded from the early, agenda-setting stages of surrogacy law reviews.



Industry-Driven Panels

Advisory committees often lack independence, exhibiting conflicts of interest and sidelining evidence of harm.

The Democratic Deficit

Current legislative reviews suffer from compressed consultation, a lack of exposure drafts, and heavy reliance on industry stakeholders.



Surrogacy, Human Rights, and Legislative Duty: A Structural Analysis

Briefing Document for the NSW Legislative
Council Select Committee on Fertility Support and
Assisted Reproductive Treatment

Prepared for the Committee Hearing | Policy & Rights Framework

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Organizational Mandate & Inquiry Scope

Our Mandate

The organisation's mandate is the **protection of women from exploitation** and the protection of our **rights**; is not to adjudicate who most 'deserves' a child.

The Committee's Task

The task before the committee is not to fine-tune consumer safeguards but to decide whether the state should endorse a practice built on reproductive exploitation.

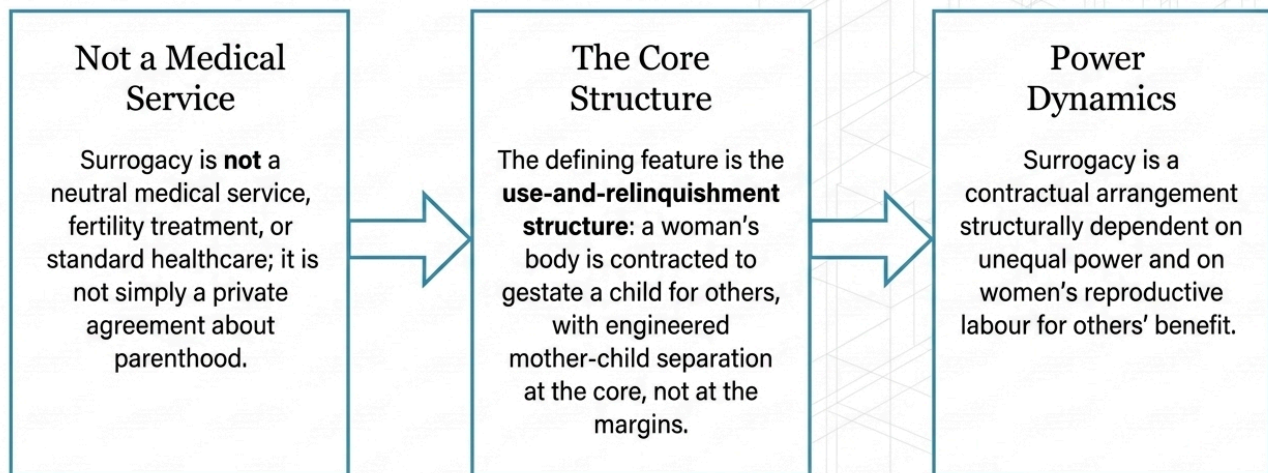
Distinct Concepts:

Assisted Reproductive Technology (ART)
Involves treating one's **own** fertility and body.

Structural Surrogacy
About contracting **another** woman's body and reproductive capacity.

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Defining the Practice: The Structural Reality of Surrogacy



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Exploitation is Structural, Not Regulatory

Regulatory Assumption

The belief that screening, contracts, and rules can mitigate the risks of the practice.

Exploitation is **built into the structure** of surrogacy; it is not a side-effect of poor or incomplete regulation.

Even so-called 'altruistic' surrogacy relies on coercive social conditions: gendered expectations of self-sacrifice, service, and economic pressures that undermine genuine choice.

Screening, counselling, and 'safeguards' **sanitise** the trade in women and children, making it look orderly, but cannot cure an inherently exploitative practice.

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Reframing 'Barriers' as Essential Protections

Protections ~~Barriers~~

So-called 'barriers' to surrogacy are **basic, minimal protections** against exploitation and commodification, not unjust impediments.

There is **no entitlement** to surrogacy; describing protections as 'barriers' assumes a right to women's reproductive labour that does not exist.

Prohibition is itself a barrier, and is the **only adequate safeguard** against commodification and structural exploitation.

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The Legislative Lens: How Parliament Views Its Duty

Stewardship (The Commercial/Administrative Model)	Guardianship (The Rights/Protective Model)
Treats parliament as a steward balancing the competing interests of commissioning adults, industry, and surrogates.	Recognises an inherent duty to guard the welfare of those who cannot adequately guard themselves—specifically, the protection of a vulnerable sex class and children.
The Impact of 'Removing Barriers' Structural Incompatibility: These duties are structurally incompatible. Once parliament chooses to 'remove barriers' to surrogacy, it has subordinated its guardianship obligation to women to the desire-claims of commissioning adults.	

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Centring Children's Rights

Refusing to bring children into an exploitative surrogacy system honours actual children's rights; post-hoc protection of existing children does not justify maintaining the engine of surrogacy.

Children's Rights

Children's rights are intrinsically linked to their mothers; rights to identity and to preserve family relations are violated by engineered separation.

A society does not wrong hypothetical children by refusing to construct an exploitative system.

International Legislative Frameworks & Obligations

Under **Term of Reference (j)**, this Committee must consider relevant national and international laws. Australia's international commitments are **binding legal obligations** that must inform law reform.

CEDAW

Convention on the Elimination of All Forms of Discrimination against Women - requires States Parties to suppress all forms of traffic in women and eliminate practices based on stereotyped roles.

CRC

Convention on the Rights of the Child - mandates the protection of children from being treated as commodities.

Palermo Protocol

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

ICCPR

International Covenant on Civil and Political Rights.

The Emerging International Consensus

July 2025: UN Special Rapporteur Report

The UN Special Rapporteur on violence against women and girls delivered a landmark report to the General Assembly describing surrogacy as a system of violence, abuse, and exploitation, calling on all UN Member States to work towards a legally binding international prohibition.

Recent Regional Shifts: European Parliament & Hague Conference

The European Parliament explicitly condemned surrogacy as reproductive exploitation, while the Hague Conference suspended its 15-year project on a cross-border surrogacy framework.

Domestic Action Abroad: Legislative Closures

Jurisdictions including Italy, Slovakia, and **others** have enacted strict legislative or constitutional prohibitions against surrogacy arrangements and fertility tourism.

Policy Conclusion: The Necessity of Prohibition



Not a Support Service: Surrogacy is not a neutral good to which people are unjustly denied access; **it is not a legitimate fertility support option.**



The Reality of Regulation: Dense regulation is an admission of inherent risk: safeguards manage margins, but ultimately **normalise and sanitise** the core exploitation.



The Role of the State: The state routinely **prohibits transactions involving structural inequality**, risk of exploitation, and third-party profit even where adults consent; surrogacy meets every threshold for structural prohibition.

Main arguments against surrogacy
Select Committee on Fertility Support and Assisted
Reproductive Treatment
NSW Parliament

1. Nature of surrogacy

- Surrogacy is not a neutral medical service, fertility treatment, or standard healthcare; it is not simply a private agreement about parenthood.
- The defining feature is the use-and-relinquishment structure: a woman's body is contracted to gestate a child for others, with engineered mother-child separation at the core, not at the margins.
- Surrogacy is a contractual arrangement structurally dependent on unequal power and on women's reproductive labour for others' benefit.

2. Structural exploitation, not bad regulation

- Exploitation is built into the structure of surrogacy; it is not a side-effect of poor or incomplete regulation.
- Even so-called 'altruistic' surrogacy relies on coercive social conditions: gendered expectations of self-sacrifice, service and economic pressures that undermine genuine choice.
- Screening, counselling and 'safeguards' sanitise the trade in women and children, making it look orderly, but cannot cure an inherently exploitative practice.

3. Barriers and prohibition

- So-called 'barriers' to surrogacy are basic, minimal protections against exploitation and commodification, not unjust impediments.
- There is no entitlement to surrogacy; describing protections as 'barriers' assumes a right to women's reproductive labour that does not exist.
- Prohibition is itself a barrier, and is the only adequate safeguard against commodification and structural exploitation.

4. Guardianship vs stewardship

- The committee's current framing treats parliament as a steward balancing the interests of commissioning adults, surrogates, industry and children.
- Stewardship is about managing a domain for stakeholders; in that model, women's bodies become one stakeholder interest among others.
- Parliament's proper role is guardianship: an inherent authority and duty to protect women and girls as a sex class, and children, from structural violence and laws that licence reproductive commodification.

- A parliament cannot simultaneously guard women as a sex class and steward other adults' access to our reproductive labour; those duties are structurally incompatible.
- If guardianship is the principle, prohibition is the only coherent legislative expression in relation to surrogacy.

5. Rights and children

- Rights are not one-directional: women and children hold rights against exploitation and commodification.
- A 'right to family' or to respect for family life does not create a positive entitlement to use a woman's body or to procure a child via a contract requiring relinquishment.
- Children have rights not to be sold or deliberately separated from their mothers; society does not wrong hypothetical children by refusing to construct an exploitative system.
- Refusing to bring children into an exploitative surrogacy system honours children's rights; post-hoc protection of existing children does not justify maintaining the engine of surrogacy.

6. Mandate and scope

- The organisation's mandate is the protection of women from exploitation and the protection of children; it is not to adjudicate who most 'deserves' a child.
- The task before the committee is not to fine-tune consumer safeguards but to decide whether the state should endorse a practice built on reproductive exploitation.
- ART involves treating one's own fertility and body; structural surrogacy is about contracting another woman's body and reproductive capacity.

7. Policy conclusion

- Surrogacy is not a neutral good to which people are unjustly denied access; it is not a legitimate fertility support option.
- Dense regulation is an admission of inherent risk: safeguards manage margins, but normalise and sanitise the core exploitation.
- The state routinely prohibits transactions involving structural inequality and risk of exploitation even where some adults consent; surrogacy should be treated in that category.
- Regulation can tidy appearances, but cannot turn an exploitative practice into an ethical one; prohibition is the only genuine safeguard, and a parliament that owes women and children a duty of guardianship cannot fulfil that duty by stewarding a market in women's reproductive labour.

The Structure of Surrogacy

A human-rights framework for lawmakers, evaluating the ethics, legal obligations, and market dynamics of reproductive contracts.

A Policy Briefing & Educational Scaffold

womensadvocacy.net / women@womensadvocacy.net

Scaffold Keyword Bar

[Core Framing and Entitlement]

[Surrogacy as a System]

[Regulation & Market Dynamics]

[State Duties & Governance]

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Anchoring Principles: What Surrogacy Is and Is Not

What it IS	What it IS NOT
<ul style="list-style-type: none">- An arrangement for the use of a woman's body for the handover of a child.- A contract for pregnancy and planned separation planned separation.- A system of reproductive services and child transfer (not a simple agreement between equals).- Structurally exploitative: treats women's bodies as resources and children as objects of a contract.	<ul style="list-style-type: none">- Not a neutral good awaiting better service delivery.- Not a neutral form of family formation.- Not a simple private contract or agreement between equals.

Scaffold Keyword Bar

[Tag: Planned separation]

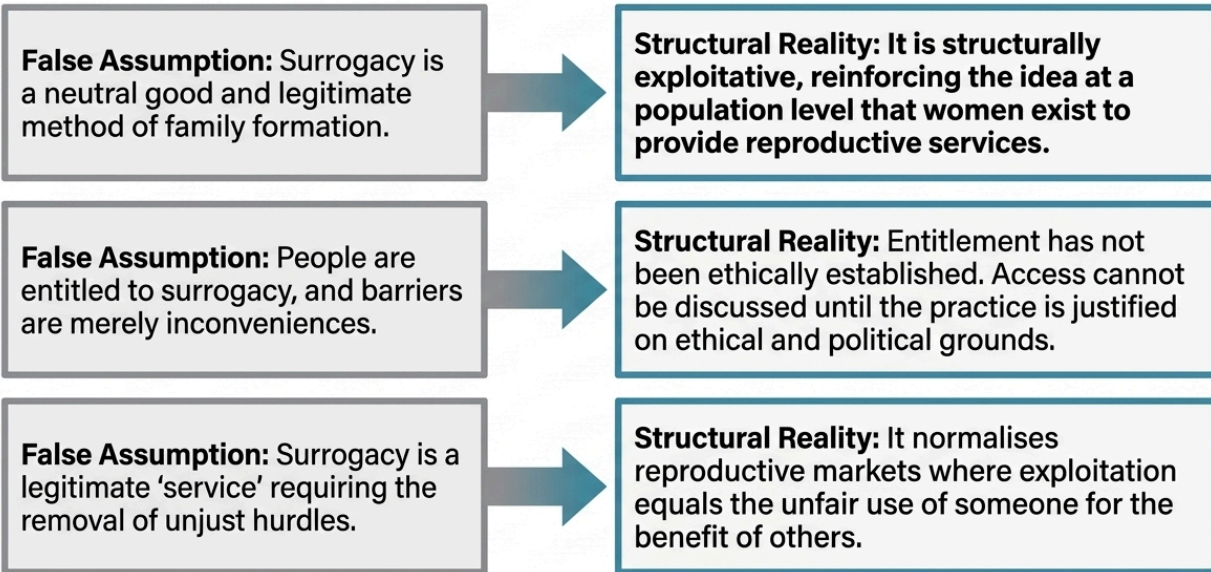
[Tag: Reproductive services]

[Tag: Women's bodies as resources]

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Dismantling False Assumptions of Entitlement



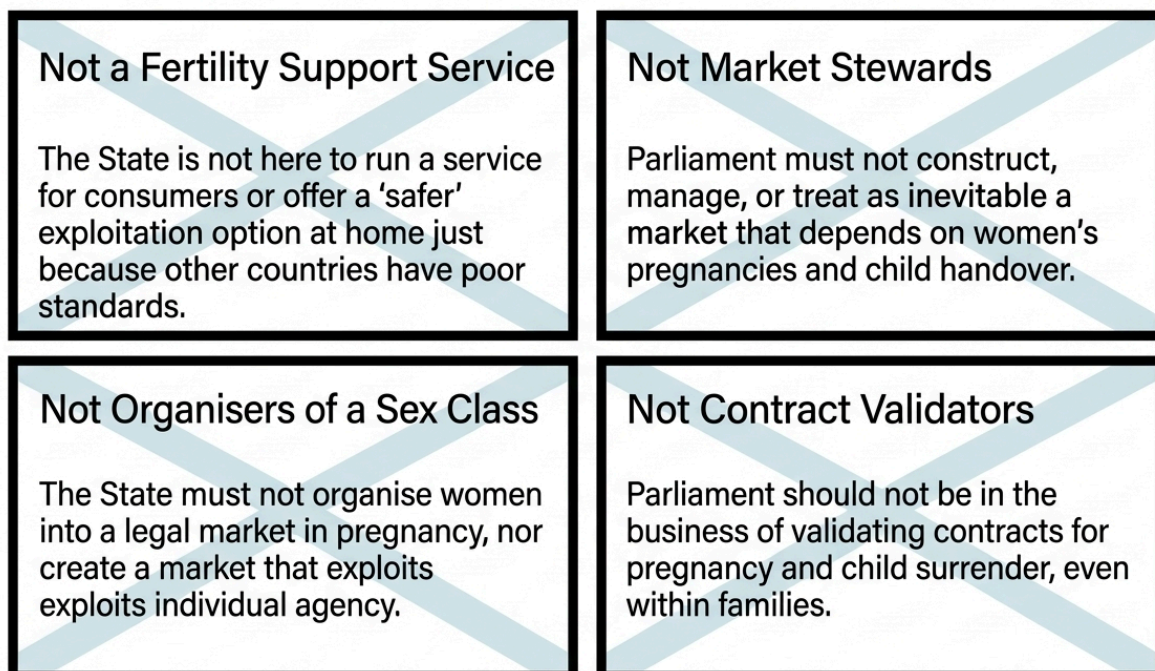
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[Tag: Entitlement]

[Tag: Neutral good]

[Tag: Barriers]

The State's Negative Duty: What Parliament is NOT



Scaffold Keyword Bar

[Tag: Parliament's duty and obligations]

[Tag: Negative duty (steward vs guardian)]

[Tag: Fertility support service]

The State's Positive Duty: The Guardian Role

Examine & Prohibit

- Duty to examine what is being bought and sold, and where risks fall.
- Power and responsibility to prohibit markets resting on exploitation (similar to prohibitions on dog fighting or extreme media, even where adults consent).

Dismantle

- Parliament must prevent inherently unsafe practices that rely on women's subordination and the commodification of children.

Strengthen Alternatives

- The state must strengthen non-exploitative routes to family: guardianship, kinship care, ethical adoption, and better social supports.

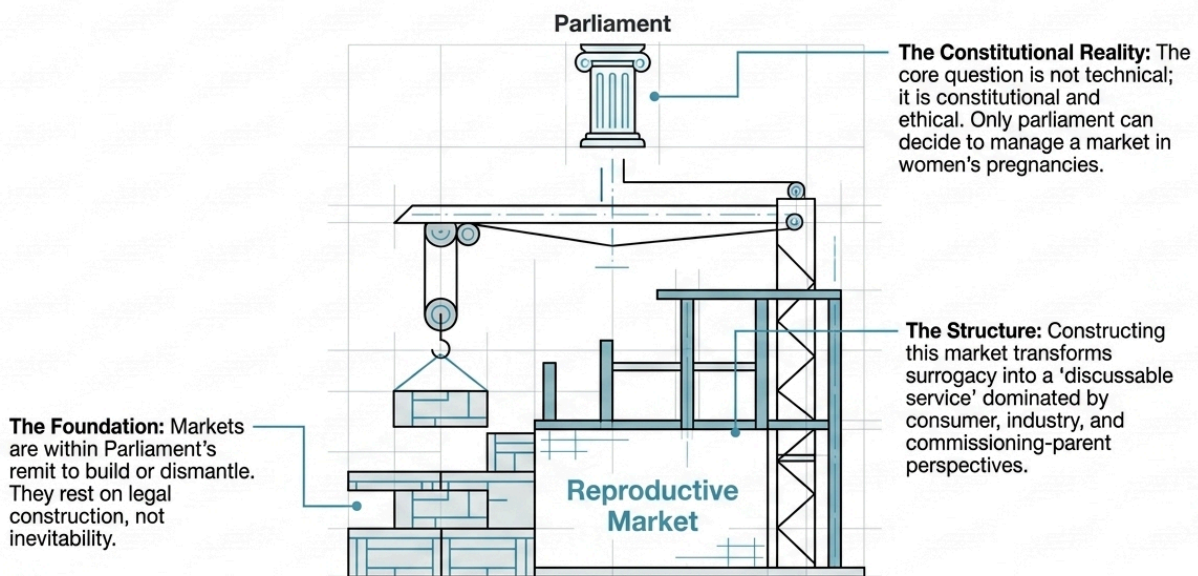
[Tag: Standard structural human-rights analysis]

[Tag: Objective patterns of power]

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Markets are Legal Constructions, Not Natural Facts



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[Tag: Trade; market management]

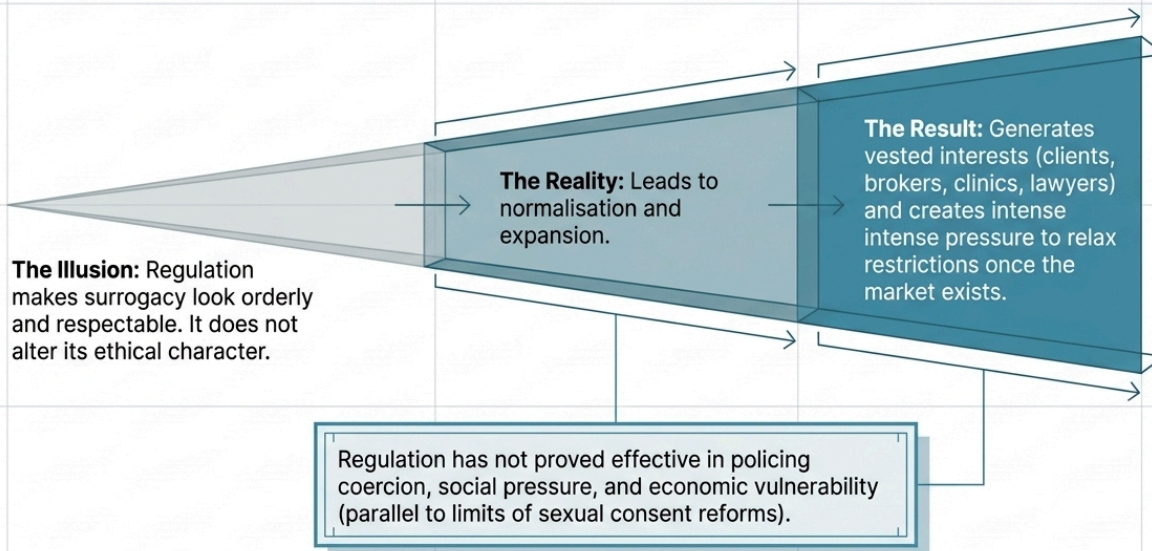
[Tag: Consumers]

[Tag: Industry stakeholders]

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The Illusion of Regulation: The Thin End of the Wedge



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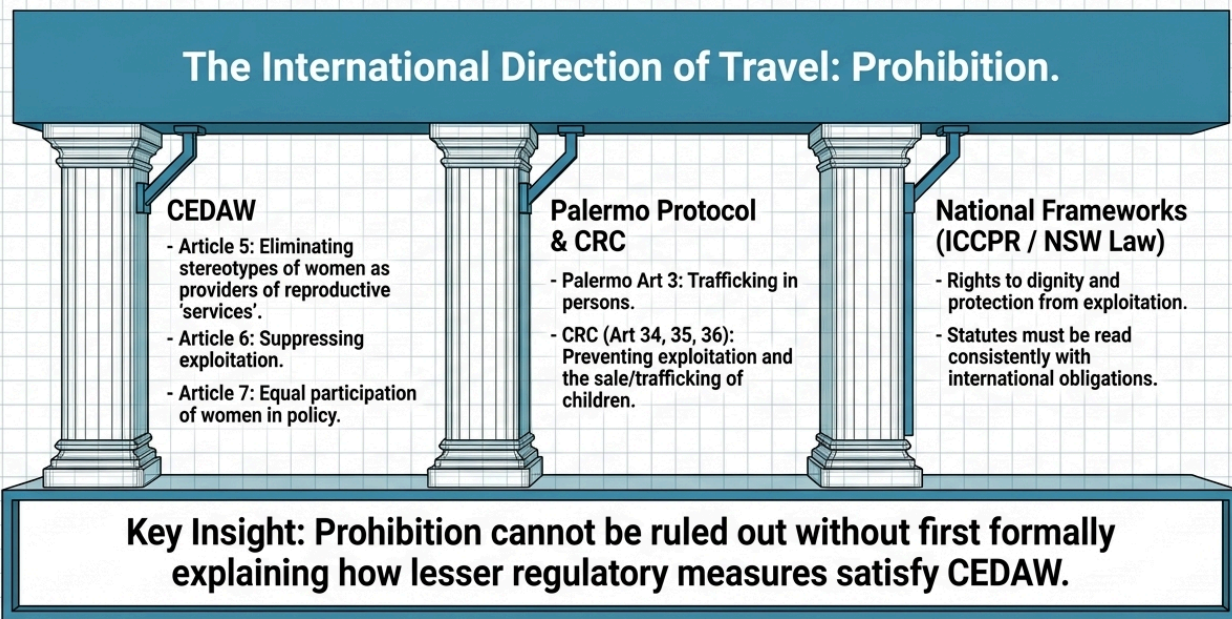
[Tag: Thin end of the wedge]

[Tag: Normalisation, expansion]

[Tag: Risk management]

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Codifying Exploitation Triggers International Scrutiny



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[Tag: Principled stand]

[Tag: Standard structural human-rights analysis]

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The Lens Shift: Agency vs. Structural Material Reality

Micro Lens

Subjective views:

- **Anecdote & Feelings:** Individual choices are subjective. Positive individual outcomes can look fine even in exploitative systems.
- **Agency:** Respecting agency does not mean using it as raw material for an industry built on sex-based inequality.

Macro Lens

Objective views:

- **Social & Structural Analysis:** The system must be examined as a whole.
- **Objective Reality:** Look at patterns across populations: who profits, who carries risk, where power and money sit.
- **Legal Structure:** Can be materially exploitative even when some women say they like being part of it.

[Tag: Agency as raw material]

[Tag: Subjective lived experience vs objective analysis]

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Equality, Diversity, and Discrimination

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[Tag: Exclusion]

[Tag: Objective patterns of power]

The Longing for Family

Exploitative Systems

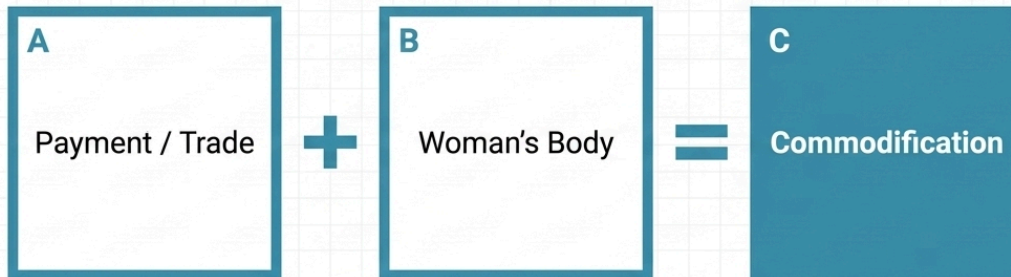
- Turning women into paid sites of reproductive labour.
- Turning children into commodities.
- Insight: The right to family life does not mean obtaining a child by any means the market devises. Some options must be off the table for everyone.

True Equality

- Strengthening **non-exploitative** alternatives.
- **Guardianship, kinship care**, and better social support for parenting (addressing poverty).

Key Insight: It is not discriminatory to refuse to organise a market in women's pregnancies and child handover.

The Mechanism of Commerce: What is Being Bought?



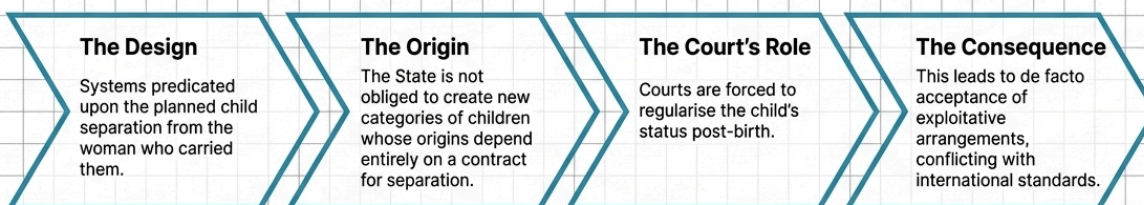
- **The Core Product:** What is actually being acquired is control over pregnancy and the handover of a child.

- **The Illusion of 'Altruism':** Paying a woman does not change what is being bought.

- **The Threshold of Commodification:** Something does not have to be paid for in cash to be commodified; it need only be traded.

Distractions like payment caps or professionalising the industry obscure the hidden commerce inherent in the transaction.

Centering Children: Planned Separation and Court Capture



The Design

Systems predicated upon the planned child separation from the woman who carried them.

The Origin

The State is not obliged to create new categories of children whose origins depend entirely on a contract for separation.

The Court's Role

Courts are forced to regularise the child's status post-birth.

The Consequence

This leads to de facto acceptance of exploitative arrangements, conflicting with international standards.

We support humane parentage/citizenship rules for existing children, alongside a firm decision not to reproduce these harms for future children.

Cross-Border Realities: Reducing Demand Overseas

Flawed Approach: Policing Travel

- **False Duty:** Other countries' poor standards do not create a duty for NSW to offer a 'safer' exploitation option at home.
- **False Goal:** The goal is not to police travel.

Structural Approach: Removing Incentives

- **Remove Incentives:** Remove legal and financial incentives that drive the market.
- **Reduce Demand:** Refuse to normalise the practice domestically.
- **Send Strong Signals:** Clear, well-publicised rules regarding parentage law, immigration, and enforcement discourage residents from purchasing reproductive services interstate/overseas.

[Tag: Complex coercion]

[Tag: Reproductive markets]

Reframing the Pushback: Secular Boundaries, Not Ideology

The Accusation	The Secular Human-Rights Reality
Religious doctrine or doctrinaire ideology.	Grounded strictly in women's human rights and secular principles established in literature.
'Extreme' rhetorical excess.	The language of 'exploitation', 'commodification', and 'violence' derives from standard international analysis of surrogacy harms.

[Tag: Standard structural human-rights analysis]

[Tag: Objective legal and material reality]

Precedent Box
 It is not extreme to draw a clear line around what can be marketed. We already draw lines around the sale of organs, sale of children, and animal sports. Surrogacy belongs in that category. We must name these dynamics so Parliament can see what is at stake.

Synthesis: Critical Questions for Lawmakers (MLCs)

Blueprint Checklist

- What are we actually paying for?**
We must be clear about the actual exchange and the ethical implications.
- Should this market exist at all, given the State's positive duties and international obligations?**
Consider the state's responsibilities and international treaties regarding human rights and exploitation.
- Are the Terms of Reference (TORs) structurally framed around a false assumption of surrogacy as an entitlement to a neutral good?**
Challenging the inherent bias in the framing of the inquiry itself.
- Are you willing to maintain or expand a practice that depends on the reproductive exploitation of women and resembles trafficking?**
Directly confront the parallels with exploitation and human trafficking.
- The core question is not whether women are capable, but who benefits when an industry calls this 'empowerment'?**
Focus on the beneficiaries of the industry, not the individual capacity of women.

We ask the committee to take these recommendations as practical findings, not merely abstract concerns. Before discussing 'access', the practice itself must be ethically justified.

[Tag: Conflicts of interest]

[Tag: Objective patterns of power]

[Tag: How Parliament organises us]

Legislative, international, and parliamentary instruments
Select Committee on Fertility Support and Assisted
Reproductive Treatment
NSW Parliament

International instruments and obligations

Core treaties and protocols the committee should have in view:

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- Convention on the Rights of the Child (CRC).
- Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (worth naming explicitly alongside CRC).
- Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- International Covenant on Civil and Political Rights (ICCPR).

Key UN and regional developments

- UN Special Rapporteur on violence against women and girls report on surrogacy and violence against women and girls, calling for prohibition and a binding international instrument.
- UN/UNICEF positions on sale of children and surrogacy.
- Emerging European position (European Parliament resolution condemning surrogacy as reproductive exploitation, plus Italy/Slovakia measures)
- South American and Asian countries are also moving or have already moved to prohibit surrogacy.

Domestic and parliamentary reviews

Major reports and reviews relevant to surrogacy law and this committee:

- Commonwealth Parliament 'Surrogacy Matters' report (House of Representatives Standing Committee on Social Policy and Legal Affairs, 2016).
- Parliament of New South Wales statutory review of the Surrogacy Act 2010.
- NSW review of the Surrogacy Act and Status of Children Act (your 2024 submission and the current NSW committee process).
- Australian Law Reform Commission review of surrogacy laws (current ALRC inquiry and discussion paper).
- UN Special Rapporteur's surrogacy and violence report (as above).

Related domestic work and legislation we have engaged with

Key pieces of work we have already done that demonstrate experience and continuity:

- NSW Equality legislation work (NSW Equality Bill / 'Equality Act' issues).
- Western Australian Assisted Reproductive Technology and Surrogacy Bill (submissions and UN engagement).
- ALRC review of surrogacy laws:
 - participation in the ALRC roundtable;
 - correspondence to the ALRC President and to the Attorney-General about governance, conflicts of interest, advisory-committee imbalance, statutory obligations and how a recommendation for prohibition fits the terms of reference.
- NSW review of the Surrogacy Act and Status of Children Act (NSWWAA submission).

Governance failures and democratic deficit theme

Recurring pattern across WA, NSW and ALRC processes:

- Exclusion of women's organisations and women's voices from early, agenda-setting stages.
- Democratic deficit: compressed consultation, lack of exposure drafts, heavy reliance on industry/clinical stakeholders.
- Conflicts of interest and industry-driven advisory committees and panels; lack of independence.
- Ignoring or sidelining evidence of harm, providing misleading rationales, and treating prohibition as 'out of scope' despite clear international obligations.
- Our correspondence to the ALRC President and Attorney-General was effectively rebuffed, with responses that did not address the conflicts and governance concerns raised.

Term of Reference (j)

How prohibition sits within the NSW terms of reference

Select Committee on Fertility Support and Assisted

Reproductive Treatment

NSW Parliament

How prohibition sits within the NSW terms of reference

The 'barriers' frame in Term of Reference (f)

- Term of Reference (f) asks the committee to inquire into and report on:
 - “barriers to accessing assisted reproductive treatment, including IVF technology and surrogacy.”
- This wording adopts an access-oriented frame. It presupposes that surrogacy is a legitimate component of fertility support and that legal or practical limits are ‘barriers’ to be identified and potentially reduced.
- Evidence from women’s advocacy organisations challenges that presupposition, arguing that so-called barriers are basic protections against exploitation and commodification, and that prohibition is itself a necessary barrier where a practice is structurally exploitative.

TOR (h), TOR (i) and the limits of regulation

- Term of Reference (h) asks about “the adequacy of the current statutory and regulatory framework for assisted reproductive treatment, including surrogacy, and any need for reform, including additional safeguards”.
- Term of Reference (i) asks about “changes to New South Wales Government policies and procedures to better support families and surrogates through surrogacy”.
- Evidence before the committee states that dense regulation, mandatory counselling, screening and other safeguards can make an exploitative practice appear more orderly without altering its fundamental character.
- On that view, no amount of additional regulation can render surrogacy compatible with women’s and children’s rights; the conclusion is that the only safeguard that truly protects against structural exploitation is prohibition rather than refinement of the existing framework.

TOR (j): relevant laws and a model national framework

- Term of Reference (j) provides that the committee is to inquire into and report on:
 - “relevant national and international laws that impact on surrogacy arrangements in New South Wales, including consideration of a model national legal framework for surrogacy arrangements.”
- Unlike the access-oriented language in TOR (f), TOR (j) does not specify a direction of reform. It requires the committee to:
 - identify relevant national and international laws that affect surrogacy in New South Wales; and
 - consider what would constitute a ‘model national legal framework’ for surrogacy arrangements.
- This necessarily encompasses:
 - Australia’s obligations under CEDAW (including Articles 5, 6 and 7), the Convention on the Rights of the Child and its Optional Protocol on the sale of children, the ICCPR and the Palermo Protocol;
 - the existing Australian legal patchwork, in which commercial surrogacy is formally prohibited in all states and territories, enforcement is limited, and overseas commercial surrogacy is treated inconsistently across jurisdictions;
 - the growing body of international guidance, including the UN Special Rapporteur on violence against women and girls’ 2025 report to the UN General Assembly on surrogacy and violence, which describes surrogacy as a system of violence, exploitation and abuse and calls on all Member States to work towards a legally binding international prohibition.

How TOR (j) allows consideration of prohibition

- TOR (j) requires the committee to take international and domestic legal obligations as a central element of its work, not merely to list instruments in passing.
- If the committee accepts the evidence that surrogacy is structurally linked to the exploitation of women as a sex class and to risks of trafficking and sale of children, it must then ask whether a ‘model national legal framework’ can coherently consist of regulation, or whether only prohibition is consistent with those obligations.
- On this analysis:
 - under TOR (h), the committee may find that the current framework and any proposed additional safeguards are inadequate because the practice itself cannot be made safe or compatible with women’s and children’s rights;
 - under TOR (j), the committee may conclude that a model national framework must prohibit surrogacy and close off routes that normalise domestic or overseas reproductive exploitation, in order to move New South Wales closer to compliance with CEDAW, the CRC, the ICCPR and the Palermo Protocol and with the approach urged by the UN Special Rapporteur.

Interpretive context in New South Wales

- The committee operates within the broader interpretive framework of the Interpretation Act 1987 (NSW), which requires legislation to be read, so far as possible, consistently with Australia's international obligations.
- Australia's treaty obligations remain binding at international law regardless of the level of domestic implementation. A recommendation that deepens New South Wales' reliance on surrogacy must therefore be weighed against:
 - the state's duties under CEDAW, the CRC, the ICCPR and the Palermo Protocol; and
 - the UN Special Rapporteur's express call for states to work towards a binding international prohibition of surrogacy.

Conclusion

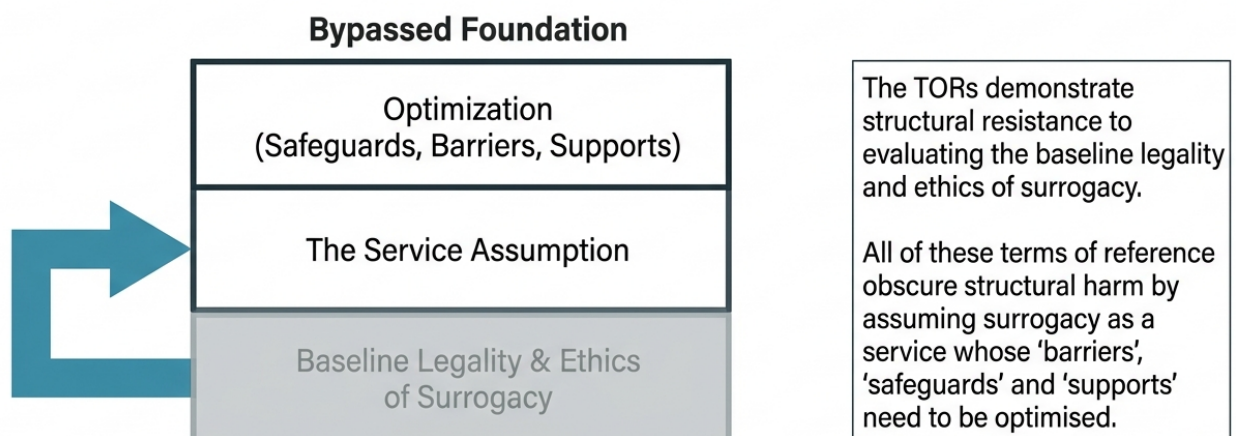
- TOR (f) and TOR (i) frame parts of this inquiry in terms of barriers to accessing surrogacy and support for families and surrogates. TOR (h) and TOR (j) allow the committee to reach a different conclusion: that surrogacy is inherently exploitative, that regulatory safeguards cannot cure that reality, and that prohibition is the only legal framework consistent with New South Wales' national and international obligations.

Deconstructing the Surrogacy Terms of Reference

Exposing Structural Harm and the Case for Prohibition.

NotebookLM

The structural resistance to evaluating baseline ethics



NotebookLM

The lexicon of normalization sanitizes ethical reality



The language abstracts away from the woman whose body is required in the transaction.

NotebookLM

MINIMALIST POLICY WHITEPAPER SLIDE

TOR (f): Re-evaluating so-called 'barriers' to access

THE ASSUMPTION



Assumes surrogacy is a neutral good that people are unjustly denied access to.

Assumes entitlement that has not been ethically established.

THE REALITY



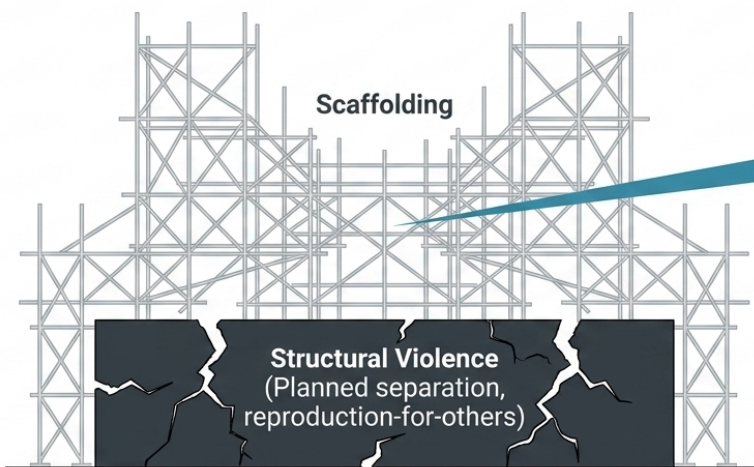
Basic protections against commodification of women and children.

Protects against hidden commerce and complex coercion.

The committee should be wary of language that turns protections into inconveniences. A 'barrier' asks how to clear a hurdle, instead of asking whether the service should exist.

NotebookLM

TOR (h): The paradox of dense regulation



The very existence of dense regulation is an admission that surrogacy is inherently risky.

- If surrogacy were genuinely benign, it would not need such elaborate scaffolding.
- Regulation sanitises, normalises, and diverts attention from structural violence.

NotebookLM

Safeguards cannot transform an inherently unethical practice

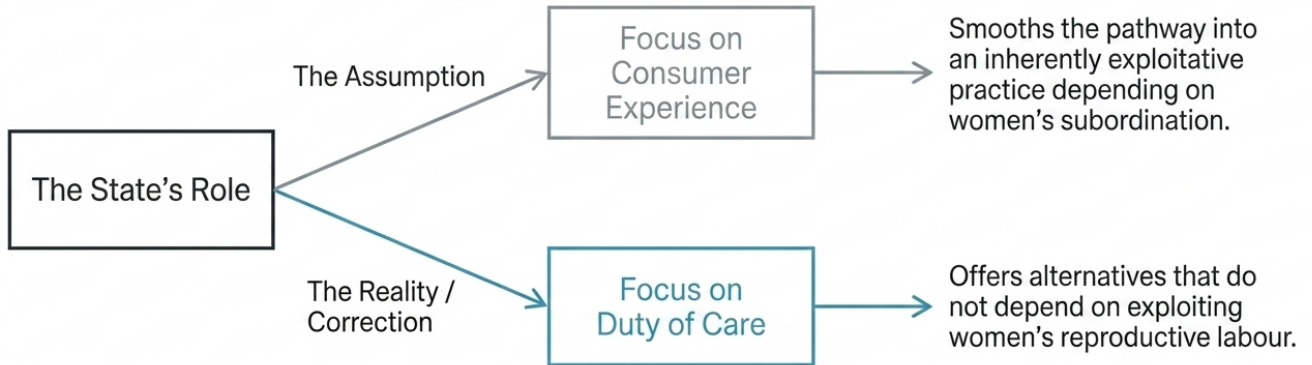


- Regulation and safeguards can manage **risk at the edges** but cannot transform the underlying practice into something ethical.
- Regulation has **not proven** effective at **policing coercion, social pressure, and economic vulnerability** (cf. NSW sexual consent laws review).

References to 'safeguards' do not preclude prohibition. The committee can reasonably conclude that the only effective safeguard is that the market should not exist.

NotebookLM

TOR (i): The trap of the ‘support’ framing



The support framing obscures structural harm. Public policy must not assume that ‘support’ has to take the form of surrogacy itself.

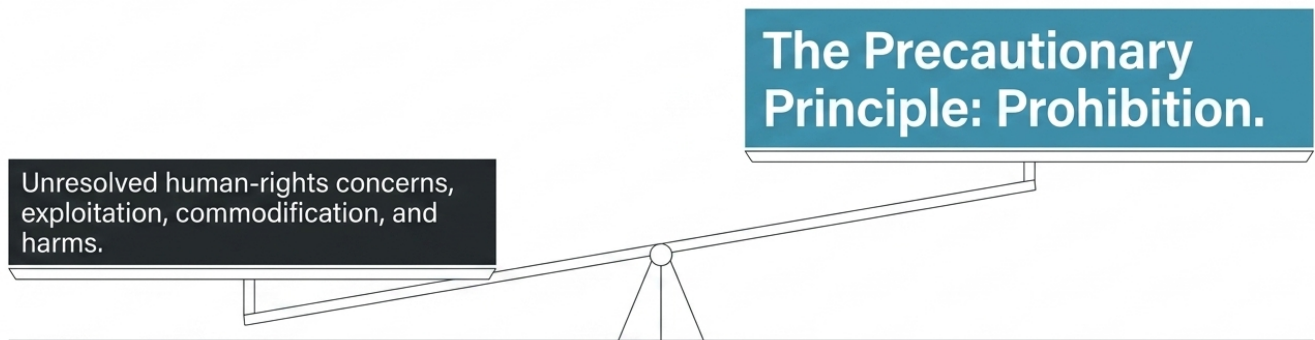
NotebookLM

TOR (j): A fragmented landscape does not mandate expansion



NotebookLM

The Precautionary Principle demands a prohibitionist framework



Any national framework should be prohibitionist; prohibition is the only option consistent with international law and domestic principles to protect women and children.

Prohibition simplifies the landscape and brings NSW law into line with international obligations.

Synthesis: Contrasting the implicit and required policy paradigms

	The TOR Framing (Market/Service)	The Human-Rights Framing (Protection)
VIEW OF SURROGACY	Neutral good / Legitimate service	Inherently exploitative / Commodification
FUNCTION OF 'BARRIERS'	Unjust hurdles denying access	Fundamental human-rights protections
ROLE OF REGULATION	Optimizes the service / Safeguards	Sanitizes structural violence / Ineffective at margins
STATE'S DUTY	Smooth the path / Support consumer	Precautionary principle / Offer non-exploitative alternatives

True reform requires acknowledging that human-rights protections are not market barriers.
The only ethical safeguard is prohibition.

Call for input to Australian Law Reform Commission's Review of surrogacy laws

Response by a
Coalition of Australian feminist organisations
11 July 2025

Introduction

We are a coalition of independent feminist organisations representing groups from across Australia. Our members are women from diverse backgrounds and professions and we advocate for women and girls, especially in domains where we face discrimination or vulnerability because of our sex.

We thank the Australian Law Reform Commission (ALRC) for the opportunity to contribute to the call for input to its review of surrogacy laws. Our position is clear: all forms of surrogacy constitute sex-based violence against women and girls and perpetuate systemic exploitation. Only a universal ban – not regulation – can address the legal, policy, and ethical violations inherent in these practices. Prohibition is the necessary step to uphold human rights and prevent further harm.

This submission calls on the ALRC to recognise women as key stakeholders in surrogacy law reform, stressing that women – especially surrogates – bear the greatest burdens and we must be actively consulted to ensure genuine protection of human rights. We invite the ALRC to read a recent submission by the Affiliation of Australian Women's Action Alliances (AAWAA), attached below, to the UN Special Rapporteur on violence against women and girls for further details regarding the specific harms of surrogacy.

Women as essential stakeholders in the ALRC surrogacy review

Against this background, it is imperative that women, and by extension feminist organisations, are recognised as major stakeholders in the ALRC's surrogacy review. Women are not merely participants in surrogacy arrangements: we are the primary subjects upon whom the entire practice depends. The medical, psychological, and economic impacts of surrogacy fall overwhelmingly on women, particularly those who act as surrogates. As such, any reform to surrogacy laws, policies, or practices must be informed by the lived realities and rights of women, and not just by the interests of commissioning parents or industry bodies.

Feminist groups and women's advocacy organisations represent a broad cross-section of women's voices, including those who have been directly affected by surrogacy. Such groups have a long history of advocating for women's health, bodily autonomy, and protection from exploitation. Our expertise and experience are essential to ensuring that the ALRC's review is genuinely balanced and upholds Australia's obligations under international human rights law to consult women on matters that affect us.

The best interests of the child and the primacy of women's rights

The Terms of Reference (ToR)¹ direct the ALRC to ensure that the best interests of the child are paramount; however, this principle cannot be properly realised without first addressing the interests and rights of women. If surrogacy arrangements are found to be inherently exploitative or harmful to women, then the ethical foundation for the practice itself collapses. In such a scenario, the absence of children born through surrogacy is not a 'problem' – it is a reflection of a society that refuses in the first place to countenance the commodification and harm of women for the purpose of fulfilling the desires of others.

To put it plainly: if the only way to protect women from the violence, exploitation, and coercion inherent in surrogacy is to prohibit surrogacy altogether, then the question of children's best interests becomes immaterial in this context, as no child would be brought into existence through a process that violates the rights and dignity of another human being – and surrogacy is such a process. Upholding women's interests is not in opposition to the best interests of children; rather, it is a pre-condition for any ethical consideration of children's welfare as a vulnerable population.

The necessity of consulting feminist and women's groups

The ALRC's consultation process therefore must not sideline women's organisations in favour of those who advocate for the expansion or normalisation of surrogacy. There is a very real risk that, without any attempt to pursue balance, the voices of those most at risk of harm – women, especially those from marginalised backgrounds – are being drowned out by well-funded industry bodies or activists for surrogacy. We see concerning signs that the conditions for this to happen have been sown in the very list of stakeholders mentioned in the ToRs, none of whom represent the feminist perspective.

Feminist women's groups bring a critical perspective that is often absent from mainstream policy discussions: we foreground the material realities of women's lives, the risks of coercion and exploitation, and the broader social consequences of treating women's reproductive capacities as commodities. Excluding or minimising these voices would undermine the legitimacy and integrity of the review process, and risk perpetuating the very injustices the ALRC is tasked with addressing.

Finally, we note that Australia's obligations under CEDAW² require the government to meaningfully consult women on matters that affect our rights and interests, including law reform. In the context of the ALRC surrogacy review, this means actively seeking and incorporating the perspectives of women's groups and advocacy organisations. Meaningful consultation is both a legal obligation under international law and essential to ensuring that surrogacy policy genuinely reflects the realities and needs of women in Australia.

Conclusion

For the ALRC's review to meet its stated objectives as well as international obligations, it must:

- Recognise women as central stakeholders whose rights and interests are at the heart of surrogacy policy,
- Ensure that feminist and women's advocacy groups are actively consulted and our expertise and lived experience given due weight,

¹ [Terms of Reference, ALRC Review of Surrogacy Laws](#)

² [Convention on the Elimination of All Forms of Discrimination against Women](#), UN General Assembly, December 1979.

- Understand that the best interests of the child cannot be separated from the rights and welfare of women, and
- Guard against the further marginalisation of women’s voices in favour of those with vested interests in the continuation or expansion of surrogacy.

Surrogacy, though often framed as a personal path to parenthood, systematically exploits women and girls – both individually and collectively – inflicting harm that extends beyond individual infertility or the longing for a child. While some experience real sorrow at not being able to give birth to a child, this cannot override Australia’s – and therefore, also, this Commission’s – obligation to protect women and girls from exploitation, commodification, and violence. Only by centering women’s experiences and expertise can the ALRC deliver recommendations that truly uphold women’s rights.

SIGNATORIES

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ATTACHMENT

Submission to the Call for input to the thematic report of the Special Rapporteur on violence against women and girls to the General Assembly 80th session on surrogacy and violence against women and girls, 18 April 2025, Affiliation of Australian Women's Action Alliances (AAWAA).



Call for input to the thematic report of the
Special Rapporteur on violence against women and girls
to the
General Assembly 80th session on
surrogacy and violence against women and girls

18 April 2025

INTRODUCTION

The Affiliation of Australian Women's Action Alliances (AAWAA) is a secular, non-partisan, independent women's rights peak body representing groups from each state and territory in Australia. Our members are women from diverse backgrounds and professions and we advocate for women and girls, especially in domains where we face discrimination or vulnerability because of our sex.

We thank the Special Rapporteur for the opportunity to contribute to the call for input on surrogacy and violence against women and girls for the General Assembly's 80th session. Surrogacy, though often framed as a personal path to parenthood, systematically exploits women and girls—both individually and collectively—inflicting harm that extends beyond infertility or the longing for a child. While that sorrow is real, it cannot override the global obligation to protect women and girls from exploitation, commodification, and violence.

Our position is clear: all forms of surrogacy constitute sex-based violence against women and girls and perpetuate systemic exploitation. Only a universal ban—not regulation—can address the legal, policy, and ethical violations inherent in these practices. Prohibition is the necessary step to uphold human rights and prevent further harm.

A. SURROGACY AS STATE-SANCTIONED VIOLENCE AGAINST WOMEN AND GIRLS

Surrogacy constitutes systemic violence against women and girls through medical, economic, and psychological harm, and state policies that permit or regulate surrogacy sanction this violence.¹

Medical violence

Surrogacy subjects women to invasive medical procedures that violate bodily autonomy and endanger health, often with inadequate safeguards. States that permit or regulate surrogacy tacitly endorse these harms through:

- Forced interventions: Surrogates undergo hormone treatments, embryo transfers, and caesarean sections without full informed consent. Contracts often grant commissioning parents control over medical decisions, including forced abortions or fetal reductions.²
- Health risks: IVF pregnancies carry heightened risks of ovarian hyperstimulation syndrome, gestational diabetes, and long-term complications such as hysterectomies.³ States fail to mandate post-pregnancy care, leaving surrogates to bear lifelong health consequences.⁴
- Obstetric violence: Medical procedures are performed for the convenience of commissioning parties.⁵ This aligns with the UN's definition of obstetric violence: harm inflicted through coercive or non-consensual reproductive interventions.

States legitimise the commodification of women's bodies when surrogacy is legalised or decriminalised. We need look no further than Greece's Mediterranean Fertility Institute scandal, which revealed surrogates confined to clinics and subjected to non-consensual procedures under state sanction.⁶

¹ See [State-sanctioned structural violence: Women migrant domestic workers in the Philippines and Sri Lanka](#), via PubMed (2019) and [Commercial surrogacy: Landscapes of empowerment or oppression explored through integrative review](#), *Health Care for Women International* (2023).

² See [Fact sheet: Surrogacy and violence against women](#), Coalition for the Abolition of Surrogate Motherhood (2024); [Caring for delivery: Healthcare professionals' ethical conflicts in surrogate pregnancy](#), *Hypatia* (202); [Obstetric violence, mistreatment, and violence against women In Reproductive Health Services](#), International Confederation of Midwives (2024); [Obstetric violence](#), *Pregnancy birth and baby* (2023); and [The shocking reality of surrogacy](#), *Filia* (2020).

³ See [Obstetric outcomes following ovarian hyperstimulation syndrome in IVF – A comparison with uncomplicated fresh and frozen transfer cycles](#), via PubMed (2022); [Risks IVF](#), NHS; [Hysterectomy in the second trimester of pregnancy after in vitro fertilization-embryo transfer](#), via PubMed (2017); [The association between ovarian hyperstimulation syndrome and pregnancy complications following fertility treatments](#), via PubMed (2021); and [Possible health effects of IVF and ICSI](#), VARTA (2021).

⁴ See ["Ain't I a woman?": A historical and contemporary analysis of state-sanctioned violence against black women in the United States](#), *Journal of Gender Studies* (2023); and [Commercial surrogacy: Landscapes of empowerment or oppression explored through integrative review](#), *Health Care for Women International* (2024).

⁵ See [Surrogacy and violence against women](#), Coalition Internationale pour l'Abolition de la Maternité de Substitution (2024); [Obstetric violence violates human rights](#), Human Rights Watch (2023); [Women's and provider's moral reasoning about the permissibility of coercion in birth](#), via PubMed (2024); [Obstetric violence: hidden in silence](#), EVN Report (2022); and [Obstetric violence, mistreatment, and violence against women in reproductive health services](#), International Confederation of Midwives (2024).

⁶ See [Crete: Another international surrogacy disaster](#) (2023) and [Surrogacy scandals continue](#), The Center for Bioethics and Culture Network (2023).

Economic violence

Surrogacy exploits economically disadvantaged women, perpetuating systemic inequality. State policies enable this through lax regulation and enforcement:

- Targeted recruitment: Poor women, including military spouses in the U.S. and marginalised groups in India, are coerced into surrogacy due to financial desperation. Payments (often \$20,000–\$25,000 in the U.S.) rarely compensate for risks, and surrogates face wage theft or contract breaches.⁷
- Global exploitation: Cross-border surrogacy in unregulated markets (e.g., Cambodia, Ukraine) traps women in cycles of poverty. States such as Australia criminalise domestic commercial surrogacy but permit overseas arrangements, outsourcing exploitation.⁸
- Structural inequity: Surrogacy laws prioritise commissioning parents' rights over surrogates' welfare. For example, New York's *Child-Parent Security Act 2020* allows intended parents to be listed on birth certificates while denying surrogates custody rights.⁹

By failing to ban surrogacy outright, states treat women's reproductive labor as a market commodity. The Australian government acknowledged this in 2014 when DNA tests revealed children born via Indian surrogacy had no biological link to commissioning parents, exposing trafficking risks.¹⁰

Psychological violence

Surrogacy inflicts profound psychological harm, exacerbated by state policies that erase women's agency and legitimise reproductive exploitation:

- Coercion and trauma: Surrogates report emotional detachment, grief, and depression after relinquishing children. Contracts often forbid bonding with the child, compounding trauma.¹¹
- Emotional isolation and lack of support: Surrogates often experience significant emotional isolation, particularly when separated from their families during pregnancy or when housed in surrogate hostels. The absence of adequate psychological support or counselling exacerbates feelings of loneliness, anxiety, and distress increasing the risk of postnatal depression and long-term emotional harm.¹²
- Pressure to suppress natural attachment: Surrogacy contracts and social expectations frequently require women to suppress or deny natural feelings of

⁷ See [America's overlooked surrogate mothers](#), *Richmond Journal of Law and Technology* (2018); [Fact sheet: Surrogacy and violence against women](#), Coalition for the Abolition of Surrogate Motherhood (2024); [Predicament of commercial surrogacy in India](#) (2015); and [Trading on the female body: Surrogacy, exploitation, and collusion by the US Government](#), *Public Discourse* (2017).

⁸ See [Sleepwalking through the minefield](#), Law Society of the Australian Capital Territory (2018); [Surrogacy overseas](#), Australian Government; and [Surrogacy in Australia: The 'failed experiment'?](#) Precedent AULA 6; (2023) 174 Precedent 22 (2023).

⁹ [The Child-Parent Security Act: Gestational surrogacy agreements, acknowledgment of parentage and orders of parentage](#) (2021); [Parentage proceedings under the Child - Parent Security Act in conjunction with the New York State budget for fiscal year 2020-2021](#) (2021); and [Can a surrogate mother seek custody of the child in New York?](#) (2021).

¹⁰ [Surrogacy Matters Report](#), Parliament of Australia (2016).

¹¹ [Emotional experiences in surrogate mothers: A qualitative study](#), via PubMed (2014); and [The psychological well-being and prenatal bonding of gestational surrogates](#), via PubMed (2018).

¹² See [Navigating emotional bonds: A comprehensive study of surrogate mothers attachment and psychological experiences in surrogacy](#), *International Journal for Multidisciplinary Research* (2024); [Surrogacy and its effects on the mental health of the gestational carrier](#), CSUSB (2024) [The psychological well-being and prenatal bonding of gestational surrogates](#), via PubMed (2018).

attachment to the baby they carry. This enforced emotional detachment is a coping mechanism that can lead to internal conflict, guilt, and psychological turmoil especially at the point of relinquishment.¹³

Courts prioritise commissioning parents' interests over surrogates' rights. In Australia, parentage orders are granted automatically for overseas-born children, legitimising exploitative practices post hoc.¹⁴

B. THE AUSTRALIAN REGULATORY AND LEGAL CONTEXT

Australia's surrogacy laws are governed at the state and territory level, resulting in a fragmented legal landscape. While all jurisdictions prohibit commercial surrogacy,¹⁵ and altruistic surrogacy is permitted under strict conditions, significant loopholes exist for those who wish to purchase a child in an overseas surrogacy arrangement. The regulatory focus on altruistic arrangements raises significant ethical questions – questions that are not resolved by commercial surrogacy.

Numbers of surrogacy births

More Australian children are born each year through overseas commercial surrogacy than domestic altruistic arrangements. Domestically, around 130–150 children are born annually via altruistic surrogacy, including 131 gestational births recorded in fertility clinics in 2022 (ANZARD)¹⁶ and an estimated 10–15 'traditional' surrogacy births occurring outside clinics.¹⁷ By contrast, overseas commercial surrogacy consistently accounts for higher numbers. In the year ending June 2024, a record 376 children were commissioned overseas by Australians via overseas surrogacy—nearly triple the number of domestic 'altruistic' births.¹⁸ The trend is ongoing: in 2021–2022, 213 Australian passports were issued to children born through such arrangements.¹⁹

'Altruistic' surrogacy

Australian states and territories generally imagine that consent to an altruistic surrogacy arrangement can be "freely and voluntarily" given by each of the affected parties.²⁰ Surrogacy as an inherently coercive, violent, and exploitative practice does not align with 'consent.' Of growing concern, and now recognised at law, are the many different forms of social control of women that find expression in individual situations as well as in everyday socio-cultural practices. Neither social nor individual coercion can ever be discounted in altruistic surrogacy: in fact, all States and Territories in Australia recognise that exploitation

¹³ See [Fact sheet: Surrogacy and violence against women](#), Coalition for the Abolition of Surrogate Motherhood (2024); "[The miracle mothers and marvelous babies](#)": [Psychosocial aspects of surrogacy – A narrative review](#), via PubMed (2020).

¹⁴ [Reforming Australia's surrogacy landscape](#), *Law Society Journal* (2025); and [Overseas compensated surrogacy arrangements and the Family Court of Australia](#), AUSTRALII (2020)

¹⁵ Except in the Northern Territory, which has no specific laws in this relation.

¹⁶ [Australian and New Zealand Assisted Reproduction Database \(ANZARD\)](#).

¹⁷ [Surrogacy births in Australia](#) and [Australian surrogacy statistics](#).

¹⁸ [Record number of Australian children born overseas through surrogacy](#) (2024).

¹⁹ [Surrogacy births in Australia](#) (2023).

²⁰ See, for example, the [NSW Surrogacy Act 2010 No 102](#), Section 31.

of women is possible and must be prevented in surrogacy arrangements, even in ‘altruistic’ arrangements—which is why altruistic surrogacy is regulated.²¹

In Australia, serious attention is needed where birth mothers in altruistic surrogacy receive ‘rewards,’ ‘gifts,’ or other benefits—such as holidays, beauty treatments, or entertainment. These fall within the definition of a commercial arrangement, involving a fee, reward, or material advantage.²² Commodification doesn’t require payment—only exchange—and such transactions effectively render altruistic surrogacy commercial by another name.

In any kind of reproductive contract to relinquish a child, exploitation is baked-in to the arrangement—and this includes contracts for ‘altruistic’ surrogacy. Commercial surrogacy suffers these same moral complications, but in Australia it is nowhere near as regulated as is altruistic surrogacy.

Commercial and overseas surrogacy

Commercial surrogacy is illegal in all Australian states and territories, but laws on overseas surrogacy vary widely—from explicit bans in NSW, Qld, and WA, to discouragement (Vic), to no clear prohibition (SA, Tas, NT), and no criminalisation at all (ACT). This legal patchwork, combined with weak enforcement, creates loopholes that allow Australians to commission commercial surrogacies abroad with little consequence.

Since 2010, over 3,000 children have been born via overseas surrogacy to Australian parents—yet not a single prosecution has occurred under state laws criminalising the practice.²³ In effect, Australia’s enforcement is symbolic, rendering these laws ineffective as real deterrents. This has implications for trafficking, and makes the legal application of citizenship and parentage by the Australian Courts often a post-hoc approval of exploitation of women being used in surrogacy arrangements.

Australians’ exploitation of women and girls through surrogacy arrangements/trafficking

This effective decriminalisation in Australia of overseas surrogacy—either through lack of enforcement, lack of regulation, or straight-out non-criminalisation (as in the ACT)—has implications for human rights abuses and human trafficking.²⁴

In truth, the evidence of surrogacy in commercial arrangements overwhelmingly shows that women and girls in overseas jurisdictions—particularly in poorer countries—are being coerced into commercial surrogacy for the benefit of wealthy buyers in the West. We are informed in this view by various international reports that detail baby trading and human trafficking²⁵ and by the fact that many of those poorer countries have recognised the

²¹ See [Discussion Paper, Review of Surrogacy Act 2010 and Status of Children Act 1996](#), ‘Background to the Surrogacy Act’ (2024).

²² See [Discussion Paper, Review of Surrogacy Act 2010 and Status of Children Act 1996](#), (2024).

²³ [Medallist launches surrogacy case book](#) (2024) and [Surrogacy overseas](#).

²⁴ [Women’s bodies, international relations, and surrogacy: Private lives made public](#), Australian Institute of International Affairs (2023); [Key considerations: children’s rights and surrogacy – briefing note](#), UNICEF (2022); [Fight against human trafficking: Council and European Parliament strike deal to strengthen rules](#), Council of the EU (2023); [Surrogacy and the sale of children](#), Special Rapporteur on the sale and sexual exploitation of children (2018).

²⁵ [Women’s bodies, international relations, and surrogacy: Private lives made public](#), Australian Institute of International Affairs (2023); [Key considerations: children’s rights and surrogacy – briefing note](#), UNICEF (2022);

exploitation that occurs in commercial surrogacy and have responded by banning the practice.²⁶

Indeed, the NSW 2018 Statutory Review of the Surrogacy Act,²⁷ the 2016 Surrogacy Matters Report²⁸ published by the Commonwealth Parliament, and the UN Special Rapporteur on the sale and sexual exploitation of children²⁹ all speak with one voice when it comes to preventing the commercialisation of women's reproductive function:³⁰ there are power imbalances between wealthy customers and poor women which commodify women's reproductive capacities.

While Australia has ratified the Palermo Protocol, which defines trafficking as exploitation through recruitment by coercion or deception (Art 3(a)), enforcement against surrogacy-related trafficking remains inadequate in this country. Moreover, third-party exploitation, in which Australian-based brokers promote surrogacy in countries with lax regulations, profits from arrangements that exploit women as surrogate mothers.³¹

C. HUMAN RIGHTS VIOLATIONS

International obligations and violations of international instruments

AAWAA recognises that legislative change in Australia—especially around human dignity and rights—reinforces our international human rights obligations. Surrogacy is a form of state-sanctioned violence against women and girls and therefore violates multiple international human rights instruments. While acknowledging the personal desire for family formation, these aspirations cannot outweigh the global imperative to prevent the commodification of women and girls in surrogacy. Surrogacy violates the following international human rights instruments.

Convention on the elimination of all forms of discrimination against women (CEDAW)³²

- Article 6: Requires states to suppress all forms of trafficking and the exploitation of women. Surrogacy arrangements involving women's reproductive capacity fall within this definition.
- Article 5: Calls for eliminating stereotypes that portray women as reproductive vessels. Surrogacy reinforces this harmful stereotype.

[Fight against human trafficking: Council and European Parliament strike deal to strengthen rules](#), Council of the EU (2023); [Surrogacy and the sale of children](#), Special Rapporteur on the sale and sexual exploitation of children (2018).

²⁶ See, for example, Cambodia, India, Nepal, and Thailand.

²⁷ [Report on the Statutory Review of the Surrogacy Act 2010](#), Parliament of New South Wales (2018).

²⁸ [Surrogacy Matters Report](#), Parliament of Australia (2016).

²⁹ [Surrogacy and the sale of children](#), Special Rapporteur on the sale and sexual exploitation of children (2018).

³⁰ See [Discussion Paper. Review of Surrogacy Act 2010 and Status of Children Act 1996](#), 'Commercial surrogacy arrangements' (2024).

³¹ See, for instance, the Mediterranean Fertility Institute (Crete) scandal, which involved Australian agencies marketing surrogacy services linked to trafficking allegations. The scandal involved allegations of surrogates being trafficked across borders, unpaid, and exploited under fraudulent surrogacy arrangements marketed to international clients, including Australians. Australian brokers were implicated in promoting these services despite ethical concerns. The clinic allegedly exploited 169 women from countries like Ukraine and Georgia, forcing them to act as surrogates or egg donors while keeping them under surveillance. Australian couples were among the primary clients due to Greece's previously liberal surrogacy laws.

³² [Convention on the Elimination of All Forms of Discrimination against Women](#), UN General Assembly, December 1979.

Protocol to prevent, suppress and punish trafficking in persons, especially women and children³³

- Defines trafficking as involving recruitment, transfer, or harbouring of persons for exploitation.
- Commercial surrogacy involving international travel often meets this definition. Payments exploit vulnerable women, commodifying the surrogate.

D. MEASURES REQUIRED

To address surrogacy's human rights violations, legal reforms must be enacted across national, regional, and international levels.

Legal measures required

National level

- Prohibit all forms of surrogacy—commercial and so-called 'altruistic'.
- Criminalise the facilitation, brokerage, and advertising of surrogacy.
- Apply surrogacy prohibitions extraterritorially to prevent cross-border circumvention.
- Integrate prohibitions into broader anti-trafficking and human rights frameworks.

Regional level

- Harmonise surrogacy laws to ban surrogacy world wide.
- Develop conventions and protocols that explicitly define surrogacy as exploitation.
- Establish cooperative frameworks to address cross-border surrogacy cases.

International level

- Develop a binding international convention prohibiting all forms of surrogacy as exploitation of women and children.
- Strengthen existing human rights instruments to explicitly prohibit surrogacy.
- Expand UN special procedures' mandates to monitor and report on surrogacy violations.
- Establish universal standards recognising surrogacy as a form of violence against women and girls.

Policy measures required

National level

- Develop ethical infertility frameworks that reject exploitation of women's reproductive capacity.
- Strengthen domestic adoption systems as an ethical alternative to surrogacy.
- Launch public education campaigns on the harms of surrogacy.
- Establish support services (healthcare, legal aid) for exploited women.
- Fund research into long-term physical and psychological impacts on women and girls exploited in surrogacy.

³³ [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#), OHCHR.

Regional level

- Address structural drivers of surrogacy such as poverty and gender inequality.
- Develop coordinated strategies to counter reproductive tourism.
- Monitor surrogacy trends and share best practices for ethical responses to infertility.

International level

- Integrate prohibition of surrogacy into international development policy.
- Create best practice guidelines for ethical infertility care.
- Promote global recognition of surrogacy as exploitation.

Institutional measures required*Monitoring*

- Establish national observatories to track surrogacy practices and harms.
- Require medical facilities to report on assisted reproductive technologies.
- Empower independent monitoring bodies with civil society participation.

Enforcement

- Create specialised law enforcement units to detect and prosecute surrogacy crimes.
- Provide adequate resources, whistleblower protections, and sanctions for complicit professionals.
- Coordinate immigration, child welfare, and justice systems for comprehensive enforcement.

Cross-border cooperation

- Establish mutual legal assistance treaties specific to surrogacy.
- Implement data-sharing protocols across agencies and jurisdictions.
- Enable joint investigations, extradition agreements, and coordinated training for relevant officials.

CONCLUSION

While acknowledging the profound grief of infertility, individual aspirations for parenthood cannot justify the systemic violence embedded in surrogacy. True progress lies not in regulating exploitation but in eradicating it. We urge the Special Rapporteur to recommend a prohibitionist approach, ensuring that the rights of women and girls prevail over commercial and contractual interests. Only through such decisive action can societies uphold the principles of dignity, equality, and justice enshrined in international law.



AAWAA statement to ALRC roundtable 18 December 2025

AAWAA maintains a clear, consistent abolitionist position: all forms of surrogacy constitute sex-based violence against, and exploitation of, women and girls and must be prohibited, not expanded or normalised through law reform or harm-minimisation. The harms identified in the Discussion Paper – exploitation risks, coercive economic pressures, and legal uncertainty – are not problems to be managed at the margins, but symptoms of a structural practice that commodifies women's reproductive labour and children's lives. These harms disappear only when surrogacy is abolished, which is the position we have already put on the record before the ALRC and the UN Special Rapporteur on violence against women, and which is supported by the Special Rapporteur.

From this abolitionist starting point, the governance of this review is not a technical side issue but goes directly to its legitimacy. The ALRC's own corporate governance framework, and the Australian Public Service Conflict of Interest Management Framework – which the ALRC could look to for guidance – require that both actual and perceived conflicts of interest are identified, documented, and transparently managed to maintain public confidence in Commonwealth decision-making. Those standards are especially important where the inquiry concerns fundamental human rights questions for women and girls, rather than minor technical amendments.

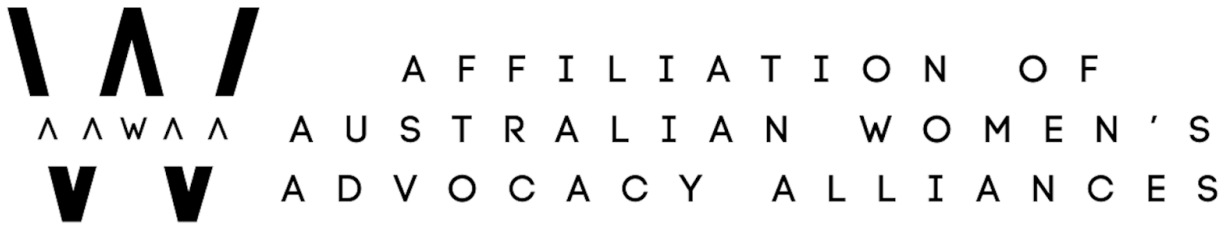
Yet, in this review, there is no publicly available explanation of how conflicts and perceived conflicts of interest were assessed or managed for either the Assistant Commissioner or the members of the Advisory Committee. The Assistant Commissioner has a substantial body of prior scholarship that directly overlaps with the reforms now proposed on cost recovery and pathways to parentage, but the ALRC has not set out how this overlap was analysed, what conflict assessment was undertaken, or what measures were adopted to safeguard independence and impartiality. The APS framework recognises that perceived conflicts can be as damaging to public confidence as actual conflicts; the appropriate response is not to deny or minimise them, but to address them openly through disclosure and concrete management strategies.

The Advisory Committee's composition compounds these concerns. Of eleven members, based on publicly available material, it appears that eight hold

professional, financial, or advocacy roles that are directly dependent on the continuation and expansion of surrogacy including fertility specialists, specialist surrogacy lawyers, surrogacy counsellors, and LGBTQIA advocacy organisations – no feminist abolitionist organisations are included. This amounts to structural capture: those whose livelihoods and ideological projects depend on surrogacy expansion are advising on whether and how surrogacy should be expanded, while women's organisations arguing for abolition are confined to this single, hour-long roundtable at the very end of the process.

Against that background, the central governance question for this roundtable is straightforward and goes to the heart of transparency and impartiality. 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 and the instructive APS Conflict of Interest Management Framework? Unless and until the Commission answers that question on the public record, and reconstitutes its advisory structures to include abolitionist feminist organisations, this review cannot credibly claim to meet basic standards of impartiality, transparency, or compliance with Australia's international human rights obligations under CEDAW.

The ALRC must pause this review and reconstitute the advisory committee. The commission must ensure abolitionist feminist organisations are included at advisory level.



Justice Mordecai Bromberg
President Australian
Law Reform Commission
via EAtoPresidentBromberg@alrc.gov.au and info@alrc.gov.au

23 December 2025

Dear Justice Bromberg,

Re: Review of surrogacy laws – Governance, process, and request for pause

We write to you following the roundtable consultation held on 18 December 2025, in which you invited us to set out our position in writing regarding our governance and process concerns relating to this inquiry, as well as our submission that a recommendation to prohibit surrogacy falls within the terms of reference for this review.

About AAWAA

The Affiliation of Australian Women's Advocacy Alliances (AAWAA) is an independent women's rights organisation and a national peak body for our own locally organised, grassroots women's groups across all Australian states and territories. We are run entirely by unpaid volunteers and funded by donations – most of which are small and made almost exclusively by women. We work to promote, advance, advocate for, and defend the protection, social equality, welfare, and human rights of women and girls on the basis of our biological sex. Our member groups have a track record of engaging through various mechanisms – both nationally and internationally – to advance the cause for the prohibition of surrogacy.

We write today as AAWAA: we do not seek to represent the broader feminist movement in Australia, nor do we speak on behalf of the coalition of organisations that attended the 18 December roundtable.

Advisory Committee's lack of balance, plus governance and conflict concerns

Justice Bromberg, we wish to raise three interconnected concerns about the governance and process of this review.

First, the Advisory Committee for the review lacks the broad and balanced set of views necessary for a robust inquiry. The committee comprises individuals with direct financial or

ideological interests in surrogacy expansion, but conspicuously excludes other critical perspectives. A genuinely consultative law reform inquiry requires a balance of views, including not only feminist analysis of matters affecting women, 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 surrogacy practices. The current composition of the Advisory Committee does not reflect this necessary diversity, raising serious questions about whether the process can produce recommendations that are free from the influence of those who profit from the expansion of surrogacy.

Second, 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) and the *Public Governance, Performance and Accountability Act 2013* (Cth), and the APS Code of Conduct (which applies to the Assistant Commissioner). Process transparency of this kind is not optional; it is foundational to public trust in law reform institutions.

Third, when we raised governance concerns at the roundtable, we were informed that such matters were not appropriate for public discussion, and that we should raise them via private email. This approach fragments accountability. Collective concerns raised in a public forum, with witnesses, are substantively different from individual concerns communicated in private correspondence to a single officer of the Commission. The effect of this restriction is to deplete the visibility and weight of governance concerns and to reduce the ALRC's institutional accountability for addressing them.

Need for pause of current review and reconstitution of Advisory Committee

We ask that the ALRC pause the current review to allow for the reconstitution of the Advisory Committee. A reconstituted Committee must include representation of the full and balanced spectrum of informed perspectives on surrogacy, specifically including independent family law experts, adopted people, gamete donors, and women with lived experience of relinquishment, alongside feminist organisations advocating for prohibition.

We would be interested to represent our members if the membership of the Committee was to be reconstituted in such a way that it could fully and comprehensively respond to the Terms of Reference, and represent a balance of views, rather than present a surrogacy system blueprint.

ALRC's statutory obligations and Australia's international obligations

Justice Bromberg, you invited us to explain how a recommendation for prohibition falls within the Terms of Reference. We draw your attention to the ALRC's statutory obligations under the *Australian Law Reform Commission Act 1996*.

Section 24(1)(b) 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. And Term of Reference 1 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, and has only this year been reported on by the UN Special Rapporteur on violence against women and girls: 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.

We believe the ALRC cannot discharge its statutory duties by claiming that these international obligations fall outside the scope of the Review or are constrained by narrow Terms of Reference.

Request for meeting and need for consultative law reform process

Justice Bromberg, we request an opportunity to talk directly with you – personally – to discuss both the governance concerns we have raised and the substantive legal and human rights position that underpins our call for surrogacy prohibition. We would appreciate any time that you have for an online video call with myself and our Western Australian representative, Amber Rossi, in the New Year. To be clear, we respect the ALRC's statutory independence; however, given the Commission's apparent unwillingness to engage with the full spectrum of evidence or its international human rights obligations, we are concerned that the final report will be unfit for purpose.

We believe that a genuine, consultative law reform process – one that is free from structural bias, that operates with transparency, and that takes Australia's human rights obligations seriously – would create the conditions for the ALRC to consider a balanced and constructive way to protect the interests of women and children, in line with your request to us to provide other ways to approach the reform option.

We thank you and your staff for your time, and we appreciate the sensitive and difficult nature of the task that the Commission is undertaking. We look forward to your response and to meeting with you in January or February.

Yours sincerely,



Dr Megan Poore
Founder, AAWAA



Australian Government

Australian Law Reform Commission

Ruth Barson
Executive Director

30 January 2026

Dr Megan Poore
Founder
Affiliation of Australian Women's Advocacy Alliances

via email: women@womensactionall.org

Dear Dr Megan Poore

ALRC Response to your Correspondence

Thank you for your letter dated 23 December 2025 addressed to Justice Bromberg. Justice Bromberg has read your correspondence and asked that I respond on his behalf as the Australian Law Reform Commission's (ALRC) Executive Director. Your letter relates to the ALRC's Review of Surrogacy Laws (Inquiry), and the consultation held on 18 December 2025 which was attended by Justice Bromberg, Assistant Commissioner Ronli Sifris, and members of the Inquiry team.

I understand that you write as the Affiliation of Australian Women's Advocacy Alliances (AAWAA), which seeks to advance the cause for the prohibition of surrogacy. I understand that you do not represent the broader feminist movement in Australia, or the coalition of organisations that attended the 18 December roundtable.

Your letter raises three substantive matters, and I will respond to each in turn.

1. The Composition of the Review of Surrogacy Laws Advisory Committee

Your concerns in relation to the composition of the Review of Surrogacy Laws Advisory Committee (Surrogacy Advisory Committee) are based on three incorrect premises, which I have sought to correct below so as to allay your concerns. In summary:

- a) You mischaracterise the role of ALRC advisory committees in ALRC inquiries;
- b) You wrongly assume that the personal views of advisory committee members have any relevance or bearing on an inquiry; and
- c) You incorrectly believe that the ALRC has not and will not consult widely in this Inquiry.

In relation to a), the ALRC typically forms an advisory committee, or panel of experts, for each inquiry. An advisory committee will not necessarily include representatives from each stakeholder group, as these groups may be consulted separately. An ALRC advisory committee's sole function is to provide advice to, and to share their views with, the ALRC. The advice received from advisory committees is just one way that the ALRC hears from stakeholders – the other methods are through consultations and submissions. As with consultees, advisory committee views and advice are informative and not determinative.



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Under the *Australian Law Reform Commission Act 1996* (Cth) (ALRC Act), the Commissioners of the ALRC are the sole decision makers. The ALRC President, Justice Bromberg, is the only Commissioner on this Inquiry, and therefore he is the sole decision maker. In arriving at a position, the ALRC has regard to all of the evidence – submissions, consultations (including with the advisory committee and more broadly), research and our own analysis.

For transparency of our evidence base, submissions to the ALRC are published on our website in accordance with our policy; a list of consultees is published in our final reports; the names of advisory committee members and expert readers are published; our final reports are comprehensively referenced; and our recommendations are fully reasoned. If some stakeholder views are not reflected in final recommendations this does not mean that those views were not fully considered – it rather means that the ALRC, in considering the totality of evidence, ultimately formed a different view.

In relation to b), members of ALRC advisory committees are selected because of the regulatory, research or practice expertise of each committee member in a particular area relevant to the area of law under consideration. The personal views of advisory committee members are irrelevant. The constitution of the Surrogacy Advisory Committee is reflective of member expertise and the diverse groups identified in the [Terms of Reference](#) in this Inquiry.

In relation to c), in all inquiries, including this one, the ALRC consults broadly and listens to a range of views. In addition to holding, and continuing to hold, consultations, the ALRC has also provided anyone with an interest in this Inquiry the opportunity to provide their written feedback in the form of a submission on two separate occasions. As you are aware, most recently we published a Discussion Paper seeking stakeholder views on our draft proposals.

Lastly, your request that the ALRC pause the Inquiry and reconstitute the Surrogacy Advisory Committee in a fashion acceptable to you, not only misunderstands the ALRC's powers, it also fundamentally misunderstands the ALRC's independence. The ALRC is bound by the Attorney-General's decisions in relation to Terms of Reference, the time provided for an inquiry, and the resources provided to that inquiry. Once the ALRC receives Terms of Reference for an inquiry, the ALRC conducts that inquiry entirely independent of government and stakeholder influence. It would be entirely improper for the ALRC to accede to the views of government or any single interest group, as opposed to forming its own independent views as to how an inquiry should be conducted, and what recommendations should be made.

2. Management of Conflicts of Interest

Your suggestion that the ALRC has not appropriately managed conflicts of interest is serious, unsubstantiated and premised on several mischaracterisations.

First, as explained above, the Surrogacy Advisory Committee (as with all ALRC advisory committees) have no decision-making functions and are constituted of diverse experts reflective of groups identified in our Terms of Reference. Advisory committees play an important role in ALRC inquiries, however their function is consultative.



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Second, the Assistant Commissioner is an APS employee recruited for her skill and expertise following usual recruitment processes. While the Assistant Commissioner plays an important leadership role in this Inquiry, APS employees do not have the decision-making powers of a Commissioner under the ALRC Act. The personal views of APS employees are irrelevant to their employment.

Third, I can assure you that the ALRC takes very seriously its statutory obligations and is subject to the same reporting and compliance obligations as all comparable Commonwealth agencies.

3. Consideration of Australia's International Law Obligations

I wholeheartedly agree that the ALRC must aim to ensure its recommendations are consistent with Australia's international law obligations. This is required by the ALRC Act and the Terms of Reference in this Inquiry. Human rights are one of the reform principles guiding this Inquiry, as outlined in our Issues Paper, and we have explicitly sought and received feedback in relation to interpreting and applying relevant human rights laws. In addition to the submission you have already made, I encourage you to review our Discussion Paper and engage with the proposals, drawing our attention to where and how you think they diverge from international law and human rights principles. If you would like to make a further submission, please let the Inquiry team know.

As indicated above, the ALRC must conduct inquiries within the time and resources provided by the Attorney-General. This Inquiry is due on 29 July 2026 and the ALRC is operating with limited resources. You have attended one consultation and been provided with two opportunities to provide written feedback in response to our Issues Paper and Discussion Paper. Once we review the submissions responsive to our Discussion Paper, we will hold further consultations to refine our proposals, before proceeding to draft the Final Report. If the Inquiry team considers that further consultation with your organisation is required, we will be in touch.

Thank you once again for your interest in and engagement with this Inquiry.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ruth Barson'.

Ruth Barson

Executive Director

Australian Law Reform Commission



Justice Mordecai Bromberg
President Australian
Law Reform Commission
via EAtoPresidentBromberg@alrc.gov.au and info@alrc.gov.au

2 February 2026

Dear Justice Bromberg,

Re: Review of Surrogacy laws, response to correspondence from Executive Director

Thank you for inviting us to set out our position in writing following the surrogacy roundtable consultation held on 18 December 2025 and for asking us to explain how a recommendation for prohibition might fall within the Terms of Reference. We note your invitation for individual correspondence may have created a misunderstanding about our collective position. We led a coalition of twelve feminist organisations that made a joint submission; our individual letter reflects shared concerns within that broader coalition. We appreciate the engagement, and we appreciate, too, that Ms Barson has responded on your behalf.

Justice Bromberg, we write today regarding three positions attributed to us in Ms Barson's letter (attached) that we did not, in fact, take. For the record, we wish to clarify:

1. Advisory committee role

We did not claim that advisory committees have decision-making power. We raised concerns about the *composition and balance of expertise* on the Committee, noting that it comprises individuals with direct financial or ideological interests in surrogacy expansion while excluding feminist scholars, adoption experts, and those with negative surrogacy experiences. This is a question of balance and robustness, not of formal authority.

2. Personal views and conflicts

We did not assume that personal views of members are determinative of recommendations. We raised concerns about the transparency of conflict-of-interest identification and management for Advisory Committee members and the Assistant Commissioner, as required under the *ALRC Act 1996* and the *Public Governance, Performance and Accountability Act 2013*. Transparent governance processes are foundational to public confidence in law reform institutions.

3. Consultation

We did not claim that the ALRC will not consult widely. We noted only that feminist organisations were not consulted until 18 December 2025, one day before the Discussion Paper submission deadline, after the substantive direction of the inquiry had been set. Early consultation at the development stage is critical to shaping inquiry frameworks; late-stage consultation, while valuable, cannot serve the same function.

Our substantive concerns, which remain unaddressed, are

- The Advisory Committee lacks the balanced range of expert perspectives described in the ALRC's own guidance on constituting advisory committees with a range of experts from different 'schools';
- There has been no transparent process for identifying and managing conflicts of interest (material or perceived) for Advisory Committee members or the Assistant Commissioner;
- Consultation with feminist organisations and stakeholders occurred late in the inquiry process, after formative policy development stages;
- The ALRC's statutory obligation under the *Australian Law Reform Commission Act 1996* to ensure that its recommendations are, as far as practicable, consistent with Australia's international obligations, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), has not been adequately addressed in the inquiry's framing or the Discussion Paper.

We appreciate that this inquiry addresses matters on which people hold deep and sincerely held views, and that robust law reform requires engaging with the full range of evidence and perspectives, particularly on issues of significant public concern and international obligation.

Thank you for allowing us to re-state our position for the record. We would appreciate acknowledgement of receipt of this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Megan Poore', written in a cursive style.

Dr Megan Poore
Founder, AAWAA

Attachment

'ALRC Response to your Correspondence,' Ruth Barson, Executive Director, 30 January 2026



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Australian Law Reform Commission

Ruth Barson
Executive Director

30 January 2026

Dr Megan Poore
Founder
Affiliation of Australian Women's Advocacy Alliances

via email: women@womensactionall.org

Dear Dr Megan Poore

ALRC Response to your Correspondence

Thank you for your letter dated 23 December 2025 addressed to Justice Bromberg. Justice Bromberg has read your correspondence and asked that I respond on his behalf as the Australian Law Reform Commission's (ALRC) Executive Director. Your letter relates to the ALRC's Review of Surrogacy Laws (Inquiry), and the consultation held on 18 December 2025 which was attended by Justice Bromberg, Assistant Commissioner Ronli Sifris, and members of the Inquiry team.

I understand that you write as the Affiliation of Australian Women's Advocacy Alliances (AAWAA), which seeks to advance the cause for the prohibition of surrogacy. I understand that you do not represent the broader feminist movement in Australia, or the coalition of organisations that attended the 18 December roundtable.

Your letter raises three substantive matters, and I will respond to each in turn.

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Lastly, your request that the ALRC pause the Inquiry and reconstitute the Surrogacy Advisory Committee in a fashion acceptable to you, not only misunderstands the ALRC's powers, it also fundamentally misunderstands the ALRC's independence. The ALRC is bound by the Attorney-General's decisions in relation to Terms of Reference, the time provided for an inquiry, and the resources provided to that inquiry. Once the ALRC receives Terms of Reference for an inquiry, the ALRC conducts that inquiry entirely independent of government and stakeholder influence. It would be entirely improper for the ALRC to accede to the views of government or any single interest group, as opposed to forming its own independent views as to how an inquiry should be conducted, and what recommendations should be made.

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Thank you once again for your interest in and engagement with this Inquiry.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ruth Barson'.

Ruth Barson

Executive Director

Australian Law Reform Commission



18 August 2025

Dear Member,

Re: Urgent call for democratic review: Withdraw the Assisted Reproductive Technology and Surrogacy Bill for Law Reform Commission and committee scrutiny, and full stakeholder consultation

Please allow us to introduce ourselves. We are the Western Australian Women's Action Alliance (WAWAA), a member of the Affiliation of Australian Women's Action Advocacy ([AAWAA](#)), which includes groups in all states and territories in Australia. We are secular, independent, and unaligned with any political party, and we advocate for women and girls in domains where we face discrimination or are vulnerable because of our sex.

Member, we are writing to you as a matter of urgency in relation to the [Assisted Reproductive Technology and Surrogacy Bill 2025](#) and the flawed consultation process surrounding the Bill, which is currently before Parliament. The lack of adequate opportunities for input into a change of this magnitude has denied us a meaningful voice in this matter. It is for this reason that we are coming directly to you on behalf of our statewide membership who have expressed concern regarding the absence of democratic process in the tabling of the Bill.

We outline our concerns, below, and invite you to view the Annex for support for our claims.

1. Exclusion of women's voices and democratic deficit

Women's groups, independent experts, and feminist advocates were systematically excluded from consultation. The process was led by fertility industry representatives and clinicians with an obvious commercial interest in expanding ART and surrogacy. Briefings were limited and did not engage with women's advocates or the WA Law Reform Commission, despite the centrality of women to these issues.

2. Conflicts of interest and industry-driven review

The Bill emerged from a ministerial panel chaired by a leading ART clinician, supported by industry insiders. This composition represents a clear conflict of interest, prioritising commercial growth over careful consideration of impacts on women and the broader community.

3. Lack of independent review and committee scrutiny

Unlike best practices in other jurisdictions, WA bypassed both Law Reform Commission

review and full parliamentary committee scrutiny. No comprehensive, independent inquiry or open stakeholder engagement occurred, undermining rights and democratic process, and ignoring Australia's obligations under [CEDAW](#) and the [ICCPR](#).

4. Misleading rationale and legislative flaws

The government rationalises the introduction of the Bill by saying it wants to “harmonise” it with outdated laws from other states, and ignoring the ongoing ALRC review and NSW's incomplete committee inquiry process. This patchwork cannot ensure consistent protections for women.

Perhaps even more elemental, however, is that the merging of ART and surrogacy into a single law is fundamentally flawed. These fields raise distinct legal, ethical, and medical questions, but the Bill and the lack of democratic process surrounding its introduction serves industry interests by bundling the two matters, masking risks, and limiting scrutiny.

Language in the Bill and its explanatory materials is biased, framing ART and surrogacy as a consumer right for commissioning parents who need “access” and the removal of “barriers”, while erasing concerns about exploitation, commodification, and harm to women.

5. Evidence of harm is ignored

Substantial international and domestic evidence documents women's exploitation and abuse in surrogacy arrangements. The UN Special Rapporteur on violence against women and girls recognises surrogacy as a form of violence against women, and Australian data confirms the growth of unchecked, overseas commercial surrogacy as a vehicle used by Australians for obtaining a child.

What must happen

- Withdraw the Bill and refer it to the WA Law Reform Commission for an independent, evidence-based review.
- Establish parliamentary committee scrutiny with full and open stakeholder consultation, ensuring women and independent advocates play a central role.
- Ensure that any Terms of Reference are transparent and prioritise women's human rights, not industry interests.
- Recognise women as key stakeholders: do not exclude or sideline us.

Member, democracy demands inclusive, robust scrutiny. We urge you to reject this legislation until proper review and consultation are assured and delivered.

We look forward to your response that engages directly with each of the concerns we have raised above.

Yours Sincerely,

Amber Rossi
Founder
WAWAA

ANNEX: Evidence of systemic failures in WA ART and surrogacy legislation development

A. EXCLUSION OF WOMEN'S VOICES AND FEMINIST ANALYSIS

Consultation failures

- [Ministerial Expert Panel composition](#): Panel chaired by Professor Roger Hart, a leading infertility specialist, with panel members drawn exclusively from the ART industry
- [Targeted stakeholder selection](#): Government chose stakeholders requiring "further consideration" without evidence of women's groups being identified as essential stakeholders
- [No law reform commission involvement](#): WA bypassed independent review by Western Australian Law Reform Commission, unlike proper legislative processes
- [Limited public consultation](#): Process relied on select stakeholder briefings rather than open public consultation required for significant social legislation

International obligations breached

- [CEDAW Article 7 violations](#): Australia obligated to ensure women's equal participation in government policy formulation, including law reform affecting women's rights
- [ICCPR Article 25 violations](#): Citizens' right to participate in public affairs systematically denied to women's advocacy groups
- [UN Special Rapporteur warnings](#): Current UN review identifies surrogacy as form of violence against women, highlighting need for women's voices in policy development

B. CONFLICTS OF INTEREST AND INDUSTRY CAPTURE

Panel composition problems

- [Professional conflicts](#): Panel chaired by Western Australian infertility treatment expert with direct financial interest in ART expansion
- [Industry representation](#): Panel "comprised experts in the field of assisted reproductive technology" rather than independent experts
- [No independent oversight](#): No representation from women's advocacy, children's rights, or ethics expertise outside fertility industry

Regulatory capture evidence

- [Industry-friendly outcomes](#): Legislation streamlines approval processes and reduces regulatory burden on fertility clinics
- [Commercial expansion facilitated](#): Bill creates framework for the beginnings of an industry rather than protective regulation
- [Clinic-based decision making](#): Shifts power from central regulation to clinic-level decisions, benefiting industry operators

C. INADEQUATE REVIEW PROCESS COMPARED TO BEST PRACTICE

Victoria's higher standard (not followed)

- [Victorian Law Reform Commission review 2004-2007](#): Comprehensive three-year independent review with extensive public consultation
- [130 recommendations](#): Detailed analysis resulting in evidence-based Assisted Reproductive Treatment Act 2008
- [Open consultation process](#): Public submissions, community forums, and stakeholder engagement across all affected groups

WA's deficient process

- [Allan Review limitations](#): 2018-2019 review by Associate Professor Sonia Allan, whilst comprehensive, lacked law reform commission independence
- [MEP targeted consultation](#): 2022-2023 Ministerial Expert Panel undertook only "targeted consultation with stakeholders identified by the government"
- [No parliamentary committee review](#): Bill proceeded without committee scrutiny despite complexity and social significance

D. MISLEADING HARMONISATION CLAIMS

Jurisdictional inconsistencies

- [Review timing problems](#): Other state reviews conducted years or decades ago (e.g., Victoria 2007-08, South Australia 2018), creating outdated baseline
- [NSW still reviewing](#): NSW Legislative Council Select Committee only at inquiry stage, no law reform commission review completed
- [Fragmented landscape](#): Australian jurisdictions remain "mishmash" of different approaches, making harmonisation impossible
- [ALRC review ongoing](#): Australian Law Reform Commission currently reviewing surrogacy laws nationally, making WA's rush premature

False urgency arguments

- [No emergency justification](#): No crisis requiring rushed passage without proper democratic scrutiny
- [Industry pressure](#): Urgency appears driven by fertility industry interests rather than genuine public need
- [Rights-based concerns ignored](#): Urgency narrative dismisses fundamental concerns about women's sexed-based protections and rights

E. PROBLEMATIC LEGISLATIVE DRAFTING

Inappropriate bundling

- [Distinct ethical frameworks](#): ART (medical treatment) and surrogacy (reproductive contracts) raise fundamentally different ethical and legal questions
- [Different stakeholder impacts](#): ART primarily affects patients; surrogacy affects surrogate mothers, commissioning parents, and children with competing interests
- [Regulatory complexity](#): Combining distinct practices prevents adequate scrutiny of surrogacy-specific harms and protections

Language bias

- ['Access' framing](#): Terms like 'barriers to accessing surrogacy' frame women's bodies as service delivery rather than addressing exploitation
- [Industry terminology](#): Legislative language privileges commissioning parents' perspectives over surrogate mothers' experiences
- [Rights erasure](#): Focus on "family formation" obscures women's human rights and dignity concerns

F. EVIDENCE OF HARM SYSTEMATICALLY IGNORED

International evidence

- [UN Special Rapporteur findings](#): Surrogacy constitutes form of violence against women through medical, economic, and psychological harm
- [Trafficking concerns](#): Over 3,000 children born via overseas surrogacy to Australian parents since 2010, yet no prosecutions under criminalising laws
- [Exploitation documentation](#): Evidence from multiple jurisdictions shows systematic exploitation of economically disadvantaged women

Australian data ignored

- [Overseas surrogacy dominance](#): 376 children commissioned overseas via surrogacy in year ending June 2024, nearly triple domestic 'altruistic' births
- [Enforcement failures](#): Commercial surrogacy formally illegal but effectively decriminalised through non-enforcement
- [Post-hoc legitimisation](#): Courts grant parentage orders automatically for overseas-born children, legitimising exploitative practices