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9 July 2025

The Commissioner

Australian Law Reform Commission

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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 who now has a 5 ½ month old born via surrogate. Our journey was a long one – over 10 years – with 12 embryo transfers before a friend offered to be a surrogate. Our 13th embryo was transferred and resulted in the birth of our little boy in January 2025.

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.

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

- What parts of your experience were positive?

  My husband, O, and I recently experienced surrogacy. We are now parents to a little boy, H, who was born via a surrogate, K.

  Overall, our experience was a positive one, and I think that comes down to the relationship we had with our surrogate. Luckily, I've known our surrogate since 2007. Initially a work colleague, and then a close friend, O and I were very lucky and thankful when she offered to be our surrogate.

  Before anything was 'official' or finalised between us, we organised a trip over to Perth to speak with K, and her partner S, in order to answer any questions they had and work through how this would potentially play out. We are all fairly organised and detail oriented people, so we knew there would be structure to our 'team'. We also created a team chat on the phone where we could all msg, ask questions, raise concerns and update each other. Communication was important and we spoke often and regularly.

  Due to our pre-existing friendship and relationship, we all knew bits about each other. Things ran smoothly during counselling and when K and S came to us asking certain questions, we all felt comfortable talking things out to ensure we all felt safe, heard and respected before proceeding.

  Our surrogate, K, is a very meticulous person, so I wasn't surprised when she created a spreadsheet listing expenses that needed to be covered.

  K and I spoke together about the doctor we would use for the birth. Most important to us was that K was comfortable with the doctor. The doctor we chose was friendly and caring. O and I were welcome to attend every appointment, and if we couldn't make the flight to Perth, then we would facetime.

  I think knowing K made the process a pleasant and straightforward one. I knew who I was getting involved with and that there likely weren't going to be any surprises. The process brought us even closer. O and I spent a lot of time flying back and forth between Melbourne and Perth in order to attend scans and appointments. While in Perth, we stayed with K and her family and grew quite close to her two children. We facetime regularly to keep in touch and hear what they are up to.

  Most of the doctors and nurses seemed to have positive attitudes when dealing with them and when explaining our situation.

- What parts of your experience were negative?

  Finding a surrogate is a daunting task. A surrogate has every right to change their mind during the journey. We were conscious that K had a family and hopes and dreams for the future. We didn't want to take up years of her time, so we were nervous when time was ticking away. The amount of time that passed between our surrogate offering to carry for us, and the transfer of the embryo was just over two years. Part of this time was due to the fact that we didn't have embryos ready, but part of this was the amount of time it takes to complete all of the counselling, lawyers, paperwork, reports and then the patient review panel (PRP). Our counsellor at the fertility clinic went on leave, so we needed to wait until she returned in order to finalise the report with her (they didn't want us to speak to another counsellor). Then due to the timing of when the report was completed and submitted, the PRP had 'closed' for the holidays. So even though the report was submitted in November/December, the first available time to meet with the PRP wasn't until March. We made it clear to K that she could change her mind at any time, and all of these delays or timing issues had O and I nervous, as we knew time was ticking and K had a life to live.

  The PRP itself was a bit daunting – five strangers casting judgement over our situation. The one question they seemed to focus on that rattled me was how we were going to support K with her food prep since we live in Vic and she lives in WA. I understand the need to protect all parties involved however some of the questions asked seemed irrelevant and overly intrusive.

  Applying for paid parental leave (PPL) was confusing. Even though our lawyer told us that our surrogate would be eligible, K didn't believe she would be and didn't end up applying for it. We, as the intended parents, were not eligible for PPL, which was really frustrating and upsetting. This had to do with some changes I made back home (overseas), and that seemed to cause confusion at Medicare/Centrelink as to whether that should have been included or not in the calculation. I had little desire to fight this with them as I was already drained by so much of the process and finding a staff member who was able to assist.

  The birth was scheduled to happen at [redacted]. When we arrived on the 15th with K in labour, everything went in under her name. My husband, O, and I, both were given wrists bands with her name on it. When H was born, his cot said: baby boy of K. It would be nice if there was more recognition of the intended parents during this process. Naming conventions among hospital staff – in particular the

term “birth mother” – seemed a bit archaic, confusing and negative towards the intended parents.

The day after H was born, the head nurse came in and said our doctor had not told her this was a surrogacy birth and there were forms, protocols, conversations that should have been had before the birth. It was also explained that the baby would need to leave the hospital with K and then she could hand the baby to us in the car park (or somewhere outside the hospital doors). We can’t fault the care of the doctor, but it seemed like a breakdown in communication or a lack of understanding as to what the process is at the hospital when there is a surrogate giving birth.

When our surrogate gave birth to her own children, she only stayed in the hospital for a maximum of one day. So when we had the opportunity to stay in the hospital for two, three or even four days, we wanted to jump at the chance to stay and ask any questions we had of the nurses and doctors. Our surrogate was very kind and after speaking together, she offered to stay on so we could do this. However, knowing that she had two young children at home who were anxious to see and hear how their mom was doing, she asked the doctor if she could go home for a few hours to help with dinner and bedtime. Our doctor said yes, no problem. But the nursing staff in the hospital said no, she couldn’t leave because she was technically the birth mother of H. They then changed their mind and said she *could* go home for a few hours, but during that time, H would need to move out of our room and go down to the neonatal ward. We agreed to this requirement as we wanted K to go home and see her family. We found the request strange and unnecessary as H had been in a room with only us for the prior 24-36 hours and K had a different room down the hall. For all intents and purposes, we were the parents and carers of H from the moment he was born, so this seemed more policy driven than simple common sense. Regardless, we wheeled him down to the neonatal ward, and were ushered into a small room, with no one in it; there were just empty/unused incubators. The nurse wheeled in one chair and when I said my husband would also be coming down, she said there was a small folding camp chair in the corner that he could use?!?! For the amount we had to pay has borders in the hospital, a proper chair would have been appreciated and deserved. We told the nurse that H was due to have his bottle and that the nurses upstairs on the ward normally checked his vitals before we fed him. She said she would check them, but that we should change his nappy first. There was no where to change him, no assistance provided whatsoever, so we made do with the tiny rolling cot he was in. There was nothing for us to do in that room. We weren’t going to leave H there alone without us being present, so we sat quietly and waited. When our surrogate called to say she was on

her way back, I asked the nurse if we could go back up to our room since K would be back soon. It was getting late and we hadn't had dinner and H was due another bottle. She said she thought that was an acceptable request but that she would need to ask the head nurse if that was ok. She walked down the hall, and we could hear the response from where we stood: "NO! THEY ARE NOT THE PARENTS!" What an absolute kick to the guts that was. We ARE the parents. For the past 24-36 hours we had been the ones caring for H, loving H, feeding H, changing H, cuddling H. For 10 years we had been chasing this dream and H was finally here. And now some nurse is saying that we are not the parents due to a technicality. Even though in less than 24 hours we would be leaving the hospital with H, as our son, we were not allowed to leave the neonatal ward until K returned. I understand that hospitals have protocols, but sometimes common sense needs to prevail. In our room upstairs on the ward, the nurses who knew us, were checking in on us every three hours – far more 'supervision' than what we had in the neonatal ward. Why we had to take H downstairs to a place where none of the nurses knew us, and no one was even in the room with us made no sense; this was a pointless exercise. There was no reason for us to have to take H downstairs at all. K came back and we all went back upstairs. The head nurse who had commented earlier about us not being the parents didn't even come out to see us leave – I don't even believe she was made aware that we were leaving; another nurse simply buzzed us out. When we left the hospital the next day, there wasn't anyone checking to make sure that the baby was leaving with K. I carried H out of the hospital, as his mom, without any issue at all and made our way to our accommodation to start our new family life. It further demonstrates the need for a change to policy, attitudes, and language throughout the medical profession and a better understanding of who the parents actually are – not archaic, outdated views and rules.

After H was born, we had to organise for a few medical procedures. All contact was being sent directly to K and she then had to forward messages to us. Checkups with the maternal health nurses also sent messages directly to K's phone, not ours. A pain for K who now was at home with her family and she has to act as a personal assistant monitoring our incoming appointments for our little boy.

Trying to get H added to our medicare card took a bit of work. I tried to enroll him online, as is the normal process, but received a message that the request had failed or was denied. I had to call and speak to staff over the phone in order to get it sorted out. It can take ages to get through to someone on the phone, so I was adamant over the phone that this needed to be done, and could be done, and the staff member I spoke to finally processed the request.

Parentage order. We got all the relevant documents together and got the affidavit witnessed and sent everything to our lawyer at the end of February. Our lawyer submitted the parentage order in March and as I write this today, 9 July 2025, it still has not been finalised. Another hoop for us to jump through before our child becomes 'officially' ours – and he'll be 6 months old next week! We haven't been able to apply for a passport since we don't have a birth certificate with our names on it. (I believe we could try to apply for a passport, but have been told that similar to dealing with medicare/centrelink, it comes down to the staff you deal as to how easy/difficult this process would be). My family and friends back home are all anxiously waiting, as am I, to travel back home and introduce him to everyone. I had hoped to travel there this month to celebrate my birthday, my husband's birthday and my son's 6 months, but since the parentage order is still being processed, those plans have all had to be put on hold. Not something that the other families in my 'new parents group' have had to deal with.

Parentage order fees are vastly different in all of the states – some don't charge anything! It would be great if this process was the same across the board. Additionally, being able to complete the parentage order before the birth of the baby would be amazing, or to not have to do at all would be even better! Our surrogate and her partner don't want another child and S (K's partner) was not keen on being listed on the birth certificate, however, they are currently listed as the parents on our son's birth certificate. I'm not entirely sure what legalities exist around this if something happened to them. To have this sorted before the birth would be an easier and more streamlined process. It's also one less thing to have to do when navigating life as a new parent. Additionally, if this had been completed before H was born, then all the post birth medical appointments would have been dealt with directly by us, not having to go via our surrogate first. The last thing you want to do is more paperwork when you're loving, bonding, and caring for your new little one. Doing it before the baby is born would provide clarity and certainty to all (intended parents, baby, surrogate). Alternatively, with all the counselling and agreements that are completed before being allowed to even commence surrogacy, we are already all on the same page about who the baby is going to after they are born – so is a parentage order really necessary? Can't the intended parents simply be listed as the parents right from the start?

2. What reform principles should guide this Inquiry?

Empathy for the intended parents and the surrogate.

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?

The main barriers are around finding and connecting with a surrogate. Based on the online forums I am a part of, it is quite clear that the number of intended parents in Australia is far greater than the number of surrogates. It also seems that more and more people are experiencing fertility issues so the number of intended parents looking for a surrogate will continue to grow. I came to Australia as a 26 year old and have no family here, so I couldn't rely on a sister or childhood friend to offer to be a surrogate. When our fertility specialist suggested we look at surrogacy, we never thought we would be able to find a surrogate here and initially looked overseas. If our friend and surrogate had not come forward and offered to carry for us, I'm not sure we would have proceeded with surrogacy in Australia. I think it would have been next to impossible to find a surrogate here. If you look at the online forums, the majority of posts are from intended parents who introduce themselves, and then re-introduce themselves to keep them 'top of mind' for surrogates who may be reading the posts. I believe we would have gone through international surrogacy had our friend not come forward simply because it's just so hard to connect with a surrogate in Australia. The main countries we were looking at were Canada and USA.

The rules for surrogacy in each state are different, making it difficult to navigate as to what you are allowed/not allowed to do – ie. Advertise for a surrogate. I was really unsure about this and didn't want to get in trouble or be told that we weren't allowed to proceed with a surrogate because of how we connected. I walk a lot and wondered if I could write on my t-shirt: Looking for a surrogate – but I didn't know if that was against the rules?!

Many people don't know that surrogacy is legal in Australia. When we went to get our immunisation for pertussis, and we told the pharmacist why we were getting this done, his first question was: Oh, is that legal in Australia? I found it shocking that someone in the medical profession didn't know that surrogacy is legal here.

Costs, or rather the unknown costs involved can also be prohibitive. I've seen more than a few posts on online forums from people asking: how much does it cost to do surrogacy in Australia? That's like asking how long is a piece of string. Especially since things are

different in each state (like costs for parentage order).

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 compensated surrogacy. Compensated surrogacy could make surrogacy more accessible in Australia, as many women wouldn't consider becoming surrogates because it is unpaid.

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?

The process in Victoria sees us going through numerous rounds of counselling, external counsellors, lawyers, and the patient review panel – so numerous round of approvals required before being allowed to proceed and commence with a surrogate. Then when the baby is born, another approval is required from a judge who will ultimately decide on our parental rights. It is a timely and costly process and ultimately, frustrating to have to deal with after the baby is born. As mentioned above, our son is almost six months old and the parentage order still haven't been finalised.

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

Move to pre-birth parentage order or completely remove the need based on all the approvals and boxes that need to be ticked before the surrogacy is approved.

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

We need to harmonise surrogacy laws so that everyone can access the same laws no matter where they live. Likely the best way forward is to have Federal surrogacy laws.

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

Yes. To make surrogacy accessible in Australia, we need to make sure everyone knows about it. The Government can help raise awareness and educate the community. Raising awareness can also assist with the services that people need to access, including Medicare, Centrelink, parental leave and hospital care for a surrogacy birth. As mentioned previously, when we told a pharmacist we were getting the pertussis immunisation because we were having a baby via a surrogate, his first question was: Is that legal in Australia? There is a lot of misinformation these days due to social media and influencers – similar to the low vaccination rates we are seeing, so the true and accurate information needs to be made public.

Thank you for considering my submission.

Yours Faithfully,

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