Submission to the ALRC Surrogacy Inquiry

Submitted by:
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Focus Area:
Human rights and identity rights of children (who become adults) born from surrogacy arrangements

OVERARCHING PRINCIPLES

Q2. What reform principles should guide this Inquiry?

This inquiry must be guided by the principle that children are rights-holders, not products, and that their best interests - especially long-term identity and psychosocial wellbeing must take precedence. Reforms should embed:

- The right to know one's biological heritage (UNCRC Article 7).
- Truthful identity documentation (e.g., integrated birth certificates showing both legal and biological parentage).
- Lifelong access to government-funded psychosocial support with a focus on identity, grief and family relationships.
- Prevention of child commodification and exploitation.
- Learnings from past failures in adoption policy where truth was obscured, leading to lifelong harm for children (who become adults) and mothers.

HUMAN RIGHTS

Q3. Key human rights issues in domestic/international surrogacy?

- Identity suppression: Children (who become adults) should not be denied access to information about their origins.
- Risk of commodification: Creating children for payment/contract, especially in commercial surrogacy should not be an option in Australia.
- Exploitation: There is a risk that individuals in economically disadvantaged situations will be

drawn to the option of becoming a surrogate based on payment offered and will suffer lifelong grief and harm if the choice is based on short-term financial gain and has not been thoroughly considered without independent, supportive counselling and social work to offer alternate financial and social support.

Q4. What birth information should children (who become adults) have access to?

- Full and open access to information about their conception, surrogate, egg/sperm/embryo donors, and all relevant medical and psychosocial histories.
- Access should be lifelong, without restriction, and not subject to veto by any other party to the surrogacy arrangement.

This should be facilitated by:
- An integrated birth certificate model.
- A central registry of surrogacy records.
- Government funded, lifelong support services to navigate this information (including counselling, records tracing, family reunification work and therapeutic life story work for children to process the information from an early age for healthy identity development).

BARRIERS & ELIGIBILITY

Q6–7. Eligibility requirements for surrogacy?

- Must include independent psychological screening and preparation including counselling and legal advice.
- Must prohibit anyone with a record of child abuse, domestic violence, or criminal convictions from commissioning surrogacy.
- Clear limits on age and medical suitability of surrogates.
- Must centre capacity to provide lifelong identity transparency for the child and be open to a relationship to the child should the child (who becomes an adult) wish that.

AGREEMENTS & PROCESS

Q8-9. Validity and enforceability of agreements?

- Be enforceable only insofar as they protect the child's rights and the surrogate's welfare.
- Not commodify the child or override the right to change one's mind (eg. Surrogates retaining the right to revoke consent until post-birth).
- Require legal advice and counselling for all parties.
- Surrogates should be supported throughout and following the consent process, with a cooling off period of at least 30 days after signing a consent.

Q10. Process requirements?

- Pre and post birth counselling for the surrogate
- Proof of legal advice and psychosocial preparation before consent is given by the surrogate.
- Counselling for all parties must be trauma-informed and independent of commissioning parties or organisations.

Q11. Gaps in professional services?

- There is currently a lack of lifelong government funded support for the child (who becomes an adult). Therapeutic Life Story Work should be considered for children to support their healthy identity development from an early age.

COMPENSATION

Q15-17. Reimbursement & compensation?

Australia must not allow commercial surrogacy. The creation of children should not be market-drive. To this end:

- Provide clear, transparent reimbursement costs for surrogate's medical, loss of income costs and reasonable expenses incurred.
- Ensure strict limits on compensation to avoid commercialization.
- Consider a centralized process to hold funds in trust and audit this process to promote accountability and ethical safeguards with public oversight. This process should be overseen by an independent, not for profit, public body.
- Surrogates should never be financially incentivized to carry a child as this commodifies both the surrogate and the resulting child (who becomes an adult).

LEGAL PARENTHOOD

Q18-19. Legal parentage?

- Should not occur automatically; A post birth reflection period should be available to the surrogate with government funded counselling and support prior to the provision of consent, with a cooling off period.
- Automatic assignment of parentage would replicate past closed adoption practices which perpetuated harmful secrecy and obscuring the truth. In addition to the psychological harm that these past practices perpetuated, such practices are no longer possible in any case due to the wide spread, inexpensive availability of direct to consumer DNA testing.

CITIZENSHIP

Q20-21 Citizenship, passports and visas?

- These must prioritise the child's right to identity, legal status and nationality.
- If a child is born in another country, they should have full rights to citizenship to that country for their whole life to facilitate later in life biological family relationships.

REGULATION BETWEEN OR WITHIN JURISDICTIONS

Q22-23. Oversight and harmonization?

- National consistency is essential.
- Surrogacy laws should be harmonized at the federal level through a national framework grounded in international human rights standards – especially the UN Convention on the Rights of the Child.
- Laws should prioritise access to biological truth and must deter unethical practices.
- A national independent regulator should be established, separate from fertility clinics or agencies to avoid conflicts of interest. Profit motivated entities must not have regulatory powers.
- Oversight should cover a range of professionals including legal, health, counsellors and social workers.
- The Family Court should be considered as managing surrogacy related legal processes.

AWARENESS, EDUCATION & OTHER ISSUES

Q25. Awareness and education?

- Current understanding of surrogacy and it's psychosocial impacts are poor.
- A government funded awareness and education program should be stablished for a range of professionals including health professionals, education professionals and the general public.
- Education should centre the lived experiences of people born via surrogacy and lessons from past closed adoption practices.

OTHER ISSUES

Q25-27.

- The notion that the adult desire to parent equals a 'right' is harmful and should be challenged. Becoming a parent is not a right, it is a privilege.
- The inquiry must avoid treating identity rights as peripheral or secondary. Identity, family of origin and truth are core human rights and must be central to any surrogacy law reform processes.
- The Government has a duty to learn from the closed adoption era and prioritise these issues in scope.