Thursday 10th July 2025

The Commissioner
Australian Law Reform Commission
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Flinders Lane
Victoria 8009
Email: surrogacy@alrc.gov.au

Dear Commissioner,

SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION – REVIEW OF AUSTRALIA'S SURROGACY LAWS

We thank the Committee for the opportunity to provide a submission to the Inquiry into the review of Australia's surrogacy laws, Issues Paper 52.

This submission is informed by our lived experience as Intended Parents (IP). We provide consent for this submission to be published; however, we ask that the names of our children remain de-identified.

Background

Our names are [redacted] and [redacted]. We are the parents of [redacted] and [redacted], born via surrogacy in Melbourne, Victoria.

Prior to embarking on the surrogacy journey, we engaged independent legal representation, which included the implementation of a surrogacy agreement, general health screening with the assistance of a General Practitioner (GP) with an interest in fertility, sexual health screening, and psychological counselling.

Our surrogate elected to utilise her own ova and conceived our children via home insemination. This form of surrogacy is known as Traditional Surrogacy, rather than Gestational Surrogacy, whereby the surrogate carries a child conceived from another female's ova and implanted via in-vitro fertilisation (IVF). As a result, and under current laws in Victoria, fertility clinics and fertility specialists were not permitted to assist us. Therefore, we engaged a GP for ongoing prenatal health assessments. [redacted] and [redacted] were conceived in 2020 and 2023, respectively, via home insemination.

Our daughters were born in Melbourne, Victoria, in 2021 and 2024, respectively. We remained collaborative with our surrogate and their partner throughout the pregnancy and following the births of both children. Our daughters refer to our surrogate as Aunty, as they do her same-sex partner. Our surrogate and their partner have three children of their own. All three children were born via sperm donation from [redacted] and refer to us both as Uncle.

In this submission, we have identified a number of issues related to surrogacy arrangements in Australia, specifically in response to points 4 to 7, 11, 13 to 16, 18 to 19, and 24 to 25.

Point 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?

The information of all parties involved in the surrogacy process should be made available to the children born from a surrogacy arrangement. The committee may wish to consider existing systems and processes related to donor conception and adoption. Information transparency may provide children with an opportunity to understand their biological, genetic, and cultural origins, which may be important for some individuals in the development of their self-identity.

Point 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 inability of surrogates and IPs to advertise their intentions is one of the greatest barriers to successful surrogacy. If parties cannot be known to each other, how are they to engage?

While we appreciate the issue of screening for risk, the current process for assessment and approval of surrogates and IPs before entering into a surrogacy arrangement and accessing medical support is rigorous and time-consuming (often 6 to 12 months). This may be perceived as a barrier for some individuals.

The eligibility criteria for being a surrogate are an additional barrier, particularly in certain jurisdictions, such as Western Australia (WA), where members of the rainbow community are excluded from accessing surrogacy services.

Additional barriers include jurisdictions that restrict access to international surrogacy, for example, New South Wales (NSW) or jurisdictions that require all parties to be residents of that state or territory.

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

We suggest that there is a role for eligibility criteria to judiciously balance the risks and benefits to all parties. Therefore, independent legal advice, counselling, and health checks should remain.

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

In Victoria, currently, a Traditional Surrogate as outlined above does not have the same access to medical support, information, or access to fertility clinics and specialist clinicians. The committee may wish to consider law reform to enable surrogates to use their ova, if required or elected, while still enabling the surrogate and IP to access services from fertility clinics and specialist clinicians. The committee may wish to consider recommending independent counselling prior to the surrogacy arrangement to mitigate potential psychological risks.

Currently, the rainbow community are excluded from accessing surrogacy in WA. We suggest that law reform occur to ensure that the rainbow community in WA, and all jurisdictions, have the option of accessing surrogacy provided that all parties fulfil existing psychological, medical and legal requirements. Excluding the rainbow community from accessing surrogacy may allude to discrimination.

The requirement for the surrogate to have previously birthed their own child and completed their own family remains an ongoing barrier for many individuals who wish to pursue surrogacy. Several individuals in our lives have clearly stated that they have never wanted nor do not want children of their own. However, they remain willing to assist other individuals in creating their own families. Current laws exclude individuals who have not previously birthed a child from being surrogates. The committee may wish to consider law reform to allow an individual to become a surrogate irrespective of whether they have birthed children of their own.

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

Under current laws in Victoria, fertility services are not permitted to assist Traditional Surrogates. Therefore, individuals with low levels of health literacy are potentially placed at increased risk by being excluded from fertility services. We presented to a fertility specialist seeking guidance and health professional advice before commencing the surrogacy journey. The fertility specialist stated, “I can’t help you in any way; if I help you or provide any advice, I will lose my registration”.

There appears to be a knowledge gap amongst many individuals within mainstream services such as Medicare, Centrelink, Births, Deaths and Marriages. The IPs and surrogates are often

required to educate individuals about surrogacy, including healthcare professionals and Government department employees. Of note, we were questioned several times about whether traditional surrogacy is legal in Australia. Many people asked questions to the effect of "Is that legal?", "Can you do that?", "Is that ethically sound?".

Point 13: How should surrogacy advertising be regulated?

We maintain that the laws should enable surrogates and IPs to engage in advertising for surrogacy. To mitigate the risks to both parties, advertising could occur through a national surrogacy register.

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

We recommend that the current arrangements for Paid Parental Leave are equitable for IPs and surrogates and should remain. However, in general, we recommend greater access to Medicare for all medical procedures, including ultrasounds, GP appointments, and fertility procedures.

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

We recommend greater clarity on what can and cannot be reimbursed to the surrogate. This will protect all parties from circumstances such as disapproval of the parentage orders, delays in processing birth certificates, and potential legal risks for unknowingly reimbursing a surrogate for an item that is not permitted under the legislation.

Point 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.

We recommend supporting a *compensated* surrogacy arrangement where a cap is considered and agreed upon by both parties. This may reduce the risk of exploitation and provide a framework for collaborative arrangements of compensation. Commercial surrogacy has the

propensity to elicit exorbitant compensation and a high market value for surrogacy, which may exclude people from lower socioeconomic backgrounds.

Point 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?

In Victoria, the child must be 28 days old before an application is submitted to obtain legal parentage for a child born through surrogacy. The process for obtaining parentage requires a further 3-6 months. During this time, our surrogate was required to remain engaged for all legal and medical matters, which was burdensome for the surrogate and emotionally taxing for both the surrogate and us.

An additional problem is the requirement to apply for a second birth certificate following the transfer of parentage to replace the surrogate (and their partner) from the original birth certificate with the names of the IPs. As IPs, without a birth certificate or legal parentage, we cannot apply for passports or be declared the children's parents under Medicare. There are also additional requirements to access childcare, such as providing a copy of our surrogacy arrangement, which is private, confidential and highly sensitive. This is not a record we felt comfortable sharing with an educational institution.

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

The committee may wish to consider law reform to grant IPs immediate parentage at the time of birth, based on a collaborative surrogacy arrangement, which has been written by an accredited lawyer specialising in the practice of surrogacy law.

The surrogacy arrangement may be reviewed and approved by an administrative body prior to the child's birth, and the IP's details placed on the birth certificate at the time of registering the birth. This would alleviate numerous concerns for those involved in the surrogacy arrangement, and the burden on Government agencies involved in the birth, including Medicare, Centrelink, and Births, Deaths and Marriages. We wish to highlight that a judicial body is not required to approve the parentage of children who are born outside of a surrogacy arrangement. We therefore argue that a judicial body should not be required to approve the

parentage of children born through surrogacy, provided that independent legal representation and a surrogacy arrangement are in place.

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

We maintain that the law should not have a role in discouraging or prohibiting gestational or traditional surrogacy. Currently, the law prohibits fertility clinics from assisting surrogates and IPs who choose to pursue traditional surrogacy and disregards bodily autonomy. Excluding surrogates from the option or choice of using their egg also excludes the surrogate from specialist fertility services and equal access to healthcare.

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

Yes. There is a need for awareness and understanding in the healthcare and general community service sectors. Often, the IPs and surrogates are required to provide ongoing education and to inform multiple parties about the current laws, policies, and use of correct terminology. While we perceive this as an opportunity to provide education to others, it also places undue pressure on individuals and families engaged in surrogacy.

We propose the following recommendations for reform, which the committee may wish to consider:

1. **A national surrogacy framework**
    a. Nationally consistent surrogacy legislation for all Australian states and territories.
    b. Law reform would be required to enable an IP or surrogate to engage in advertising for surrogacy. Advertising could occur through a national surrogacy register, ensuring that there is community and stakeholder consultation in its development.
    c. Surrogacy laws should recognise all sections Australian community, for example, same-sex couples, single parents, and people electing to international surrogacy arrangements.

2. **Address the complexity and delays associated with legal parentage at birth**

   Law reform to grant IPs immediate parentage at the time of birth should be considered. This would be based on a collaborative surrogacy arrangement, which has been written by an accredited lawyer specialising in the practice of surrogacy law and approved by an administrative body.

3. **Clear national guidelines**

   a. Surrogates should not be out-of-pocket for their altruism. We recommend nationally consistent guidelines on reimbursements.

   b. We recommend a *compensated* surrogacy arrangement where a financial cap is considered and agreed upon by both parties.

   c. Independent legal advice, counselling, and health screening should remain.

4. **Professional training and public information**

   Health professionals, legal practitioners, and the general community require factual, accessible, inclusive, and nationally consistent information about surrogacy.

Thank you for the opportunity to contribute to this Inquiry.

Kind regards,

[redacted]

[redacted]