[redacted]
New South Wales, Australia
11 July 2025

To the Review Panel,

Please find attached my submission to the National Review of Surrogacy. I am submitting this as a woman who has undertaken two altruistic surrogacy journeys in Australia. Both journeys ended with the intended parents ceasing contact once they had taken their baby home.

This submission draws on my lived experience and outlines the emotional, psychological, physical, legal, and financial challenges that surrogates in Australia may face. My intention is not only to share my story, but to advocate for greater protection, oversight, and support for women who choose to carry a child for someone else.

I have included detailed answers to each consultation question and a separate personal impact statement. I appreciate the opportunity to contribute to this review and sincerely hope that it will lead to national consistency in surrogacy laws, genuine support for surrogates, improved post-birth relationship expectations, and consideration of fair compensation for the work and risk surrogates undertake.

Thank you for the opportunity to be heard.

Sincerely,
[redacted]

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:

I have been an altruistic surrogate twice, both experiences deeply meaningful but also challenging in different ways. Both surrogacies took place within Australia, following the legal frameworks applicable to altruistic surrogacy in the relevant states.

The altruistic nature and the opportunity to help intended parents create families were profoundly positive. The emotional fulfilment of contributing to life and supporting others was rewarding. The medical care and counselling provided were generally supportive and professional. While I did not face barriers personally related to identity characteristics, I observed that some intended parents, especially those in same-sex relationships or from culturally and linguistically diverse backgrounds, faced legal and social hurdles accessing surrogacy services or recognition. Additionally, lack of consistent laws across jurisdictions complicates access for many families.

Positive Aspects

- The strong emotional connection and friendships formed with intended parents during the process.
- Access to medical and psychological support during pregnancy.
- The sense of contributing to family creation in a meaningful and selfless way.

Negative Aspects

- Both times, contact with intended parents ceased soon after the baby was taken home, which was emotionally difficult. There was a lack of ongoing support or communication as the surrogate post-birth.
- The legal processes around parentage orders and documentation were slow, complex, and inconsistent across jurisdictions.

- The absence of an independent oversight body left me feeling unsupported and uncertain at times.
- There was minimal recognition or compensation for the physical and emotional toll of surrogacy.

Areas for Improvement and How

- Establish a national, independent oversight and support body to provide guidance, education, and dispute resolution for surrogates and intended parents throughout and after the process.
- Create clearer, more consistent, and timely legal pathways for parentage recognition and documentation nationally, reducing delays and confusion.
- Develop frameworks that allow surrogates and intended parents to maintain mutually agreed contact post-birth, respecting everyone's emotional needs.
- Recognise and fairly compensate surrogates for their contributions beyond altruism, covering reasonable expenses and acknowledging the physical and emotional impacts.
- Enhance education and accessibility of surrogacy services for diverse families, ensuring equity regardless of relationship type or cultural background.

Reform principles

Question 2 What reform principles should guide this Inquiry?

Response:

The following reform principles should guide the Inquiry to ensure that surrogacy laws and policies are fair, ethical, and supportive of all parties involved:

Best Interests of the Child

All reforms must prioritise the rights, wellbeing, and best interests of the child born through surrogacy, including timely legal recognition and security of identity.

Respect and Support for Surrogates

Surrogates should be treated with dignity, respect, and compassion throughout the process and beyond. They require appropriate support, recognition, and, where appropriate, fair compensation for their physical and emotional contributions.

Equity and Inclusiveness

Reforms must ensure equitable access to surrogacy for all individuals and families, regardless of sexual orientation, gender identity, relationship status, cultural or linguistic background, or geographic location.

National Consistency and Clarity

Uniform or substantially consistent national laws and policies should replace the current patchwork of state and territory regulations, reducing confusion and legal uncertainty for families and professionals.

Transparency and Accountability

Surrogacy arrangements must be governed by transparent processes with clear legal frameworks, robust oversight, and accountability mechanisms to protect all parties from exploitation or harm.

Informed Consent and Autonomy

All parties should have access to comprehensive information and counselling to make fully informed, voluntary decisions throughout the surrogacy journey.

Collaboration and Flexibility

Laws and policies should encourage cooperation between federal and state governments, health professionals, legal practitioners, and families to respond to evolving social, ethical, and medical developments.

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:

Surrogacy arrangements, whether domestic or international, raise several significant human rights concerns that must be carefully addressed to protect all parties involved:

Right to Family and Parenthood

Intended parents have a fundamental right to form and raise a family. Laws and practices should facilitate access to surrogacy in a way that respects this right, regardless of sexual orientation, gender identity, relationship status, or cultural background.

Rights and Wellbeing of the Surrogate

Surrogates must have their physical, emotional, and psychological wellbeing safeguarded. This includes protection from exploitation, coercion, and unsafe medical practices. Their autonomy and informed consent must be respected at every stage.

Rights of the Child

Children born through surrogacy have the right to legal recognition, a secure identity, and access to their genetic and birth history where possible. They should not face discrimination or legal uncertainty due to the circumstances of their birth.

Protection Against Exploitation and Trafficking

International surrogacy especially carries risks of exploitation, trafficking, and abuse, particularly in jurisdictions with weak regulatory frameworks. Safeguards must be in place to prevent commercial exploitation and ensure ethical practices.

Non-Discrimination and Equality

Surrogacy laws and policies should ensure equal treatment and non-discrimination for all parties, including intended parents of diverse backgrounds and surrogates from vulnerable communities.

How These Issues Should Be Addressed:

- Comprehensive Legal Frameworks: Develop clear, consistent, and enforceable laws that protect human rights in surrogacy arrangements, balancing the interests of surrogates, intended parents, and children.

- Independent Oversight: Establish a national oversight body to monitor compliance, provide education, and intervene where rights may be compromised.

- Informed Consent and Support: Ensure all parties receive thorough counselling and information to make voluntary, informed decisions free from pressure or coercion.

- International Cooperation: Collaborate with other countries to regulate international surrogacy, prevent exploitation, and provide legal certainty for cross-border families.

- Accessibility and Inclusion: Remove barriers based on sexual orientation, gender identity, cultural background, or relationship status to uphold equality and human dignity.

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:
Children born through surrogacy have a fundamental right to know key information about their birth, as part of their identity and wellbeing. This includes:

Basic Birth Information

Children should have access to accurate details about their birth, including the fact that they were born through surrogacy, the date and place of birth, and legal parentage arrangements.

Genetic and Medical Information

Where possible, children should have access to information about their genetic origins, including the identity of the surrogate and genetic parents, as well as relevant medical history. This supports their health needs and sense of identity.

Circumstances of the Surrogacy Arrangement

Age-appropriate information about the surrogacy arrangement itself, such as why it was chosen and the roles of the surrogate and intended parents, should be made available to children in a way that respects their developmental stage and emotional readiness.

How This Information Should Be Provided or Facilitated

Legal Recognition and Documentation

Birth certificates and parentage orders should transparently reflect surrogacy arrangements, with mechanisms to record genetic and surrogate information in secure registries accessible to the child when appropriate.

Counselling and Support Services

Children and their families should have access to counselling to help them understand and process information about surrogacy, supporting emotional wellbeing and identity development.

Independent Access Services

An independent national body or registry could facilitate access to identifying and non-identifying information about surrogates and genetic parents, with appropriate privacy protections and safeguards.

Education and Awareness

Families should be encouraged and supported to have open, age-appropriate conversations about surrogacy from an early age, promoting honesty and trust.

Providing children with transparent and supportive access to information about their birth through surrogacy respects their rights, fosters identity formation, and promotes psychological wellbeing.

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:

Several significant barriers prevent many people from accessing domestic surrogacy arrangements in Australia. These barriers disproportionately affect certain groups, including LGBTIQA+ individuals, financially disadvantaged people, and those from culturally and linguistically diverse backgrounds.

Main Barriers:

Legal Complexity and Inconsistency

Surrogacy laws vary widely between states and territories, creating confusion and uncertainty. Eligibility criteria, parentage order processes, and requirements differ, making it difficult for intended parents and surrogates to navigate the system.

Limited Access for Diverse Families

Some jurisdictions have restrictions that disproportionately affect LGBTIQA+ individuals, single parents, and non-traditional families, limiting their ability to enter into surrogacy arrangements legally and safely.

Financial Barriers

Although altruistic surrogacy is the norm, associated medical, legal, and support costs can be substantial. These expenses, often borne privately, exclude financially disadvantaged people from accessing surrogacy.

Lack of Awareness and Information

Many prospective surrogates and intended parents lack access to clear, accurate information about the process, legal requirements, and available support, which can deter or delay pursuit of surrogacy.

Emotional and Social Challenges

Stigma, family disapproval, or emotional uncertainty about surrogacy can also discourage people from pursuing it.

Limited Surrogate Availability

There is a shortage of altruistic surrogates in Australia, making it difficult for many intended parents to find willing surrogates.

Ways to Overcome These Barriers:

National Consistency and Clear Legal Frameworks

Implement uniform or substantially consistent surrogacy laws across all states and territories to simplify processes and reduce legal uncertainty.

Inclusive Eligibility Criteria

Ensure laws explicitly allow access to surrogacy for all family types, including LGBTIQA+ individuals, single parents, and culturally diverse families.

Financial Support and Compensation

Provide public funding assistance or regulated compensation frameworks to cover reasonable costs and recognise surrogates' contributions, reducing financial exclusion.

Improved Education and Outreach

Develop accessible, culturally sensitive resources and counselling services for all parties, increasing awareness and understanding of surrogacy options and processes.

Support Networks for Surrogates and Intended Parents

Create national support bodies or programs to connect prospective surrogates with intended parents and provide ongoing emotional and practical support.

Addressing Stigma and Social Barriers

Promote public awareness campaigns to reduce stigma and normalise surrogacy as a valid and respected family-building option.

These reforms would foster safer, more accessible, and equitable surrogacy arrangements for all Australians wishing to start families through this pathway.

Eligibility requirements for surrogacy

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

Response:

Yes, eligibility requirements for surrogacy are important to ensure the safety, wellbeing, and fairness of all parties involved (surrogates, intended parents, and children).

Key eligibility requirements should include:

Voluntary and Informed Consent

All parties must provide free, informed, and voluntary consent after receiving comprehensive counselling and information about medical, legal, and emotional aspects.

Health and Medical Suitability

Surrogates should meet medical criteria that ensure they can safely carry a pregnancy without undue risk to their health or the child's wellbeing.

Psychological and Emotional Readiness

Surrogates and intended parents should undergo psychological assessments and counselling to confirm they understand the implications and are prepared for the emotional journey.

Legal Capacity and Residency

Parties should have the legal capacity to enter into surrogacy arrangements and generally be residents of Australia to ensure access to consistent legal protections.

Eligibility of Intended Parents

Eligibility criteria should be inclusive and non-discriminatory, allowing access to single people, same-sex couples, and diverse family structures. However, they may include requirements demonstrating genuine intent and capacity to parent.

No Commercial Gain

Surrogacy should remain altruistic, with reasonable compensation allowed and cover for expenses directly related to the pregnancy and surrogacy.

Age Requirements

Age limits may be appropriate to protect health and maturity levels, such as surrogates being adults and intended parents at an age consistent with parenting capacity.

These eligibility requirements help balance protection, respect for autonomy, and access equity. They promote safe and ethical surrogacy practices while accommodating diverse family types.

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

Response:

Yes, several eligibility requirements for surrogacy should be reconsidered to better reflect fairness, inclusivity, and the lived realities of those involved:

Introduce Clear Psychological Support Requirements

While some jurisdictions include psychological assessments, I recommend making comprehensive counselling mandatory for both surrogates and intended parents throughout the surrogacy journey, including post-birth support. This ensures emotional wellbeing and informed decision-making.

Change Residency and Citizenship Restrictions

Current restrictions that limit surrogacy in some states should be relaxed to allow greater inclusivity, particularly for diverse family structures, while ensuring legal protections are upheld.

Remove Discriminatory Criteria

Any eligibility criteria that exclude single people, LGBTQIA+ individuals, or culturally diverse families should be removed to ensure equal access to surrogacy arrangements.

Clarify Age Requirements

Age criteria should be evidence-based, reflecting health and maturity rather than arbitrary limits. For example, surrogates with proven reproductive history and good health should be eligible regardless of age. Surrogates should not be limited to having proven reproductive history though.

Introduce Eligibility for Intended Parents Regarding Parenting Capacity

Instead of restrictive criteria based on marital status or gender, eligibility for intended parents should focus on their capacity and commitment to provide a safe, loving environment for the child.

Revise Compensation Rules

While altruistic surrogacy should remain the standard, clearer provisions allowing reasonable compensation for surrogates' expenses and time would recognise their contribution fairly and reduce financial hardship.

These changes would promote safer, more equitable, and more compassionate surrogacy arrangements, reflecting contemporary family diversity and ethical considerations.

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:

Yes, there are several areas where requirements for surrogacy agreements could be improved to ensure clarity, fairness, and protection for all parties:

Introduce Mandatory Independent Legal Advice

To safeguard informed consent and fairness, all parties, surrogates and intended parents, should be required to receive independent legal advice before signing any surrogacy agreement. This ensures everyone fully understands their rights, obligations, and the legal implications.

Include Provisions for Post-Birth Contact and Communication

Surrogacy agreements should allow for clear, mutually agreed arrangements regarding ongoing contact or communication between surrogates and intended parents post-birth, acknowledging the emotional complexities involved.

Clarify Compensation and Expense Reimbursement

Agreements should explicitly outline what expenses are reimbursed to the surrogate and prohibit any commercial profit, ensuring transparency and compliance with altruistic surrogacy laws.

Remove or Limit Clauses That Infringe on Surrogate Autonomy

Agreements should not include overly restrictive or coercive clauses about the surrogate's lifestyle, medical decisions, or autonomy during pregnancy. Medical decisions should ultimately remain with the surrogate, with due regard to the child's wellbeing.

Introduce Provisions for Dispute Resolution

Surrogacy agreements should contain clear mechanisms for dispute resolution, such as mediation or referral to an independent body, to address conflicts without resorting immediately to courts.

Standardise Agreement Templates

Introducing standardised templates or guidelines for surrogacy agreements nationally would promote consistency and reduce legal ambiguity.

Updating these requirements will enhance trust, clarity, and respect between surrogates and intended parents, while safeguarding their rights and wellbeing.

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:

Yes, surrogacy agreements should be enforceable to provide legal clarity and protection for all parties, but with important limitations and safeguards.

Currently, surrogacy agreements are only binding for financial reimbursement, which leaves surrogates and intended parents vulnerable, especially in situations where agreed-upon supports or post-birth relationships are not honoured. This lack of enforceability can result in significant emotional and financial harm, particularly for surrogates who often enter these arrangements in good faith with a deep sense of trust and commitment.

Enforceability of All Parts of the Agreement

Not all parts of a surrogacy agreement should be enforceable. Provisions related to financial reimbursements and agreed responsibilities should be enforceable to ensure transparency and fairness. However, clauses that attempt to control personal decisions—such as medical choices or parenting arrangements—should not be enforceable, respecting the surrogate's bodily autonomy and best interests of the child.

Who Should Be Able to Enforce the Agreement

Both surrogates and intended parents should have the ability to enforce the agreement's legal and financial provisions. Additionally, courts or an independent regulatory body could have oversight powers to resolve disputes and enforce compliance.

How Agreements Could Be Enforced

Enforcement should primarily occur through accessible dispute resolution mechanisms such as mediation or arbitration before resorting to courts. Courts should have authority to enforce financial terms and interpret contractual obligations but should not compel personal actions that infringe on individual rights. A regulatory oversight body could monitor compliance and offer guidance.

In summary, enforceability should balance legal certainty with respect for autonomy and the unique nature of surrogacy arrangements, ensuring fair and respectful outcomes. It would not only protect the surrogate and intended parents, but also promote trust and clarity in the arrangement, improving the emotional outcomes for the child born through surrogacy.

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:

To ensure ethical, informed, and supportive surrogacy arrangements, robust process requirements should be established:

Counselling Availability After the Child's Birth

Counselling should be offered and readily accessible not only before and during the surrogacy process but also after the child's birth. Post-birth counselling supports the emotional wellbeing of surrogates, intended parents, and the child, especially given the complex feelings and potential challenges that can arise after separation or changes in family dynamics.

Consequences if Legal Advice and Counselling Are Not Provided Before Entering an Agreement

Surrogacy agreements entered without evidence of independent legal advice and counselling should be considered incomplete or invalid for certain legal purposes, such as parentage order applications. This requirement ensures that all parties understand their rights and responsibilities, protecting them from future disputes or exploitation. If legal advice and counselling are not provided, the arrangement should be reviewed or delayed until proper processes are completed.

Proof of Legal Advice and Counselling for Parentage Applications

Applications for parentage orders should require formal proof that both surrogates and intended parents received independent legal advice and counselling. This ensures informed consent and that the application reflects a genuinely voluntary and understood agreement. It also provides courts and regulatory bodies with assurance that parties were appropriately supported.

Implementing these process requirements will promote ethical surrogacy practices, safeguard all parties, and provide a clear legal framework that supports lasting, positive outcomes for families.

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:

There are several notable gaps in the professional services supporting surrogacy arrangements in Australia, impacting the experience and wellbeing of surrogates, intended parents, and children.

Operation of Surrogacy Agencies

Currently, Australia has limited formal surrogacy agency services, with most arrangements managed privately or through informal networks. The introduction of regulated, transparent, and ethical surrogacy agencies could help coordinate matching, provide education, support, and ensure adherence to legal and ethical standards. However, these agencies must be tightly regulated to prevent exploitation or commercialisation inconsistent with altruistic surrogacy principles.

Availability and Accessibility of Legal Advice and Counselling

- Legal Advice: There is uneven access to specialised legal advice on surrogacy across different regions. Many parties face challenges finding lawyers with expertise in surrogacy law, which can result in inconsistent advice or delays. Improved access to affordable, specialised legal services is essential.
- Counselling: Counselling services vary widely in availability and scope. Counselling should be comprehensive, covering emotional, psychological, ethical, and relational aspects before, during, and after surrogacy. Currently, access is limited in rural and regional areas, and there is a need for culturally sensitive counselling tailored to diverse family structures and backgrounds.

Subject Matter for Legal Advice and Counselling

Both legal and counselling services should comprehensively address:

- Rights, responsibilities, and risks for all parties;
- Medical and psychological impacts of surrogacy;
- Legal processes for parentage and documentation;
- Potential emotional challenges post-birth;
- Cultural and social implications;
- Options for ongoing contact and communication.

Addressing these gaps through national standards, increased funding, and professional training would enhance the quality and consistency of surrogacy support services, ensuring safer and more positive experiences for all involved.

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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:

Professional services supporting surrogacy should be structured to provide ethical, accessible, and comprehensive support for all parties involved, while respecting their diverse needs and experiences.

Role of Professional Services

The core role of professional services should be to:

- Facilitate informed decision-making through education and counselling;
- Support emotional and psychological wellbeing before, during, and after surrogacy;
- Provide expert legal advice to ensure clarity, fairness, and compliance with laws;
- Coordinate practical aspects of surrogacy arrangements, such as matching surrogates and intended parents, where appropriate;
- Act as independent advocates for surrogates, intended parents, and children, protecting their rights and interests.

For-Profit vs Not-for-Profit and Funding Models

Given the sensitive and ethical nature of surrogacy, services should primarily be delivered by not-for-profit organisations or public agencies to prioritise the wellbeing of parties over profit motives. However, some for-profit services may complement this if tightly regulated to prevent exploitation. Sustainable funding could come from government grants, public health funding, and user fees scaled to income, ensuring affordability and broad access.

Integration or Separation of Services

Counselling services should remain independent from fertility clinics and surrogacy agencies to avoid conflicts of interest and ensure unbiased support. However, close collaboration and communication among legal, counselling, medical, and support services are essential to provide seamless, coordinated care. Integrated case management systems could help tailor support to individual needs while maintaining professional independence.

Meeting Diverse Needs and Experiences

Professional services must be:

- Culturally sensitive and accessible to people from diverse linguistic, cultural, and social backgrounds;
- Inclusive of all family types, including LGBTQIA+ and single parents;
- Available in rural, regional, and remote areas via telehealth and outreach programs;
- Adaptable to the emotional complexities of surrogacy, offering long-term support including post-birth counselling;
- Responsive to evolving legal and social developments, ensuring ongoing education for professionals.

By operating under these principles, professional services can ensure ethical, equitable, and effective support for all people navigating surrogacy arrangements in Australia.

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:

The current legal uncertainty and inconsistency around surrogacy advertising across Australia causes confusion, restricts transparency, and creates inequity. A clear, ethical, and nationally consistent framework for surrogacy advertising is essential.

a) Should advertising be allowed?

Yes. Advertising for surrogacy (both by intended parents seeking a surrogate and by potential surrogates seeking intended parents) should be allowed, provided it is regulated and conducted respectfully.

In a system built on altruism and trust, meaningful connection is fundamental. Restricting advertising forces people into private online spaces or informal channels, which can lead to mismatches, unsafe dynamics, and a lack of oversight. In both of my journeys, I found intended parents through community groups because public advertising was not a viable or legal option in many states.

Permitting advertising would legitimise the process and reduce reliance on unmoderated forums like Facebook.

b) Who should be allowed to advertise?

Advertising should be limited to people who meet basic eligibility criteria (e.g. legal age, residency, no disqualifying offences) and who have completed preliminary screening and education. This ensures that people are not entering the matching space without adequate understanding of the process and responsibilities.

A national surrogacy register or platform, managed by an independent body, could be used to host verified profiles of intended parents and surrogates. This would ensure accountability while still allowing for authentic, values-based connection.

c) What advertising content should be allowed?

Advertising should be truthful, respectful, and non-coercive. Guidelines should prohibit:

- Offering or soliciting payment or material benefit (beyond legally permitted reimbursement or compensation, if introduced)
- Emotional manipulation (e.g. guilt-laden appeals)
- Misrepresentation of legal, medical, or emotional realities

Content should focus on values, intentions, lifestyle, and what the parties are hoping for in a surrogacy relationship, not on desperation or promises.

In both of my experiences, mismatched expectations, especially around ongoing contact and support, led to significant harm. Regulated advertising can help establish realistic and aligned expectations from the outset.

d) Where should advertising be allowed?

Advertising should be permitted on:

- A centralised, government-endorsed surrogacy register or website
- Social media platforms, with clear rules and reporting tools
- Surrogacy organisation networks, newsletters, or community groups
- Possibly, newspapers or online classifieds, if monitored for compliance

A regulated framework would ensure consistent messaging, protect vulnerable people from coercion or exploitation, and encourage transparency.

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:

Surrogates and intended parents both undertake significant physical, emotional, and financial commitments. Their entitlements should reflect the realities of what is required to safely and ethically bring a child into the world through surrogacy. Currently, there are major inequities in access to Medicare, paid leave, and financial supports that disadvantage both parties, particularly surrogates.

a) Medicare rebates for fertility treatments

Intended parents, regardless of their gender, sexuality, or relationship status, should have access to Medicare-funded fertility treatment in altruistic surrogacy arrangements. Currently, the surrogate may be eligible for Medicare rebates because the procedure is done on her body, even though she is not the one trying to have a baby. This creates both legal and ethical grey areas.

Intended parents, who are biologically and emotionally invested in the process, often bear the full cost of fertility treatments, even when they are accessing the same medical services that other Australians receive with Medicare support. This is particularly unfair to same-sex male couples and single intended parents, who have no alternative paths to biological parenthood without surrogacy.

Clear, inclusive eligibility for Medicare rebates for surrogacy-related fertility treatment should be implemented.

b) Access by surrogates to paid or unpaid parental leave

Surrogates should be entitled to paid parental leave, or a separate surrogate-specific leave entitlement, in both legislation and enterprise agreements.

Pregnancy and birth take a real toll—physically, emotionally, and financially. As a surrogate, I underwent major abdominal surgery (caesarean sections), hormonal shifts, and recovery periods, all while continuing to parent my own children and manage a household. In both my journeys, I was left with long-term physical consequences, including a 9cm abdominal separation requiring surgery, and without financial support or leave entitlements to manage that recovery.

Surrogates are expected to give birth and while they have access to minimum wage structured government leave or wage replacement applying for this payment through Centrelink is confusing and result in inconsistent outcomes for Surrogates. Additional training to Centrelink staff is required to reduce this.

c) Making surrogacy arrangements more affordable

Yes, it is absolutely desirable, and necessary, to make altruistic surrogacy more affordable in Australia.

Right now, the high costs of legal fees, counselling, travel, IVF, and medical care create significant barriers. Intended parents often spend tens of thousands of dollars on necessary services, while surrogates are often left out of pocket for incidental costs or long-term medical consequences, despite receiving no compensation for their time, risk, or labour.

More affordable surrogacy could be achieved by:

- Expanding Medicare coverage for fertility treatments
- Offering rebates or subsidies for required legal and counselling services
- Establishing a public surrogacy support system to reduce the financial burden of matching, education, and postnatal care
- Introducing a modest, regulated compensation model for surrogates to acknowledge the time, risk, and physical toll involved

Without financial accessibility, surrogacy will remain an option only for those who are wealthy enough to afford it and strong enough to manage its challenges without formal support. That is neither fair nor sustainable.

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:

The current system for reimbursing surrogates in altruistic arrangements is inconsistent, unclear, and often leaves surrogates out of pocket. This is unacceptable given the physical, emotional, and financial toll involved. In my own experiences, I was left with lasting physical damage (including a 9cm abdominal separation requiring surgery), and although both intended parent couples had the means to support me, neither covered the long-term health impacts. The reimbursement process must be fair, enforceable, and trauma informed.

a) What expenses should be reimbursable?

Reimbursable expenses should include, but not be limited to:

- Medical expenses not covered by Medicare or private health insurance (including IVF-related procedures, scans, and medications)
- Mental health care (before, during, and after the pregnancy)
- Out-of-pocket costs such as travel, parking, accommodation, childcare, groceries during recovery, and lost income
- Home help such as cleaning or meal services during late pregnancy and postnatal recovery
- Long-term recovery expenses (e.g. physiotherapy, pelvic floor rehabilitation, or surgery for abdominal separation if caused or worsened by the pregnancy)

Surrogates should not be forced to absorb these expenses—especially not when they have sacrificed their bodies and wellbeing to help others have a family.

b) How should payment be calculated?

Reimbursement should be:

- Actual-cost based, with surrogates keeping receipts or records, and
- Predictive, allowing for certain anticipated costs to be agreed on and paid in advance (e.g. maternity clothes, counselling, travel for appointments)

In some cases, a reasonable flat-rate schedule could be adopted to streamline commonly occurring expenses (e.g. $X per week for groceries during bedrest, $X for travel to IVF clinic). This avoids forcing surrogates to justify every dollar spent and reduces emotional discomfort or conflict.

c) Should there be limits on any amounts?

Yes, reasonable caps could apply to specific categories, but there must also be flexibility for individual circumstances. For example, a surrogate who lives rurally may incur significantly higher travel and accommodation expenses to attend mandatory appointments. Similarly, complications such as extended bedrest or surgical recovery can raise costs well above the "average."

A rigid cap system would only work if paired with a review mechanism for exceptional costs.

d) What should the reimbursement process look like?

The reimbursement process should be transparent, structured, and independently overseen. I recommend:

- Funds held in trust by an independent third party (such as a surrogacy agency or legal professional), who releases payments according to a pre-agreed schedule
- Partial upfront payments for known and expected costs
- Receipts provided where feasible—but not required for small or agreed-upon recurring expenses
- A dispute resolution mechanism, so surrogates aren't forced to chase or negotiate reimbursements themselves

In both of my journeys, I experienced either passive resistance or emotional manipulation when raising reimbursement needs. Having an independent party manage funds would relieve pressure and prevent damage to relationships.

e) Are there jurisdictions worth learning from?

Several international models offer examples:

- The UK allows for reimbursement of “reasonable expenses” and recognises that emotional labour and recovery needs exist, though it still lacks standardisation.
- Canada provides clearer structures around reimbursable categories and allows surrogates to receive support without requiring them to bear costs upfront.
- Some US states (especially where compensated surrogacy is permitted) have highly regulated escrow processes managed by licensed professionals to protect both parties.

Australia should draw from these examples to implement a national, uniform reimbursement framework that prioritises fairness, protects surrogates from financial harm, and removes the burden of enforcement from individuals.

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, I strongly support compensated surrogacy. I do not support unregulated or profit-driven commercial surrogacy, but I believe Australia urgently needs to move beyond the current altruistic-only model, which is outdated and exploitative in practice.

a) Compensated surrogacy

The current framework assumes altruism is enough to carry someone through a physically demanding, emotionally intense, and often medically risky process. It is not.

As someone who has been an altruistic surrogate twice, I can say without hesitation that the expectation to give so much of yourself, your body, your time, your health, your mental wellbeing, and your family’s stability, without any form of compensation is fundamentally unfair.

Every other party in the process is paid:
- Fertility specialists
- Lawyers
- Counsellors
- Agencies
- Embryologists

The surrogate (who literally grows and births the child) receives nothing beyond limited reimbursement, and even that is inconsistent and often disputed. This places an enormous emotional and financial burden on the surrogate and, by extension, her family.

Compensation does not negate altruism. A surrogate can act with love and generosity while still being fairly acknowledged for the labour and risk involved.

I support a nationally regulated compensation model where surrogates receive a standard, modest payment recognising:
- Time off work
- Physical and emotional labour
- Health risks and long-term medical consequences (such as abdominal separation or surgical recovery)
- The impact on the surrogate’s family and lifestyle

Compensation should not be excessive or profit-driven, but it must be meaningful.

b) 'Commercial' surrogacy

If "commercial" surrogacy refers to for-profit models driven by agencies or individuals seeking to monetise surrogacy as a business opportunity, then no, I do not support it. These models risk coercion, inequality, and commodification of women and children.

However, I urge caution in how the term "commercial" is defined. There is a false equivalency being drawn between "compensated" and "commercial" in many current discussions. A regulated compensation model does not equal a commercial market. Surrogacy can be ethical, values-driven, and emotionally connected and include fair compensation.

In both of my journeys, I was emotionally and physically harmed, not because of commercialisation, but because of power imbalances, unmet commitments, and a lack of accountability. A properly compensated system, overseen by an independent body, could help address those issues by:

- Valuing the surrogate's role
- Creating enforceable agreements
- Reducing the emotional pressure to "stay quiet" or "be grateful"
- Protecting against the devastating effects of abandonment

Australia must stop pretending that altruism alone protects surrogates. It doesn't. Regulation, oversight, and fair compensation do.

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:

If Australia were to allow compensated surrogacy, implementation must be ethical, nationally consistent, and centred on protecting the rights and wellbeing of surrogates, intended parents, and children. We do not need or want a profit-driven commercial surrogacy industry, but we urgently need a fair, regulated model of compensation that acknowledges the real cost (physical, emotional, financial) of being a surrogate.

Having been an altruistic surrogate twice and left with long-term emotional trauma, physical injury, and financial loss, I know firsthand how harmful the current system is when there is no enforceable support or formal recognition of the surrogate's enormous contribution.

a. How should compensation be calculated?

Compensation should be standardised nationally, based on the time, risk, and impact of pregnancy. Calculation could follow a tiered model, factoring in:
Medical and physical burden (e.g. hormone treatment, C-section, complications)
Time off work (especially for casual/self-employed workers)

Loss of income or superannuation
Childcare or domestic help needs during pregnancy and recovery
Emotional and psychological toll
Recovery from pregnancy (e.g. physiotherapy, surgery for abdominal separation)

A base rate could be set per trimester (or week) of pregnancy, with additional payments for procedures like embryo transfer, invasive monitoring, and surgical birth.

This model would acknowledge the surrogate's work without over-commercialising the process.

b. Should there be a limit on the amount of compensation?

Yes—but the cap should be realistic, evidence-based, and responsive to individual needs.

Any limit should:

- Be high enough to cover actual expenses, time, and health impacts
- Allow flexibility for exceptional circumstances (e.g. twins, bedrest, surgery)
- Be reviewed regularly in line with economic conditions and medical costs

Caps that are too restrictive will either push people toward informal or overseas arrangements or continue to unfairly disadvantage surrogates.

c. Who should set the amount of compensation?

An independent national surrogacy regulatory body should set and review the compensation structure, in consultation with:

- Surrogates and their families
- Intended parents
- Legal and medical experts
- Ethics professionals
- Counselling and support providers

Compensation must not be set by intended parents or agencies alone—it must reflect the real-world cost borne by the surrogate and ensure fairness across all states and territories.

d. What should the process for compensation look like?

The process must be independent, transparent, and not reliant on personal negotiation. I recommend:

- Compensation funds be held in trust by a third party, such as an independent agency or legal body
- Payments to be made in regular instalments (e.g. monthly or milestone-based: pregnancy confirmation, each trimester, birth, recovery period)
- Surrogates to have access to emergency funds if unplanned medical or personal issues arise
- Receipts to be optional for flat-rate expenses, with flexibility for special claims
- A formal, enforceable agreement covering compensation, lodged with the national regulator before pregnancy proceeds
- A dispute resolution mechanism to prevent breakdowns in communication or exploitation

This structure protects all parties and prevents manipulation, abandonment, or power imbalances, something I experienced in both my surrogacy journeys.

e. Are there jurisdictions worth learning from?

Yes. While no system is perfect, Canada offers a model that reimburses surrogates for legitimate expenses and provides clearer regulatory support than Australia. Some U.S. states, where compensated surrogacy is legal, offer examples of structured escrow management and pre-birth orders that transfer parentage without the surrogate being legally responsible post-birth.

The UK is currently reviewing its own laws, with proposals to introduce structured compensation and move toward an administrative parentage model, Australia should watch this closely and learn from both their progress and their challenges.

Australia must acknowledge that compensation is not exploitation, it is respect. A properly regulated model would reduce the need for Australians to pursue international surrogacy, improve outcomes for children, and protect surrogates from long-term emotional and financial harm.

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:

The current processes for establishing legal parentage in both domestic and international surrogacy arrangements in Australia are outdated, inconsistent, and emotionally distressing for everyone involved, especially the surrogate.

Key issues in domestic surrogacy:

- Delay in establishing legal parentage
- Under current laws, the surrogate (and her partner, if applicable) is the legal parent of the child at birth—even though the surrogate has no intention of parenting. This legal fiction can last for months, until a parentage order is granted by a court.

During that time:

- The intended parents may not be able to make legal decisions for their child (such as medical consent).
- The surrogate is listed on the birth certificate, which can feel inappropriate and distressing.
- The surrogate may remain legally responsible for a child she did not intend to parent.

This creates unnecessary legal, emotional, and administrative complications during what is already a vulnerable time for everyone.

Court process is slow, costly, and inconsistent.

Obtaining a parentage order involves a formal court application and often multiple rounds of legal paperwork, affidavits, and counselling reports. It is resource-intensive, slow, and varies widely between states.

In my experience, even when everyone agrees and the arrangement has been legally and ethically managed, the court process felt intrusive and emotionally re-traumatising, especially after being abandoned by the intended parents shortly after the birth.

No urgent mechanism when relationships break down

If a relationship between the surrogate and intended parents deteriorates (as happened in both of my journeys), there is no fast-track or emergency provision to transfer parentage or ensure the best interests of the child. This leaves surrogates vulnerable to legal liability and emotional harm long after they've fulfilled their role.

Key issues in international surrogacy:

No national recognition or reciprocity

There is no consistent national framework for recognising parentage orders from international jurisdictions. Each case is assessed on an individual basis, creating delays and uncertainty for intended parents bringing babies home to Australia. This particularly affects same-sex male couples and single intended parents who pursue international arrangements out of necessity.

Delays in citizenship and passport processing

Babies born via international surrogacy often face significant delays in gaining citizenship and obtaining an Australian passport, leaving them effectively stateless and stranded overseas for weeks or months. This is a deeply distressing and unfair situation for all involved.

Surrogates have no legal recognition or protection

In international arrangements, the Australian legal system has no jurisdiction to monitor or protect the surrogate, meaning her treatment, consent, and wellbeing may go unchecked. Australia's current ban on commercial surrogacy overseas leaves parents with little recourse but to either break the law or navigate dangerous grey areas.

What needs to change?

- Immediate legal recognition of intended parents upon birth, provided all preconditions (e.g. counselling, legal advice, consent) have been met
- Removal of court-based parentage orders in favour of an administrative model, like in adoption or donor conception processes
- National consistency and reciprocal recognition of international surrogacy parentage arrangements
- Fast-tracked citizenship and passport pathways for babies born overseas via surrogacy
- Creation of a national surrogacy oversight body to support all parties, including in cases of relationship breakdown

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:

The current legal parentage process in Australia is complex, inconsistent, slow, and often emotionally harmful, especially for surrogates. Reform is urgently needed to prioritise the best interests of the child, while also respecting the roles and intentions of the surrogate and the intended parents.

Having been a surrogate twice, I found the process of transferring legal parentage unnecessarily stressful and, in both cases, the delay in legal recognition created further trauma, particularly when the relationships broke down. A surrogate who never intended to parent the child should not carry legal responsibility beyond birth. At the same time, intended parents must be empowered to make decisions for their child from day one.

a. Timing

Legal parentage should ideally be transferred automatically at birth, provided all safeguards and process requirements (counselling, legal advice, consent, etc.) were completed before pregnancy. The current post-birth process leaves surrogates vulnerable and can delay decision-making for the child.

b. Who makes the decision

This should become an administrative process, not a court-based one. Requiring surrogates and intended parents to go through a court system after the birth is costly, adversarial, and retraumatising, especially if there has been a breakdown in the relationship. An independent national surrogacy regulator could oversee and approve parentage transfers, provided pre-birth conditions were met.

c. If recognition should be automatic

Yes, automatic recognition of legal parentage at birth should be the norm if:

- The surrogate gives full and informed consent before conception;
- All counselling and legal requirements have been satisfied;
- The arrangement is registered with the regulatory body.

This would mirror processes used in adoption and assisted reproductive treatments and reduce unnecessary trauma and delay.

d. Should the process vary based on circumstances?

Some flexibility may be needed for international surrogacy. However, the core principle should remain: if the surrogate never intended to parent and the intended parents are ready and suitable, legal parentage should be transferred as efficiently and safely as possible.

Payment type should not influence the determination of parentage. Parentage is about the child's welfare and the parties' intentions, not whether a surrogate was compensated.

e. Intended mothers vs. intended fathers

All intended parents, regardless of gender or biological connection, should be treated equally in legal parentage determinations. The law should not discriminate between intended mothers and fathers, or between genetic and non-genetic parents. Recognition should be based on intent and pre-conception agreement, not biology or gender.

f. Should compliance with process requirements matter?

Yes, but non-compliance should not punish the child or surrogate. If process requirements like counselling or legal advice were missed, the parentage process should allow:

- Remediation or supplementary processes (e.g. retrospective counselling)
- Oversight by the independent regulator to assess suitability and child safety

In cases where the intended parents have otherwise acted in good faith, parentage should not be withheld due to minor technicalities.

g. Importance of prioritising the best interests of the child

The best interests of the child must always come first—but that includes:

- Being raised by the parents who intended and prepared to raise them;
- Ensuring their legal status is secure from birth;
- Avoiding delays that compromise medical, legal, or emotional stability.

The current process often fails children by delaying recognition and exposing them to legal uncertainty in their earliest days of life.

h. Jurisdictions to learn from

- The UK Law Commissions' proposed reforms aim to establish pre-birth parentage orders, with automatic transfer of legal parentage at birth when all requirements are met.
- Several US states (e.g. California) already issue pre-birth parentage declarations, which are recognised at birth, reducing ambiguity and emotional stress.
- Canada's system also offers valuable lessons in balancing ethical surrogacy practices with post-birth recognition processes that respect all parties.

Australia needs a uniform, national system for legal parentage that:

- Transfers parentage automatically at birth where pre-conditions are met;
- Uses an administrative, non-court-based process;
- Applies to both domestic and international arrangements;
- Prioritises the wellbeing of the child, while also protecting surrogates from prolonged legal liability.

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:

Having observed and supported members of the surrogacy community, I know many families who have faced significant barriers and delays when trying to bring their children home to Australia after international surrogacy arrangements. These delays cause undue stress, prolonged separation, and instability during the most critical bonding period for families. Even where the surrogacy was lawful and ethical overseas, the Australian system remains inflexible, judgmental, and inconsistent.

a. Australian citizenship

One of the most significant issues is the complex, lengthy, and inconsistent process for granting citizenship by descent to children born via international surrogacy. The process requires extensive documentation, including proof of parentage, genetic links, and legal intent, often through paperwork from countries with very different legal systems.

Problems include:

- Delays: Applications can take months or even longer, with no guarantee of success.
- Discrimination: Same-sex male couples often face heightened scrutiny due to lack of a genetic link in some cases.
- Ambiguity: There is no clear national policy that recognises the intent-based nature of parentage in international surrogacy arrangements.
- Burden of proof: Families must often produce a combination of DNA tests, birth certificates, legal documents, and statements from clinics, sometimes from countries with poor documentation standards.

These barriers result in children being stuck overseas, stateless or without proper identity, while loving parents are left powerless and emotionally distressed.

b. Australian passport

The passport process is linked to citizenship, so the same issues apply. Even when citizenship is granted, processing times for passports can be slow, and parents may need to travel extensively between embassies, government offices, and hospitals with a newborn in a foreign country.

There is no streamlined or compassionate approach for international surrogacy, despite the fact that these children are, in most cases, intended to be Australian citizens with Australian parents who have planned for and prepared to raise them.

c. Australian visa

Where citizenship cannot be granted immediately, the child may need a temporary visa to enter Australia. These are not always guaranteed and are subject to complicated immigration laws. The child may be treated as a “non-citizen,” even though the only home they’ve ever been intended for is Australia.

This can delay travel, access to healthcare, and even result in family separation where one parent must stay overseas with the baby while the other returns to work in Australia.

Recommendations:

- Streamline the process for obtaining Australian citizenship, passports, and visas for babies born through legitimate international surrogacy arrangements.
- Introduce reciprocal recognition of surrogacy arrangements from accredited countries with ethical and legal frameworks aligned with Australia’s standards.
- Establish a dedicated government support unit or pathway within the Department of Home Affairs to assist families going through international surrogacy.
- Ensure that the child’s best interests are always paramount, including their right to immediate legal identity, a stable home, and timely reunification with their intended parents.
- Ensure equal treatment regardless of the parent’s gender, sexual orientation, or genetic connection to the child.

The current system reflects a punitive attitude towards international surrogacy rather than a child-focused and rights-based approach. This must change.

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

The current process for obtaining key documents related to children born through surrogacy, (including birth certificates, parentage orders, Australian citizenship, passports, and visas) presents several challenges that can cause significant stress and uncertainty for surrogates, intended parents, and the child.

To improve this process, the following measures should be considered:

National Consistency and Clarity

There needs to be a nationally consistent legal framework that clearly outlines the procedures, requirements, and timelines for obtaining these documents. At present, variations between states and territories lead to confusion and delays, especially for families who move across borders or engage in interstate surrogacy arrangements.

Streamlined Timing of Parentage Orders

Parentage orders should ideally be processed before or immediately after birth, enabling intended parents to be legally recognised without unnecessary delays. This would prevent the child from being in a legal limbo and reduce administrative burden on families.

Simplified and Transparent Procedures

The application processes for citizenship, passports, and visas should be simplified and standardised with clear guidance and support available to intended parents and surrogates. Complex and opaque procedures disproportionately affect families formed through international surrogacy.

Improved Support and Communication

An independent oversight or support body dedicated to surrogacy should assist all parties through the legal processes and documentation. This would provide emotional and practical support, ensure that surrogates receive information about the status of applications, and help intended parents navigate legal complexities.

Recognition of Surrogates' Rights and Contact

As surrogates often experience a sudden loss of contact with intended parents once legal parentage is transferred, the documentation process should also incorporate opportunities for surrogates to remain informed or connected if mutually agreed. This could be supported by an independent intermediary.

Timely Issuance of Citizenship and Travel Documents

Children born via surrogacy, particularly international surrogacy, face hurdles in acquiring Australian citizenship and travel documents. Processes should be expedited and made more transparent to avoid unnecessary delays in the child's ability to travel, access services, and feel secure in their legal identity.

Review of Altruistic vs Commercial Frameworks

The legal framework governing documentation should reflect the evolving nature of surrogacy, whether altruistic or commercial, to ensure all children born through surrogacy have equitable access to legal recognition and necessary documentation.

These improvements would reduce emotional and financial burdens, uphold the rights and dignity of all parties, and ensure children born through surrogacy have secure and recognised identities from birth.

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:

a. Inconsistencies in Surrogacy Regulation Between Jurisdictions

Surrogacy laws in Australia vary significantly between states and territories, including who can access surrogacy, eligibility criteria for surrogates and intended parents, legal requirements for parentage orders, and the recognition of commercial versus altruistic surrogacy. Some jurisdictions have more progressive and streamlined processes, while others impose restrictive or unclear rules. These disparities cause confusion, delays, and inequities for families, particularly those involved in interstate or international arrangements.

b. Problems Caused by These Inconsistencies

The patchwork nature of surrogacy laws creates significant practical and emotional challenges. Intended parents and surrogates may face uncertainty about legal recognition and parental rights, especially if they move between states or live in one jurisdiction but undergo surrogacy in another. Inconsistent rules may lead to longer waits for parentage orders, variable eligibility for citizenship, and difficulties obtaining travel documents. The lack of clear, uniform guidelines also contributes to unequal access to surrogacy and inconsistent protections for all parties.

c. Impacts of Differences Between Federal Legal Regimes

Federal laws related to citizenship, family law, and immigration intersect with state surrogacy laws but are not always well coordinated. For example, citizenship law requires clarity on parentage for children born through surrogacy to receive Australian citizenship, but state-based parentage orders can be inconsistent or delayed. Family law jurisdiction and the recognition of parental status may also be complicated when surrogacy arrangements cross state lines or involve international parties, leading to legal uncertainty and potential hardship for families.

d. Judicial Process for Transferring Legal Parentage

If a judicial process for parentage transfer is retained, it is important to clarify and possibly centralise jurisdiction to improve consistency and efficiency. Determining parentage in a federal court, such as the Federal Circuit Court or Family Court of Australia, may offer a more uniform approach, reduce interstate legal discrepancies, and better integrate with federal laws on family matters and citizenship. However, state courts could retain a role for matters relating to specific local surrogacy laws, provided their decisions are consistent with federal principles. I do not support this type of judicial process for obtaining parentage orders though.

e. Importance of Harmonising or Making Approaches More Consistent

Harmonisation of surrogacy regulation is critically important to protect the rights and wellbeing of children born through surrogacy, surrogates, and intended parents.

Consistency would reduce legal complexity, improve access to services, and promote equitable treatment regardless of geographic location. It would also minimise the risk of families falling through legal gaps or experiencing prolonged uncertainty.

f. How Harmonisation Could Be Achieved

The most effective approach would be to develop uniform or substantively consistent surrogacy legislation across all states and territories, supported by clear federal coordination on citizenship, family law, and immigration matters. This could be achieved through:

- A national framework or model law agreed upon by the National Federation Reform Council;
- Federal legislation that sets minimum standards and coordinates with state laws to ensure consistency;
- An independent national body to oversee and support surrogacy arrangements, providing guidance and dispute resolution across jurisdictions.

Federal regulation alone may face constitutional limits, but a cooperative approach between federal and state governments is essential. Harmonised laws would ensure that all parties (surrogates, intended parents, and children) are treated fairly and that legal processes are clear and accessible nationwide.

This harmonisation would reflect the evolving social acceptance of surrogacy and ensure that laws keep pace with modern family diversity, protecting all involved in a fair and transparent way.

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:

Yes, surrogacy arrangements must be subject to appropriate oversight to protect the rights, wellbeing, and interests of all parties involved, especially surrogates, intended parents, and children.

a. Need for a Regulator or Oversight Body

An independent oversight body is essential. This body should be administrative rather than judicial, with authority to regulate, educate, monitor compliance, and provide support and dispute resolution. It would ensure ethical standards, informed consent, and fair practices throughout the surrogacy process.

b. National or State and Territory Based Oversight

Oversight should be national to provide consistency across jurisdictions, reduce confusion, and ensure equitable access to support and regulation regardless of location. A national body could collaborate with state and territory entities but serve as the central authority to streamline processes and enforce standards uniformly.

c. Groups Needing Oversight

Oversight should apply to:

- Health professionals (fertility clinics, medical practitioners, counsellors) to ensure ethical and professional conduct;
- Surrogacy agencies and intermediaries to prevent exploitation;
- Intended parents and surrogates to ensure informed consent and adherence to legal obligations;
- Legal practitioners involved in surrogacy agreements to maintain transparency and fairness.

Such oversight will promote safe, respectful, and legally sound surrogacy arrangements nationwide.

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:

a. Sanctioning or Criminalising Certain Forms of Surrogacy

While it is important to discourage exploitative and unethical practices in surrogacy, the use of criminal sanctions should be very carefully considered and limited. Criminalising certain forms of surrogacy, such as commercial surrogacy or surrogacy arrangements that exploit vulnerable parties, may be necessary to protect individuals from harm and prevent coercion or trafficking. However, overly broad or punitive laws risk driving surrogacy underground, making it less safe for all involved, particularly surrogates and children.

b. Effect of Using Criminal Law to Regulate Surrogacy

Using criminal law as the primary regulatory tool can have unintended negative consequences. It may discourage transparency and access to legal protections, increase the vulnerability of surrogates and intended parents, and create barriers to obtaining necessary documents and recognition for the child. Criminalisation can also inhibit the development of supportive frameworks that promote ethical, safe, and consensual surrogacy arrangements.

c. Regulatory Approaches Preferable to Criminal Law

Regulation through clear, humane, and supportive frameworks is preferable. Such approaches include:

- Robust oversight and monitoring by an independent national body;
- Clear eligibility criteria and informed consent processes;
- Education, counselling, and support services for surrogates and intended parents;
- Legal recognition frameworks that protect all parties and the child's best interests;
- Civil penalties or administrative sanctions for breaches rather than criminal charges, except in cases of serious exploitation or abuse.

A balanced regulatory approach that discourages unethical surrogacy while promoting safety, respect, and support for surrogates and families is the most effective way forward.

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:

Yes, there is a significant need to improve awareness and understanding of surrogacy laws, policies, and practices across Australia.

Currently, many people, whether prospective surrogates, intended parents, or professionals involved in surrogacy, find information through informal channels, inconsistent online sources, or word of mouth. This often leads to confusion, misinformation, and unrealistic expectations.

Key groups who would benefit from improved education and information include:

- Prospective surrogates and intended parents, who need clear, accessible guidance on legal rights, responsibilities, and the emotional and medical aspects of surrogacy.
- Health professionals, such as fertility specialists, counsellors, and general practitioners, who require up-to-date training on the ethical and legal dimensions of surrogacy to support their patients effectively.
- Legal practitioners, who play a critical role in drafting agreements and navigating parentage orders, should have comprehensive knowledge of surrogacy legislation and best practices.
- Government agencies and support services, who manage regulatory frameworks and provide assistance, must be well-informed to deliver consistent, empathetic support.

Improved national coordination of educational resources, public awareness campaigns, and professional training programs would promote informed decision-making, reduce anxiety and conflict, and foster respectful, safe surrogacy practices.

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:

It is important that the review clearly defines its scope to focus on the most impactful areas affecting surrogacy arrangements and the parties involved. From my perspective, the following points are relevant:

In Scope:

The review should prioritise issues around legal recognition of parentage, national consistency in surrogacy laws, the rights and wellbeing of surrogates and children, access to support and counselling, and regulatory oversight. These areas directly affect the safety, fairness, and transparency of surrogacy arrangements and have lasting impacts on families formed through surrogacy.

Out of Scope:

It may be appropriate to exclude matters that are already comprehensively addressed by other bodies or legislation, such as unrelated family law disputes not specific to surrogacy, or broader assisted reproductive technologies not connected to surrogacy arrangements. However, care should be taken not to exclude issues that overlap significantly with surrogacy, such as parentage orders or citizenship pathways for children born via surrogacy.

Overall, the review should maintain flexibility to consider emerging issues and voices from surrogates and intended parents, ensuring that no important aspect is overlooked simply due to rigid scope boundaries.

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:

While the Issues Paper covers many important topics, there are several additional issues and reform opportunities that warrant attention:

- Ongoing Support and Contact Arrangements Post-Birth
  Many surrogates experience a sudden loss of contact with the intended parents and child after birth, which can be emotionally challenging. The regulatory framework should consider mechanisms to facilitate ongoing, mutually agreed contact or communication, supported by an independent intermediary, to acknowledge the surrogate's role and emotional investment.
- Recognition and Compensation for Surrogates
  The current emphasis on altruistic surrogacy overlooks the need for fair recognition and compensation for surrogates' time, effort, and risks. A regulated compensation framework that covers reasonable expenses and acknowledges surrogates' contributions would promote fairness and reduce exploitation risks.
- Independent National Oversight Body
  Establishing a national independent body to oversee surrogacy arrangements would provide consistent regulation, support, education, and dispute resolution services, bridging gaps caused by jurisdictional inconsistencies.
- Improved Access for Diverse Families
  Surrogacy laws should be explicitly inclusive of all family types, including LGBTQ+ couples, single parents, and families formed through international arrangements, ensuring equitable access to surrogacy and related legal recognition.
- Integration with Federal Laws on Citizenship and Family Law
  Stronger coordination between surrogacy regulation and federal citizenship and family law frameworks is needed to ensure timely and seamless legal recognition of children born through surrogacy, avoiding unnecessary delays or legal uncertainty.
- National Consistency and Uniform Legislation
  A uniform or nationally consistent legislative framework for surrogacy across all states and territories remains a priority to reduce confusion, inequity, and legal complexity.

These reforms would improve fairness, clarity, and support for all parties involved in surrogacy, promoting safe, respectful, and legally secure family formation.

Personal Impact Statement
Name: [redacted]
Date: 11 July 2025

Introduction
My journey as a surrogate was driven by compassion and a genuine desire to help others experience the joy of parenthood. I never anticipated that this path would lead to such profound personal and familial distress.

Emotional and Psychological Impact
The lack of communication, support, and eventual abandonment by the intended parents left me grappling with feelings of worthlessness and deep emotional pain. The trust I placed in them was shattered, leading to a prolonged period of depression and anxiety.

Physical Impact
The physical repercussions of the pregnancies, especially the second, have been significant. The 9cm abdominal separation has affected my daily life, limiting my mobility and causing chronic pain. The financial burden of potential surgery adds another layer of stress.

Impact on My Children
My children, who were part of this journey, have been left confused and hurt by the sudden absence of the intended parents and the babies they once considered part of our extended family. Their emotional well-being has been compromised, leading to ongoing therapy sessions.

Conclusion
This experience has been a stark reminder of the vulnerabilities inherent in surrogacy arrangements. The emotional, physical, and psychological impacts have been profound, affecting not just me but my entire family. I hope that by sharing my story, I can bring awareness to the potential pitfalls of such arrangements and advocate for better support systems for surrogates.