Response to the Australian Law Reform Commission

Dr Katherine Wade, Professor Kirsty Horsey, and Dr Zaina Mahmoud

Data from the Children's Voices in Surrogacy Law project

Email correspondence: [redacted]

11 July 2025

The project:

The below are insights from the Children's Voices in Surrogacy law project, carried out in the United Kingdom. This project engaged with 54 children based in England aged 8-18 on the issue of surrogacy law and surrogacy law reform. The project was conducted during the period of consultation leading to the Law Commission of England and Wales and the Scottish Law Commissions' 2023 *Report on Surrogacy: Building Families through Surrogacy: A New Law*.

The participants:

Phase 1 involved focus groups with 25 children aged 8-17 with experience of surrogacy.

The breakdown is as follows:

Born through surrogacy	7 (6 gestational and 1 traditional)
Children of surrogates	17
Aunt had child through surrogacy:	1

Phase 2 involved focus groups with 24 school pupils aged 8-18. These children did not have experience of surrogacy.

Phase 3 involved 5 children aged 9-13 born through US surrogacy and living in the UK. All 5 were born through US gestational surrogacy and egg donation from a donor.

The Method:

We consulted with the participants about surrogacy based on a model involving play and art. We asked questions about the topics: Parenthood, Contributions to Surrogates and Origin Information through interactive card games. We also collected data through artwork. The theme for Phase 1 and Phase 3 was: "What Surrogacy Means to Me" and the theme for Phase 2 was: "What I Learned about Surrogacy Today".

Preliminary reports of the data for Phase 1 and 2 and the artwork from Phase 1 are available on our website: Children's Voices in Surrogacy Law | (Phase 3 is the not the subject of a report but we are currently combining analysis of all three phases into an academic monograph).

These are the only published reports that we are aware of in English-speaking jurisdictions focusing on surrogacy law reform with children. We consulted with the Law Commissions in

the UK on the 2023 report and are available to consult with the Australian Law Reform Commission further, if this is useful.

Below are summaries of the main responses from children related to some of the questions in the ALRC issues paper about: parenthood, payments to surrogates and origin information, along with some additional insights.

Additional information is available in the preliminary reports of Phase 1 and 2, such as quotes from participants.

ORIGIN INFORMATION

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?

Openness:

Generally, our participants favoured openness around surrogacy arrangements.

When asked if a child born through surrogacy should know the identity of their surrogate, most participants said yes (n=21/25). In Phase 2, results were more varied (Yes: n=13, not sure: n=9 and no: n=2). In Phase 3, no one said no to this question, with 3 saying yes and 2 saying maybe.

When asked if a child born through surrogate should know if the surrogacy was gestational or traditional, results were a little more varied, but the majority in all phases said that children should know this. In Phase One, 15 said yes, 6 said not sure and 4 said no. In Phase 2, 16 said yes, 6 said not sure and 2 said no. In Phase 3, 3 said yes and 2 said maybe.

When asked whether children should know identity of egg or sperm donors, the majority in Phase 1 and 3 (who have experience of surrogacy) said yes. In Phase 1, 15 said yes, 4 said not sure and 1 said no (this was based on 20 responses) and in Phase 3, 4 said yes and 1 said maybe. However, the results in Phase 2 were more varied: 8 said yes, 13 said not sure and 3 said no.

- Many participants thought it was important to know one's history.
- Some said the surrogate should be known to the child, as she was a big part of their story and acknowledged the fact that without the surrogate the child would not be born.
- A recurring issue was that children might feel betrayed if they were not told and then found out.
- While some children framed this issue as a "right to know" about one's birth, others framed this as being a "nice" thing to know.
- Opinions differed on whether there was a "right to know". Some participants felt that children have a right to know both their surrogate and donors, while some were more nuanced, citing the idea that they should be told if they are curious or if they "want to know".

- Most participants thought that a child's parents should tell them about the fact they were born through surrogacy. While some thought that children should be told young, other felt that they should be told in adolescence.
- Some Phase 2 participants were concerned about the IPs not wanting the child to know or they felt that it would not be that important to know. This group did not have direct experience of surrogacy or gamete donation.

Contact

Contact between the surrogate and the child born through surrogacy was viewed positively by our participants.

- Participants spoke about how they enjoyed the contact between families and mentioned dog walks, meet-ups in parks, and phone calls on birthdays. For the 5 participants born through international surrogacy, they all had undertaken a trip to the US to visit the surrogate and her family. This also involved sightseeing and one trip also involved a visit to the medical professionals involved in the surrogacy.
- The artwork in particular highlighted the connections made through surrogacy between the two families. The art depicted connections between intended parents (IPs) and surrogates, the children and the IPs and the IPs between each other. These were depicted very positively, with images of smiling figures holding hands, bright colours and love hearts. In the UK, surrogacy organisations, such as SUK, and Brilliant Beginnings, COTS, and MSJ, encourage ongoing relationships between IPs and surrogates, as well as their families.[1]

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?

In our study, 9 participants out of 25 in Phase 1 thought that money was an acceptable contribution for surrogates (i.e., surrogates could be paid). The 5 participants from Phase 3 were less firm on their views about whether money was an acceptable contribution, with 1 participant saying yes, 2 participants saying maybe, and the remaining 2 participants being unsure.

Overall, participants in Phase 1 and Phase 3 valued altruism. The artwork from Phase 1 and Phase 3 depicted altruism in many ways, such as IPs thanking the surrogate, illustrating the moment the baby was handed over with balloons, hearts and present analogies (flowers, bows). Money was not depicted in any artwork.

Many participants thought gifts were a nice way to show gratitude to the surrogate, though many thought that the gifts should not be extravagant. There was a clear trend that expressions of

[1] See "friendship first" model of Surrogacy UK at *Surrogacy UK* <https://surrogacyuk.org/> Accessed: 14 March 2025 and the "relationship-based ethos" of Brilliant Beginnings at <https://brilliantbeginnings.co.uk/who-we-are/>

appreciation and gratitude were important, alongside ensuring that the surrogate was not out of pocket.

For those that thought that surrogates could be paid, many stressed that these amounts should not be too high, due to concerns that it would mean that surrogates would be doing it from the wrong reasons, it may attract desperate individuals who needed money, or that IPs could be exploited or unable to pursue surrogacy. Participants across all phases voiced concerns over the IPs' financial burden resulting from the surrogacy.

We asked whether they felt that children might be negatively affected if they knew their surrogate had been paid. Of the 12 children born through surrogacy, two raised concerns that the child might be negatively affected, for example, through feeling like a "toy" or feeling that they had been "bought". The remaining 10 were unaffected, and said they did not think it mattered.

Three older children of women who acted as surrogates voiced considerable concern with the idea of commercial surrogacy, stating that it would make them worried to know that their mother was doing surrogacy for money, as opposed to doing it because she enjoyed it.

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.

When asked what made someone a parent, the participants in this project believed that parenthood is based on love, support, care and responsibility. The majority did not adhere to a gestational account of motherhood, but indicated that, in surrogacy, intention should form the basis of parenthood.

When asked who should be the parents of a child born through surrogacy, the majority said that the intended parents should be the parents (Phase 1: n=22/25, Phase 2: n=18/24 and Phase 3:

n=5/5). Many justified this by reference to choice, agreement and intentions of the parties. Some thought that it could be appropriate for the surrogate to be a parent alongside the intended parents. Sometimes it was apparent that whether the surrogate also provided the egg used in surrogacy might be a factor that swayed the participants' decision.

Some artwork depicted non-heteronormative models of parenthood, with two men and single parents being depicted.

When asked about the current model of parental orders in the UK, where parenthood is transferred after birth to the IPs, most of the participants said it was unnecessary and that the IPs should be the parents from birth. Some described the process as being 'unfair' on the IPs, again often based on intentions of the parties or the fact that the intended parents were the ones who initiated the arrangement in order to become parents, and the surrogate agreed to help them.

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.

In this UK-based project, we found there was a lack of education about surrogacy in schools. Some participants said it was mentioned when speaking about IVF in a subject called Personal, Social, Health and Economic education. Some others who had chosen 'Childcare' as an optional secondary level subject also said it was mentioned in this context.

However, many participants thought that it should be taught in schools. They felt it was important to know about surrogacy in case they needed surrogacy in the future.

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?

We believe it is important to consult with children on the issue of surrogacy law reform, since many of the issues under review impact children during childhood.

When asked if children should be involved in law reform, participants said yes, with one making the point that if the law changes, the participants themselves will be affected by the law in the future.