



10/07/2025

The Commissioner
Australian Law Reform Commission
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Flinders Lane
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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 a surrogate.

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?
- What parts of your experience were negative?
- What could be improved and how?

I first thought about being a surrogate at 16 years old. I had a friend who was facing some health issues that might have impacted her fertility. I said I would have babies for her if she couldn’t. I had similar conversations with at least 2 friends over the next 5 years.

In 2015 I had my first daughter. And after an easy conception, uncomplicated pregnancy and beautiful birth. I started researching. Could I be a surrogate in Australia? I researched online, I attended an info session and then a conference. I was absolutely going to do this. Just needed to finish our family first.

We had our third and final child in 2019 and I told the midwives I would be back as a surrogate.

Then covid hit and I watched teams struggle with forced separation, stress over who would or could be at the birth and the loss of support they had so carefully planned out. The unknowns were endless. So we waited and researched. We found SASS- Surrogacy Australia Support Service. They helped me lay out a clear path of steps to take to make sure we were ready to meet a couple. I had been in the online communities and attended community meet ups for 6 years at this point but couldn't take the next steps of choosing someone, it didn't seem fair that I had that choice to make entirely on my own.

My husband and I met our intended parents at the start of 2022. We spent most of 2022 building our friendship and getting to know each other. Towards the end of 2022 we engaged a psychologist and two surrogacy lawyers. At the start of 2023 we had our first fertility specialist appointment. 5 transfers over the next 12 months finally resulted in a positive at the start of 2024.

While we were building our friendship we discussed in depth every possible scenario and pathway that this journey could lead us down. One or both IPs attended every appointment they could, as well as anything we went to together, such as community meet ups, family bbqs or events and always stayed as long as we could. They welcomed us into their house and lives and now we can't imagine our lives without each other.

We engaged a team of private midwives for this pregnancy and planned to birth at the [REDACTED], as I had 2 of my previous births there.

The pregnancy, when we finally got there, was mostly uneventful until the third trimester when an overseeing OB who hadn't met me decided I fitted the criteria for Clexane injections. The criteria I met were that I was overweight, over 30 and needed IVF treatments to get pregnant. If I had lived 100kms away on the gold coast (where my IPs live) the IVF criteria doesn't apply. I was overweight in all my own pregnancies as well and had no issues. I turned 30 amidst transfers so I was almost 31 when this criteria was decided. With my teams support and my own bodily autonomy I decided not to have the Clexane injections and to monitor for blood clots in other ways.

Our IPs rented a house 6 minutes from us from 38 weeks onwards. We waited and caught up and spent more time together going for walks and to coffee shops and midwife appointments. Finally their long awaited baby girl decided to join us at almost 41 weeks. I labour quickly and this time was no different. I called them at 6.15am, I told the midwife we were leaving home at 6.30am, we arrived at hospital by 7.30am, got into the birthing tub and she was born in the water at 8.39am. My fourth water birth. Surrounded by an amazing group of midwives, her mum in the water with me and her dad watching on in awe. Handing them their baby (after I had fed her and birthed the placenta) was the most amazing moment and we had all the midwives in tears. We spent the day at the hospital and we were all home for dinner.

I direct fed her for the first 5 days and continued to pump milk around the clock

for 3 whole months. They were so appreciative and were able to feed her almost exclusively on breast milk for the first 6 months of her life.

We navigated a few challenges over the next couple of months with doctors and hospitals as I was still their babies birth mother and legal parent, I needed to consent to procedures when it really felt like it should be them.

We completed parentage order and attended court in Brisbane to celebrate. As I didn't need a lawyer present and my husband was unable to attend I did need to sit at the opposite end of the desk alone.

Almost 2 years down the track and we still talk weekly, visit and catch up every month or 2 and are planning attempting for a sibling with their remaining embryos in the coming months.

I have heavily involved myself in the surrogacy communities and love talking about surrogacy everywhere I go. Being a surrogate and being a part of this exclusive community of amazing people willing to help others and wanting to fight for everyone to experience having a family is truly inspirational. I have made some of my closest friends in this community. We all come to surrogacy for different reasons, we all have unique journeys and we all want to see improvements made to the future of Surrogacy in Australia.

2. What reform principles should guide this Inquiry?

I think the 6 principals set out in the Issues paper are well thought out.

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 agree this is well covered in the issues paper

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?

All children should have access to information about their genetic family as well as the circumstances relating to their birth. Ideally this information should be provided truthfully by their parents.

In a paperwork sense this should be provided to Births, Deaths and Marriages and be a footnote on their birth certificate that allows them to access this information. It would be amazing for this information to be on the birth certificate itself but I acknowledge that removes the child's right to share that information with whom they choose rather than every person who needs to see their birth certificate in their lifetime.

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 most consistent barrier is the number of women willing or able to be surrogates far outweighs the number of people needing surrogacy to start a family. This could be balanced better by offering compensation as well as spreading awareness that this is something women can do in Australia.

The next barrier is the inconsistency between states for who is eligible to use a surrogate or be a surrogate.

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

No, it is time to remove eligibility criteria for IPs and give them autonomy of choice. If they are willing to follow the process why shouldn't a woman with a uterus be given a choice whether to carry her own pregnancies. It is an outdated way of thinking to tie a woman's capability to her ability to produce children. It also alienates people with unexplained fertility, birth trauma, social infertility such as being Trans.

Currently in most states it is up to individual fertility specialists and clinics to decide if a couple requires or is eligible for surrogacy. This creates an uneven playing field and leaves room for personal opinions.

For Surrogates a birth worker confirming that they can safely carry a pregnancy and birth safely is sufficient.

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

In a few states women must have had their own baby to be a surrogate. This is an unnecessary requirement to have over someone's bodily autonomy. The choice to carry a pregnancy should be between a woman, her family and her medical team.

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

There currently isn't many guidelines for how a surrogacy agreement should be written to make it valid. A national standard should be created. As part of a surrogacy agreement a pre-birth parentage order could be created. This would separate the financial agreement from the agreement to hand over a baby. A common fear of IPs is that a surrogate will keep the baby, likewise a fear of surrogates is that the IPs won't take the baby and she will be left caring for a

baby that is often unrelated to her. A pre-birth parentage order could eliminate some of these fears.

9. Should surrogacy agreements be enforceable?

Yes. By a judge in family court if a team breaks down. Currently only the financial side is enforceable. This does need to remain, Surrogates need to be protected from exploitation and to not be left out of pocket for helping someone else create a family.

Enforcement of a surrogacy agreement should not compromise a surrogates autonomy and agency and the best interests of the child should always remain paramount to any adults interests.

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

Pre-approval for all teams by a governing body, standardized counselling and legal requirements. Counselling should be standard for before pregnancy, during pregnancy and after birth. Counselling for a team is valuable and this process is quite a large process emotionally and often over a sustained period of time. Counselling however should not be tied to payments or parentage. Pre-birth parentage orders should be an available part of this process.

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

Making agencies or matching services legal
Attracting more lawyers and psychologists to the specialist area
More fertility specialists with surrogacy knowledge

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

I would be open to an all in service, but I would not stop independent services from being able to continue.

13. How should surrogacy advertising be regulated?

Both Surrogates and IPs should not be prosecuted for advertising. Currently there is a fear of prosecution within the community which leads to rumors and spreading of incorrect information. Being able to advertise will increase awareness and public perception of surrogacy.

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

Medicare should be accessible for surrogacy to the same level that it is accessible for a couple accessing fertility treatments. People requiring this next step have often been through years of fertility treatments. With an extra body involved there is often more testing and different procedures required, testing that they have likely already done themselves.

Paid Parental Leave from Centrelink should be accessible in all states for the IPs and the surrogate. More training and clear processes for Centrelink staff to ensure they don't offer their opinion instead of finding out the correct answer as to who is eligible for PPL. It should also be recommended to be included in enterprise bargaining agreements as they don't always include surrogates.

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

Currently the guidelines for reimbursement are vague and are being intentionally used to not pay for surrogates' expenses as it can be seen as not included and the IPs are afraid of risking their parentage order. Pre-birth parentage orders and a compensated surrogacy model are both ways to alleviate these concerns. Clear guidelines for reasonable expenses need to be set up, regularly updated and reviewed and a reference body established to refer to or enquire to. A regulated compensated model would recognize the work of the surrogate in pregnancy, labour and birth.

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 believe a compensated model is the way forward for surrogacy in Australia. A regulated, compensated model would recognize the labour of the surrogate. The fertility industry is currently unregulated and in a surrogacy arrangement the person putting themselves through the most risk is the only one not being paid for her services.

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

Regulated, capped amounts paid to the surrogate fortnightly or monthly through an independent third party. This would need to be done in keeping with maintaining the surrogates bodily autonomy. By regulating these payments it will attract more surrogates that couldn't risk being left out of pocket but still

want to help others. Likewise by capping these payments it keeps the process affordable and stops surrogates being able to set their own prices and taking advantage of the unbalance between the small number of women willing and able to be surrogates and the large numbers of IPs requiring a surrogate. By placing value on women's time and giving IPs a way to recognize and thank surrogates for their efforts it may reduce the number of IPs going overseas.

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 current model of post birth parentage orders causes unnecessary stress on new parents and the recovering surrogate. The price and process largely varies from state to state with no clear guidelines. A pre-birth parentage order would largely reduce a lot of this stress. When a surrogate baby is born it is always a confusing time if the baby needs extra care or to see a dr in those early days when the surrogate and her husband are still the legal parents but are usually not the ones caring for or living near the newborn.

I have heard several stories of international surrogacy where the IPs are never on the baby's birth certificate, are stranded in a foreign country for months on end away from family and their support systems fighting through red tape just to bring their baby home.

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

It should be simplified. If everything is done correctly leading up to the birth there is no reason parentage can't be transferred pre-birth and out of court, It should be an administrative process.

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.

The unknowns and the risk of being stranded or laws changing while Ips are overseas or in the middle of the process is daunting for many, or a glossed over risk for many others.

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

By pre-applying or registering their intent to go overseas.

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

A national set of laws.

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

Yes, some kind of approval above the fertility clinics is needed. As long as the process doesn't significantly slow down or add more delays to the process.

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

No, surrogacy should be available to anyone who wants to use it. Decriminalize all forms of surrogacy.

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

Yes, especially once the laws are straightened out. There is a wider community perception that surrogacy is illegal in every way in Australia.

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

Donor material does often go hand in hand with surrogacy, but I understand why it is out of scope for this process.

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?

Thank you for considering my submission.

Yours Faithfully,

