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8th July 2025

The Commissioner
Australian Law Reform Commission
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[You can also make a submission at www.alrc.gov.au/inquiry/review-of-surrogacy-laws/make-a-submission/]

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 cancer survivor. Due to the life-saving treatment I received, I can no longer conceive or carry my own pregnancy. Cancer was not a choice, surrogacy is not a choice — it is my only viable pathway to parenthood.

This submission is deeply personal, but I write it also on behalf of countless Australians in similar situations, including LGBTQ+ couples and individuals, but especially on behalf of women like myself – women who are actively discriminated against, stigmatized, and disadvantaged simply because through no fault of our own have no functioning uterus.

I am seeking fairness, equal access, clarity and compassion in a legal system that too often creates barriers where there should be support. Barriers, judgement and stigma on top of what is already an incredibly painful and trying journey.

My husband and I have been on our surrogacy journey for over 5 years, we have endured the painful ups and downs, significant financial costs and mind field of regulations and requirements trying to navigate domestic altruistic surrogacy with a close friend using my own eggs and my husband's sperm. We have not yet been successful, but remain hopeful.

Introduction

In 2016 I was diagnosed with cervical cancer at age 29, I endured 12 months of treatment including chemotherapy, radiotherapy, brachytherapy (a painful and terrifying treatment I wouldn't wish on anyone), and multiple surgeries. Part way through I was able to complete an egg collection - the one and only I would ever be able to do - to preserve my fertility before recommencing treatment that would ultimately leave me with no ovaries, most of my cervix removed and a non-functional uterus. I was fortunate to be able to have 20 eggs collected for storage, however surrogacy would be my only option to have a family of my own.

Unfortunately, in 2020 the cancerous cells had returned, and further treatment insured. I providing this history as it is important context for my personal experience of surrogacy as a heterosexual, married woman. The LGBTI+ community is not the only cohort discriminated against in the current framework. For many intended parents these laws are not only confusing but actively exclusionary.

The current surrogacy laws in Australia are inconsistent, state-based, and at times discriminatory. I have encountered roadblocks that cause unnecessary stress, delay, and expense. There is no single source of truth for unbiased information and guidance. Which creates opportunity for nefarious and disingenuous actors like [redacted] who make false promises and mislead intended parents.

I grew up in [redacted], spent many years of my professional career living in [redacted] and currently live in QLD, with my husband where he is from. We have no children. We have explored surrogacy laws and requirements across each of these three states, all are different. We are working professionals and are fortunate to have the financial resources and family support to pursue surrogacy – but for many the significant cost and inaccessibility is prohibitive. For cancer survivor like me, having a family should not only be available to the wealthy.

I implore the Commission to deeply consider submissions from those with lived experience of surrogacy in Australia including surrogates and intended parents, persons born from surrogacy and experienced professionals working in the industry. And be cautious of vested interests, and critics driven by ideology rather than fact.

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 personal Experience of surrogacy

My personal journey has been difficult however there are some areas that have been positive. Due to my medical history, obtaining medical sign off to enter into a surrogacy arrangement was simple and easily supported by my fertility specialist and the clinic. That is where the easy part ended however.

Upon receiving signoff to proceed with a surrogacy arrangement, I was registered with a clinic and given some high-level information and a list of steps to complete, no guidance no support. It was left to me to do my own extensive research to find appropriate and qualified practitioners experienced with surrogacy. Dedicated social media groups were a helpful source of information from people who'd gone through the process in lieu of a central body. It's an incredibly complex system to navigate, and when you don't know what you don't know, and with no government or national body to guide you it's an overwhelming and confusing process to try to understand.

The emotional journey has been, and is still, incredibly difficult. On top of navigating the complexities, when some people discovered I was perusing surrogacy, I was met with judgement and stigma. Critics see all intended parents, no matter the background and reason, as those looking to exploit disadvantaged women for personal gain. This is exacerbated by much of the media reporting which focusses on only the worst stories – never the positive. It is so incredibly hurtful. Their answer is always 'why don't you be a good person and just adopt'. Whilst I don't have to justify my reasoning for wanting my own child, just the way able bodied women don't, it's important to note that adoption is simply not a viable alternative in Australia. A credit to Australia's welfare and family support system, there is only a tiny number of children requiring adoption in Australia outside of intra-family arrangements.

Finding a surrogate

5 years ago, we were incredibly lucky to have a friend of a friend offer to be our surrogate, without this we would not have been able to pursue a family. We commenced the slow, costly journey to complete the requirements with our clinic, the mandatory counselling sessions and the legal advice. This took over 4 years. At every juncture, we are guided by requirements that center around the rights of the surrogate, and best interests of any future child. This is obviously critical, and must remain.
That said however, not one element of the entire process seeks to defend the rights of the intended parents. We instead endure group after group, practitioner after practitioner that we need to convince that we are worthy to have a family. Whom we need to convince that we are good people, not trying to exploit anyone, that we have an incredible woman who wants to do this for us, of her own free will, who offered to do this for us without prompting. That we simply long for a family of our own, like so many Australians.

As a woman, I carry the guilt of not being able to give my husband a child. Not being able to give my parents a grandchild. Being the one all my family, friends and colleagues' pity (and who quietly think 'thank goodness that isn't me').

Throughout the years proceeding through the various toll gates, I had some very unsettling experiences as a direct result of having to turn to Facebook groups for information due to a lack of official guidance. The unregulated surrogacy communities leave way for terrible behavior from some (usually those who have no experience of infertility or surrogacy in Australia). I've received unsolicited messages from strangers accusing me of seeking to exploit women. My surrogate also received a communication from a stranger who wasn't known to her or myself accusing me of

saying terrible things about my surrogate, all completely false but incredibly upsetting and difficult to navigate in what is already a complex relationship.

My views on surrogacy

After years of navigating this complex journey, my views on surrogacy are still positive in spite of all the difficulties. In Australia it is a process that couldn't be more centered around consent. And to be a potential recipient of the greatest gift a person could give another is a truly moving experience.

It is incredibly insulting to hear the barrage of critics, some calling for a total ban, completely negate a woman's right to choose what to do with her own body and attempt to speak for these women. Who are they to decide what a woman can and can't do with her own body? Who are they to decide who is able to have a family? These critics, who have no actual understanding of the process, seem to have the loudest voices. But sunlight is the best medicine so they say, if the industry could be better regulated, and more clearly communicated from official bodies, many of these myths could be debunked. Surrogacy could be better understood, better incentivized and supported, and ultimately be more accessible (and less harmful) for people like me.

There's a variety of reasons why surrogacy laws in Australia should be reformed. Women who chose to be surrogates deserve to be supported and empowered to do so within a safe, properly regulated system that respects their right to make informed choices about their reproductive health.

Some areas for reform I would like to propose include:

- **Unequal access and discrimination**: Current eligibility criteria vary across states. In some jurisdictions, single people, same-sex couples, or people with complex medical needs are excluded from accessing surrogacy. This patchwork of laws creates inequity and undermines the principle of equal access.
- **Medicare inequity**: Current definitions of infertility, even the recently amended definition, used to determine access to Medicare rebates do not include people who require surrogacy (cancer survivors like me, same-sex male couples etc). Those who require surrogacy, and are eligible for surrogacy, are the very definition of infertile. Yet a blanket exclusion on surrogacy remains. As a result, people like me—medically infertile but not in a way that fits the outdated clinical definition—are excluded from financial support, when others who may actually be able to see a pregnancy to term are not. In reality, what this means is I am not considered 'infertile' despite having no functional uterus, absolutely zero pathway to conceive or carry my own pregnancy. Yet a woman who has a functioning uterus and could potentially carry her own pregnancy to term IS considered eligible under the current definition and can access rebates.
- **Legal Parentage delays**: Under most laws, including those in QLD where I reside, intended parents are not recognised as the legal parents at birth. My surrogate, a single female is listed as the mother and the father is listed as 'unknown'. How incredibly ridiculous when the baby's parents are very much known and in the picture. This requires lengthy and

costly (AU$10,000+) post-birth court processes to transfer parentage, delaying vital decisions about the child's care and creating emotional and legal uncertainty in the first days of navigating parenthood with a new baby.

- **Financial insecurity and lack of clarity**: Reimbursement for surrogates is allowed in some cases, but there are no clear, national guidelines about what constitutes reasonable expenses. This uncertainty can cause confusion, delay, and even deter potential surrogates. It also mean's there is no protection for intended parents around financial exploitation and unrealistic demands they feel they are unable to refuse given the situation.
- **Decriminalisation of international surrogacy**: In jurisdictions like Queensland, NSW, and the ACT, engaging in commercial surrogacy overseas is a criminal offence — even when done ethically and legally in the host country. For people who cannot find a local surrogate (the majority of cases in Australia), this creates a painful dilemma between forming a family and facing criminalisation upon return home.
- **Lack of child identity access**: There is no national registry to record information about donors or surrogates. This is a gap in the rights of children to access information about their origins, as outlined in the UN Convention on the Rights of the Child.

Reform principles

Law reform should protect the rights of all parties involved in a surrogacy arrangement, the children born, the autonomy and wellbeing of surrogates who choose to do this, and protect intended parents from harm, discrimination and exploitation.

Surrogacy should be accessible and inclusive of all types of families, all sexualities, all identities, whether they are rich or poor. Medicare rebates, funded by every tax payer in Australia, should be available to every family type in Australia struggling with infertility.

Barriers to surrogacy in Australia

The barriers for surrogacy in Australia are many, and it is the reason so few babies are born through surrogacy in Australia (approx. 150 per year or less, as reported by practicing Sarah Jefford, Surrogacy Lawyer Victoria). State by state variability across Australia makes the process an arduous task to navigate.

Legal Restrictions (State-by-State Variability)

- **Only altruistic surrogacy is legal**: In all Australian states and territories, surrogates **cannot be paid** beyond reasonable expenses. Commercial surrogacy is illegal.
- **Different laws by state**:

    - Some states (e.g. **WA, SA**) require intended parents to be in a heterosexual relationship (although reforms are ongoing).
    - **NSW, QLD, and ACT** prohibit residents from engaging in commercial surrogacy overseas, with potential criminal penalties.
    - Some states require the surrogate to have had a child of her own before.
- **Parentage orders**: post-birth, the intended parents must apply to the court to become the legal parents, a time-consuming and emotionally taxing process.

Financial Costs

- Even though surrogacy is altruistic, costs still arise:
    - Medical procedures (IVF)
    - Legal fees
    - Counselling
    - Reimbursement of pregnancy-related expenses
    - Travel and accommodation if inter-state arrangements are involved
- Total costs can range from **$15,000 to $60,000+**, despite no commercial payment.

Finding a Surrogate

- There's no official registry or agency for matching in Australia (even though some nefarious agencies claim to provide this service at a significant cost to intended parents and make false promises – these agencies should be regulated to prevent this)
- Intended parents often rely on personal networks or online communities.
- This can be emotionally difficult and time-consuming, with no guarantee of success.

Emotional and Psychological Complexity

- Emotional bonds, expectations, and communication between intended parents and surrogates can be complex. Intended parents like myself are scrutinised and judged to the point where it can take a significant toll on one's emotional resilience.

International Surrogacy Complications

- Because of the myriad of local barriers, some Australians see pursuing surrogacy overseas as their only option despite this being fraught with additional risk and at significant cost.
- Legal recognition of parentage and citizenship for babies born abroad can be legally and bureaucratically complex.
- In some states, it's actually illegal to enter into international commercial surrogacy agreements.

Eligibility

The same eligibility requirements in existence in states like Queensland currently should remain. This includes women with a medical need (e.g. no functioning uterus) and same sex couples with a social need.

Even if surrogacy law reform in Australia incentivized a higher number of women to become surrogates, it is likely that the number of intended parents would still far out way the number of surrogates. For this reason, eligibility requirements should remain in place.

Reimbursing surrogates and compensated surrogacy

Currently there is no framework or guidance on what should be considered 'reasonable expenses' for surrogates. This results in varying advice from clinics, individuals and practitioners working in the industry. With most of the emphasis placed on what intended parents are not allow to do rather than what they are. In addition, the 'fear of god' is put into potential surrogates when they are receiving initial advice regarding if they accept any form of compensation – which in and of its self acts as a deterrent to proceeding at all. No one wants to be a risk of prosecution.

Furthermore, there is a strong case for compensated surrogacy which is successful in other countries like the USA and Canada. It offers several important benefits for surrogates, acknowledging the significant physical, emotional, and time commitments involved in carrying a child for someone else. Financial compensation provides recognition of the surrogate's contribution, helping to offset lost income, medical appointments, childcare, and other related expenses that go beyond simple reimbursement. It can also promote greater equity by ensuring that surrogacy is not limited to those who can afford to volunteer such a demanding service without financial support. By fairly compensating surrogates, the process can foster a more transparent, respectful, and mutually beneficial arrangement, potentially attracting a more diverse and willing pool of surrogates while reinforcing their autonomy and agency in making informed choices about their bodies.

Best practice compensated surrogacy in Australia should be implemented through a nationally consistent legal framework that balances the rights and wellbeing of surrogates, intended parents, and children. This framework should allow for regulated, ethical compensation that goes beyond reimbursement to fairly recognise the surrogate's time, effort, and physical and emotional labour. Strict safeguards should be in place to prevent exploitation, including comprehensive psychological screening, independent legal advice, informed consent, and clear eligibility criteria for all parties. Transparency and oversight by a central regulatory body would ensure ethical standards are upheld, while access to support services throughout the process would protect the welfare of surrogates and intended parents. Such an approach would modernise Australia's surrogacy laws, reflect international human rights standards, and provide a safe, respectful pathway to parenthood.

In closing, reforming Australia's surrogacy laws presents a critical opportunity to create a more equitable, compassionate, and practical framework that reflects the realities of modern families. By introducing nationally consistent legislation that allows for ethically regulated compensated surrogacy, we can better protect the rights and wellbeing of surrogates, support intended parents on their journey to parenthood, and ensure that children born through surrogacy have a clear and secure legal status from birth. It is essential that our laws move beyond outdated restrictions and embrace a model grounded in respect, autonomy, and informed choice. I urge the Commission to prioritise reforms that promote clarity, fairness, and dignity for all parties involved in surrogacy arrangements in Australia.

I hope the commission will be ambitious in creating a legal framework that is future facing, rid of archaic arbitrary and exclusionary rules, and that protects the rights of all parties.

Thank you for considering my submission.

Yours sincerely

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