NEW SOUTH WALES WOMEN'S ADVOCACY ALLIANCE

# Select Committee on Fertility Support and Assisted Reproductive Treatment
# NSW Parliament
# Responses to supplementary questions

**1. You recommend investing in ethical solutions and strengthening non-exploitative routes to families. Do you believe the NSW Health Affordable IVF Initiative pushes women into using IVF, instead of encouraging to look for alternatives?**
AAWAA does not regard the NSW Health Affordable IVF Initiative as analogous to surrogacy, and it would be inaccurate to designate AAWAA's position as opposition to IVF as such. The distinction drawn in evidence, and in the anchoring arguments, is between medical treatment directed to a person's own fertility and arrangements that contract for the use of another woman's body for the handover of a child. IVF, whatever ethical questions may arise in particular contexts, does not necessarily involve the planned separation of a child from the woman who carried the pregnancy, nor does it depend upon constructing a market in another woman's gestation.

That said, AAWAA would not frame the issue as whether women are being 'pushed' into IVF in some simple or direct sense. The more important question is whether public policy is organised around a narrow technological and consumer model of family formation, rather than around a broader ethic of care, social support, and non-exploitative routes to family life. If a public system over-emphasises technological fertility interventions to the exclusion of guardianship, kinship care, adoption reform, social supports for women, or other non-exploitative responses, that may reflect a policy imbalance. But that is a different question from whether IVF should be treated as morally or legally equivalent to surrogacy.

AAWAA's core position is that before the State promotes, funds, or normalises any practice under the heading of 'fertility support', it must ask what is being supported and at whose expense. In the case of surrogacy, the practice itself involves the use of one woman's reproductive capacity for others and the planned relinquishment and transfer of a child, so the threshold objection is structural. In the case of IVF, the ethical analysis is different and cannot simply be collapsed into the surrogacy question. Accordingly, AAWAA's recommendation to invest in ethical, non-exploitative routes to families is not a recommendation against IVF as such, but a recommendation against allowing the language of 'fertility support' to obscure the profound moral and legal differences between fertility treatment and surrogacy.

**2. Much of the evidence to this inquiry has related to altruistic surrogacy. Does AAWAA's analysis of exploitation and commodification relating to commercial surrogacy, also equally apply to altruistic surrogacy. If so, why?**
Yes. AAWAA's analysis applies to altruistic surrogacy as well as commercial surrogacy, because the structural features that ground the analysis do not disappear simply because payment is reduced, obscured, or relabelled. The central issue is not only whether money changes hands in an overtly commercial form, but what kind of arrangement surrogacy is: namely, an arrangement for the use of a woman's body for the handover of a child, and a contract for pregnancy and planned separation of a woman and a child. Those features are present in so-called altruistic surrogacy no less than in commercial surrogacy.

The exploitation analysis is therefore structural before it is transactional. Surrogacy treats women's reproductive capacity as something that may be organised for others' benefit and children as the objects of a legal arrangement concerning transfer, parentage, and entitlement. Even where there is no profit in the narrow sense, the woman who carries the pregnancy bears the physical, emotional, and social burdens of the arrangement, while the intended parents receive the principal benefit. That asymmetry does not become non-exploitative merely because the transaction is framed in the language of generosity, love, friendship, or family solidarity.

Indeed, altruistic surrogacy may in some respects be harder to assess and regulate because the absence of overt commercial language can make pressure, indebtedness, family expectation, and emotional coercion less visible rather than less real. The committee heard extensive emphasis on altruistic arrangements, but the legal and structural form remains one in which a woman undertakes pregnancy on the understanding that the child will be surrendered to others. For AAWAA, that is the relevant moral and political fact. Commercial surrogacy may intensify commodification and create broader industry incentives, but altruistic surrogacy does not escape the underlying structure of reproductive use and child transfer.

**3. In your evidence you spoke about structural exploitation, individual consent and agency. Can you elucidate on your explanation of structural exploitation, individual consent and agency?**
When AAWAA speaks of structural exploitation, we are referring to exploitation that arises from the design and social organisation of a practice, not merely from the bad behaviour of particular individuals. A practice can be structurally exploitative even where the individual participants are courteous, well-intentioned, or sincerely attached to one another, if the practice depends upon unequal social distributions of power, risk, vulnerability, and benefit. In surrogacy, those inequalities are built into the arrangement itself: one party undergoes pregnancy and childbirth, bears the health risks, and is expected from the outset to relinquish the child; other parties receive the intended benefit of the arrangement.

This is why AAWAA has been careful not to rest the analysis on whether any given woman says she was happy, satisfied, or empowered by the experience. Individual consent matters morally and legally, but it does not settle the character of the practice. There are many contexts in which individual consent is present yet the law still asks whether the broader arrangement is exploitative, harmful, or contrary to public policy. Individual consent can be

genuine and still operate within a social structure that relies upon background inequality, economic pressure, emotional obligation, or social expectation.

Similarly, AAWAA does not deny women's agency. On the contrary, our evidence and opening statement expressly distinguished guardianship from paternalism, precisely in order to avoid treating women as incapable. The point is that agency is not a magic solvent that dissolves structural realities. A woman may choose to enter an arrangement, but the State must still ask what kind of arrangement it is, what risks it creates, whose interests it serves, and whether it is the proper role of Parliament to construct, validate, and normalise that arrangement for a society. In AAWAA's view, the existence of individual consent does not remove Parliament's responsibility to assess whether surrogacy as a social practice rests upon the unfair use of women's reproductive capacity for the benefit of others.

**4. In your evidence on pages 47 and 50 of the transcript, you suggested that Parliament should not 'steward' a reproductive market. Can you elucidate on what this means? Specifically, what is AAWAA's opinion of the legal and constitutional character of reproductive markets, and of Parliament's role in relation to them?**
When AAWAA said that Parliament should not 'steward' a reproductive market, the point was to challenge a particular institutional self-understanding that appeared to underlie much of the inquiry. The language of 'fertility support' can invite the assumption that Parliament's role is managerial: to oversee, stabilise, and improve a policy domain in which various stakeholders present competing interests. In that frame, clinics, brokers, intended parents, surrogate women, lawyers, and children are all positioned as interests to be balanced, and the task of government becomes one of market design and risk management.

AAWAA rejects that frame because reproductive markets are not natural facts to which Parliament must adapt; instead, they are legal constructions that Parliament permits, structures, subsidises, or prohibits. A market in reproductive services exists only because the State decides what contracts will be recognised, what parentage rules will operate, what payments may lawfully be made, what brokerage may occur, and what rights and obligations can be assigned or extinguished. That gives reproductive markets a distinct constitutional character: they are not merely private activities happening beyond the law, but arrangements whose very intelligibility depends upon legal authorisation.

In AAWAA's view, that means Parliament cannot evade responsibility by treating the market as inevitable and asking only how best to regulate it. The constitutional and ethical question comes first: should the law construct and maintain such a market at all? If the market depends upon women's subordination, reproductive risk, and the planned relinquishment and transfer of children, Parliament's proper role is not stewardship but judgment. It must determine whether the practice is compatible with the State's duties to refrain from harm, to prevent exploitation, and to comply with relevant human-rights obligations. In AAWAA's submission, Parliament's role is therefore not to act as trustee for a reproductive industry, but as guardian of women and children in deciding whether this category of market should exist at all in a modern society.

**5. The inquiry has heard evidence from witnesses about parentage orders and the difficulties in obtaining them and the legal uncertainty they create. In AAWAA's opinion, what does the courts' role in surrogacy tell us about the practice itself? What do the hospital and healthcare difficulties described in evidence tell us?**
The prominent role of the courts in surrogacy is, in AAWAA's view, not an accidental side issue but evidence of the legal strain built into the practice itself. Parentage orders are necessary because surrogacy creates a deliberate disjunction between gestation, birth, legal motherhood, 'intended parenthood', and, in some cases, genetic connection. The law is then asked to repair or rearrange that disjunction after the event. That recurring need for judicial intervention suggests that surrogacy is not a straightforward private arrangement but a practice that requires continuing legal reconstruction of family status.

The difficulties and uncertainty described in obtaining parentage orders tell a similar story. They show that the law is not simply administrating a settled social good, but trying to mediate conflicts and ambiguities generated by the practice itself. If a practice routinely requires courts to determine who should be recognised as parents, whether statutory criteria have been met, and how to resolve tension between biological, gestational, intentional, and legal claims, that is a sign that the practice is not normatively simple. For AAWAA, these are not mere implementation glitches. They are symptoms of a practice that divides and reallocates aspects of motherhood and parenthood that are ordinarily unified.

The hospital and healthcare difficulties described in evidence point in the same direction. They reveal that surrogacy is not simply a matter of private intention but of competing claims over the pregnant woman, the unborn child, the birth event, neonatal care, consent, decision-making authority, and medical responsibility. Healthcare systems are then required to manage tensions that arise precisely because pregnancy is being treated as a service undertaken for others. In AAWAA's opinion, these legal and clinical frictions are instructive: they indicate that surrogacy is not merely under-regulated, but structurally dissonant with the ordinary legal and ethical principles governing pregnancy, birth, and the protection of women.

**6. Some witnesses suggested that opposition to surrogacy effectively discriminates against same-sex couples or non-traditional families who cannot have children through other means. How do you respond to that characterisation?**
AAWAA rejects entirely the characterisation that opposition to surrogacy is, in itself, discrimination against same-sex couples or non-traditional families. The objection is directed to the nature of the practice, not to the identity, sexuality, or moral worth of those who seek access to it. AAWAA's position is that no person or couple, whatever their sexuality or family form, has an established entitlement to secure a child through an arrangement that uses a woman's body for pregnancy and requires the planned relinquishment and transfer of that child. The threshold question is about the legitimacy of surrogacy as a practice, not about the social acceptability of any category of intended parent.

To put the matter differently, equal dignity does not entail equal entitlement to every possible means of family formation. The law often places limits on methods of achieving desired ends where those methods are judged exploitative, harmful, or inconsistent with human dignity. That is not discrimination against those who desire the outcome; it is a judgment about the permissibility of the means. AAWAA's analysis therefore applies irrespective of whether the

intended parents are heterosexual, same-sex, single, married, affluent, or otherwise. Indeed, one reason AAWAA insists on structural analysis is precisely to avoid reducing the issue to sympathy for some aspirant parents while rendering invisible the woman whose pregnancy is being used and the child whose transfer is being arranged.

AAWAA also rejects the implication that opposition to surrogacy expresses hostility to non-traditional families as such. Families formed through ethical adoption, guardianship, kinship care, blended family structures, and many other non-traditional arrangements exist and are respected without requiring the State to create a reproductive market in women's pregnancies. The issue is not whether diverse families may flourish, but whether the State may rightly authorise and normalise a practice that depends upon reproductive exploitation and child transfer. In AAWAA's view, it may not.

**7. In your evidence you spoke about the importance of structural and social analysis. Can you explain in practical terms what that analysis looks like when applied to surrogacy? What structures and social analysis should this inquiry be examining?**
In practical terms, structural and social analysis asks the inquiry to move beyond individual narratives and examine the recurring features of the practice across cases and across populations. It asks what kind of institution surrogacy is, what social meanings it produces, what legal architecture sustains it, and where power, risk, and benefit are distributed. Applied to surrogacy, that means examining the contractual structure, the allocation of health risks, the socio-economic profile of the women who carry pregnancies, the financial and professional interests of intermediaries, the treatment of children in law, and the broader cultural message communicated about women's reproductive role.

This analysis should include, at minimum, the following structures. First, the market structure: who benefits financially or professionally from surrogacy, how the relevant ecosystem of clinics, lawyers, counsellors, and brokers operates, and what pressures exist to expand or normalise the practice. Secondly, the legal structure: how contracts, parentage orders, birth registration, health law, consent, and cross-border arrangements work together to create and validate the practice. Thirdly, the social structure: what assumptions about women, motherhood, family formation, and entitlement are reproduced when pregnancy is treated as a service for others. Fourthly, the risk structure: who bears the medical, emotional, reputational, and legal burdens, and whether those burdens fall in a patterned way on women whose relative vulnerability is socially predictable.

Structural and social analysis therefore does not dismiss lived experience; it places it in context. Individual stories may illuminate aspects of a practice, but they cannot by themselves determine whether the practice is exploitative, just, or compatible with Parliament's duties. The inquiry should therefore ask not only whether some arrangements appear workable or appreciated by participants, but whether the practice as a social system depends upon women being available for reproductive use and children being available for relinquishment and transfer. That is the level at which AAWAA submits the inquiry must operate if it is to discharge its responsibility seriously.

**8. Some evidence to the inquiry, both submissions and oral testimony, have assumed that surrogacy is a legitimate practice whose barriers simply need to be addressed. Is there a threshold question that needs to be asked and answered regarding the legitimacy of the practice of surrogacy before examining the matter of so-called barriers, that simply need to be addressed? If so, what is the threshold question and why does it need to be asked and answered regarding the legitimacy of the practice of surrogacy?**

Yes. In AAWAA's view there is a threshold question, and it should be addressed before any discussion of so-called barriers proceeds. That question is: should the State recognise, construct, facilitate, or normalise a practice whose essential structure is the use of a woman's body for the relinquishment and handover of a child? Unless that question is asked and answered first, discussion of 'barriers' simply assumes the legitimacy of the practice in advance and reduces the inquiry to one of optimisation.

This threshold question matters because language such as 'barriers', 'access', and 'support' is never neutral. It presupposes that surrogacy is a legitimate good to which people ought, in principle, to have improved 'access', and that the law's role is to remove unjustified obstacles. But that presupposition is itself the issue under dispute. If surrogacy is structurally exploitative, if it commodifies women's reproductive capacity and treats children as the objects of transfer, then the so-called barriers may in fact be minimal protections that express Parliament's refusal to construct such a market.

The threshold question also needs to be answered first because public authorities do not ordinarily begin with optimisation where the practice under consideration may itself be incompatible with human dignity or human-rights obligations. The ordinary order of reasoning is to identify the nature of the practice, determine whether it is acceptable in principle, and then consider regulation only if that prior question has been answered affirmatively. In AAWAA's submission, the inquiry should therefore first determine whether surrogacy is a practice that Parliament ought to authorise at all. Only if that legitimacy question is answered in the affirmative would it make sense to turn to the design of access or safeguards. AAWAA's position, however, is that the practice fails at the threshold.

**9. At the hearing, a question was directed to you about the governance structure of NSW Women's Advocacy Alliance and AAWAA. Can you describe the formal governance arrangements in more detail?**

The NSW Women's Advocacy Alliance operates within the broader national federation known as AAWAA, the Affiliation of Australian Women's Advocacy Alliances, and it is important to emphasise that this is not a loose informal arrangement. Organisations take many lawful forms, and AAWAA's is a serious governance structure directed towards durable national advocacy. AAWAA has a board of directors, and under our constitution that board consists of a minimum of three and a maximum of eleven directors, with a national director and, as far as practicable, representation from each State and Territory, together with the required officeholder roles including secretary and treasurer. We currently have six directors. The constitution also provides for formal membership, annual general meetings, voting rights, record-keeping, conflict-of-interest rules, disciplinary processes, and the possibility of an executive committee to manage day-to-day operations under delegation from the full board. Our income and assets are applied solely to the organisation's stated purposes.

AAWAA is in the process of being formally registered with ASIC as a not-for-profit public company limited by guarantee, with a view to operating as a charity and, in due course, obtaining deductible gift recipient status. The constitution also makes clear that affiliate groups are organisational structures within AAWAA for state and territory coordination rather than separate legal memberships, which is part of what allows AAWAA to combine national coherence with jurisdiction-specific work. In other words, the model is federated and formal, not casual: it is designed to support sustained advocacy, accountability, and national representation.

In addition, Women's Action Alliance Canberra Inc has already been incorporated for more than two years, which is relevant to AAWAA's broader institutional development and international engagement. WAAC Inc is applying for ECOSOC status at the United Nations now, and AAWAA itself intends to apply for ECOSOC status in its own right. That trajectory is consistent with the purposes set out in our constitution, which include engaging with governments, international bodies and civil society organisations on matters relating to women's sex-based protections and rights under CEDAW and other human-rights instruments.

It is also relevant that AAWAA and its affiliate organisations are already consulted and engaged at State, federal and international levels. Our recent engagements include:

- Australian Law Reform Commission, review of surrogacy laws, roundtable, December 2025
- Australian Human Rights Commission, Sydney meeting in relation to its statutory obligations in protecting women's rights, February 2026
- UN Special Rapporteur on Violence Against Women and Girls, expert online consultation on violence against older women, May 2026
- NSW Department of Communities and Justice, roundtable on the statutory review of sexual-consent reforms, April 2026
- NSW Legislative Council Select Committee on fertility and assisted reproductive technology, hearing evidence, April 2026
- Senator David Pocock, consultation on the Federal Government's Combatting Antisemitism, Hate and Extremism Bill 2026, roundtable, January 2026

AAWAA – along with our federated, affiliate groups – is a structured, serious, multi-level advocacy body whose work is recognised and engaged with across domestic and international forums. You can view our constitution on our website in the governance section.