Surrogacy in Australia – Legislation
Submission to the Review of the Surrogacy Laws – July 2025
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This paper is intended to present a position on how the surrogacy legislation needs to change in Australia in order to support individual reproductive choices and ensure equal opportunities for all Australians to experience parenthood.

The goal is to provide **increased access to surrogacy as an option for Australians, through education and thoughtful legislation.**

There was an inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements conducted in 2016 by the House of Representatives Standing Committee on Social Policy and Legal Affairs, which recommended (among other more administrative elements) that commercial surrogacy remain illegal in Australia; that there be a model national law created that facilitated altruistic surrogacy in Australia; and that the Australian Law Reform Commission should "consider whether a child's birth certificate should contain information on all gestational, genetic and intended parents, including a record that the child was born as a result of a surrogacy arrangement."

To date, of the abovementioned recommended changes, only the first one – illegal commercial surrogacy – has been instituted (or remains in place). There has been no further action.

Recommendations

With this in mind, it is recommended that:

1. A pre-birth declaration of parentage be offered to intended parents in NSW – allowing the child to be added to their Medicare and other legal documentation required:
    a. removes uncertainty and protects both surrogates and intended parents;
    b. avoids the unnecessary and highly taxing administration during an emotional and complex time.
2. A closed register of compensated surrogates and intended parents be established, under government-managed, consumer-consulted guardrails and regulations:
    a. managed by State and Territory government authorities, responsible for processing applications and assessing the eligibility and suitability of those seeking to become a surrogate or intended parents looking for a surrogate
    b. with extensive criteria to be met for both parties including:
        i. medical/psychological evaluations;
        ii. means testing for surrogates to ensure it is not their main source of income;
        iii. medically approved reason that intended parents need a surrogate);
        iv. the proper legal protections for both parties.

3. Commercial surrogacy be legalised in NSW (and renamed ‘Compensated Surrogacy’), with the following considerations paramount:
    a. the best interests of the child;
    b. the surrogate's ability to make free and informed decisions;
    c. the surrogate’s protection from exploitation; and
    d. legal clarity about the resulting parent-child relationships.
4. An education campaign be run to raise awareness and provide accurate information to Australian citizens about surrogacy.
5. An online training program be offered to healthcare professionals involved in surrogacy arrangements, in order to better equip them with the knowledge and skills necessary to provide appropriate care and support to individuals and families involved in surrogacy arrangements.
6. Rules and Laws should be on a federal basis or exactly the same in each state.

The subsequent section provides context for each of these recommendations.

Recommendation	Challenges	Solution
A pre-birth declaration of parentage be offered to intended parents in NSW – allowing the child to be added to their Medicare and all other legal documentation required.	Government resourcing	Post-birth parentage orders present an unnecessary administrative challenge for the courts that could be easily avoided. By the time the matter is heard by the Courts, the child has already been in the care of the intended parents for up to 12 months. It is incredibly rare that the Court would then take the child out of the care of its parents. In order to address government resourcing issues, this should be a simple online process with much of the approval requirements ticked off through an online system – much of this information will have already been provided through the initial application to the Registry and should be managed by the same Government Department.
A closed register of compensated surrogates and intended parents be established under under government-managed, consumer-consulted guardrails and regulations; managed by State and Territory government authorities, responsible for processing applications and assessing the eligibility and suitability of those seeking to become a surrogate or intended parents looking for a surrogate; with extensive criteria to be met for both parties.	Exploitation of women Government resourcing	Establish a closed register of surrogates and intended parents (similar to adoption) managed by State and Territory government authorities – with extensive criteria to be met for both parties. To be eligible to have your name entered into the expression of interest register to be a surrogate: 1. you must be aged 21 years or over; 2. you must be an Australian citizen; 3. you must reside or be domiciled in Australia; 4. you cannot be pregnant; 5. you do not have custody of either a child aged less than 1 year or a child who has been in your custody for less than 1 year; 6. surrogacy must not be your main source of income for the proposed 2 years of the surrogacy

		arrangement – this must be means tested; 7. you must complete a police background check; 8. you must complete a psychological assessmeny by an independent psychologist; 9. you must complete an online course on surrogacy; 10. you cannot be a surrogate under a current surrogacy arrangement; 11. if you have previously been a surrogate under a surrogacy arrangement, the surrogacy arrangement must have ended at least 12 months earlier 12. your name is not already in the expression of interest register; Other requirements to ensure the surrogate's protection from exploitation may include: 1. Mandatory counselling for both surrogates and intended parents; 2. Independent legal advice for all parties; 3. Regulated / government-managed reimbursement for the surrogate; In order to address government resourcing issues, intended parents must pay to enter into the register and to utilise the consulting / surrogate matching services provided by the Registry.
Commercial surrogacy be legalised in NSW (and renamed 'Compensated Surrogacy'), with the following considerations paramount: a. the best interests of the child;	Exploitation of women Government resourcing	See above – closed register.

b. the surrogate's ability to make free and informed decisions; c. the surrogate's protection from exploitation; and d. legal clarity about the resulting parent-child relationships.		
An education campaign to raise awareness and provide accurate information to Australian citizens about surrogacy.	Government resourcing	A website should be created that provides advice and information for Australians considering domestic surrogacy. The website should include: 1. Clear advice on the role of Australian Government support and service provision for intended parents, surrogates and children including Medicare, welfare payments, child support and paid parental leave; 2. Clear advice on surrogacy legislation in each Australian State and Territory; and 3. Clear advice on the support and services funded and provided for by each Australian State and Territory including relevant health, counselling and legal services available. A social media (and perhaps advertising – cost dependent) campaign could accompany this and drive traffic to the website.
An online training program be offered to healthcare professionals involved in surrogacy arrangements, in	Government resourcing	The bones of this online module have already been created and can be shared as part of this campaign. Very straightforward to build.

order to better equip them with the knowledge and skills necessary to provide appropriate care and support to individuals and families involved in surrogacy arrangements.		
Rules and Laws should be on a federal basis or the exactly the same in each state.	State interactions	TBC