Review of Surrogacy Laws – Answers to Questions in the Issues Paper
Submission by [redacted] intended surrogate.

1. Insights from people with personal experience of surrogacy

I was involved in a domestic altruistic surrogacy arrangement in Australia as the intended surrogate for a close family member. We had reached the point where counselling, legal, and medical clearances were all finalised. Unfortunately, the arrangement came to an end before embryo transfer occurred. While I recognise that each experience is unique, I want to share both the strengths and shortcomings of the current system as someone who had a direct and genuine intent to help build a family through surrogacy.

Positive Aspects:

- Access to counselling and legal requirements provided a valuable foundation. These steps helped set expectations and opened difficult conversations early in the process.
- The surrogacy community in Australia is incredibly supportive and informative. I felt a strong sense of connection and encouragement from others with lived experience.
- Having the ability to engage in altruistic surrogacy within a family context initially felt empowering and accessible.

Negative Aspects and Barriers:

- The lack of national consistency across surrogacy laws made it difficult to understand our rights and responsibilities, especially when navigating cross, state health systems and legal implications.
- There was no structured support for the emotional shifts and relational complexities that can arise, particularly when expectations begin to diverge between surrogate and intended parents.
- As a surrogate, there is no financial recognition of the physical, emotional, and logistical toll involved, even though everyone else in the process is paid. This can lead to feelings of invisibility and imbalance.
- Urgency and pressure (whether spoken or unspoken) from the intended parents can escalate due to the natural stress of infertility journeys, and yet there is no formal structure for managing these dynamics safely.

Improvements Needed:

- National surrogacy legislation is essential. The current patchwork of state, based laws creates confusion, delays, and inequity.

- Compensated surrogacy should be considered. It acknowledges the reality of what surrogates go through and removes financial disadvantage as a hidden cost of altruism.
- Pre, birth orders would create clarity and reassurance for all involved before the baby is born, reducing legal uncertainty and emotional stress.
- We need regulated surrogacy support services that act independently to match, support, and mediate, protecting all parties.
- Finally, public awareness and education campaigns are crucial to shift cultural narratives and create a more supportive, informed environment for ethical surrogacy in Australia.

While I did not proceed to pregnancy, I've seen firsthand how many gaps still exist in protecting and supporting surrogates, and how vulnerable we are to relationship breakdowns due to emotional misalignment, unclear boundaries, and the absence of a unified legal or structural framework.

2. Reform principles

Key reform principles should include:

1. National Consistency

- Australia must adopt a single, federal surrogacy law to replace the current patchwork of inconsistent state legislation. Uniformity in legal, medical, and counselling processes would reduce confusion and streamline timelines for all parties.

2. Surrogate-Centred Protection

- Surrogates should be recognised, respected, and protected as central participants. This means:
    - Access to independent advocacy and support services
    - Clear legal protections around informed consent and bodily autonomy
    - Consideration of reasonable financial compensation for the time, effort, and risk involved

3. Ethical, Transparent, and Regulated Framework

- Introduce a regulated surrogacy framework, including matching services, to ensure transparency, screening, and ethical alignment from the outset. These services should be required to follow best-practice standards, reducing the emotional and psychological risk for both surrogates and intended parents.

4. Pre-Birth Legal Clarity

- Implement pre-birth orders for legal parentage to reduce uncertainty and emotional stress at birth. Current post-birth transfer systems are outdated and fail to reflect the planned nature of surrogacy arrangements.

5. Accessibility and Equity

- Ensure that surrogacy laws and processes are accessible across:
    - All relationship types (including same-sex, single parents, and blended families)
    - Culturally and linguistically diverse backgrounds
    - People in regional and rural areas
      This includes improving access to information, legal services, fertility clinics, and independent counselling.

6. Public Awareness and Education

- The government should invest in education campaigns to build public understanding of ethical surrogacy, reduce stigma, and encourage best practices. This would empower more people to explore surrogacy as a viable family-building option, and more women to consider becoming surrogates with confidence.

Ultimately, reforms must be grounded in dignity and balance, ensuring that the emotional, legal, and physical weight of the process is shared more fairly and facilitated with transparency and care.

3. Key human rights issues in surrogacy include:

- Autonomy of surrogates: Surrogates must have full control over their bodies throughout the process. This includes the right to make decisions during pregnancy and birth without coercion.
- Legal parentage clarity: Children have a right to secure, clear legal ties to their intended parents from birth.
- Equitable access: Everyone, regardless of location or relationship status, should have equal access to surrogacy pathways.
- Exploitation risks: Especially in international arrangements, where surrogates may not have equal legal protections or economic power.

These issues should be addressed through national, consistent legislation that ensures informed consent, legal certainty pre-birth, fair compensation, and protections for all parties involved.

4. Children born through surrogacy should have access to clear, age-appropriate information about the circumstances of their birth, including:

- Who their surrogate was and her role in the process
- The identity of any donors involved, if applicable
- The intentions and hopes behind their creation and the love that surrounded it

This should be provided early and gradually, in language suited to the child's age and stage, not as a one-time conversation. Governments can support this by providing resources, counselling, and legal frameworks that uphold a child's right to identity and origin.

5. The main barriers that prevent people from entering surrogacy arrangements in Australia are:

- Complex and inconsistent laws across states
- Lack of awareness about the process
- No compensation for surrogates
- Long, drawn-out timelines
- Stigma, especially for same-sex couples or non-traditional families

Fix it by creating one national law, offering fair surrogate compensation, better education, and faster pathways.

6. Yes, there should be some basic eligibility requirements to protect everyone involved.

For surrogates: physically and mentally healthy, already a parent, and well-informed about the risks.
For intended parents: able to provide a safe, stable home and ESPECIALLY emotionally prepared for the process.

But it shouldn't be overly restrictive, flexibility and case-by-case assessment are important.

7. Eligibility requirements which should be introduced, changed, or removed are;

The requirement that surrogates must be finished with their own family should be more flexible. Some women are happy to do a journey before their final child.

Also, timelines for trying to conceive (like 12 months of IVF failure) should be reconsidered, it can be unnecessary and emotionally damaging.

And remove the rule that bans any form of compensation, it's outdated and unfair.

Surrogacy agreements — validity and enforceability
8. Yes, the current requirement that conception must happen a set time after signing should be removed. It causes unnecessary delays. Agreements should also include clearer protections around the surrogate's medical and personal needs.

9. Yes, parts of the agreement should be enforceable, especially anything related to the surrogate's medical care, costs, and wellbeing. The surrogate should be able to enforce those parts. Enforcement could happen through a simple legal process that ensures both parties are supported, not punished.

10. Counselling should absolutely be available after birth, it's often when people need it most. If legal advice or counselling aren't done before the agreement, the process should pause until they are. Parentage applications should require proof of both to protect everyone involved.

11. Professional services, including legal and counselling services

There's a big gap in accessible, affordable professionals who actually understand surrogacy. Legal advice and counselling should be specialised, not generalised. Agencies could help if properly regulated, right now there's no central place to find support or guidance.

12. Professional services should offer clear, balanced support to all parties, not just the intended parents. They should be a mix of funded and low-cost services, depending on need. Counselling should be independent to avoid bias, and services should be trauma-informed, inclusive, and culturally aware so they can support a wide range of people and experiences.

13. Advertising should definitely be allowed, especially on social media where people naturally connect with friends and family. Surrogates and intended parents should both be allowed to share openly. Content should stay respectful and informative, not transactional. A national surrogacy register could also be helpful for those wanting a more formal path.

14. Access to Medicare and parental leave
Rebates should cover all fertility treatments exactly as they would for a couple going through IVF, including egg retrievals, even if they're for surrogacy. Surrogates should also receive the same paid parental leave entitlements, from both employers and government, as any other mother who gives birth. Surrogacy shouldn't make these basic supports harder to access.

Reimbursing and compensating surrogates
15. The process for reimbursing surrogates should be more comprehensive and supportive of the full scope of their contribution. All expenses directly related to the planning and execution of being a surrogate, including pregnancy preparation, health and dietary needs, attending appointments, completing paperwork, and lifestyle adjustments, should be reimbursed. Payments should reflect the time and effort involved, using the surrogate's hourly rate as a guide. For those without a formal income, such as sole traders or stay-at-home parents, a minimum wage benchmark would be fair. There should be no set financial limits, as each journey is different and may vary in complexity or duration. A practical reimbursement method could involve a designated bank card, with receipts or timesheets used to track spending and time commitments. While no specific overseas models come to

mind, it's important that the process is transparent, flexible, and respectful of the surrogate's role.

16. Yes, I support compensated surrogacy and believe surrogates should be fairly paid for their time, effort, and the significant physical and emotional toll of the process. Everyone else involved in a surrogacy journey is compensated, it's only fair that the person doing the most is too.

I'm open to a clearer, more regulated form of commercial surrogacy in Australia, provided it protects the rights and wellbeing of surrogates and intended parents. If "commercial" means exploitation, then no, but if it means transparent, ethical compensation with proper safeguards, then yes.

17. If Australia were to allow compensated surrogacy, it should be implemented through a clear, national framework that ensures fairness, transparency, and protection for all parties.

Compensation should be calculated based on time, effort, and personal cost to the surrogate, including health impacts, lifestyle changes, and time spent on appointments and paperwork. It should reflect a surrogate's income (or a minimum wage benchmark for stay-at-home parents or sole traders), not just reimbursement of expenses.

There should not be a strict limit, as every journey is unique, some are straightforward while others are medically complex or emotionally demanding. Instead, guidelines should be set with flexibility and reviewed case by case.

Compensation should be agreed upon at the start and managed via a neutral third party, such as through monthly instalments held in trust, with accountability systems like receipts or timesheets where appropriate.

We can look to countries like Canada or parts of the U.S. where there are more structured systems that aim to protect everyone involved while allowing compensation.

Legal parentage of children born through surrogacy

18. The main problems with obtaining legal parentage through surrogacy in Australia are how slow, inconsistent, and outdated the process is.

Currently, intended parents must apply for a Parentage Order after the baby is born, which creates legal limbo – the people raising and caring for the baby are not the legal parents at birth. This can cause issues with hospital care, travel, and decision-making, especially in emergencies.

Each state and territory has different rules, adding more confusion and delays. The lack of a national system makes it harder for all parties, especially in cross-border or international arrangements.

A pre-birth legal framework would be clearer, safer, and less emotionally stressful. It would confirm the intended parents' legal rights before the baby is born while still protecting the surrogate's autonomy and rights throughout the pregnancy.

19. To improve how intended parents become the legal parents in surrogacy, we need a system that's clear, fair, and timely.

Legal parentage should be granted before birth through a pre-birth order process, so there's no confusion about who the legal parents are when the child is born. This would reduce stress for everyone and avoid delays in care or decision-making.

The decision could be administrative rather than requiring court approval, as long as all legal, counselling, and consent steps are met.

Recognition should be automatic once the agreement is validated, regardless of whether the surrogate is genetically related to the child or whether the arrangement happened locally or overseas, assuming the process followed ethical and legal standards.

All intended parents, whether mothers or fathers, should be treated equally, and the system should prioritise the best interests of the child.

We can look to countries like the UK or Canada, where pre-birth frameworks and regulated surrogacy systems provide a more efficient and compassionate approach.

Citizenship, passports and visas

20. The main problems with obtaining citizenship, passports, or visas for children born through international surrogacy are long delays, unclear requirements, and lack of consistency between cases. Parents often face stressful waiting periods, especially if the process starts only after the child is born. The system also lacks transparency, and it can feel unpredictable depending on the embassy or consulate involved.

21. The process could be improved by creating a clear, streamlined pathway for children born through surrogacy. This could include a dedicated surrogacy unit within the relevant departments, pre-approval steps before the birth, and clear checklists. Consistency across international offices and faster processing times would significantly reduce the emotional and financial stress on families.

Oversight and harmonisation – Inconsistent laws

22. The best way to address differences in surrogacy regulation is to introduce national, federal-level legislation that replaces the patchwork of inconsistent state laws. Right now, each state has different eligibility rules, definitions, legal processes, and views on compensation, which creates confusion, delays, and unequal access.

These inconsistencies are definitely problematic, they cause unnecessary stress and legal uncertainty for surrogates and intended parents. A harmonised approach would ensure all Australians have equal and fair access to surrogacy, no matter where they live.

Federal regulation would streamline legal parentage transfers, standardise the use of courts, and better align with other national laws like citizenship and Medicare. It's time to treat surrogacy like the national issue it is, not a postcode lottery.

23. Yes, oversight is appropriate and necessary. A national independent regulator should be established to ensure consistency, transparency, and protection for all parties involved. This body should oversee compliance with ethical standards, manage complaints, and provide guidance and education.

National oversight is crucial, state-based systems are too inconsistent. The regulator should oversee surrogacy agencies, fertility clinics, legal and health professionals, and ensure surrogates and intended parents are properly supported and informed.

24. The criminal law should not be the primary way to regulate surrogacy. Using criminal sanctions creates fear and shame around something that is already emotionally and logistically complex. Instead, clear regulatory frameworks are a better approach, they offer protection without punishment. Focus should be on ethical, safe practices rather than criminalising people who are often just trying to build a family.

Lack of awareness and education

25. Awareness and understanding of surrogacy laws and options in Australia are very limited. Most people rely on social media or word of mouth, and even professionals like GPs and fertility clinics often give inconsistent advice. Government-backed education campaigns and better training for professionals would help everyone navigate surrogacy more safely and confidently.

26. I agree with the scope set out. The focus on improving domestic surrogacy access, safety, and fairness is the priority. Broader debates around reproductive technologies or adoption should remain separate.

Other insights

27. Yes, there needs to be more mental health support throughout the journey, not just at the beginning. Surrogates and intended parents can face unexpected emotional challenges, especially if the journey doesn’t proceed. Also, better protections and options should be in place when arrangements break down. And finally, national regulation is essential, the current patchwork of state laws creates too many complications and inconsistencies.