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[redacted]

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The Commissioner
Australian Law Reform Commission
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Dear Commissioner,

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

I am making this submission to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. I am close friends with a couple who are parents through surrogacy after suffering a missed miscarriage / medical treatment that left the mother with significant scarring in her uterus, leading to her not being able to carry future pregnancies.

Over 6 years, I witnessed my friends struggle with infertility, giving everything they had emotionally and financially to make their family.

When they were finally told that surrogacy was the only way forward, they were nearly 40, tired and hurting. They looked into commercial arrangements overseas as it seemed so complicated in Australia and given the lack of clarity over the rules, and the length of time needed to find a surrogate within the guidelines, pushing them into their 40s to have a baby.

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

I seek that my submission be published.

1. If you or someone close to you has had personal experience of surrogacy, please describe:
    - What parts of your experience were positive?

    I have the privilege of seeing how happy and fulfilled my friends and their family are with the finally having their little girl in their lives. They are over the moon

with their daughter and there is a true sense of completeness she brings to their lives. She has not only made their world complete, but also our friends' lives who have been on this emotional journey with them. Without their surrogate, they would not be the people they are today.

- What parts of your experience were negative?

The lack of clarity over the rules was a big stressor. Having to understand the risks of being prosecuted for undertaking commercial surrogacy overseas was a huge issue for them as law abiding citizens.

- What could be improved and how?

A) Medicare rebates for IVF cycles for surrogacy – Rebates should be available for couples undertaking IVF for the purposes of surrogacy. There is no difference between that process and normal IVF processes.

B) National Surrogacy Laws – The current state-based system restricts surrogacy. Navigating different sets of rules whilst going through the stresses of surrogacy just makes things harder. Having one set of rules will allow for clarity and potentially increase the number of surrogacy babies as often the rules restrict making matches.

C) Compensation for surrogates -

Every other party in the surrogacy process is compensated apart from the surrogate. To me, this is an obvious step that Australia should be taking. The surrogate takes the most risk in the process and has the heaviest burden.

D) Pre-birth Orders -

Having clarity over the parents prior to the birth will make things so much easier when it comes to registering and bringing babies home if overseas. It also allows for the intended parents to be the decision makers when dealing with any medical issues that arise after the birth. This takes pressure off the surrogate who may be asked to make decisions she doesn't believe are hers to make.

E) Regulating the industry -

Regulating the industry will allow clarity for all parties. It will let the intended parents and surrogates know what they are in for right at the start of the process. It will protect parties too.

F) Decriminalise international commercial surrogacy -

This should be a top priority. As far as I am aware, it has never been prosecuted but it weighs on people's minds as they go through the process. If the legislation isn't being used, it should be removed.

2. What reform principles should guide this Inquiry?

Australia should buck the world-wide trend of restricting women's rights and reducing fertility options. Australia should be supportive of surrogates and the surrogacy process and implement changes to support increasing the number of surrogacy babies.

Religious views should not be considered as part of the review process.

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

   NA

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 / facilitated?

   In the unlikely situation that a surrogate baby isn't told about how they came to be, they should be allowed to access the information about how they came to be. In traditional surrogacy situations, this may be important for medical reasons.

5. What do you think are the main barriers that prevent people from entering into surrogacy arrangements in Australia, and how could these be overcome?

   There isn't a lot of information readily available for intended parents and surrogates. You have to have committed to the process before really finding out much about it. If information was more readily available, there may be more potential surrogates available which would help create more families.

   Compensation may also be a barrier for some potential surrogates.

   Complicated rules, differing across Australia will also be a barrier.

   Pointless restrictions such as they must come from the same state (Tasmania) further hinder the process.

   The lack of medicare rebates compounds an already expensive process.

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

   No. There should not be any eligibility criteria other than all parties consenting.

7. Are there any current requirements which should be changed or removed?

   NA

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

   NA

9. Should surrogacy agreements be enforceable?

   No.

10. What process requirements should be in place for surrogacy arrangements?

    It is between the parties. Templates are useful but ultimately the arrangements are for the Intended Parents and Surrogate to decide and sign.

11. What are the gaps in professional services for surrogacy in Australia?

    Counselling. There is a chronic shortage in counselling around fertility/ family planning in Australia.

12. What is the best way for professional services for surrogacy to operate?

    NA.

13. How should surrogacy advertising be regulated?

    It should not be regulated.

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

    Parental leave for all parties.

15. How could the process for reimbursing surrogates for reasonable expenses be improved?

    NA

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?

    I support both compensated and commercial surrogacy with clear regulation.

17. If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented?

    NA

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?

    Length of time taken to get the legal parentage.

    This is worse in an international surrogacy where the parents will have been overseas for an extended period of time already. Waiting for the parental order extends that time frame or the family has to navigate the visa process to bring their baby back (complicated and more expenses).

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

Putting the parents' names on the birth certificate.

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.

    NA

21. How could the process for obtaining these documents be improved?

    Allowing the biological parents on the birth certificate from the start (recognising that this may be dictated by other countries' legislation) but there is no reason why Australia can't join those countries that already do this.

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

    Nationalise surrogacy regulation.

    A nation wide register for surrogacy teams would provide transparency across Australia.

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

    They are already checked by solicitors so I think that is enough.

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

    No.

25. Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices?

    Yes.

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

    NA

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?

    NA

Thank you for considering my submission.

Yours Faithfully,

Jennifer Holder