Review of Surrogacy Laws
Questions in the Issues Paper

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 am an intended parent hoping to find an egg donor and surrogate to have a second child. I qualify for surrogacy as I required a emergency hysterectomy at the time of my son's birth, due to undiagnosed placenta accreta. Placenta accreta is a condition caused by abnormal growth of the placenta into the lining, muscle and/or wall of the uterus, and can lead to life-threatening haemorrhage before, during or after labour.

I am hoping to find a surrogate in Australia, predominantly because I want to make the most of the life I have now, and not lose sight of what I have, what a gift a child is, and I don't want to miss out on precious time with my son by pursuing a sibling.

I would also want to be close to a surrogate during the pregnancy, because I want to be part of my child's life from the very beginning if possible. Having been fortunate enough to experience pregnancy myself, I understand that it is a medical condition that can be life-threatening, and even when things are going well it can be really hard physically and emotionally. I want to be able to help a surrogate any way I can.

The main barrier I've faced, aside from several delays not directly related to surrogacy (e.g. delayed egg retrieval attempts due to my fear of anaesthesia and lengthy covid lockdowns, 3 unsuccessful egg retrievals), is the restrictions regarding how I find a potential surrogate – ie cannot advertise, aside from very general social media post to advise people of my situation.

There are few surrogates in Australia relative to the number of intended parents, and it feels overwhelming and like a full time job to find a surrogate.

The main way to find a surrogate in Australia is either through a family member, friend or acquantaince, or through social media groups where you have to read posts, comment and post content yourself regularly to hopefully one day get noticed by a potential surrogate. This has been very stressful, as I want to engage with the community and make contacts with other intended parents as well as potential surrogates, as we share a common experience, but even with the best intentions, I haven't managed this. Very few people have the luxury of making this their full time priority, and with the low rate of success for domestic surrogacy, I can't put my entire life on hold, including my career, in order to complete my family. No matter how much I want to, and how much I would love and care for another baby.

It's a continual waiting game, living life holding my breath, knowing I must move forward and be present and grateful for what I already have, and be open to everything and share my story and hope someone will help us, while an invisible silent ticking clock looms over my existence. I often feel overwhelmed by the process, and the low chance of ever achieving my dream of completing my family.

I don't have a problem discussing surrogacy with anyone, but I have found some people to be remarkably insensitive and uneducated about the topic. Some have asked if it's even legal in Australia, others why we don't "just adopt". I even had a GP question the ethics of an attempted egg retrieval procedure when we don't have a surrogate yet, as if this wasn't something we had considered very carefully and discussed at length with our fertility specialist. People who do not need a surrogate are not interrogated during a routine medical appointment (I was requesting anti-nausea medication for the medicated IVF cycle) about whether it is ethic or moral to consider a pregnancy, or even IVF if a pregnancy is not guaranteed (which of course it isn't).

Like every other Australian citizen seeking a surrogate, I am not responsible for my medical infertility and deserve to access services to create or complete my family as much as any person with intact fertility.

With regards to barriers related to my personal circumstances, I feel it's harder to be "picked" by a potential surrogate when you already have a child, and when you are part of a heterosexual couple. I emphasise that this has been my personal experience, and I absolutely support surrogacy for any couple or individual no matter who they are if it is needed, everyone deserves the chance to become a parent if they wish.

I am fortunate that the financial cost associated with surrogacy would not currently be a barrier for my family, but as estimates that I have seen for domestic surrogacy in Australia are up to $100, 000 (according to resources found on the Australian Surrogacy Facebook page), it would be cost-prohibitive for many intended parents.

Reform principles

Question 2 What reform principles should guide this Inquiry?

Response:

Respect and dignity – for all parties involved

Accessibility
Harm minimisation – particularly for the surrogate

Human rights

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:

Potential for coercion and exploitation of surrogates, in particular:

- In locations where opportunities to earn a livable income is limited and commercial surrogacy is legal, I am concerned that the financial need may outweigh potential health risks for the surrogate, and they might choose to become a surrogate because they need to, not because they want to. Pregnancy is a medical condition that carries health risks, I know from my labour experience that maternal mortality is not an insignificant risk
- Ie the right to autonomy
- The right to bodily autonomy – surrogates should have the final say about what happens to their body

The right to freedom from discrimination

The right to share in and benefit from scientific advancements

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:

I think that all information should be available to a child born through surrogacy, including their genetic heritage (egg/sperm donors) and surrogate's details. However I think the surrogate's details should only be disclosed if the surrogate agrees to it.

I don't think the intended parents should be able to prevent their child from accessing this information. I think it is the child's right to know how they came to be.

Resources could be provided by doctors, psychologists, fertility specialists etc to help guide intended parents about how and when to tell their child about the surrogacy process, including suggestions about age-appropriate terminology and concepts, and where to seek help (eg counselling) if needed.

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:

The main barriers that hinder or prevent surrogacy arrangements in Australia that I perceive are:

- Legal restrictions regarding communicating the need for a surrogate, i.e. advertising is illegal
- Lack of awareness in the general public regarding the legal process of surrogacy in Australia, or even that it is legal in Australia. Potential surrogates may not be aware that domestic surrogacy is possible in Australia, so may not seek out resources or attempt to connect with intended parents
- Differences in laws, processes to organise surrogacy and surrogacy arrangements between states, which can complicate attempts to connect with and carry out a surrogacy arrangement when intended parents and surrogate live in different states
- Lack of clear guidelines and enforceable requirements to support a surrogate through a pregnancy and during the postpartum period. Although a surrogate mother is eligible for parental leave as well as the intended mother, which provides some financial support in the post-partum period, I think counselling with a mental health professional, ideally a psychologist and psychiatrist, should be available for the surrogate for the duration of the pregnancy and the post-partum period (e.g. for three months after birth, or longer if recommended by the mental health professional), with costs to be covered by the intended parents
- Adequate financial compensation for surrogacy, so that a surrogate does not lose money from the process

Eligibility requirements for surrogacy

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

Response:

Yes, there are physical and psychological risks for a surrogate that I believe should be justified not only by the surrogate's informed consent, but also by the medical need for surrogacy for the intended parents, i.e. that the intended parents are either physically unable to conceive (e.g. lack of uterus, repeated unsuccessful atttempts using assisted reproductive techniques) or socially infertile (i.e. individual wanting to becoming a single parent, same sex male couples).

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

Response:

I would consider including women who have previously experienced severe hyperemesis of pregnancy. This condition can have severe deleterious effects on the mother's mental and physical health and is completely out of her control. If assessed by a mental health professional (psychiatrist/psychologist) and fertility specialist I think this condition should be eligible for surrogacy.

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 I think agreements should be enforceable.

But ultimately the surrogate's physical and psychological health needs to come first, and the agreement needs to reflect this so that all parties are protected.

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:

Yes definitely counselling should be available for all parties including the surrogate and the surrogate's family if desired. I think it should be strongly encouraged, if not mandatory, for the surrogate and intended parents post-birth.

It depends on whether the counselling is just a check-box activity prior to the pregnancy/birth, and on the specific type of counselling and counsellor required.

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 seem to be few legal professionals with expertise in the surrogacy process and legal apsects of the surrogacy process in particular. This also applies to medical and mental health professionals.

Surrogacy agencies are one way to deal with this, but need to consider potential conflict of interest with regards to financial aspects, incentives for staff working at these agencies to find and match surrogates with intended parents. Potential to exploit both the intended parents (e.g. guaranteeing a match with a surrogate and successful pregnancy and birth if payment given) and surrogates (encouraging/coercing surrogates to match and proceed with the surrogacy process).

If surrogacy agencies were to operate in Australia I would recommend they consider having an ethics committee or review committee, ideally independent to the organisation, to review and regulate the activities of the agency.

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:

I think a not-for-profit model would eliminate some of the potential conflicts of interest mentioned in my answer to the above question. Ideally some funding would be provided by the government. I would strongly recommend counselling services provided by professionals with relevant expertise in this area.

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.

I think advertising should be permitted as it is when seeking an egg donor.

Response:

I think advertising should be permitted as it is when seeking an egg donor.

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:

I believe that

- Medicare rebates should be available for fertility treatments, including procedures for embryo creation, and embryo transfer to a surrogate. As far as I am aware the embryo transfer process for a surrogate is not compensated by Medicare in Victoria at the moment, where I am located
- Surrogates should be able to access paid and unpaid parental leave, the same entitlements that intended parents receive

With regards to the cost of surrogacy arrangements, reducing costs would make domestic surrogacy available to more intended parents, but this needs to be balanced against preservation of the surrogate's autonomy, physical and emotional health. I consider this to be particularly challenging in the context of current societal attitudes towards pregnant women and mothers, and women in general. Pregnancy is not considered "work", and nor is childcare, at least when performed by the child's mother, but unfortunately it is also undervalued when performed by qualified educators, reflected by lack of adequate government funding and relatively low wages for childcare educators.

I also feel that the post-partum period is not recognised as a distinct physiological state that is normal for all women after giving birth, and this is even more the case for surrogates. That is, once they've given birth and the baby has gone home with the intended parents, the surrogate should maybe spend a few days recovering from the birth, depending on their exact circumstances, and then get on with their life. Inadequate accommodation for a surrogate post-birth, i.e. financial, medical, and psychological support, could discourage a surrogate from entering a surrogacy arrangement.

Ultimately the entire process of surrogacy needs to be accepted and respected by the community and government to facilitate ways to reduce the cost of the process.

This includes accepting the right of the intended parents to seek and access assisted reproductive technologies, the medical risk the surrogate takes in carrying a pregnancy, and the time and cost of recovering from pregnancy and birth, and caring for a child.

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:

I think any expenses that are incurred as a result of the surrogate's pregnancy should be reimbursed, including:

- Medical costs (e.g. appointments, medications, lost income from taking time off work to attend medical appointments)
- Allied health costs (e.g. physiotherapy, massage, acupuncture, podiatrist)
- Mental health services (e.g. psychologist, counsellor – ideally on a regular basis throughout the pregnancy and the post-partum period, and potentially beyond this time depending on a surrogate's requirement for this service)
- Childcare services for the surrogate's children where needed
- Income lost from any time taken off work during the pregnancy which is related to the pregnancy (both physical and mental health)

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:

I support compensated surrogacy in preference to commercial surrogacy, as I believe there is less opportunity for coercion and exploitation of the surrogate

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:

For domestic surrogacy, I am concerned that the intended parents' names are not on the birth certificate, and intended parents need to apply for a parentage order.

This process can take a long time and cause unnecessary stress for both the intended parents and surrogate, and potentially the surrogate's family.

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, absolutely. I was not even aware of the possibility of surrogacy until my psychiatrist mentioned it several weeks after my son was born and I had lost my uterus, and my husband and I initially thought even creating embryos for a potential surrogate would be cost prohibitive.

As mentioned earlier, I've also found that many people are not aware that surrogacy is legal in Australia and why it may be medically necessary.

Also think people need to be educated about why someone might need assisted reproductive technologies, that there are many reasons, and none are related to a person's ability to parent. That people affected by infertility are just as deserving of a chance to become a parent as someone who accidentally falls pregnant.

Even though I'm seeing more advertisements for IVF in general, I still think there is a social stigma associated with infertility that hinders open communication and tends to place some kind of blame or responsibility on the infertile person which is unnecessary and hurtful. I wonder if the stigma also discourages people from seeking treatment for infertility and makes a difficult diagnosis/situation even more painful.

I have experienced this personally with comments such as "why don't you just adopt", "just be grateful you have one child", "everything happens for a reason". I am fully aware of the "reason" I am infertile – I had a medical condition for which the treatment involved the loss of my fertility in order to save my life. This does not mean that I only "deserve" or was "meant to have" only one child.

Education about the following areas would be helpful:

- The prevalence of infertility (e.g. that it is not rare, it has multiple causes, and it is not the fault of the person who experiences it) would help start conversations
- The potential paths to parenthood, including gamete donation, embryo donation, surrogacy

This education would be useful for the general community, but also GP's, nurses, medical receptionists, psychologists, counsellors in any capacity, social workers, teachers etc.

Basically anyone who may encounter someone who needs or has used a surrogate, in their professional capacity.
Improving awareness is also vital to ensuring that a child born through a surrogacy arrangement does not experience discrimination, judgement or bullying from their peers or other people in their life.

Thank you for taking the time to read my responses and consider this important issue.

Even if I am not successul in finding a surrogate, I hope that I can contribute positively to increasing awareness and understanding of the wide-reaching effects of infertility and the difficulties in achieving a successful outcome when seeking assisted reproductive treatment.

This is something I think about every day, and I know I am not the only person who needs this issue to be more widely recognised and respected, and made more accessible.