Review of Surrogacy Laws
Questions in the Issues Paper

This document extracts the **27** questions contained in the Review of Surrogacy Laws Issues Paper released by the Australian Law Reform Commission ('ALRC').

Anyone is welcome to use this document when preparing a submission. You may wish to insert your responses to the questions here and submit it to the ALRC. It is not necessary to address all of the questions — you can answer as many or as few as you wish.

Read the Issues Paper

Make a submission

Insights from people with personal experience of surrogacy

Question 1 If you or someone close to you has had personal experience of surrogacy, please describe:

- What parts of your experience were positive?
- What parts of your experience were negative?
- What could be improved and how?

In your response, please let us know:

a. how you were involved in the process (for example, if you were a surrogate, intended parent, or child born through surrogacy);

b. if the process took place in Australia or overseas;

c. if the process took place overseas, the country in which the surrogacy arrangement took place and what was attractive about that country; and

d. if you think you faced barriers because of certain personal characteristics (for example, if you were in a same-sex relationship or from a culturally or linguistically diverse background).

You might also want to consider the issues discussed below in your response.

Response:

Intended Parent

Overseas

Colombia

Cost VS US cost – people, culture

Gay men minimal options of countries

Positive – amazing relationship with surrogate and her family – having a happy, healthy baby that was safe

Negative – 4 year process

Improvement – make it legal

Reform principles

Question 2 What reform principles should guide this Inquiry?

Response:

ALL

Human rights

Question 3 What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements? How should these be addressed?

Response:

We chose our agency because it was all guided through an organisation that ensures the surrogates are set up for success with the payment received. We heard of horror stories in some countries that received their payments and the money was gone the next day by family spending it etc. This foundation ensures that their money is used to build businesses or by a home pay for study etc. and supports them in making those things a reality.

I'm not negating the fact that this person has sacrificed more than we could ever repay but ensuring that the effort is used to create positivity and set them up in some way helps

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?

Response:

All, we will not be sheltering our child from her story. Her surrogate, heritage etc. she will have all information we have available to her at any time as without them or the egg donor she wouldn't be here.

Insights about the key issues and potential reform options

Barriers to domestic surrogacy

Question 5 What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome?

You might want to consider the experiences of any groups who may face greater barriers to accessing domestic surrogacy than others, such as LGBTIQA+ people, people who are financially disadvantaged, or people from culturally and linguistically diverse backgrounds.

Response:

It's very incestuous for lack of abetter word, we looked into many options and this felt like they almost wanted to be part of the decision making of the child and come to Christmas which didn't feel comfortable for us. Also the matching and seeking donors and surrogates felt uncomfortable for us using a Facebook group to meet people felt

so ingenuine and almost like dating apps. The laws are difficult to understand it costs money at every turn to find out information

Eligibility requirements for surrogacy

Question 6 Should there be eligibility requirements for surrogacy? If so, what should those requirements be?

Response:

Same as any couple having a baby naturally

Question 7 Are there any eligibility requirements which should be introduced, changed, or removed?

Response:

Should be no different to any couple able to conceive naturally

Surrogacy agreements — validity and enforceability

Question 8 Are there any requirements for a valid surrogacy agreement you think should be introduced, removed, or changed?

Response:

I believe everything we had to do through our international arrangement was fair. What we're having to go through now to try and obtain parentage orders is ludicrous and so expensive outside of the $200k it's cost were running into the tens of thousands to try and legalise what we have, to have something put on paper to what we are doing being parents to our child. No legal person should be able to decide if we're her parents or not. Whether approved or not there is no change to our circumstances.

Question 9 Should surrogacy agreements be enforceable? You might want to consider:

a. if all parts of the agreement should be enforceable;

b. who should be able to enforce the agreement; and

c. how agreements could be enforced.

Response:

They aren't in our case, they should be, to ensure everybody's safety and security.

Process requirements for surrogacy

Question 10 What process requirements should be in place for surrogacy arrangements? You might want to consider:

a. if counselling should also be available after the child's birth;

b. what should happen if legal advice and counselling are not provided before entering a surrogacy agreement; and

c. if parentage applications should require proof of legal advice and/or counselling.

Response:

- **Absolutely should be available another reason we chose our agency as they are provided with support before, during and after including surrogate and her children**
- **Should always be shouldn't ever not be.**
- **It should but not at such exorbitant cost**

Professional services, including legal and counselling services

Question 11 What are the gaps in professional services for surrogacy in Australia? You might want to consider:

a. if surrogacy agencies should operate in Australia; and

b. the availability, accessibility, and subject matter to be covered in legal advice and counselling sessions.

Response:

- **Shouldn't be like the US should be cost effective SUPPORT services rather than an agency looking to make profit**
- **Anyone should have counselling available to them that is cost effective**

Question 12 How should professional services operate in Australia? You might want to consider:

a. what their role should be;

b. if they should be for-profit or not-for-profit, or how they should be funded;

c. if different types of services should operate together or separately, for example, whether counselling services should be independent or integrated within agencies or fertility clinics; and

d. how they could best meet the diverse needs and experiences of people involved in a surrogacy arrangement.

Response:

- be a support service

- **Unsure – people need to be paid for their services but not to make millions of dollars of profit to vulnerable people who are unable to conceive naturally due to a variety of factors**
- **Having all the services available in one place would be amazing**
- **Seek people's experiences and learnings – ask why we've had to choose these options – specialise in all areas not just a particular cohort of people i.e. gay men, women/men unable to conceive naturally.**

Limits on advertising

Question 13 How should surrogacy advertising be regulated? You might want to consider:

a. if advertising should be allowed;

b. who should be allowed to advertise;

c. what advertising content should be allowed; and

d. where advertising should be allowed, for example via newspapers, social media, or by establishing a surrogacy register.

Response:

Advertising for support services rather than sales pitches, real life stories of peoples experiences

Access to Medicare and parental leave

Question 14 What entitlements, if any, should be available to surrogates and intended parents? You might want to consider:

a. Medicare rebates for fertility treatments;

b. access by surrogates to paid or unpaid parental leave, including through enterprise agreement terms; and

c. if it is desirable to make surrogacy arrangements generally more affordable, and how this could be achieved.

Response:

- **Absolutely, no one should be ignored for not being able to conceive naturally**
- **NA for international arrangements but locally yes absolutely**
- **Absolutely making all services available at the same costs as a person able to naturally conceive**

Reimbursing and compensating surrogates

Question 15 How could the process for reimbursing surrogates for reasonable expenses be improved? You might want to consider:

a. what expenses should be reimbursable;

b. how payment should be calculated;

c. if there should be limits on any amounts;

d. the process for reimbursement (for example, whether money should be kept in trust, whether there should be a requirement to produce receipts, etc); and

e. any jurisdictions (either within Australia or overseas) that have processes for reimbursement worth learning from.

Response:

Any costs associated with the pregnancy should be covered like parents would if they could conceive themselves

No real change from what I'm aware is currently being done you should trust your surrogate is only charging you actual costs incurred

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.

Response:

Yes, the surrogate is sacrificing more than could ever be repaid, it's not only about money but relationships, sacrifice not a job.

Question 17 If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented? You might want to consider:

a. how compensation should be calculated;

b. if there should be a limit on the amount of compensation;

c. who should set the amount of compensation;

d. the process for compensation (for example, whether it should be paid in monthly instalments, whether the money should be kept in trust etc); and

e. any jurisdictions (either within Australia or overseas) that have processes for compensation worth learning from.

Response:

Similar to how it is now in international surrogacy arrangements, seek to understand how it is currently being done, how much actually goes to the surrogate, agency, medical teams etc. to ensure fairness to all parties, it's already happening, now we need to ensure it's fair.

Our surrogate was paid instalments throughout the pregnancy and all costs covered like travel etc. then with the support of the foundation able to buy land, travel and use for medical expenses etc.

We first need to understand how its being done internationally before trying to juristic in Australia

Legal parentage of children born through surrogacy

Question 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?

Response:

Cost is exorbitant and the outcome won't change whether a judge approves or not. Our child will still be in our care either way, so a waste of everyone's time and resources and money to get a piece of paper allowing me to do what I'm doing anyway. No judge should be able to decide. It's so not ok.

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.

Response:

- **At birth if consenting adults have entered an agreement**
- **Parents! Not a lawyer or judge!**
- **No difference**
- **Not at all we are all humans capable of being wonderful parents even if we can't conceive naturally**
- **No, why should it be any different to others being able to conceive naturally?**
- **100% and that's giving the same rights to them as those who are born to parents able to naturally conceive**
- **I think so, the good and the bad! We have had a wonderful experience, whilst not black and white all the sacrifice and heartache have been worth it to have our beautiful baby happy bubbly girl in our lives**

Citizenship, passports and visas

Question 20 What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy:

a. Australian citizenship;

b. an Australian passport; or

c. an Australian visa.

Response:

Relatively straight forward and no issues to obtain, whilst expensive and cumbersome to arrange all worth it and all important

Question 21 How could the process for obtaining these documents be improved?

Response:

Pretty well piled in our case

Oversight and harmonisation – Inconsistent laws

Question 22 What is the best way to approach differences in surrogacy regulation between or within jurisdictions? You might want to consider:

a. the ways in which surrogacy regulation is inconsistent between jurisdictions;

b. if these inconsistencies are problematic;

c. any impacts of the differences between federal legal regimes (for example, citizenship law and family law);

d. if a judicial process for transferring legal parentage is retained, whether applications for parentage should be determined in state courts, the Federal Circuit Court and Family Court of Australia, or both;

e. how important it is that the approaches are harmonised or made more consistent; and

f. how any harmonisation could be achieved (for example, by regulating surrogacy at a federal level or through uniform or substantively consistent state legislation).

Response:

- **Make it one size fits all we are all in one country with varying laws**
- **Hard to understand as it differs so much**
- **Make it clear concise national**
- **So outdated and so unnecessary as there is no change whether granted or not a waste of everybody's time, resources, money, stress, mental health to name a few!**
- **So important for the reasons mentioned above and throughout**
- **Make it the same as anyone that can conceive naturally and not show prejudice**

Oversight and harmonisation – Oversight

Question 23 Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach? You might want to consider:

a. the need for a regulator or oversight body and what it could look like (for example, an administrative body or a tribunal);

b. if oversight should be national or state and territory based; and

c. which groups need oversight (for example, health professionals).

Response:

- **I understand there needs to be some oversight but for it to be so vastly different is unfair and so 1950's we need to move with the times and support people from all walks of life equally**
- **National**
- **People that have been through it with real life examples and experiences**

The role of the criminal law

Question 24 Should the law have a role in discouraging or prohibiting certain forms of surrogacy? You may wish to consider:

a. if engaging in or facilitating certain forms of surrogacy, whether in Australia or overseas, should be sanctioned or criminalised;

b. the effect of using the criminal law to regulate certain forms of surrogacy; and

c. whether there are regulatory approaches preferable to the criminal law.

Response:

- **No, really simply, everybody should have equal opportunity to be parents. And shouldn't be made to do hings by any means to be parents i.e. enter into a commercial surrogacy agreement because it's so difficult locally**

Lack of awareness and education

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.

Response:

Absolutely speak with parents with children born from surrogacy ask why we had to choose these options, ask about the struggle and internal battles we face by having to do things against law. There are so many people who have children that should never have been able to but haven't been vetted or scrutinised or made to feel ashamed by wanting to be parents. We looked at all available options fostering was so difficult and we're still in the process 5 years later! There are children in need and it's all so difficult to access leaving us no option in our case but to enter into a commercial surrogacy arrangement overseas so that we could be parents to our child like any other able to naturally conceive.

Issues we consider to be out of scope

Question 26 Do you have any views about the issues we consider to be in or out of scope?

Response:

Unsure of what's in either and can't see any information in the paper, would be good to understand what's in and out of scope to be able to answer

Other insights

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?

Response:

Make it fair, available to consenting adults unable to conceive naturally. Make it the same costs as anyone able to conceive naturally, give us the same parenting rights as any parent able to conceive naturally, we shouldn't have to jump through hoops and go through all the legal issues to be able to parent our children the same way any other person can. Stop discriminating and use the resources time and cost to support sick kids, or children in unsafe homes etc. focus should be on important issues not whether or not we have a piece of paper that a judge has signed to say we can parent our child that we are already parenting and there would be no change whether or not it was granted, make it legal locally or internationally, give EVERYONE the opportunity to parent well and bring up children of our future with kindness, compassion, care irrespective or not of why their parents where unable to conceive naturally.

Thank you for your time in reading my responses, the time and effort that is being given to this is so appreciated, I just want my daughter to have the same rights as any other child and for me to be able to parent like any other parent (some of which should never have been parents) again thank you to whoever is reading this your efforts to make positive change don't go unnoticed. From my partner, daughter and I. Thanks,