[redacted]

Friday, 13th May 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

I am making this submission to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. I am an intended parent, and I am currently going through surrogacy in Australia with my wife, [redacted]. We were initially looking at going overseas because of the challenges with altruistic surrogacy in Australia. We are part of the 79% of Australians whose friend has offered to be our surrogate. We have our contract signed and are currently in our 3-month cool off period.

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

I seek that my submission be published but de-identified.

My responses are on the following page:

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?

    I am an intended parent, and I am currently going through surrogacy with my wife, [redacted]. We were initially looking at going overseas because of the challenges with altruistic surrogacy in Australia. However, we are part of the 79% of Australians whose friend has offered to be our surrogate. We have our contract signed and are currently in our 3-month cool off period.

    We are going through surrogacy due to my wife's medical issues associated with her kidney transplant. We fell pregnant in March 2024, but due to rhesus incompatibility, she unfortunately had a miscarriage and went into anti-body mediated rejection requiring 7 months of treatment. For her safety and that of my future baby, surrogacy is our only option. I'm longing to become a father and to see my wife become a mother. We hope this submission helps change the laws to make it easier for Australia who whatever reason are unable to carry themselves, but still long to grow a family.

    The process has been challenging. The process is not clear, what are the exact requirements, not being able to rely on the fertility clinic to know what to do has been challenging. There were many times that we thought it would be easier to go overseas and have an agency manage it. Everything is left on you to research, schedule/book, and submit. Additionally, the costs associated with **pre-pregnancy** costs are already >$13.5k due to no Medicare Rebate (psych, legal, GPs, fertility appointments etc.). These two factors, if improved, would make the process a lot less stressful and provide better access to Australia surrogacy opportunities.

2. What reform principles should guide this Inquiry?

    The principles should be equality, access, and simplification.

    Everyone, regardless of their gender or relationship arrangement, be able to access surrogacy services. The process should be clear, simple, and easy to follow to successful have a baby in Australia. The extends to Medicare rebate to assist with the financial burden, eligibility, and adjustments to the current reimbursement/compensation rules.

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?

I have personally struggled with the idea of going internationally because of the countries that offer the service. Ethically it doesn't feel right for a women who lives in sub standard conditions compared to Australia be paid to carry my baby.

At least in Australia, the surrogate would live in better conditions – access to clean drinking water, food, shelter and medical professionals.

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?

   Their birth mother's name. I understand birth certificates will now have a comment about further information available. This is fair. It is really up to the parents/parent to explain where they came from. There are great books out there that explain it.

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?

   Access to surrogates has been the biggest impact for us. We didn't know where to start and immediately looked internationally because of this reason. It was only because we spoke to family and friends that our friend offered. By offering a compensation model it would provide access to more friends and family and strangers would need the eligibility criteria in 6.

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

   Over a certain age, health, and mental stability should be the only requirements. I don't believe having to have previous children should be a requirement. Many women chose to not have children. I do believe the age should be increased to 21 due to emotional intelligence and maturity required.

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

   I understand the importance of each required. Initially I thought the requirement for our surrogates husband to have a psych assessment and medical assessment was excessive. But I know who how important it is for our surrogate to have a health and supportive husband during this emotional process.

   I suggest additional counselling sessions (not mandatory but recommended) at 12 weeks, 20 weeks, 30 weeks, and post birth.

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

   I believe the inclusion of who should look after the baby in the event something happens to the IP (during pregnancy) should only remain if it's the surrogate nominated. If the IPs chose someone else, it shouldn't form the contract. Inclusion of vaccines and flu shots should be added, as well as prenatal vitamins etc.

9. Should surrogacy agreements be enforceable?

   Yes, I think they should be. They are written to protect the child, but also all parties. Parties should be able to enforce the contract that was agreed. Perhaps managed by respective lawyers who provided the original advice.

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

    A standard approach to all states, when a clear process of what the requirements are for all parties. I am yet to see it documented clearly – and I'm a consultant!

    I think counselling should be mandated during the pregnancy and post pregnancy. Even with friends/family being surrogates. The mental/spiritual health of everyone is so important.

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

    Surrogacy agencies feel very commercialized. Surely with more Australian's having surrogacy journeys in Australia (and not overseas), our fertility clinic could assist with managing the process including counselling, psychological, and legal. I only found 2 lawyer in Perth who had experience with Surrogacy Agreements. I only found 2 psychologists in Perth who could perform the psych assessment.

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

    Standard across Australia – either as non-for-profit or through a fertility clinic.

13. How should surrogacy advertising be regulated?

    Facebook groups are amazing and work well currently. The rules are clear on how you can post. Over 21% of surrogacies in Australia were found via Social Media.

Being able to post on a surrogacy register (managed by the government/non-for-profit and not by a commercial business) would be great.

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

    Medicare rebate! I am not choosing to not be pregnant, I would love to be pregnant and have a healthy baby. The fact that surrogacy is our only option is challenge enough, coupled with no rebate for appointments makes it very expensive process. Especially if I need to do another egg collection cycle that will not be deemed eligible for a rebate because I'm going through surrogacy.

    Both Ips and surrogates should be entitled to employee parental leave, and Centrelink paid parental leave. For the surrogate I feel that things like cleaning, transport, and a pregnancy medical impact payment would assist.

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

    A reimbursement for the impact of pregnancy on their bodies. The regulations are clear currently that only medical and travel is covered. By being able to pay someone to carry your child, a figure that I am unsure of, it would discourage Australian's going overseas, because we would have more Australian's willing to be surrogates.

    I appreciate the ethical nature of this topic. I don't believe in commercialization of such a special gift. If the reimbursements were to change and an external body were to be introduced but I'd fear it would become too commercialized. Making a baby should be about engaging 5-10 different businesses, it's about connections and building trust to give someone a gift.

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 a compensated surrogacy.

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

    Clearly defined in the surrogacy contract/agreement (that will then need to be enforceable). The fertility clinic should be manage any transactions / payments.

Perhaps, milestones payments against 12 weeks, 20 weeks, 30 weeks, 40 weeks. A similar model to Canada.

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?

    I've not experienced this yet.

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

    I've not experienced this yet.

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.

    I've not experienced this yet.

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

    I've not experienced this yet.

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

    Regulating surrogacy at a federal level would create much better consistency and care. It's confusing for people, especially if IPs find a surrogate in another state/territory of Australia. The impact of families having to travel (at their cost) because a state doesn't allow a certain procedure or has different regulations seems counterproductive – removing someone from their safe space. This also makes it easy for transferring legal parentage.

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

    I understand the intent of this especially if more surrogacy arrangements were to occur within Australia. I think the fertility clinic should assist with this perhaps

through additional counselling sessions to run through the arrangement together to allow an avenue for parties to make comments/check in with each other. Alternatively, a national body could step in to provide oversight.

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

    Yes, it needs to be clear because ambiguity creates confusion. The requirements need to be clear and easy to understand. I don't believe in criminalising people who do commercial surrogacy overseas because they were unable to find an Australian surrogate.

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

    Yes, it can be quite confusing where to look for cross references when completing an application to the RTC of WA. The process at our clinic has also been unclear which misinformation shared on the process requirements along the way.

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

    Discrimination against IPs wanting to go private should be addressed. Even has a hetro-couple, we have had some engagement with private professionals who are not as supportive.
    I'd also be open to changing the term of birth mother. For my being female, who is genetically the birth mother, but did not *give birth*, I feel this would be changed to gestational surrogate, or birth surrogate. I am the mother so by calling the surrogate mother makes it confusing for all parties and the child when they are eventually taught about where they came from.

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?

    Remember, surrogacy is no one's first choice – I wouldn't wish it on anyone as a means to start a family. By making it easier to have surrogacy in Australia we could reduce the number of people going overseas who are faced with their own legal/ethical/political challenges.

Thank you for considering my submission.

Yours Faithfully,

[redacted]