Review of Surrogacy Laws
Questions in the Issues Paper

This document extracts the **27** questions contained in the Review of Surrogacy Laws Issues Paper released by the Australian Law Reform Commission ('ALRC').

Anyone is welcome to use this document when preparing a submission. You may wish to insert your responses to the questions here and submit it to the ALRC. It is not necessary to address all of the questions — you can answer as many or as few as you wish.

Read the Issues Paper

Make a submission

Insights from people with personal experience of surrogacy

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.

Response:

I am a parent of a child born through surrogacy in Canada 2024. My husband and I are a same-sex couple and we liked Canada because they speak English and have similar quality of health care. They also have altruistic surrogacy which allowed us to feel like we weren't breaking any laws in Queensland.

We also liked Canada because we could sign up with an agency to help us match with an egg donor and gestational surrogate. The agency was also invaluable to help us jump through all the steps required and surrogate never had to speak to us about reimbursements. She had someone at the agency to assist her and that allowed us to only speak about the pregnancy journey and how our bub was growing. We love that our son now has additional support and friends based in Canada as we have remained close with our egg donor and surrogate and their extended family. We also liked that the Canadian government had strict oversight of the surrogacy process and strict guidelines around what is allowed to

be covered as surrogacy related reimbursements and that everything has to have a paper trial which gave us extra piece of mind. We were included for all of the midwife appointments and ultrasounds, these unfortunately took place often at 2am due to the time difference.

In Canada, as soon as our son was born he was legally our responsibility. Unfortunately, our son was born with meconium aspiration and ended up in NICU for 5 weeks. Because we were seen as our son's parents all medical questions were directed towards us and our son was listed under our names only. Our surrogate was not listed anywhere as part of his decision makers or parental status that could confuse staff. One downside was that his hospital bill cost $480 000 CAD, fortunately we had surrogacy insurance which covered the cost of this but it did cause us stress because we were unsure how much would be covered and the hospital continued to contact us threatening debt collectors if the bill was paid. The insurance covered the whole cost but it took a few months for them to pay. The Canada hospital system knew that we had insurance but said it was our responsibility to pay the bill.

We also liked that our son's birth certificate only listed myself and my husband as his parents. The process to get our son's birth certificate was pretty straight forward, we needed to sign birth documents with our lawyers virtually and they submitted everything for us. This all happened while our son was still in NICU. By only having us on his birth certificate it reduces future issues and extra questioning when it comes to travelling without his "mother" as his birth certificate only lists us as his parents.

We really enjoyed our experience with Canada. The negatives are that we had to travel to Canada. We had to pay for accommodation, car hire, car seat and general living costs while in Canada for the 8 weeks that we were there for our son's birth. We also had to extend our stay with our airbnb several time, fortunately our host blocked out dates so that we could do this otherwise we would have had to move accommodation several times. We also travelled to Canada 3 times for our sperm to be frozen, meeting our egg donor and then meeting our surrogate before heading over for the birth of our son, all adding additional cost. Our immediate families also couldn't afford to come over so they only got to meet our son when we returned to Australia and weren't able to be there to support us while our son was in hospital. The direct costs for our son's creation which include IVF, agency fees, legal fees, insurance and egg donor / surrogate reimbursements came to a total of $200 000 AUD.

Once we were back in Australia we were able to apply for citizenship for our son, the process was pretty straight forward but the application could be streamlined to include the additional documentation required for surrogate births in the initial applications instead of having to connect us for the additional documents. Ie we not able to upload our surrogacy agreement in the initial application despite knowing that it would be required for the application. Regardless it was all pretty straight and we were able to submit this paperwork ourselves without requiring a lawyer to do this for us. We were only able to get his Medicare card until after all of this was done so we had to pay for this vaccinations and doctor follow up in Australia privately until we had this.

Our son is the greatest thing that has ever happened to us and we would not change anything that we went through to get him but the process of having to go overseas really does add a lot of hurdles that could put couples off even beginning to try.

Reform principles

Question 2 What reform principles should guide this Inquiry?

Response:

Human 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?

Response:

Equitable access to surrogacy for all, protecting the rights and interest of the child and the surrogates right for autonomy and not being left legally responsible for a child that she never wanted.

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?

Response:

I think that child born through surrogacy should have access to this information. I think they should be able to find out their gestational carrier and gamate donor. It would be nice if “births, deaths and marriages kept this information. Personally, I would like it not to be included on the birth certificate to prevent this information complicating passport application process and for the potential of someone thinking that they are a parent of the child.

Insights about the key issues and potential reform options

Barriers to domestic surrogacy

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 LGBTIQA+ people, people who are financially disadvantaged, or people from culturally and linguistically diverse backgrounds.

Response:

That there is no framework, its all ambiguous and you have to try and rely on friends or family carrying for you. By limiting agencies it also opens up either side to being able to be exploited, the hurdles that you have to jump through to get a parentage order and that the child is not your legal responsibility from birth are all barriers that limit domestic surrogacy.

Eligibility requirements for surrogacy

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

Response:

I think anyone over the age of 18 should be able to have access to surrogacy or be able to become a surrogate.

Question 7 Are there any eligibility requirements which should be introduced, changed, or removed?

Response:

Surrogacy agreements — validity and enforceability

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

Response:

Post birth counselling before a parentage order can be issues I don't should be part of the requirements. I think that it should be available for the gestational carrier at the expense of the intended parents but don't think it should come into parentage. I also think that parentage should be issued at birth and the intended parents be legally responsible for the child.

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.

Response:

I think that the parentage order be enforceable by the legal system although automatic parentage on the birth of the child would alleviate this requirement to be enforced. One of our friends were told by their lawyers that if they don't pay their surrogates additional expenses that she had requested then she might not turn up to court and their child would never legally be theirs. In their case they no longer have a relationship with their surrogate which is disappointing and caused them lots of stress and now their child does not have a nice story about the surrogate who helped to bring them into the world.

Process requirements for surrogacy

Question 10 What process requirements should be in place for surrogacy arrangements? You might want to consider:

a. if counselling should also be available after the child's birth;

b. what should happen if legal advice and counselling are not provided before entering a

surrogacy agreement; and

c. if parentage applications should require proof of legal advice and/or counselling.

Response:

a) yes should be available if the surrogate would like it but it should not form any part of the parentage orders.
b) IVF clinics should not be able to process until this information is provided.

c) No but I think this should all be done before a transfer can take place and parentage should be automatic at birth. The law system can go after IVF clinics that do not comply.

Professional services, including legal and counselling services

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.

Response:

A) Agencies should be able to operate but I think they should be regulated to ensure they are providing legal advise and aren't trying to profit from the process. No kickbacks from recommending legal services as well.

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.

Response:

Non for profit, help provide matching services, account keeping services and support for both the intended parents and surrogates. Money should never go directly from the IP's to the surrogate to avoid exploitation. Counselling and legal services and IVF services should all be separate. Basically they will be a surrogacy coordination service.

Limits on advertising

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.

Response:

Anyone and everyone should be able to advertise across any form of media which they see fit.

Access to Medicare and parental leave

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.

Response:

Intended parents and surrogates should be able to have access to all of the following. Surrogates for a shorted period of paid parental leave. Ie up to 8 weeks or longer if complications.

Reimbursing and compensating surrogates

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.

Response:

I think all expenses should be covered, the surrogate and her family shouldn't be out of pocket for helping create someone else's family. I do think the money should be kept in trust and receipts make it more transparent.

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.

Response:

I think either options should be available. Why should a surrogate have to bear the cost and risk of child birth without being compensated.

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.

Response:

Legal parentage of children born through surrogacy

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?

Response:

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.

Response:

It should be automatic and an administrative process with everything submitted before birth. I think that only the intended parents should be listed on the birth certificate. There should be no circumstances in which the child goes back to the surrogate unless the intended parents leave the child to them in their will but only if agreed to beforehand. The surrogate should be free from the risk of being left with a child that they did not intend of being responsible for.

Citizenship, passports and visas

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.

Response:

This is copied from question 1. Once we were back in Australia we were able to apply for citizenship for our son, the process was pretty straight forward but the application could be streamlined to include the additional documentation required for surrogate births in the initial applications instead of having to connect us for the additional documents. Ie we not able to upload our surrogacy agreement in the initial application despite knowing that it would be required for the application. Regardless it was all pretty straight and we were able to submit this paperwork ourselves without requiring a lawyer to do this for us.

For our son's passport, it was straight forward for us because our son only lists both of us as his parents but I have heard of others needing the surrogate to sign passport documentation for the initial passport or renewal. This is absurd to me as the surrogate has no legal standing for the child. It discriminates against them as being the child's parents.

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

Response:

Oversight and harmonisation – Inconsistent laws

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).

Response:

It would be beneficial if all states and territories had the same process to eliminate any confusion and legal advise can be consistent regardless of where you or your surrogate lives. It would be beneficial if it was a federal law so that the individual states wont be able to limit access for certain groups.

Oversight and harmonisation – Oversight

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).

Response:

The role of the criminal law

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.

Response:

All forms of surrogacy should be allowed and regulated within Australia.

Lack of awareness and education

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.

Response:

Being able to advertise while address some this lack of education, health professionals in particular around birthing. The use of “mother” is a very trigger word for us, I could only imagine how it would feel being a female intended parent. Education towards the passport department would be beneficial and surrogates consent or signatures should be removed.

Issues we consider to be out of scope

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

Response:

Other insights

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?

Response: