July 6, 2025

The Commissioner
Australian Law Reform Commission
PO Box 209
Flinders Lane
Victoria 8009
Email: surrogacy@alrc.gov.au

Dear Commissioner,

SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION – REVIEW OF AUSTRALIA'S SURROGACY LAWS

We are making this submission to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. We are intended parents now via altruistic surrogacy in Australia, with our daughter born in January 2025.

We have read the Issues Paper and have responded to the questions posed in the paper below.

We seek that our submission be published but de-identified.

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

Positives:

- Overall, it was very positive, primarily due to our wonderful surrogate and the strong relationship we have built together as a surrogacy team.
- Melbourne IVF were supportive of our wish to explore altruistic surrogacy in Australia.
- Opportunity to access publicly funded fertility service for a final round of embryo creation at The Royal Women's Hospital, Melbourne.
- Relatively smooth process (although longer wait times than ideal) to obtain approval for surrogacy via Melbourne IVF's internal committee and the Patient Review Panel (PRP)

- Inclusive care from our private obstetrician and the private hospital where our surrogate gave birth.
- Both parties were eligible for and received Centrelink parental payments, which were very helpful.

Negative:

- The financial cost of the surrogacy process for us in Victoria was upwards of $100,000. We were fortunate that our first embryo transfer was successful. This cost could have easily escalated, with each transfer costing approximately $8,000.
- As intended parents, we paid everyone involved *except* for our surrogate. Two private and one public IVF providers, a day procedure centre, two lawyers, three psychologists, a private hospital, and a private health insurer all profited from our ultimately successful endeavour to bring our child into this world. Yet, our surrogate was legally required to do this altruistically, when we would argue that she shouldered most of the work. We liken this to the 'Wedding Tax', leaving us with no option but to pay, as there is often no alternative. As we progressed further through the process, the sunk-cost fallacy led us to continue paying.
- Our surrogate resides in NSW, while we, as intended parents, reside in Victoria. Navigating the complexities of different surrogacy laws across various jurisdictions was challenging. For example, we were not allowed to send our embryos to NSW for implanting; instead, we had to fly our surrogate and her young child to Victoria. As you can imagine, arranging this at short notice does become expensive.
- Monash IVF (our first clinic) would not create embryos for us without a surrogacy agreement in place. Monash IVF said that this was part of their 'policy'; however, this was not transparent when we first attended the clinic and engaged in their services. We also question the reason for this policy and whether it is appropriate/legal for them to refuse to create embryos without a surrogacy agreement in place. As a result, we needed to transfer our gametes to an alternative provider, at our cost, of course.

Improvements:

- Federal rather than state-based laws regarding surrogacy are necessary to ensure uniformity nationwide and prevent postcode discrimination.
- More precise documentation of all IVF providers regarding their policy on surrogacy. Alternatively, these policies could be uniformed through federal law.
- Surrogacy services to be included in publicly funded IVF centres.
- Addition of surrogacy services to the Medicare Benefits Schedule.

What reform principles should guide this Inquiry?

- Equal access to healthcare for those pursuing surrogacy and those engaging in reproductive services without surrogacy.
- Equal access to eligibility for surrogacy, regardless of sexual orientation, sexual identity or relationship status.
- Equal access to surrogacy regardless of location (both state and urban/rural).
- Uniform federal law.

What entitlements, if any, should be available to surrogates and intended parents?

Medicare Rebates: All IVF services should be eligible to receive Medicare rebates, regardless of whether surrogacy or donor involvement is involved. Excluding these IVF services from Medicare rebates is discriminatory.

Private Health Insurance Rebates: Similar to the above, private health insurance does not cover the costs of embryo transfer(s), even if the surrogate has 'top-level' coverage that includes assisted reproductive services. If surrogates were accessing assisted reproductive services for their own needs, they would be able to apply for private health insurance rebates, further highlighting the discrimination towards surrogacy within the private health sector.

Parental Leave Entitlements (Workplace): Our experience with the workplaces approving our parental leave entitlements for our surrogate, her husband, and us as intended parents has been positive. Ensuring parental leave for all parties for births via surrogacy is embedded within Enterprise Agreements across all sectors to ensure it is easily accessible and on par with 'traditional' parental leave.

Parental Leave Entitlements (Centrelink): We have an overall positive experience accessing parental leave entitlements via Centrelink. Having the option of 'parent via surrogacy' within the parental leave application process also gave us, as intended parents, access to paid leave to care for our child. The access of our surrogate to obtain this entitlement also enabled her physical and emotional recovery without financial pressures. Again, equal access to basic entitlements is what this country prides itself on.

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

The process of obtaining a substitute parentage order, seeking legal advice, and applying for an amended birth certificate was costly, at over $2,000 for this alone. This also required a time commitment from our surrogate and her partner to attend legal appointments, as well as us as intended parents to complete the administrative burden for our submission. Frustratingly, the bulk of our substitute parentage order application involved resubmitting our application to the Patient Review Panel (PRP). If intended parents were able to be listed on the birth certificate from birth, this would reduce administrative burden, time commitment, and cost for all involved.

How could the process for intended parents to become the legal parents of children born through surrogacy be improved?

As part of the Patient Review Panel (or similar), an addendum should state that the intended parents will be the legal parents of this child. This could then be forwarded to the appropriate Family Court to formalise this once the birth occurred.

What is the best way to approach differences in surrogacy regulation between or within jurisdictions?

One set of laws Australia-wide for consistency, fairness and equal access.

Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach?

A central and federal regulating body (akin to the Victorian Assisted Reproductive Treatment Authority (VARTA) in Victoria) would be essential to ensure all parties involved in surrogacy arrangements comply with federal laws regarding surrogacy. This would include oversight of surrogacy teams (intended parent(s), surrogate, surrogate's partner (if applicable), and IVF providers and their surrogacy service (counsellors, fertility specialists, nurses).

Should the law have a role in discouraging or prohibiting certain forms of surrogacy?

There is value in ensuring surrogacy is entered into in 'good faith' by all parties. Having limitations on surrogacy may help ensure the safety and autonomy of surrogates. The 'rights of the child' should also be central to any surrogacy law.

Thank you for considering our submission.

Yours faithfully,

[redacted]

(Intended Parents now Parents via altruistic surrogacy in Australia – Jan 2025)