



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair), Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Parentage (Surrogacy) Amendment Bill 2023

Submission Number: 003

Date Authorised for Publication: 06 December 2023



Archdiocese of Canberra and Goulburn Submission to the Inquiry into the Parentage (Surrogacy)
Amendment Bill 2023

Archbishop Christopher Prowse, Catholic Archbishop of Canberra and Goulburn

(archbishop@cg.org.au)

The Catholic Archdiocese of Canberra and Goulburn, in itself and through its agencies, represents the largest non-government employer in the ACT. Additionally, the Church, through its health and social welfare agencies, including Calvary ACT, Southern Cross Care, Catholic Health Care, Marymead Catholic Care and the St Vincent de Paul Society, as well as our network of parishes, serves significant portions of the ACT Community – both Catholics, as well as those of other beliefs and none.

The Church argues that human life in all its forms must be protected from conception until natural death. We argue this in alignment with the long tradition of Catholic doctrine but also in keeping with mainstream philosophy and human rights. Additionally, the Church, in a broad sense, and the Archdiocese directly in the ACT, offers tangible support and care to vulnerable people at all points in their lives but most acutely to the formation of families and the dignity of children.

There is a natural and commendable desire to bear children. Many couples face great pain and sadness when they cannot have children because of infertility or the inability to carry a child to full term. Many of us know and love people who are in this position.

Due to both our active, practical, direct engagement with people in need and our long intellectual history in grappling with the fundamental questions of existence, we must state strongly and unambiguously that turning to surrogacy as a response to this pain and sadness is not in the best interests of the child, the mother acting as a surrogate, any gamete donors or the commissioning parents.

The practice of surrogacy raises issues that affect the dignity of each of the people involved, dehumanising one of the most profoundly human and personal parts of life – the conception, birth and upbringing of a child and the loving relationships that are essential to the nurturing of human life.¹ Human beings are not products that can be developed mechanically or traded away. Through surrogacy, the link between a mother and her child, one of the most profound and formative relationships available to the human experience, is distorted. Families suffer as a result of the division it creates between the natural personal, psychological, and physical processes through which families form and bond. The recognition of the human rights of all involved is compromised through the objectification and commodification of surrogate mothers and children.

In response to the ACT Government's recent proposal to amend the laws governing the practice of surrogacy within the ACT, we submit that surrogacy, whether commercial or altruistic, is inherently flawed and is an affront to human dignity. Given the manifest offences of this practice against the

¹ [Congregation for the Doctrine of the Faith \(1987\), Instruction On Respect For Human Life In Its Origin And On The Dignity Of Procreation.](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html)

https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html



well-being of women and children, it would be intolerable to argue that regulation or harm minimisation, instead of prohibition, would uphold the dignity of women and children.

For this submission, we will not address the disregard for human rights evident in commercial surrogacy, which is rightly prohibited in Australia. However, we maintain that the internal logic of what is misleadingly termed altruistic surrogacy, which still treats women as vessels for production, motherhood as a kind of mechanistic labour and children as a product to be acquired, will naturally lead to an acceptance of commercial forms of surrogacy.

Respect for the Dignity and Rights of Children

Article 3 of the Convention on the Rights of the Child, to which Australia is a party, stipulates that the child's best interests must always be respected. Children also enjoy the following rights under the convention:

- "An identity and family relations."²
- "As far as possible, know and be cared for by their parents."³
- "Not be separated from their parents against their will, except in certain specified circumstances."⁴
- "Maintain personal relations and direct contact with both parents, except if it is contrary to the child's best interests."⁵

Surrogacy undermines these rights by disconnecting children from their natural parents. To do so typically requires genetic parents to disregard their obligations to their biological children, an action that would be universally seen as immoral in any other circumstance.

Surrogacy also undermines the unique physical, emotional and social bonding that takes place during pregnancy, during which a child's mother is a child's singular relationship. Pregnancy is a critical developmental stage that affects a child's long-term health, capacity, and well-being.⁶ According to the scientific field of epigenetics, the environment a child is exposed to in the womb can drastically affect how their genes are expressed in later life.⁷ Furthermore, it is recognised that the mother and growing child engage in hormonal and emotional interactions throughout pregnancy.⁸ One study

² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577. Art 8.

³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577. Art 7.

⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577. Art 9.

⁵ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577. Art 9.

⁶ Bowlby, E.J.M. (2008), *Attachment: Volume One of the Attachment and Loss Trilogy*, Vintage Digital.

⁷ National Scientific Council on the Developing Child (2010). *Early Experiences Can Alter Gene Expression and Affect Long-Term Development: Working Paper No. 10.*; Shonkoff, J. P., Boyce, W. T. , & McEwen, B S. (2009). Neuroscience, molecular biology, and the childhood roots of health disparities: Building a new framework for health promotion and disease prevention. *JAMA*, 301(21), 2252-2259.

⁸ Agnafors, M. The harm argument against surrogacy revisited: two versions not to forget. *Med Health Care and Philos* 17, 357–363 (2014).



concluded that "the absence of a gestational connection to the mother may be problematic."⁹ Another comparing regular pregnancy (called "spontaneous pregnancy in this study") with surrogate pregnancy found that:

"Neonates born from commissioned embryos and carried by gestational surrogates have increased adverse perinatal outcomes, including preterm birth, low birth weight [...]."¹⁰

The psychological impact of surrogacy on the surrogate mother's other children should also be considered. Despite the limited evidence on the psychological health of children born through surrogacy, the immediate removal of a child from this relationship has been shown to have significant psychological impacts on children later in life.¹¹

A person's sense of identity and the people they form bonds with is deeply rooted in their genealogy. People typically feel that their sense of self is shaped by their connections to their ancestry, parents, siblings, and other genetic relatives.¹² This fundamental human need for people to understand themselves through their ancestors is perhaps most immediately evident in the widespread use of the internet for tracking genealogy.¹³ Additionally, psychologists discuss the concept of genealogical bewilderment, where individuals, especially children, experience alienation and difficulties in understanding and establishing their own identity when they have little or uncertain contact with their biological parents.¹⁴ When the genetic and genealogical connections that are fundamental to human flourishing are broken through the practice of surrogacy, children born through this process can experience significant grief and confusion.¹⁵

Surrogacy also breaches the rights of children through the reduction of children to products selected and produced for the interests of the adults who want a child. Feminist writer Kajsa Ekis Ekman makes the point that "even in altruistic surrogacy, there is a drastic change in the way we look at children: as products to be exchanged through contracts."¹⁶ As a result, after a child becomes a producible quantity for another, quality expectations rise. Commissioning parents often do not desire a disabled child, and surrogates may be contractually forced to terminate kids with undesirable features.¹⁷ The fact of surrogacy is that commissioning parents' wishes drives surrogacy agreements, and the value of a surrogate child fluctuates in accordance.

⁹ Golombok S, Blake L, Casey P, Roman G, Jadva V. Children born through reproductive donation: a longitudinal study of psychological adjustment. *J Child Psychol Psychiatry*. 2013;54(6):653-660.

¹⁰ Woo I, Hindoyan R, Landay M, et al. Perinatal outcomes after natural conception versus in vitro fertilization (IVF) in gestational surrogates: a model to evaluate IVF treatment versus maternal effects. *Fertil Steril*. 2017;108(6):993-998.

¹¹ Agnafors, M. The harm argument against surrogacy revisited: two versions not to forget. *Med Health Care and Philos* 17, 357–363 (2014).

¹² Leighton, K. (2012). Addressing the harms of not knowing one's heredity: lessons from genealogical bewilderment. *Adoption & Culture*, 3(1), 63-107.

¹³ Rodriguez, Gregory. "How Genealogy Became Almost as Popular as Porn." *Time*, 30 May 2014, <https://time.com/133811/how-genealogy-became-almost-as-popular-as-porn/>.

¹⁴ Leighton, K. (2012). Addressing the harms of not knowing one's heredity: lessons from genealogical bewilderment. *Adoption & Culture*, 3(1), 63-107.

¹⁵ van den Akker, O.B.A. (2017). *"Surrogate Motherhood Families"*. Palgrave Macmillan Cham.

¹⁶ Ekman, K E, Stop Surrogacy Before it is Too Late. *Festival of Dangerous Ideas*. 19 August 2014. See: <https://medium.com/festival-of-dangerous-ideas/stop-surrogacy-before-it-is-too-late-9910035a63f0#.ma2g0si1u>

¹⁷ Anderson, E, Is Women's Labor a Commodity? *Philosophy and Public Affairs*, 19(1), page 75-76



Respect for Dignity and Rights of Surrogate Mothers

All forms of surrogacy also exploit surrogate mothers by objectifying their bodies and fertility for contractual use. Surrogacy implies that pregnancy, and the overall health of a surrogate mother, is just the mechanistic function of an organ that carries a child and thus requires a woman to reject several essential aspects of the relational bonding that naturally occurs during pregnancy.

Because it divides motherhood into gestational and social mothers, 'surrogate motherhood' devalues mothering and the formation of one of the most primal and profound relationships in the human experience, the relationship between mother and child. Pregnancy often involves biological, psychological and incredibly personal processes of bonding between mother and child. Regardless of processes put in place by surrogacy agencies to stop this bonding, frequently, surrogate mothers are unable to repress an instinctive emotional connection with the child that they carry.¹⁸

Instead of relieving the pain caused by infertility, surrogacy transfers sadness from the infertile couple to the surrogate mother. United States surrogate mother Elizabeth Kane wrote:

Surrogate motherhood is nothing more than the transference of pain from one woman to another. One woman is in anguish because she cannot become a mother, and another woman may suffer for the rest of her life because she cannot know the child she bore for someone else.¹⁹

There is limited empirical information on the long-term physical and psychological impacts of bearing a child for nine months and then giving them up. However, some studies suggest an increased likelihood of increases in neonatal intensive care unit (NICU) admission and length of hospital stay.²⁰ Another study found that surrogate pregnancies were more likely to result in caesarean section than vaginal delivery, which can be riskier for both the mother and baby.²¹ This study also found evidence that surrogate pregnancies featured higher likelihoods of gestational diabetes, hypertension (pre-eclampsia) and placenta previa.²²

Although the rights of the surrogate mother during surrogacy are predicated on their consent to the procedure, consent is a difficult concept that requires more than obtaining a signature on a form.²³

¹⁸ Tieu, MM, Altruistic surrogacy: the necessary objectification of surrogate mothers. *J Med Ethics* 2009; 35: 172. Byrne, M, Surrogacy: some ethical issues. *Bioethics Outlook*, 9(1) 1998: 15.

¹⁹ Ekman, K E, Stop Surrogacy Before it is Too Late. Festival of Dangerous Ideas. 19 August 2014. See: <https://medium.com/festival-of-dangerous-ideas/stop-surrogacy-before-it-is-too-late-9910035a63f0#.ma2g0si1u>

²⁰ Merritt TA, Goldstein M, Philips R, et al. Impact of ART on pregnancies in California: an analysis of maternity outcomes and insights into the added burden of neonatal intensive care [published correction appears in *J Perinatol*. 2014 Nov;34(11):879]. *J Perinatol*. 2014;34(5):345-350.

²¹ Woo I, Hindoyan R, Landay M, et al. Perinatal outcomes after natural conception versus in vitro fertilization (IVF) in gestational surrogates: a model to evaluate IVF treatment versus maternal effects. *Fertil Steril*. 2017;108(6):993-998.

²² Woo I, Hindoyan R, Landay M, et al. Perinatal outcomes after natural conception versus in vitro fertilization (IVF) in gestational surrogates: a model to evaluate IVF treatment versus maternal effects. *Fertil Steril*. 2017;108(6):993-998.

²³ See National Health and Medical Research Council, 'National Statement on Ethical Conduct in Human Research' (2007) Chapter 2.2.



Even in a system that allows only for regulated altruistic surrogacy, women may be acting out of feelings of obligation if they are a surrogate for someone whom they are related to or know.²⁴

Australian feminist organisation FINRRAGE has spoken publicly of several cases in which family members acting as surrogates for infertile relatives have experienced pressure and family tension.²⁵

For reasons such as these, in November 2015, the European Parliament published a human rights report that condemned the practice of surrogacy on the basis that it "...undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity ..."²⁶

Proposed Changes to Surrogacy in the Australian Capital Territory

The proposed changes to the ACT regulations to allow a child to be commissioned without any genetic relationship with either of the commissioning parents is concerning, given the importance of genealogical and genetic connections for a child's formation.

The proposed introduction of advertising for donors is also a concerning addition to surrogacy law in the ACT. Highlighting the inherently commercial dimensions of such transactions. Just as surrogacy encourages the eugenic viewing of children as designer products whose value fluctuates depending on the desire of the commissioning parents, allowing advertising will encourage women's bodies to be treated as consumer services and the eugenic selection of a 'perfect' mother.

Additionally, regulation in Australian territories and states seems to be failing. In areas where foreign surrogacy is illegal and punished by 1-3 years in jail, such as in the ACT, 'Families via Surrogacy' hosts gatherings to promote going overseas for surrogacy. They may do so, but there have been no convictions, even though they promote practices that contravene state and territorial legislation.²⁷

Conclusion

Surrogacy degrades women and their children and deprives both of something they need and deserve. The parent-child relationship is lifelong, and each parent, like their child, has a right and obligation to know and be a part of their family. Children are not products or accessories that can be ordered, just as women are not vessels for reproduction. Whether gestational, conventional, commercial, or altruistic, surrogacy purposely breaks the connection between a child and their mother, which is vital to children's health and development.

²⁴ Dickenson, DL., Regulating (or not) reproductive medicine: an alternative to letting the market decide. *Indian Journal of Medical Ethics*, VIII(3) 2011: 178. Byrne, M, Surrogacy: some ethical issues. *Bioethics Outlook*, 9(1) 1998: 16.

²⁵ Feminist International Network of Resistance to Reproductive and Genetic Engineering (Australia), Submission No. 93 to the Western Australia Independent Review of the Human Reproductive Technology Act 1991 and the Surrogacy Act 2008, 16 March 2018.

²⁶ European Parliament, *Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter*. 30 November 2015.

²⁷ Feminist International Network of Resistance to Reproductive and Genetic Engineering (Australia), Submission No. 93 to the Western Australia Independent Review of the Human Reproductive Technology Act 1991 and the Surrogacy Act 2008, 16 March 2018.



There is no 'right' to a child, especially not one that uses another woman as an 'incubator' for the sought child. Because surrogacy intrinsically trades in the pain felt by people without their own biological children, the exploitation of surrogate mothers and the treatment of children as manufacturable products, this practice cannot be made safer by regulation.

Archbishop Christopher Prowse
Catholic Archbishop of Canberra and Goulburn