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11/07/2025

Switchboard Victoria submission: Review of Surrogacy Laws

About Switchboard

Established 32 years ago, Switchboard Victoria (Switchboard) is a community-based not for profit organisation that provides peer-driven support services for the lesbian, gay, bisexual, transgender and gender diverse, intersex, queer and asexual (LGBTIQA+) communities, allies, friends, and families.

Switchboard is committed to ensuring that our work and services address the intersections between different forms of inequality, discrimination and disadvantage, including colonisation, racism and immigration status, and the role that these play in the oppression and discrimination of LGBTIQA+ peoples.

Switchboard serves the LGBTIQA+ community through a number of programs and services including:

- QLife - the Victorian provider for the national 7 day a week LGBTIQA+ support phone service
- Rainbow Door - free specialist LGBTIQA+ helpline providing information, support, and referral to all LGBTIQA+ Victorians, their friends and family
- Switchboard's national suicide prevention program CHARLEE comprising Lived Experience networks, research, training and bereavement support groups and postvention coordination
- Switchboard's QTIBPoC program that delivers advice and training on anti-racism practices, community development and engagement for LGBTIQA+ people of colour and people of faith
- Rainbow Families - community engagement and support for rainbow families where one, two or more parents, coparents, carers or donors are LGBTIQA+, including families who have or intend to have a child via surrogacy
- Pride in Ageing and Out and About: connecting and supporting older LGBTI+ people across Victoria

For definitions and terminology used we refer you to the Victorian state government's LGBTIQA+ Inclusive Language Guide (updated October 2023)

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LGBTIQA+ inclusive language guide | vic.gov.au (www.vic.gov.au)

Switchboard confirms that this submission is intended as a public statement to the Australian Law Review Commission (ALRC).

Support from Switchboard's Rainbow Families Program

Switchboard welcomes the current Review of Surrogacy Laws from the ALRC and its aims to propose uniform law in relation to surrogacy and consider how to reduce barriers to domestic altruistic surrogacy arrangements in Australia.

Switchboard's Rainbow Families program builds on the legacy of a previously volunteer-led community initiative and works to connect LGBTIQA+ parents, carers and their families to supports and vital information in Victoria. Since its inception, the program has fostered a strong and connected network through a range of activities, including a community of practice, an advisory group, inclusive social events such as Rainbow Story Times, education panels, and strategic partnerships with like-minded organisations to promote community safety and inclusion.

As a peer-led community-controlled LGBTIQA+ organisation, Switchboard understands the importance and value of consultation with communities who will be impacted by any changes to laws around the use of surrogacy. Switchboard acknowledges, with gratitude, the contribution of the ALRC Surrogacy advisory committee which includes LGBTIQA+ community members.

This submission is a show of support for the review and reflecting the input of its members who are passionate about surrogacy; however, is not the result of a formal community consultation. Rather, this submission includes expertise located within the Rainbow Families program. On that basis, this submission is limited in scope and we wish to be clear that Switchboard not addressing a question in the Issues Paper is not intended to reflect agreement with the current law or ambivalence as to the outcome.

Why this is important to the LGBTIQA+ community and this submission (Q2 & Q3)

LGBTIQA+ prospective parents (single or partnered) experience disproportionate challenges with fertility compared to heteronormative prospective parents. Pregnancy simply may not be possible between the Intended parents and their only option for starting a family with a child whom either of the Intended parents share a genetic connection is via a surrogacy.

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Therefore, surrogacy laws address the fundamental human rights of LGBTIQA+ people with respect to their right to found a family, the right to benefit from scientific advancements and the right to freedom from discrimination.

As noted in *Private Lives 3*, Australia's largest national survey of the health and wellbeing of LGBTIQ people, 'surrogacy, fostering and adoption…are generally difficult to access, which creates significant barriers for people who desire children in the future'.[1] Further, some participants who reported having a desire for children or were undecided on having children in the future, felt the barriers they faced to having children were in relation to their gender or sexual identity,[2] and more than 20% listed challenges relating to surrogacy as potential barrier.[3]

There is community demand for people to be able to safely start and grow their families through regulated, transparent processes. We welcome reform to help build pathways to parenthood that are safe and accessible for everyone involved.

National reform and uniform laws (Q22 & Q24)

When the law is inconsistent, everyone is impacted, not just LGBTIQA+ people. However, Switchboard's members who contributed to this submission feel strongly that inconsistent laws between states and territories contributes to uncertainty and inequitable outcomes.

It is unacceptable that same-sex couples and single men (which impacts gay men) residing in Western Australia are unable to access domestic altruistic surrogacy. The fact that LGBTIQA+ Western Australians must contemplate relocating across Australia to start a family via surrogacy is disheartening.

Similarly, inconsistency of laws regarding commercial surrogacy penalties between states and territories leads to the prohibitions not fulfilling their intended purpose. It can also lead

[1] Hill, A. O., Bourne, A., McNair, R., Carman, M. & Lyons, A. (2020). *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. ARCSHS Monograph Series No. 122. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University, p.31

[2] Almost four in ten (37.5%; n = 1,332) participants who desired having children or more children in the future reported 'a lot' or 'extremely' when asked if they faced barriers to having children in relation to their sexual orientation. Almost half (50.8% n = 439) of trans and gender diverse participants reported 'a lot' or 'extremely' when asked if they faced barriers to having children in relation to their gender. (*Private Lives 3* 2020, p.31)

[3] Hill, A. O., Bourne, A., McNair, R., Carman, M. & Lyons, A. (2020). *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. ARCSHS Monograph Series No. 122. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University, p.32

to unintended outcomes, when individuals rely on information erroneously which is not applicable in their residing state or territory.

The LGBTIQA+ community often relies on peer-to-peer advice and Switchboard's members have observed how misinformation can easily be passed around in spaces for LGBTIQA+ people interested in starting a family. Uniform laws would help mitigate this issue.

Reimbursement of surrogates (Q5, Q15 & Q24)

Generally, the scope of what can be reimbursed by the Intended parents in altruistic surrogacy arrangements is limited. There can be uncertainty about what is permissible as a reimbursement. This can lead to distress during what is already a burdensome process for all parties involved. Switchboard's members have observed breakdowns in the surrogacy arrangement over disagreement between the Surrogate and the Intended parent about whether an expense is legally reimbursable but had agreed to reimburse all legally reimbursable expenses of the surrogate.

There is a general sentiment of support amongst Switchboard's members that expanding the definition of reimbursable expenses, including broadening the scope of lost income of the surrogate, would reduce barriers to surrogacy. This should include the option of the surrogate's reimbursement of leave entitlements and for as long a period surrounding birth that the parties agree, not just unpaid leave as medically required or for a limited prescribed period. Pregnancy is deeply personal and what may be considered a reasonable expense in relation to pregnancy will vary greatly.

Switchboard is not currently making a submission regarding the question of commercial surrogacy. However, if there are penalties for receiving or providing a material benefit or advantage to a surrogate: then Switchboard would encourage that the penalty be limited to parties who wilfully breached this law. Reimbursements that may appear subjectively unreasonable should still be excepted so long as the parties did so in good faith. Uncertainty about what is reimbursable creates barriers to surrogacy in Australia.

Conclusion

LGBTIQA+ people can face additional barriers to accessing healthcare and reproductive support due to legal and systems-based exclusion, alongside potential impacts of stigma and discrimination.

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Switchboard supports increased access to safe and legal surrogacy options to help parents-to-be navigate systems that can be regulated, transparent and safe for themselves, surrogates and children.

This brief submission reflects our strong support for consistent and fair laws that recognise all parents, regardless of how their families are formed.

This submission was prepared and written by:

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