



Australian Government

Australian Law Reform Commission

ISSUES PAPER

REVIEW OF SURROGACY LAWS

Issues Paper 52

June 2025

The Australian Law Reform Commission acknowledges the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, sea, and community. We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders past and present. In particular, we acknowledge the Traditional Custodians of the lands on which our offices are based: the Wurundjeri people of the Kulin Nation for our Melbourne office; and the Jagera people and Turrbal people for our Brisbane office.

Unless otherwise stated, this Discussion Paper reflects the law as at 16 May 2025.

The Australian Law Reform Commission ('ALRC') was established on 1 January 1975 and operates in accordance with the *Australian Law Reform Commission Act 1996* (Cth).

ALRC publications are available to view or download free of charge on the ALRC website: www.alrc.gov.au/publications. If you require assistance, please contact the ALRC.

ISBN: 978-1-7637876-5-0

Citation: Australian Law Reform Commission, *Review of Surrogacy Laws: Issues Paper* (2025)

Commission Reference: ALRC Issues Paper 52, 2025

© Commonwealth of Australia 2025

This work is copyright. You may download, display, print and reproduce this material in whole or part, subject to acknowledgement of the source, for your personal, non-commercial use or use within your organisation. Requests for further authorisation should be directed to the ALRC.

CONTENTS

How do I participate?	iv
What is the ALRC's Review of Surrogacy Laws about?	1
Making a submission	2
What is a submission?	2
How do I make a submission?	2
What is the deadline?	2
What happens next?	3
Key terms	3
Surrogacy in Australia	4
Navigating this Issues Paper	6
Part 1: Insights from people with personal experience of surrogacy	6
Part 2: Reform principles	7
Human rights	8
Part 3: Insights about the key issues and potential reform options	10
Barriers to domestic surrogacy	10
Reimbursing and compensating surrogates	15
Legal parentage of children born through surrogacy	17
Citizenship, passports, and visas	20
Oversight and harmonisation	21
The role of the criminal law	23
Lack of awareness and education	24
Issues we consider to be out of scope	25
Part 4: Other insights	26

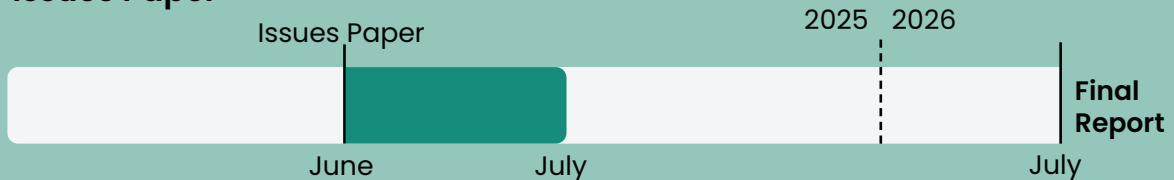
How do I participate?



Make a formal submission

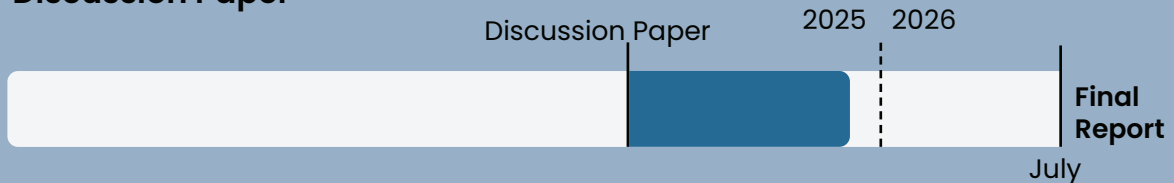
Your submission might respond to either or both of:

Issues Paper



You can send your submission to us between 4 June and 11 July 2025

Discussion Paper



You can send your submission to us when we publish our Discussion Paper

Your submission might be



a written document



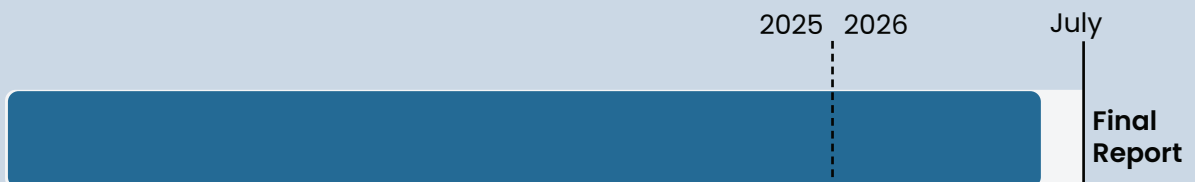
an audio recording



any format that suits you



Get in touch and share your views



You can share your views with us at any time during the Inquiry. You might like to:



email us



send us a letter



give us a call

What is the ALRC's Review of Surrogacy Laws about?

1. The Attorney-General of Australia has asked the Australian Law Reform Commission ('ALRC') to conduct a review of Australian surrogacy laws, policies, and practices.

2. Surrogacy is the practice of a person carrying and giving birth to a child for another person or couple. Surrogacy regulation aims to ensure that the relevant rights and interests of everyone involved — children born through surrogacy, surrogates, and intended parents — are recognised and protected. In Australia surrogacy is regulated both at the federal, and state and territory levels.

3. The **Terms of Reference** describe what the ALRC has been asked to do. In summary, we have been asked to review and make recommendations about how surrogacy is, and should be, regulated in Australia, with a focus on proposals for better aligning state, territory, and Commonwealth laws.

4. The Terms of Reference ask us to investigate a list of specific considerations. We have been asked to adopt a practical and human rights-based approach when considering:

- how to reduce barriers to surrogacy arrangements within Australia;
- how Australian law should address overseas surrogacy arrangements;
- how legal parentage for children born through surrogacy arrangements overseas should be recognised;
- how citizenship, visa, and passport requirements for children born through international surrogacy arrangements should be aligned; and
- what information should be available to children born through surrogacy arrangements.

5. We have been asked to consult with key groups involved in surrogacy. In line with our Terms of Reference, we will review how Australian surrogacy laws, policies, and practices currently function, and will use an evidence-based and principled approach to recommend reform options that consider the rights and interests of all people involved in surrogacy, with an emphasis on the rights and interests of the child.

6. This Issues Paper is the first of two requests for written submissions on this topic. It introduces the Inquiry, provides an overview of how surrogacy is regulated in Australia, and explains what we know so far about the problems this creates and how these problems could be solved. It has **27 questions** — you are welcome to comment on some or all of them. A standalone document listing the questions is available on our **website**.

7. Your input is important, and we are committed to considering your views. At this stage of the Inquiry, we are especially interested in hearing about what you see as the problems with surrogacy regulation and your ideas for how things could improve. We hope to hear from:

- people with personal experience of surrogacy, such as people who have been (or will be) surrogates, intended parents, parents through surrogacy, or people born through surrogacy arrangements;
- people who are professional experts in surrogacy, such as academics, clinicians, lawyers, and counsellors;
- businesses or organisations involved in surrogacy;
- the groups listed in our Terms of Reference; and
- any other members of the public.

Making a submission

What is a submission?

8. A submission is a response to an ALRC inquiry. It is an important opportunity for people to contribute their experiences, views, and expertise. Submissions help the ALRC to understand what people think about how the law is working and how it could be changed.
9. You can put your submission together in any way that works for you. For example, you can:
 - choose to answer all or just some of the questions in this Issues Paper;
 - tell us about your experience of surrogacy more generally; or
 - comment on parts of our Terms of Reference, without using the questions in this Paper.
10. You do not need to answer the questions listed to make a submission.

How do I make a submission?

11. You can make a submission by:
 - uploading it through the [ALRC website](#);
 - emailing it to surrogacy@alrc.gov.au; or
 - posting it to PO Box 209, Flinders Lane VIC 8009.
12. Your submission may be handwritten, audio recorded, or use any form of communication that suits your needs.

Submission confidentiality

When you make a submission, please tell us if you want it to be:

- de-identified — this means it will be published online, but anonymised. We will remove your name, the names of anyone else mentioned in the submission, and any other identifying details before we publish it; or
- confidential — this means it will not be published online, and your name will not be included in our list of submissions.

If you do not specify, we will treat your submission as a public submission, subject to any laws that apply and our [submission policy](#).

We want to encourage submissions from people who have personal experience of surrogacy. This includes surrogates, intended parents, parents through surrogacy, and people born through surrogacy. However, some Australian laws prohibit the identification of people involved in surrogacy arrangements or family court proceedings. For this reason, **we will de-identify all submissions which identify, or may identify, people involved in surrogacy arrangements**. If we determine that your submission does not need to be de-identified, we will ask for your consent before publishing it.

We will only disclose identifying information outside the parameters above if the law or a court tells us to do so. In making a submission, and given 'commercial' surrogacy is illegal, you may want to consider whether you are disclosing information that might expose you, or others, to legal risks or consequences.

What is the deadline?

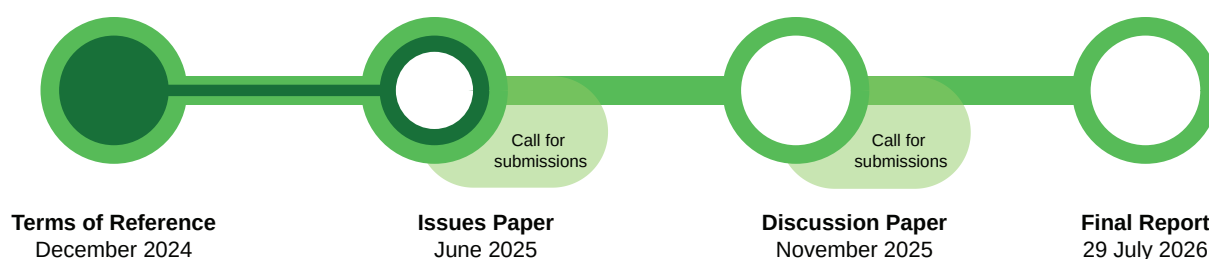
13. We will accept submissions until **Friday 11 July 2025**.

What happens next?

14. We will publish submissions on our website, in line with the confidentiality process above and our [submission policy](#).

15. After reviewing all the submissions and continuing to consult with key groups, we will publish a Discussion Paper in November 2025. The Discussion Paper will set out ideas for reform and ask for feedback on those ideas. You are welcome to make a submission in response to one or both of our papers.

16. The ALRC will write a Final Report that considers all the responses we receive in submissions and consultations, as well as our research. Our Final Report to the Attorney-General is due in July 2026.



17. If you have any questions about the submissions or Inquiry process, please contact surrogacy@alrc.gov.au.

Key terms

18. The following are the key terms we use in this Issues Paper. We understand that these terms can evolve, or people may not agree with the terms listed here. We welcome feedback on the best terms to use in this Inquiry in your submission.

Domestic surrogacy	Surrogacy arrangements that take place while both the intended parent/s and surrogate reside in Australia, and where all parts of the process of becoming pregnant and giving birth (such as screening and fertility treatments) occur in Australia.
Intended parent/s	The person or people seeking to have a child through surrogacy, who will raise the child after the birth.
International surrogacy	Surrogacy arrangements that take place while the intended parent/s reside in a different country from the surrogate. In the Australian context, it refers to any arrangement where the intended parent/s usually reside in Australia and the surrogate resides outside Australia.
Legal parent	The person or people who are legally recognised as a child's parent/s.
Parental responsibility	A person who holds the responsibilities and decision-making powers for a child which would usually be held by a parent. For example, the power to make medical decisions for the child.

Surrogacy	<p>Surrogacy is the practice of a person becoming pregnant, carrying the pregnancy, and giving birth to the child for another person or couple, with the intention that the other person or couple will be the child's legal parent/s.</p> <p>A surrogate may use their own eggs (known as 'traditional' or 'genetic' surrogacy) or eggs belonging to the intended mother or an egg donor (known as 'gestational surrogacy').</p>
Surrogacy agreement	The agreement made between the intended parent/s, surrogate, and potentially the surrogate's partner, which sets out the surrogacy process, as well as the rights and obligations of each party.
Surrogate	The person who becomes pregnant with a child, carries the pregnancy, and gives birth to the child for another person or couple, with the intention that the other person or couple will be the child's legal parent/s.
Surrogate's unique contribution	The physical, mental, and emotional exertion of a surrogate because of anything done under a surrogacy arrangement, including trying to become pregnant, becoming pregnant, carrying a pregnancy, and giving birth to a child. This could include the time they spend and the risk they incur. Other terms sometimes used to describe this unique contribution include 'gestational services' and 'reproductive labour'.

Surrogacy in Australia

19. Surrogacy has existed for a long time, but has become more common following developments in in-vitro fertilisation ('IVF') and changing social attitudes toward same-sex relationships and single parenting. Surrogacy is used by a range of people, including same-sex male couples, single men, or other people who cannot sustain a pregnancy. Some people undertake surrogacy within Australia ('domestic surrogacy'), but it is more common for Australians to enter arrangements overseas ('international surrogacy').¹

20. Surrogacy has been the subject of many inquiries and reviews in Australia. So far, there have (generally speaking) been two waves of surrogacy law reform in Australia. The first wave, in the late 1980s and early 1990s, adopted a restrictive approach to surrogacy and limited its practice.² The second wave, in the mid-to-late 2000s, was more permissive and has led to legalising and regulating certain forms of surrogacy across Australia.³

21. Surrogacy is regulated both at the federal, and state and territory levels. All states and territories have laws relating to eligibility requirements; process requirements (like counselling and legal advice); parameters for reimbursing the surrogate's reasonable expenses; mechanisms for transferring legal parentage; and the prohibition of 'commercial' surrogacy. However, the specific requirements in each state and territory are different.

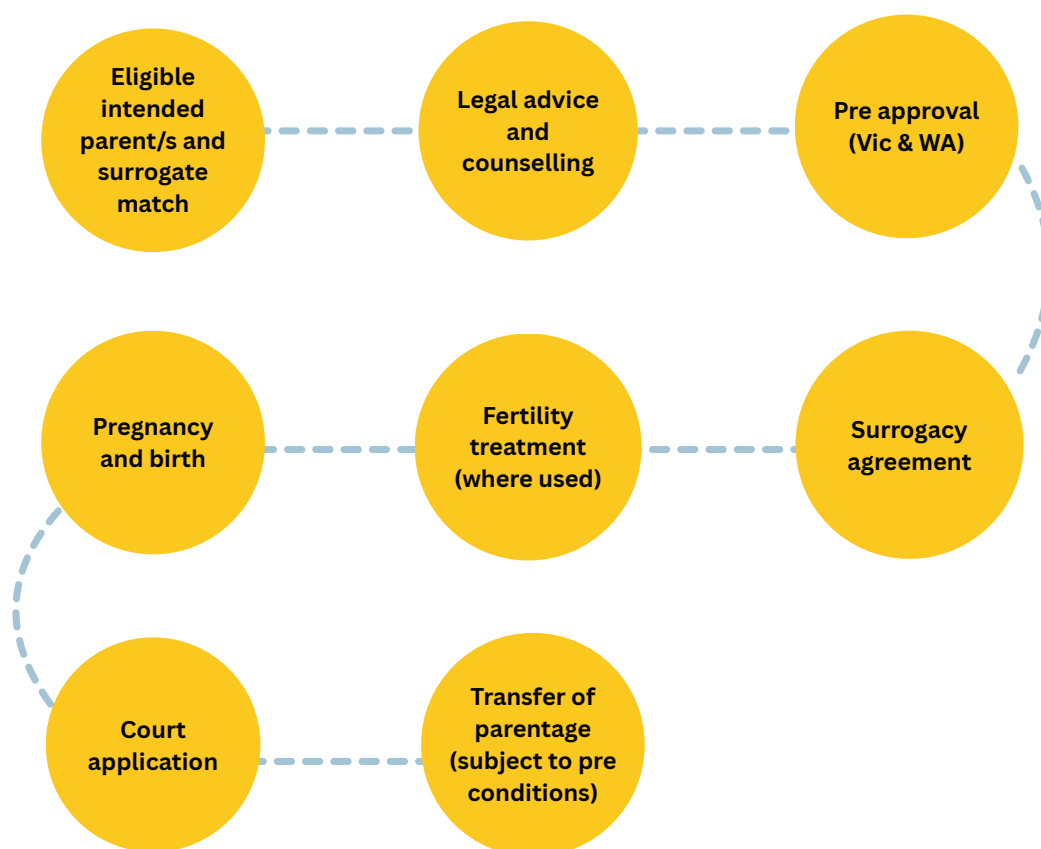
1 In some Australian jurisdictions it is illegal to undertake international commercial surrogacy, see '[The role of the criminal law](#)' below.

2 Jenni Millbank, 'The New Surrogacy Parentage Laws in Australia: Cautious Regulation or "25 Brick Walls"?' (2011) 35(1) *Melbourne University Law Review* 1, 6–7.

3 Ibid 10–13.

22. **Figure 1** below sets out the general process for surrogacy in Australia.

Figure 1: Overview of the surrogacy process in Australia



23. The number of Australians using surrogacy to form a family is increasing each year.⁴ It is hard to know the exact number of surrogate births each year, but it has been reported that 76 children were born through domestic surrogacy in 2020.⁵ Department of Home Affairs' data indicates that 275 children were born through international surrogacy in the same year.⁶ This number increased to 375 in 2023.⁷

24. The ALRC has heard — and data suggests — that the way surrogacy is regulated makes accessing domestic surrogacy difficult. Key issues include a lack of available surrogates in Australia, concerns about who will be the legal parents of the child, and surrogacy in Australia being perceived as a long or complicated process. As a result, many intended parents enter surrogacy arrangements overseas, sometimes in jurisdictions with regulatory frameworks that do not adequately protect the rights of all parties to the surrogacy arrangement.⁸ For example, concerns have been raised about the risks of human trafficking and exploitation.⁹

4 Stephen Page, 'Surrogacy in Australia: The "Failed Experiment"?' (2023) 172 *Precedent* 22.

5 Ibid.

6 Data provided by the Department of Home Affairs to the Australian Law Reform Commission, 17 April 2025. See also Page (n 4).

7 Data provided by the Department of Home Affairs to the Australian Law Reform Commission, 17 April 2025.

8 See '[Part 2: Reform principles](#)' below for further discussion.

9 House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Surrogacy Matters: Inquiry into the Regulatory and Legislative Aspects of International and Domestic Surrogacy Arrangements* (2016) [1.97]–[1.98]; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, 37th sess, UN Doc A/HRC/37/60, (15 January 2018).

Navigating this Issues Paper

25. The Issues Paper summarises what we have heard so far through consultations and early research. This information is just a start. We will continue to consult widely throughout this Inquiry. This Paper seeks your feedback to help us build our understanding of the issues. It also discusses some early ideas for reform options. We invite you to comment on these ideas and any other ideas you may have.

26. This Issues Paper has four parts:

Part 1 is aimed specifically at people who have personal experience of surrogacy, such as intended parents, parents through surrogacy, surrogates, and people born through surrogacy.

Part 1: Insights from people with personal experience of surrogacy

**Question
1**

This Part aims to help the ALRC build its understanding of the experiences people have with accessing and navigating a surrogacy arrangement and how this could be improved.

Parts 2 to 4 are aimed at everyone with an interest in this Inquiry, including people with personal experience of surrogacy.

Part 2: Reform principles

**Questions
2 – 4**

This Part sets out proposed reform principles to guide the Inquiry and identifies key human rights considerations. It provides an opportunity to comment and provide feedback on these overarching principles.

Part 3: Insights about the key issues and potential reform options

**Questions
5 – 26**

This Part sets out specific issues the ALRC has identified so far and some possibilities for reform we have heard about, along with questions to check our understanding of the issues and help us come up with potential ideas for reform.

Part 4: Other insights

**Question
27**

This Part provides an opportunity to comment on any other issues or ideas that were not covered in other questions.

Part 1: Insights from people with personal experience of surrogacy

27. If you have been involved, or considered being involved, in a surrogacy arrangement, the ALRC wants to hear from you about your experience. We want to hear about what went well, what you found hard, and what you think could have been improved. Understanding the experiences of intended parents, parents through surrogacy, surrogates, and people born through surrogacy

is critical to this Inquiry. We are interested in hearing from people with personal experience of surrogacy in Australia and overseas.

Question 1

If you or someone close to you has had personal experience of surrogacy, please describe:

- What parts of your experience were positive?
- What parts of your experience were negative?
- What could be improved and how?

In your response, please let us know:

- a. how you were involved in the process (for example, if you were a surrogate, intended parent, or child born through surrogacy);
- b. if the process took place in Australia or overseas;
- c. if the process took place overseas, the country in which the surrogacy arrangement took place and what was attractive about that country; and
- d. if you think you faced barriers because of certain personal characteristics (for example, if you were in a same-sex relationship or from a culturally or linguistically diverse background).

You might also want to consider the issues discussed below in your response.

Part 2: Reform principles

28. The ALRC's recommendations for reforming Australia's surrogacy laws, policies, and practices will be guided by a set of overarching principles. While these principles are not the only factors that influence how we are thinking about regulating surrogacy, we invite your input on what these principles should be.

29. The principles we propose below have been shaped by our Terms of Reference, as well as our early consultations and research:

- **Human rights** — Our Terms of Reference ask us to have regard to the human rights of children born through surrogacy, surrogates, and intended parents. Reforms should protect and promote the human rights of all involved and centre the best interests of the child as the most important consideration. Given that this principle is central to our inquiry, it is explored in more detail below.
- **Harm minimisation** — Surrogacy arrangements can pose risks of exploitation. Reforms should aim to prevent or minimise potential harm by ensuring that surrogacy arrangements are as safe and ethical as possible.
- **Respect and dignity** — Reforms should ensure that all parties involved in a surrogacy arrangement are treated with respect and dignity, with particular recognition of the surrogate's unique and vital role in the process.
- **Accessibility** — People may face legal barriers to accessing surrogacy. Some of these barriers may be discriminatory. Reform efforts should try to ensure laws are inclusive and do not discriminate. While some financial barriers may be unavoidable, recommendations should aim to improve financial accessibility wherever possible.
- **Pragmatism** — Surrogacy is increasingly being used as a pathway to form a family. The Terms of Reference make clear that the ALRC's role is to improve surrogacy regulation,

rather than to question its legitimacy or if it should be regulated. Reforms should therefore focus on developing a regulatory framework that is practical, efficient, and responsive to societal needs and expectations.

- **Harmonisation** — There are significant differences between the laws that regulate surrogacy across Australia. Reforms should focus on making these laws more consistent, so that the law is more certain, efficient, and fair. More consistent laws may also mean that people do not feel the need to travel to jurisdictions that they think may be less restrictive.

30. While all the principles are important, they may not be equally important in every situation, and there may be a need to balance competing principles.

Question 2

What reform principles should guide this Inquiry?

Human rights

31. The Inquiry's Terms of Reference, as well as the *Australian Law Reform Commission Act 1996* (Cth), require us to ensure that any recommendations are consistent with Australia's international obligations,¹⁰ such as those found in human rights conventions. When regulating surrogacy, it is important to consider the rights of people born through surrogacy, surrogates, and intended parents, some of which are discussed below.

Children's rights

- **The rights of the child as paramount**¹¹ — the rights and best interests of the child born through surrogacy are widely regarded as the most important consideration throughout the surrogacy process, and are rights Australia has a responsibility to uphold.¹²
- **The prohibition on the sale of children**¹³ — some consider that a surrogacy arrangement in some contexts may amount to the sale of a child.¹⁴
- **The right of the child to be cared for by their parents,¹⁵ and the right to privacy, family, and home**¹⁶ — barriers to intended parents obtaining legal parentage of a child born through surrogacy risk violating these rights as they prevent the child's social family from being recognised as their legal family.
- **The right of the child to preserve their identity and nationality**¹⁷ — this right raises questions about the information people born through surrogacy should be entitled to regarding the circumstances of their birth (for example, through the details provided on birth certificates or available through births, deaths and marriages registries). If intended parents are prevented from accessing domestic surrogacy, and instead pursue international surrogacy, it may be challenging for a child to access genetic or gestational information.

10 *Australian Law Reform Commission Act 1996* (Cth) s 24(1).

11 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3.

12 As a State Party to the *Convention on the Rights of the Child*.

13 *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, opened for signature 25 May 2000, UN Doc A/RES/54/263 (entered into force 18 January 2002) art 1.

14 Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, 37th sess, UN Doc A/HRC/37/60, (15 January 2018) 12–17 [41]–[72].

15 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 7.

16 *Ibid* art 16.

17 *Ibid* art 8.

- **The right to be free from discrimination**¹⁸ — treating children born through surrogacy differently from other children could violate this right.

Surrogates' rights

- **The right to freedom from discrimination**¹⁹ — there is a risk that surrogacy arrangements may perpetuate gender or racial inequality.
- **The right to be free from slavery and forced labour**²⁰ — in some places, where there is less regulation, more financial inequality, and women's decision-making capacity and access to information is limited, exploitation risks are greater.²¹
- **The right to autonomy**²² — the right to make an informed choice about whether to be a surrogate, free from pressure or inducement.
- **The right to bodily integrity**²³ — surrogates have the same rights to make decisions about their physical and mental health as any pregnant person, including the need for informed consent for medical treatment from before conception to birth.
- **Work rights**²⁴ — some argue that surrogates should be reimbursed for expenses, and compensated for their unique contribution in the surrogacy arrangement (for example, recognition of their time, effort, and risk incurred, as well as medical, leave, and superannuation entitlements).

Intended parents' rights

- **The right to freedom from discrimination**²⁵ — restricting domestic eligibility could result in some people being denied access to surrogacy because of their personal characteristics. People may face further discrimination if they attempt to access surrogacy overseas. For example, same-sex male couples could experience discrimination in some countries. Restricting access to legal parentage based on how a child is conceived may also result in people who become parents through surrogacy experiencing different treatment, with flow on effects for the rights of the child (discussed above).²⁶
- **The right to privacy**²⁷ — this intersects with the right of the child to know their identity.

18 Ibid art 2.

19 *Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 7; *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 5.

20 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 8.

21 The Hon Chief Justice John Pascoe AC CVO, 'Sleepwalking through the Minefield: Commercial Surrogacy and the Global Response' (Speech, Blackburn Lecture, 15 May 2018).

22 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 17; *Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) arts 15–16. See also United Nations, 'Joint UN Statement Calling for Sexual and Reproductive Health and Rights for All' <cdn.who.int/media/docs/default-source/reproductive-health/joint-un-statement-calling-for-srhr-for-all.pdf>.

23 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 9, 17.

24 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976) arts 6–7, 10.

25 *Universal Declaration of Human Rights*, GA Res 217A(III), UN GAOR, UN Doc A/810 (10 December 1948) art 2; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 26; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976) art 2; *Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 2; *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) arts 5–6.

26 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 24.

27 *Universal Declaration of Human Rights*, GA Res 217A(III), UN GAOR, UN Doc A/810 (10 December 1948) art 12; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 17.

- **The right to receive and impart information**²⁸ — as ‘commercial’ surrogacy is illegal, there are limits on the information available to intended parents about the process and risks involved in international surrogacy.
- **The right to share in and benefit from scientific advancements**²⁹ — barriers to accessing domestic surrogacy may infringe on intended parents’ enjoyment of this right.
- **The right to found a family**³⁰ — there is disagreement about whether this extends to a right to engage in a surrogacy arrangement, but it is clear that intended parents who are desperate for a child are especially at risk of being financially and emotionally exploited, deceived, and misinformed by unscrupulous operators.³¹
- **The rights of persons with disabilities**³² — people with disabilities may turn to surrogacy to start a family because they are unable to carry a child. Barriers to accessing domestic surrogacy have a unique impact on people with disabilities, and could prevent people from accessing their rights.

Question 3

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

Question 4

What information about the circumstances of their birth do you think children born through surrogacy should have access to? How should this be provided or facilitated?

Part 3: Insights about the key issues and potential reform options

32. This Part of the Issues Paper sets out specific issues and some possibilities for reform we have heard about. It covers barriers to domestic surrogacy, reimbursing and compensating surrogates, legal parentage of children born through surrogacy, and citizenship, passports, and visas.

33. The ALRC would also like to understand the structures, safeguards, and tools that need to be in place to ensure that surrogacy is well regulated. To help us understand how best to regulate surrogacy, this Part also includes topics that could be examined to ensure the right features and conditions are in place. We consider oversight and harmonisation, the role of the criminal law, and education about surrogacy.

Barriers to domestic surrogacy

34. The ALRC understands from our early research and consultations that there are a range of barriers to undertaking domestic surrogacy. Some specific barriers are addressed below, but

28 *Universal Declaration of Human Rights*, GA Res 217A(III), UN GAOR, UN Doc A/810 (10 December 1948) art 19; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 19.2.

29 *Universal Declaration of Human Rights*, GA Res 217A(III), UN GAOR, UN Doc A/810 (10 December 1948) art 27.1; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976) art 15.1.

30 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 23.

31 Ronli Sifris, Karinne Ludlow and Adiva Sifris, ‘Commercial Surrogacy: What Role for Law in Australia?’ (2015) 23(2) *Journal of Law and Medicine* 275, 290–1.

32 *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

there are also some systemic barriers, such as a shortage of surrogates in Australia and the perceived length of the process.³³

Question 5

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

You might want to consider the experiences of any groups who may face greater barriers to accessing domestic surrogacy than others, such as LGBTIQ+ people, people who are financially disadvantaged, or people from culturally and linguistically diverse backgrounds.

Eligibility requirements for surrogacy

35. Requirements for who can enter a surrogacy arrangement differ across Australia.³⁴ Some of these requirements:

- **restrict eligibility** — for example, Western Australian laws do not allow same-sex couples and single men to become parents through surrogacy;³⁵
- **are inconsistent nationally** — for example, there are differences in:
 - the circumstances in which surrogacy is permitted, such as what is considered a ‘medical’ reason for surrogacy;³⁶
 - the minimum age for surrogates and intended parents, which ranges from 18 to 25;³⁷ and
 - citizenship or residency requirements for surrogates and intended parents;³⁸
- **may reduce the number of available surrogates** — for example, a requirement that a person has already given birth before they become a surrogate.³⁹

36. Potential reform options include:

- removing eligibility requirements that exclude some people or groups;
- making eligibility requirements more consistent nationwide; or
- introducing, removing, or changing requirements.

33 Ezra Kneebone et al, ‘Australian Intended Parents’ Decision-Making and Characteristics and Outcomes of Surrogacy Arrangements Completed in Australia and Overseas’ (2023) 26(6) *Human Fertility* 1448, 1451–2.

34 Ronli Sifris, ‘Surrogacy’ in Ben White et al (eds), *Health Law in Australia* (Thomson Reuters, 4th ed, 2023) 533, 540–42. See also Ezra Kneebone, Karin Hammarberg and Kiri Beilby, ‘Surrogates’, Intended Parents’, and Professionals’ Perspectives on Ways to Improve Access to Surrogacy in Australia’ (2024) 38(1) *International Journal of Law, Policy and The Family* 1, 4–5.

35 See, eg, South Australian legislation which sets out circumstances, at least one of which must exist, before an intended parent may be eligible to enter a surrogacy arrangement: *Surrogacy Act 2019* (SA) s 10(4)(f). Tasmanian legislation requires a ‘medical or social need’: *Surrogacy Act 2012* (Tas) s 7. By contrast, legislation in the Australian Capital Territory does not specify any required circumstances: Sifris (n 34) 540. See also Kneebone, Hammarberg and Beilby (n 34) 4–5.

36 See, eg, South Australian legislation which sets out circumstances, at least one of which must exist, before an intended parent may be eligible for surrogacy: *Surrogacy Act 2019* (SA) s 10(4)(f). Tasmania legislation requires a ‘medical or social need’: *Surrogacy Act 2012* (Tas) s 7. By contrast, legislation in the Australian Capital Territory does not specify any required circumstances.

37 See, eg, *Parentage Act 2004* (ACT) ss 28B–28C (at least 18 years for both surrogate and intended parents); *Surrogacy Act 2012* (Tas) ss 16(2)(b)–(c) (at least 25 years for surrogate; at least 21 years for intended parents); *Surrogacy Act 2010* (Qld) ss 22(f)–(g) (at least 25 years for both surrogate and intended parents).

38 See, eg, *Surrogacy Act 2019* (SA) ss 10(3)(c), (4)(c)–(d). In Tasmania, it is precondition to a parentage order, that the surrogate and intended parents must have been resident in Tasmania: *Surrogacy Act 2012* (Tas) s 16(2)(g).

39 See, eg, *Surrogacy Act 2012* (Tas) s 16(2)(d).

Question 6

Should there be eligibility requirements for surrogacy? If so, what should those requirements be?

Question 7

Are there any eligibility requirements which should be introduced, changed, or removed?

Surrogacy agreements — validity and enforceability

37. In all Australian states and territories, surrogacy agreements are not legally enforceable, which means that parties to the agreement cannot be required to comply with its terms. But most jurisdictions will enforce the obligation to reimburse the surrogate's reasonable expenses.⁴⁰ Requirements for a valid surrogacy agreement also differ between states and territories.⁴¹ For example, some require the agreement to be in writing, and some require that it be entered into before conception. The ALRC has heard that agreements being unenforceable can deter intended parents and surrogates from entering a surrogacy arrangement.

38. Potential reform options include:

- establishing consistent requirements nationally for a valid surrogacy agreement; or
- making surrogacy agreements, or parts of them, enforceable.

Question 8

Are there any requirements for a valid surrogacy agreement you think should be introduced, removed, or changed?

Question 9

Should surrogacy agreements be enforceable? You might want to consider:

- a. if all parts of the agreement should be enforceable;
- b. who should be able to enforce the agreement; and
- c. how agreements could be enforced.

Process requirements for surrogacy

39. Australia's states and territories require different steps to be followed before entering a valid surrogacy arrangement or transferring legal parentage. These aim to ensure all parties to the agreement understand the range of risks and processes involved. For example, there are differences in:

- whether pre-approval by a regulatory body is needed;⁴²
- whether the participants must provide a criminal history report;⁴³

40 *Parentage Act 2004* (ACT) s 28D; *Surrogacy Act 2010* (NSW) s 6; *Surrogacy Act 2022* (NT) ss 11, 12(3); *Surrogacy Act 2010* (Qld) s 15; *Surrogacy Act 2019* (SA) s 13; *Surrogacy Act 2012* (Tas) s 10; *Assisted Reproductive Treatment Act 2008* (Vic) s 44; *Surrogacy Act 2008* (WA) s 7. Some states place further conditions on reimbursement, for example in Queensland, South Australia, and Tasmania surrogacy costs are not reimbursable if a surrogate does not 'relinquish' custody of the child or consent to a transfer of parentage: *Surrogacy Act 2010* (Qld) s 15(2)(b); *Surrogacy Act 2019* (SA) s 13(3); *Surrogacy Act 2012* (Tas) s 10(2)(c).

41 Sifris (n 34) 542–3.

42 Only Victoria and Western Australia (in surrogacy arrangements where assisted reproductive technology is used) require pre-approval before participants enter into a domestic surrogacy arrangement: *Assisted Reproductive Treatment Act 2008* (Vic) ss 39–40; *Surrogacy Act 2008* (WA) ss 16–17.

43 *Surrogacy Act 2019* (SA) ss 10(3)(f), 10(4)(g).

- whether the participants must undergo a psychological assessment;⁴⁴ and
- requirements for counselling and independent legal advice — whilst these are generally required in each jurisdiction,⁴⁵ the level of detail required by the law, how compliance is recorded, as well as the consequences for not complying, differ between jurisdictions.⁴⁶

Question 10

What process requirements should be in place for surrogacy arrangements? You might want to consider:

- if counselling should also be available after the child's birth;
- what should happen if legal advice and counselling are not provided before entering a surrogacy agreement; and
- if parentage applications should require proof of legal advice and/or counselling.

Professional services, including legal and counselling services

40. In some countries, like Canada, the United States, and United Kingdom, specialist surrogacy agencies connect intended parents with potential surrogates and manage the administration of the arrangement. Australia does not have such comprehensive services, save for a few organisations that may facilitate some introductions and offer general advice.⁴⁷

41. The ALRC has heard that despite legal advice and counselling being mandatory requirements for domestic surrogacy throughout Australia, there are few lawyers and counsellors specialising in this area.

42. A lack of professional services that meet the needs of people wishing to engage in domestic surrogacy could be a barrier to these arrangements occurring within Australia. Potential options for reform might include:

- allowing surrogacy agencies to operate in Australia, on a commercial or not-for-profit basis; or
- supporting the development of other specialist services, or existing services, to better facilitate surrogacy arrangements.

⁴⁴ *Surrogacy Act 2008* (WA) s 17.

⁴⁵ *Parentage Act 2004* (ACT) ss 28–28A; *Surrogacy Act 2010* (NSW) ss 17, 35–36; *Surrogacy Act 2022* (NT) ss 20–25; *Surrogacy Act 2010* (Qld) s 22(2)(e); *Surrogacy Act 2019* (SA) ss 10(5)(b), 14–15; *Surrogacy Act 2012* (Tas) ss 16(2)(a), (f); *Status of Children Act 1974* (Vic) s 23(2)(b); *Surrogacy Act 2008* (WA) ss 21(2)(b)–(c).

⁴⁶ *Surrogacy Act 2010* (NSW) s 17; *Surrogacy Act 2022* (NT) ss 24, 28; *Surrogacy Act 2010* (Qld) ss 27, 32; *Surrogacy Act 2012* (Tas) s 18; *Surrogacy Act 2008* (WA) s 17.

⁴⁷ Having 'a surrogacy provider which met all my needs' was rated as one of the key considerations that draws people towards international surrogacy arrangements: Kneebone et al (n 33) 1453 [Table 6 and 7]; Kneebone, Hammarberg and Beilby (n 34) 11.

Question 11

What are the gaps in professional services for surrogacy in Australia? You might want to consider:

- a. if surrogacy agencies should operate in Australia; and
- b. the availability, accessibility, and subject matter to be covered in legal advice and counselling sessions.

Question 12

How should professional services operate in Australia? You might want to consider:

- a. what their role should be;
- b. if they should be for-profit or not-for-profit, or how they should be funded;
- c. if different types of services should operate together or separately, for example, whether counselling services should be independent or integrated within agencies or fertility clinics; and
- d. how they could best meet the diverse needs and experiences of people involved in a surrogacy arrangement.

Limits on advertising

43. Advertising in relation to surrogacy is generally prohibited across Australian states and territories, but there are differences regarding precisely what is prohibited.⁴⁸ The prohibitions apply to any person publishing an advertisement, which can include professional services, intended parents, and surrogates. The differences can be confusing, and limits on advertising can make it difficult for intended parents and potential surrogates to connect.

44. Potential reform options include permitting some form of advertising in relation to surrogacy arrangements.

Question 13

How should surrogacy advertising be regulated? You might want to consider:

- a. if advertising should be allowed;
- b. who should be allowed to advertise;
- c. what advertising content should be allowed; and
- d. where advertising should be allowed, for example via newspapers, social media, or by establishing a surrogacy register.

Access to Medicare and parental leave

45. Fertility treatments provided in connection with a surrogacy arrangement are not eligible for Medicare rebates.⁴⁹ This may significantly add to the cost of entering a domestic surrogacy

⁴⁸ *Parentage Act 2004* (ACT) s 43; *Surrogacy Act 2010* (NSW) s 10; *Surrogacy Act 2022* (NT) s 50; *Surrogacy Act 2010* (Qld) s 55; *Surrogacy Act 2019* (SA) s 26; *Surrogacy Act 2012* (Tas) s 41; *Assisted Reproductive Treatment Act 2008* (Vic) s 45; *Surrogacy Act 2008* (WA) s 10.

⁴⁹ *Health Insurance (General Medical Services Table) Regulations 2021* (Cth) sch 1, reg 5.2.6.

arrangement.⁵⁰ A potential reform would be to make rebates available for fertility treatments performed for a surrogacy arrangement. However, even with Medicare rebates, surrogacy may still be financially inaccessible for some people.

46. Intended parents may access Centrelink's Paid Parental Leave scheme,⁵¹ as well as 12 months of unpaid parental leave under the National Employment Standards (NES). Additional parental leave may be available under the intended parents' employment contract or enterprise agreement, depending on the terms of the agreement.⁵²

47. Surrogates may access Centrelink's Paid Parental Leave scheme to take time to recover from the birth.⁵³ They are also able to access some unpaid parental leave under the NES, ranging from six weeks before the expected due date to at least six weeks following the birth.⁵⁴ It is unclear how common it is for additional parental leave policies contained in enterprise agreements and employment contracts to apply to surrogates.

48. Ensuring that surrogates have adequate leave to manage the experience of pregnancy and birth could be an important part of making domestic surrogacy arrangements more accessible. Potential reform options may include:

- changing the income or employment tests for surrogates to access Centrelink's Paid Parental Leave scheme;
- increasing the amount of unpaid leave surrogates can take under the NES; or
- requiring that enterprise agreement parental leave policies extend to surrogates.

Question 14

What entitlements, if any, should be available to surrogates and intended parents? You might want to consider:

- a. Medicare rebates for fertility treatments;
- b. access by surrogates to paid or unpaid parental leave, including through enterprise agreement terms; and
- c. if it is desirable to make surrogacy arrangements generally more affordable, and how this could be achieved.

Reimbursing and compensating surrogates

49. In Australia, surrogates can be reimbursed for some reasonable expenses associated with trying to become pregnant, pregnancy and birth, and entering or being part of a surrogacy arrangement.⁵⁵ What constitutes a 'reasonable expense' differs between jurisdictions, but generally includes expenses like medical treatment, legal advice, counselling, loss of earnings

50 The interpretation of infertility for the purposes of a 'clinically relevant service' under the *Health Insurance Act 1973* (Cth) s 3 specifically does not extend to surrogacy, despite a recent expansion of the interpretation to include social infertility: Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG), Certified Reproductive Endocrinology and Infertility (CREI) and Fertility Society of Australia and New Zealand, *Definition of Infertility* (Consensus Statement, August 2024). See also Department of Health and Aged Care (Cth), 'Medicare Benefits Schedule — Note TN.1.4'.

51 Department of Social Services, *Guides to Social Policy Law: Paid Parental Leave Guide*, "2.9 Maximum PLP Entitlements" (Version 1.88, 12 May 2025); *Fair Work Act 2009* (Cth) ss 70–72.

52 Australian Public Service Commission, *Maternity Leave Act Review Report* (June 2023) ch 3–4.

53 Department of Social Services (n 51).

54 Ibid; *Fair Work Act 2009* (Cth) ss 70–72.

55 *Parentage Act 2004* (ACT) s 24; *Parentage Regulation 2024* (ACT) reg 4; *Surrogacy Act 2010* (NSW) s 7; *Surrogacy Act 2022* (NT) s 12; *Surrogacy Act 2010* (Qld) s 11; *Surrogacy Act 2019* (SA) s 11; *Surrogacy Regulations 2020* (SA) reg 5; *Surrogacy Act 2012* (Tas) s 9; *Assisted Reproductive Treatment Act 2008* (Vic) s 44; *Assisted Reproductive Treatment Regulations 2019* (Vic) regs 11–11A; *Surrogacy Act 2008* (WA) s 6.

in particular circumstances, and other reasonable out of pocket costs such as childcare or housekeeping.⁵⁶

50. All states and territories prohibit what is referred to as ‘commercial’ surrogacy arrangements.⁵⁷ One of the reasons for this is concern that they may lead to exploitative arrangements.⁵⁸ This means surrogates cannot be compensated beyond reimbursement of reasonable expenses. For example, they cannot be compensated for the effort that goes into being pregnant or giving birth, including their time and exposure to risk.

51. The ALRC has heard in early consultations that:

- the meaning of ‘reasonable expense’ can be unclear and inconsistent, and surrogates can be left out of pocket;
- restricting payment to reimbursement of reasonable expenses does not adequately recognise the surrogate’s role and the risk they undertake; and
- compensating surrogates beyond reasonable expenses could help recognise the surrogate’s unique contribution and reduce barriers to domestic surrogacy, such as the limited availability of surrogates.

52. There are a range of ways to reimburse and compensate surrogates, as shown in **Figure 2**.

Figure 2: Range of reimbursement and compensation options



53. Potential reform options include:

- clearer identification of what can be reimbursed as a reasonable expense;
- a broader approach to what constitutes a reasonable expense; or
- compensating surrogates to recognise their unique contribution to the surrogacy arrangement.

54. In relation to compensating surrogates to recognise their unique contribution, we have heard that two possible approaches are:

- **Compensated surrogacy** — a regulatory approach where compensation is allowed within clearly defined limits. For example, this might include a cap on the amount of compensation, and guidelines for how it should be calculated and paid.
- **‘Commercial’ surrogacy** — a non-regulatory approach, where compensation is allowed without clearly defined limits. For example, without a cap on compensation.

56 See, eg, *Surrogacy Regulations 2022* (NT) s 12(2)(e); *Assisted Reproductive Treatment Regulations 2019* (Vic) reg 11(1)(d).

57 *Parentage Act 2004* (ACT) s 41; *Surrogacy Act 2010* (NSW) s 8; *Surrogacy Act 2022* (NT) s 48; *Surrogacy Act 2010* (Qld) s 56; *Surrogacy Act 2019* (SA) s 23(1); *Surrogacy Act 2012* (Tas) s 40; *Assisted Reproductive Treatment Act 2008* (Vic) s 44; *Surrogacy Act 2008* (WA) s 8.

58 Australian Government, ‘Why Australia Prohibits Commercial Surrogacy’, Human rights and surrogacy <www.surrogacy.gov.au/human-rights-and-surrogacy/why-australia-prohibits-commercial-surrogacy>.

Question 15

How could the process for reimbursing surrogates for reasonable expenses be improved? You might want to consider:

- a. what expenses should be reimbursable;
- b. how payment should be calculated;
- c. if there should be limits on any amounts;
- d. the process for reimbursement (for example, whether money should be kept in trust, whether there should be a requirement to produce receipts, etc); and
- e. any jurisdictions (either within Australia or overseas) that have processes for reimbursement worth learning from.

Question 16

Do you support a) *compensated* surrogacy and/or b) '*commercial*' surrogacy?

You might want to consider whether you agree with how we have described compensated and '*commercial*' surrogacy.

Question 17

If Australia was to allow for compensated or '*commercial*' surrogacy, how could this be implemented? You might want to consider:

- a. how compensation should be calculated;
- b. if there should be a limit on the amount of compensation;
- c. who should set the amount of compensation;
- d. the process for compensation (for example, whether it should be paid in monthly instalments, whether the money should be kept in trust etc); and
- e. any jurisdictions (either within Australia or overseas) that have processes for compensation worth learning from.

Legal parentage of children born through surrogacy

55. Parentage refers to the person or people who hold the legal 'title' of parent for a child. In Australia, parentage automatically attaches to the person giving birth to the child and their partner (if any).⁵⁹ Traditionally, only up to two people can be the child's legal parents.⁶⁰ In general, several people (including the legal parents) can have 'parental responsibility' for a child, which includes children born through surrogacy.⁶¹

56. Where a surrogacy arrangement takes place in Australia, in line with relevant state law, the surrogate is the child's legal parent at birth. The parties must then go through a judicial process to transfer legal parentage to the intended parent/s.⁶² Where a surrogacy arrangement takes place overseas, who will be recognised as the legal parent/s will depend on the law in the host country.

⁵⁹ See, eg, *Parentage Act 2004* (ACT) s 23; *Status of Children Act 1974* (Vic) s 5.

⁶⁰ Some doubt was expressed regarding this accepted position by the High Court in *Masson v Parsons* [2019] HCA 21 (a case that did not involve surrogacy).

⁶¹ *Family Law Act 1975* (Cth) pt VII, div 2.

⁶² *Ibid* s 60HB; *Parentage Act 2004* (ACT) s 18; *Surrogacy Act 2010* (NSW) s 12; *Surrogacy Act 2022* (NT) ss 26, 31; *Surrogacy Act 2010* (Qld) ss 21–22; *Surrogacy Act 2019* (SA) s 18; *Surrogacy Act 2012* (Tas) s 13; *Status of Children Act 1974* (Vic) ss 20–21; *Surrogacy Act 2008* (WA) ss 20–21.

Even when intended parents are recognised as legal parents in that country, they have often not been recognised as legal parents in Australia.⁶³

57. Concerns about parentage orders following legal domestic surrogacy arrangements are mostly around timing, uncertainty, and expense. Legislation does not allow intended parents to apply for a parentage order until the child is a number of weeks old.⁶⁴ It may take months after that before the order is made. Over this period, intended parents have no legal relationship to the child, which may compromise the rights of the child.⁶⁵

58. Australia's states and territories require different steps to be followed before entering a valid domestic surrogacy arrangement or transferring legal parentage. The requirements under some laws are more demanding than others.⁶⁶ When determining a parentage order application, the court must decide whether the order is in the child's best interests.⁶⁷ Other requirements also apply, and these differ between Australian states and territories.⁶⁸ The consequences of failing to comply with the legal requirements are unclear. For example, in the recent New South Wales case of *Re N*, where the requirement for an independent counsellor's report was not complied with, legal parentage was denied.⁶⁹ But in the case of *Seto & Poon*, involving payment beyond reasonable expenses, the intended father was recognised as a legal parent.⁷⁰

59. For intended parents who enter an international surrogacy arrangement, the pathway to legal parentage is not clear. As 'commercial' surrogacy (defined in Australian legislation as a surrogacy arrangement where the surrogate receives payment beyond covering reasonable expenses) is illegal in all Australian states and territories,⁷¹ state and territory courts generally will not recognise parents who have engaged in this type of surrogacy as the child's legal parents.⁷² While some states and territories have recently introduced laws that allow for parentage orders following a 'commercial' surrogacy arrangement to be made in certain circumstances, these avenues will often require admitting criminal conduct to the court.⁷³

60. The Federal Circuit and Family Court of Australia (formerly the Family Court of Australia) has also been reluctant to recognise legal parentage in international surrogacy matters.⁷⁴ Legal outcomes in this area continue to be uncertain. For example, in the case of *Bernieres v Dhopal* the Full Court of the Family Court refused to grant legal parentage to intended parents who had engaged in surrogacy overseas.⁷⁵ The *Bernieres* approach has subsequently been followed (see

63 *Re Rose* [2018] FamCA 978.

64 The specific age range varies by jurisdiction: *Parentage Act 2004* (ACT) s 28G; *Surrogacy Act 2010* (NSW) s 16; *Surrogacy Act 2022* (NT) s 26(2); *Surrogacy Act 2010* (Qld) s 21; *Surrogacy Act 2019* (SA) s 18(2); *Surrogacy Act 2012* (Tas) s 15; *Status of Children Act 1974* (Vic) s 20; *Surrogacy Act 2008* (WA) s 20.

65 See '[Children's rights](#)' above for further discussion.

66 See, eg, the approval processes required under Victoria and Western Australian legislation, see '[Oversight and harmonisation](#)' below.

67 *Parentage Act 2004* (ACT) s 26(1); *Surrogacy Act 2010* (NSW) ss 17, 22; *Surrogacy Act 2022* (NT) s 34(1); *Surrogacy Act 2010* (Qld) s 22(2); *Surrogacy Act 2019* (SA) s 18(5); *Surrogacy Act 2012* (Tas) s 16; *Status of Children Act 1974* (Vic) s 22(1); *Surrogacy Act 2008* (WA) s 13(1).

68 Some differing requirements relate to the timing of applications for parentage orders, and what needs to be evidenced in the application: see '[Process requirements for surrogacy](#)' above.

69 *Re N* [2025] NSWSC 409.

70 *Seto & Poon* [2021] FamCA 288.

71 See '[The role of the criminal law](#)' below.

72 See, eg, *Lloyd & Compton* [2025] FedCFamC1F 28.

73 *Parentage Act 2004* (ACT) ss 28F(2) and 28H(2) for parentage orders to be made following commercial surrogacy arrangements, provided the intended parents can demonstrate the child would face a 'pressing disadvantage' if the order were not made, and these provisions do not effect the intended parents' criminal liability under s 41. Similarly, new provisions under the *Surrogacy Act 2010* (NSW) due to commence on 1 July 2025 will allow parentage orders to be made following commercial surrogacy arrangements provided such arrangements took place overseas, however these provisions also do not alter liability for the offence contained s 8 for engaging in commercial surrogacy: Equality Legislation Amendment (LGBTIQA+) Bill 2024 (NSW).

74 *Bernieres v Dhopal* (2017) 324 FLR 21.

75 *Ibid.*

for example *Lloyd & Compton*),⁷⁶ but in other cases there are signs that the court is beginning to adopt a different approach.⁷⁷

61. A lack of formal parentage can have negative emotional and psychological repercussions. It may also have negative practical consequences. For example, it could impact the child's ability to obtain an Australian passport or access Medicare. The legal parent-child relationship is also relevant in the context of child support law and the laws relating to inheritance.⁷⁸

62. There is a question around whether the pathway to legal parentage of children born through surrogacy should be the same, regardless of the type and location of the surrogacy arrangement. Some think that a more difficult process should be in place to deter people from entering international surrogacy arrangements.⁷⁹ Others think that a child should not be disadvantaged due to the circumstances of their birth.⁸⁰ Reforming the legal parentage process when children are born through international surrogacy arrangements must weigh up these two views.

63. Possible avenues for reforming the transfer of parentage process include:

- The *process* for recognising legal parentage could involve a simpler judicial process, an administrative process, or automatic recognition when the child is born, as long as certain pre-conditions are satisfied.
- The *timing* for recognising legal parentage could be before conception, before birth or after birth.

64. Where a child is born through an international surrogacy arrangement, another option is to give a court or other authority the power to recognise legal parentage orders or documents from the country where the child was born, if certain conditions are met.

Question 18

What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

⁷⁶ *Lloyd & Compton* [2025] FedCFamC1F 28.

⁷⁷ *Gallo & Ruiz* [2024] FedCFamC1F 893.

⁷⁸ Alexandra Harland and Cressida Limon, 'Recognition of Parentage in Surrogacy Arrangements in Australia' in Paula Gerber and Katie O'Byrne (eds), *Surrogacy, Law and Human Rights* (Routledge, 2017) 149; Australian Human Rights Commission, Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into Surrogacy* (17 February 2016) 3 [6]; Sifris (n 34) 555 [12.150].

⁷⁹ See, eg, Law Commission of England and Wales and Scottish Law Commission, *Building Families through Surrogacy: A New Law (Volume II: Full Report)* (Law Comm Report No 411, Scot Law Com Report No 262, 2023) 34 [2.23].

⁸⁰ Harland and Limon (n 78) 153; Alexandra Harland, 'Surrogacy, Identity, Parentage and Children's Rights – Through the Eyes of a Child' 59 *Family Court Review* 121.

Question 19

How could the process for intended parents to become the legal parents of children born through surrogacy be improved? You might want to consider:

- a. timing (for example, if the process happens before or after the birth of the child);
- b. who makes the decision (for example, if it is an administrative or judicial decision);
- c. if recognition should be automatic;
- d. if the process should be different depending on the circumstances (for example, based on whether the surrogate has a genetic link to the child, the type of payment they received, and whether the surrogacy arrangement was in Australia or overseas);
- e. whether intended mothers are or should be treated differently to intended fathers in legal parentage determinations;
- f. whether the granting of legal parentage should depend on compliance with process requirements;
- g. the importance of prioritising the best interests of the child; and
- h. whether we can learn from the processes of any other countries.

Citizenship, passports, and visas

65. A significant number of surrogacy arrangements entered into by Australian intended parents take place overseas.⁸¹ An issue which then arises is how the intended parents bring the child born through surrogacy to Australia. Australians who have engaged in international surrogacy can seek to obtain Australian citizenship (by descent) and an Australian passport for the child.⁸² It may also be possible, if the child has citizenship in the country of birth, to obtain a passport from that country and travel to Australia on a visa, though visa options appear to be limited.⁸³

66. The ALRC's initial consultations suggest that there are complexities with current processes, which include:

- proving the required connection between the child and the Australian intended parent/s at birth, to obtain citizenship by descent;⁸⁴
- making a passport application on behalf of the child, as the success of such an application may depend on whether the consent of the surrogate can be obtained;⁸⁵
- the risk of statelessness, if the child is unable to secure either Australian citizenship (through the intended parent/s) or citizenship in the country of birth; and
- access to entitlements (such as Medicare), which generally require citizenship or permanent residency.⁸⁶

81 Data provided by the Department of Home Affairs to the Australian Law Reform Commission, 17 April 2025. See [‘Surrogacy in Australia’](#) above.

82 *Australian Citizenship Act 2007* (Cth) pt 2 div 2 sub-div A; Department of Home Affairs (Cth), ‘International Surrogacy Arrangements’, *Immigration and Citizenship* <<https://immi.homeaffairs.gov.au/citizenship/become-a-citizen/by-descent/international-surrogacy-arrangements>>; *Australian Passports Act 2005* (Cth) s 11; *Australian Passports Determination 2015* (Cth) s 10; Australian Government, Department of Foreign Affairs and Trade, Australian Passport Office, ‘Surrogacy’, How to get a child a passport <www.passports.gov.au/getting-passport-how-it-works/how-get-child-passport/surrogacy>.

83 Department of Home Affairs (Cth) (n 82); Department of Foreign Affairs and Trade (Cth), ‘Going Overseas for International Surrogacy’, *Smarttraveller* <www.smarttraveller.gov.au/before-you-go/activities/surrogacy>.

84 *Australian Citizenship Act 2007* (Cth) s 6; *H v Minister for Immigration and Citizenship* (2010) 188 FCR 393 [127]–[129].

85 *Australian Passports Act 2005* (Cth) s 11; *Australian Passports Determination 2015* (Cth) s 10. See also, Australian Government, Department of Foreign Affairs and Trade, Australian Passport Office (n 82).

86 *Health Insurance Act 1973* (Cth) s 10.

67. Options for reform might include requiring people who are going overseas to engage in international surrogacy arrangements to register their intention before going overseas, to facilitate the administrative processes of bringing the child back to Australia.

Question 20

What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy:

- a. Australian citizenship;
- b. an Australian passport; or
- c. an Australian visa.

Question 21

How could the process for obtaining these documents be improved?

Oversight and harmonisation

Inconsistent laws

68. Surrogacy laws differ between Australian states and territories. For example, laws vary with respect to:

- eligibility requirements (who is permitted to enter a surrogacy arrangement);
- whether the criminal law applies to international surrogacy arrangements; and
- process requirements.

69. There are also gaps and inconsistencies between state and federal laws. For example, many stakeholders have raised concerns about the diverging state and federal legal pathways to parentage for children born through different types of surrogacy arrangements.

70. Finally, there are inconsistencies between different federal legal regimes, such as those regulating family law, citizenship eligibility, and obtaining a passport. For example, it is possible that different tests are used for determining who is a parent in applications for citizenship by descent under the *Australian Citizenship Act 2007* (Cth),⁸⁷ compared with determining legal parentage under the *Family Law Act 1975* (Cth).⁸⁸

71. Inconsistencies can create several issues, such as confusion about the law, and a lack of clarity about what law applies if the surrogate and intended parents live in different states. Inconsistencies can also lead to people seeking out jurisdictions or locations where surrogacy arrangements are easier (so-called ‘reproductive tourism’).⁸⁹

72. Possible solutions to this issue could be:

- states and territories referring the power to legislate to the Commonwealth, so that there is one national law on surrogacy;
- developing uniform surrogacy legislation to be adopted in each state and territory;
- states and territories amending their legislation to be substantively consistent; or
- some combination of the above.

⁸⁷ *Australian Citizenship Act 2007* (Cth) s 8.

⁸⁸ *Family Law Act 1975* (Cth) pt VII.

⁸⁹ Kneebone, Hammarberg and Beilby (n 34) 11–12.

Question 22

What is the best way to approach differences in surrogacy regulation between or within jurisdictions? You might want to consider:

- a. the ways in which surrogacy regulation is inconsistent between jurisdictions;
- b. if these inconsistencies are problematic;
- c. any impacts of the differences between federal legal regimes (for example, citizenship law and family law);
- d. if a judicial process for transferring legal parentage is retained, whether applications for parentage should be determined in state courts, the Federal Circuit Court and Family Court of Australia, or both;
- e. how important it is that the approaches are harmonised or made more consistent; and
- f. how any harmonisation could be achieved (for example, by regulating surrogacy at a federal level or through uniform or substantively consistent state legislation).

Oversight

73. Regulatory bodies for surrogacy arrangements have been established in Victoria and Western Australia.⁹⁰ There is no national surrogacy oversight body. Oversight bodies help to approve, monitor, and review surrogacy arrangements. They could play a role in ensuring that appropriate safeguards are in place and the law is being applied consistently. At the same time, increasing regulatory oversight could lengthen the surrogacy process, or make it more complicated and burdensome.

74. There also appear to be a range of laws and guidelines that medical, psychological, and other health professionals must follow to ensure they take an ethical approach to facilitating surrogacy arrangements.⁹¹ The ALRC has heard during initial consultations that there could be improved oversight of health professionals, such as clearer guidelines and ethical standards, and that oversight of doctors should be independent of the fertility clinics to avoid conflicts of interest.

75. Options for reform might include:

- harmonising ethical guidelines for health professionals in this area;
- establishing a national oversight body to regulate domestic surrogacy;
- establishing oversight bodies in each state and territory; or
- having no oversight of surrogacy arrangements.

⁹⁰ *Assisted Reproductive Treatment Act 2008* (Vic) Part 4; *Surrogacy Act 2008* (WA) s 17.

⁹¹ For example, state and territory assisted reproductive technology laws, and the National Health and Medical Research Council, 'Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research' (2017).

Question 23

Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach? You might want to consider:

- a. the need for a regulator or oversight body and what it could look like (for example, an administrative body or a tribunal);
- b. if oversight should be national or state and territory based; and
- c. which groups need oversight (for example, health professionals).

The role of the criminal law

76. It is a criminal offence in all Australian jurisdictions to engage in 'commercial' surrogacy arrangements.⁹² The legislation in almost all Australian jurisdictions uses the term 'commercial' surrogacy to refer to any surrogacy arrangement where the surrogate receives payment beyond reimbursement of reasonable expenses.⁹³ The legislation does not distinguish between 'compensated surrogacy' and 'commercial surrogacy'.

77. In some jurisdictions (the Australian Capital Territory, New South Wales, and Queensland), the prohibitions apply 'extra-territorially',⁹⁴ meaning it is a criminal offence for people who usually live in those jurisdictions to engage in 'commercial' surrogacy overseas.⁹⁵ Committing an offence can result in outcomes ranging from a financial penalty to imprisonment.

78. Other surrogacy related offences (which differ between Australian jurisdictions) include:

- procuring 'commercial' surrogacy arrangements;⁹⁶
- providing fertility treatment for the purposes of 'commercial' surrogacy arrangements;⁹⁷
- advertising surrogacy arrangements (though some jurisdictions limit this to advertising 'commercial' surrogacy arrangements);⁹⁸ and
- publishing information which identifies the child, or a party to the surrogacy arrangement.⁹⁹

79. One of the reasons 'commercial' surrogacy is criminalised, both domestically and internationally, is to prevent surrogates, intended parents, and children from being exploited.¹⁰⁰

92 *Parentage Act 2004* (ACT) s 41; *Surrogacy Act 2010* (NSW) s 8; *Surrogacy Act 2022* (NT) s 48; *Surrogacy Act 2010* (Qld) s 56; *Surrogacy Act 2019* (SA) s 23(1); *Surrogacy Act 2012* (Tas) s 40; *Assisted Reproductive Treatment Act 2008* (Vic) s 44; *Surrogacy Act 2008* (WA) s 8.

93 *Parentage Act 2004* (ACT) s 40; *Surrogacy Act 2010* (NSW) s 9; *Surrogacy Act 2022* (NT) s 48; *Surrogacy Act 2010* (Qld) s 10; *Surrogacy Act 2019* (SA) s 23; *Surrogacy Act 2012* (Tas) s 8. Victoria and Western Australia do not specifically refer to 'commercial' or 'compensated' surrogacy. However, they do prohibit surrogacy that would result in 'benefit or material advantage' or is 'for reward', respectively: *Assisted Reproductive Treatment Act 2008* (Vic) s 44; *Surrogacy Act 2008* (WA) s 6.

94 It could also be unlawful for people who live in other jurisdictions to engage in 'commercial' surrogacy overseas due to 'long arm' laws: see, eg, *Criminal Code 1913* (WA) s 12.

95 *Parentage Act 2004* (ACT) s 45; *Surrogacy Act 2010* (NSW) s 11; *Surrogacy Act 2010* (Qld) s 54.

96 See, eg, *Parentage Act 2004* (ACT) s 42; *Surrogacy Act 2012* (Tas) s 41.

97 *Parentage Act 2004* (ACT) s 44.

98 See, eg, *ibid* s 43; *Surrogacy Act 2010* (NSW) s 10; *Assisted Reproductive Treatment Act 2008* (Vic) s 45; *Surrogacy Act 2008* (WA) s 10.

99 See, eg, *Surrogacy Act 2010* (NSW) s 52; *Surrogacy Act 2022* (NT) s 52; *Surrogacy Act 2010* (Qld) s 53.

100 Australian Government (n 58).

80. However, it does not appear as though the criminal law is achieving its objectives of deterring behaviour and minimising harm:

- Australians residing in those jurisdictions where it is an offence continue to travel overseas to engage in 'commercial' surrogacy arrangements.¹⁰¹
- While some referrals for prosecution have been made,¹⁰² it appears no one has ever been prosecuted in Australia for engaging in international 'commercial' surrogacy.
- Criminalising some surrogacy arrangements may be counterproductive or cause harm. For example, it may drive some surrogacy arrangements underground, resulting in less oversight and regulation, or it could mean that children born through 'commercial' international surrogacy arrangements are discriminated against (for example, with respect to legal parentage or citizenship).¹⁰³

81. Other criminal laws that apply extra-territorially, such as those which criminalise forced pregnancy, human trafficking, slavery, and slavery-like practices,¹⁰⁴ might also be sufficient, or more appropriate, to address concerns which may arise from exploitative international surrogacy arrangements.

82. Potential options for reform include:

- uniform criminalisation;
- decriminalisation; or
- legalising 'commercial' surrogacy (or compensated surrogacy, as we have described above).

Question 24

Should the law have a role in discouraging or prohibiting certain forms of surrogacy? You may wish to consider:

- a. if engaging in or facilitating certain forms of surrogacy, whether in Australia or overseas, should be sanctioned or criminalised;
- b. the effect of using the criminal law to regulate certain forms of surrogacy; and
- c. whether there are regulatory approaches preferable to the criminal law.

Lack of awareness and education

83. The ALRC has heard that there is a widespread lack of awareness about surrogacy in Australia. For example, some people in the community assume that all surrogacy is illegal. In addition, some people may not appreciate the laws or risks relating to international surrogacy or legal parentage before seeking to enter a surrogacy arrangement overseas. Lack of public awareness and understanding can lead to issues such as limited availability of surrogates in Australia, and exposure to the risks associated with international surrogacy in some international jurisdictions.

84. Differences between state and territory laws can also lead to confusion for medical and legal professionals. For example, IVF clinics operating nationally may unintentionally provide inaccurate advice because they lack awareness of the differences between state laws. Only two Australian

101 Sam Everingham, Martyn Stafford-Bell and Karin Hammarberg, 'Australians' Use of Surrogacy' (2014) 201(5) *Medical Journal of Australia* 1, 3.

102 See, eg, *Lloyd & Compton* [2025] FedCFamC1F 28.

103 Sifris (n 34) 553–4. See '[Legal parentage of children born through surrogacy](#)' and '[Citizenship, passports, and visas](#)' above for further information.

104 *Criminal Code 1995* (Cth) divs 268, 270, 271.

jurisdictions have developed guidelines to support public healthcare providers to provide care to surrogates and intended parents through the pregnancy, birth, and post-natal processes.¹⁰⁵ Without processes in place, healthcare providers risk confusion and possible insensitivity around the different parties' roles and responsibilities.

85. There seems to be a need for improved education targeting both the public, and professionals who provide services to surrogates and intended parents, such as medical professionals, counsellors, and legal professionals. Education could focus on:

- what surrogacy is;
- the laws regulating surrogacy;
- the risks of engaging in international surrogacy in certain jurisdictions;
- the challenges of bringing children born through surrogacy back to Australia; or
- providing services to parties to surrogacy arrangements.

Question 25

Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices? You might think about how people currently find out about surrogacy, or the particular groups or professions who could benefit from improved education and information.

Issues we consider to be out of scope

86. There are some issues that the ALRC is not planning to deal with as they may require us to go beyond our Terms of Reference, or they cannot be dealt with within the Inquiry's timeframe.

87. For example, the ALRC is aware that donated eggs are commonly used in surrogacy arrangements.¹⁰⁶ We have heard that there is a shortage of available eggs in Australia, and that this shortage may be a barrier to accessing domestic surrogacy. However, we do not plan to examine this issue closely as it is not a focus of the Terms of Reference, and addressing this issue meaningfully would not be possible within this Inquiry's timeframe.

88. Further, while we plan to consider overseas practices to help identify what we can learn from other countries, we do not plan to engage in an in-depth analysis of the regulatory regimes of other countries or to make recommendations about the desirability of Australians traveling to specific jurisdictions.

Question 26

Do you have any views about the issues we consider to be in or out of scope?

105 Canberra Health Services, 'Guidance in the Care of Surrogacy (Policy Document CHS24/609, November 2024)'; SA Health, Government of South Australia, *Surrogacy Management Standards in Public Health Units in SA 2021* (Clinical Directive No CD072, Version 2, 4 February 2021).

106 Kneebone, Hammarberg and Beilby (n 34) 2.

Part 4: Other insights

89. This Paper outlines the main issues and some potential reform ideas related to surrogacy laws in Australia that the ALRC has identified through our preliminary research and consultations. However, there may be other issues or ideas that we do not know about, or examples of surrogacy regulation that are working well either in Australia or overseas about which we are not yet aware.

Question 27

Are there any important issues with regulating surrogacy that we have not identified in the Issues Paper? Do you have any other ideas for reforming how surrogacy is regulated?