25 July 2025

The Commissioner
Australian Law Reform Commission
By Email Only: surrogacy@alrc.gov.au

Dear Commissioner

Submission to the Australian Law Reform Commission – Review of Australia's Surrogacy Laws

This submission is made by way of contribution to the Austradrome is a congenital condition which occurs in 1 in 5000 females. Typically, MKRH is characterised by the under development or absence of the uterus, cervix and upper portion of the vagina.

MRKH Australia is a registered charity and not-for-profit-organisation providing information to people impacted by MRKH, their families and medical practitioners, as well as providing a safe space for connection and peer support.

Thank you for considering our submission.

Yours faithfully

[redacted]

Simone Cureton
Secretary
MRKH Australia

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Question 2 What reform principles should guide this Inquiry?

Response:

The guiding principle must be the best interests of the child born through the surrogacy arrangement. MRKH Australia agree with the ALRC's recommendations for reform.

MRKH Australia recognises that accessibility to surrogacy should be equal and without discrimination.

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:

MRKH Australia agree that the human rights of all parties to the arrangement, including the child born of the arrangement, must be respected including those highlighted by the ALRC.

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:

MRKH Australia recognises the rights of a child to have access to information about their genetic connections and birth story.

All information as to the gamete donor/s and surrogate should be contained on the birth register.

While the information should be held on the register by Births, Deaths & Marriages, there should be options for the information actually printed / displayed on the Birth Certificate to be that chosen by the parents and/or the person to whom the certificate belongs (upon attaining the age of 16 years). The printed / displayed information on the Birth Certificate should be easily accessible and changeable.

The Application for a Birth Certificate could contain options for the information displayed on the Birth Certificate – 'tick a box' options. i.e. tick for names of parents and/or donor and/or surrogate to be on the Certificate. If, at a later date, there is a requirement / desire for differing information to be printed on the Certificate, it would simply be a case of applying for another copy with differing information i.e. names of parents + name of egg donor but not surrogate or names of parents + name of surrogate no donor etc.

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

Response:

MRKH Australia recognise the following barriers:

Uniformity of Laws

With laws differing in each State, it creates confusion and is inequitable, discriminatory and prohibitive.

For example, in Tasmania, the intended parents can only pursue surrogacy with a surrogate who is domiciled in Tasmania.

An obvious discrimination is the lack of access to surrogacy for single and gay men in Western Australia.

The differing laws have different obligations and requirements for the parties which create differing costs depending on the State in which the intended parents reside. For example, in relation to seeking a parentage order in New South Wales (s17 of the *Surrogacy Act 2010* (NSW)) and Queensland (s32 of the *Surrogacy Act 2010* (QLD)) there is a requirement that the parties consult with an independent psychologist for the purposes of preparation of a Surrogacy Guidance Report. This is a requirement that does not exist in any other States. The different requirements, of course, create different costs depending on the State.

MRKH Australia support uniform laws in each State and Territory of Australia.

Medicare

MRKH people do not have access to Medicare rebates. The general approach is that if a doctor refers a person for fertility treatment a rebate is accessible for fertility treatments and assisted reproductive treatments such as IVF. The reality for people with MRKH is there are no rebates for a person without a uterus.

The lack of access to Medicare is inequitable and discriminatory and increases fertility treatment costs significantly for people pursuing a surrogacy arrangement.

Limited Information

There is currently a government website Surrogacy in Australia however the information is limited and, in parts, not entirely accurate. This website should be built upon and provide Fact Sheets, resources, provide relevant services (such as mediation), further guidelines around reimbursable costs, names of ANZICA accredited counsellors and legal professionals.

Any such website should provide information about international surrogacy.

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

Response:

Most State legislation includes a requirement for intended parents to be 'eligible' for surrogacy on the basis that there is a medical or social need. MRKH agree with the eligibility requirement.

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

Response:

Medical Eligibility of Intended Parents to include eligibility on the basis of Psychiatric Wellbeing

Currently the medical need (in most State legislation) is such that a person is unlikely to become pregnant or give birth or there is risk of harm in doing so. There should be further clarification around this for medical practitioners / fertility specialists by way of guidance as to when this eligibility is met.

The medical need for surrogacy should include eligibility as a result of a psychiatric condition, for example tokophobia.

Age

Each State has an age requirement (which differs depending on the State). The age should be 25 years for both intended parents and surrogates with discretion for consideration of 18 years or above based on an assessment of maturity (similar to s29 of the *Surrogacy Act 2010* (NSW)).

Surrogate – Previous Birth and Medical Eligibility

Surrogate should undergo health screening and receive advice from an independent obstetrician (i.e. a health practitioner independent of the treating fertility clinic) regarding medical suitability to enter into a surrogacy arrangement (similar to s17(d) of the *Surrogacy Act 2008* (WA)).

There should be no requirement for a person wishing to be a surrogate to have previously given birth following them receiving medical advice to ensure an informed decision can be made.

Surrogate Partner / Spouse

If the surrogate has a spouse/partner, they should be a party to the arrangement and should participate in counselling and receiving legal advice. This is not currently a requirement of the *Surrogacy Act 2019* (SA).

Requirements for Counselling and Legal Advice

The requirement for pre-surrogacy arrangement counselling with an ANZICA accredited counsellor in accordance with ANZICA guidelines should remain and should include, as a minimum, individual and group counselling for all parties to the arrangement.

Independent legal advice for both surrogate and their partner/spouse and independent parents with a requirement for a written legal agreement.

Permanent Resident / Citizen

Whilst all parties to the arrangement should be residing in Australia, there should be no requirement for parties to be a permanent resident or Australia citizen such as required in the *Surrogacy Act 2019* (SA) at s10(3)(c) & s10(4)(c).

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

Response:

Whilst a surrogate should always maintain bodily autonomy, the arrangement itself to an extent should be enforceable such that intended parents are presumed to be the legal parents and should be recognised as the legal parents via a pre-birth parentage order.

Any dispute about the legal parentage should rest with the surrogate.

Reasonable Expenses

The payment of the surrogate's out of pocket reasonable surrogacy expenses should remain enforceable.

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

Response:

Pre-Arrangement Counselling

The requirement for pre-arrangement / conception should remain as per question 7 under the heading '*Requirements for Counselling and Legal Advice'* above.

Legal Advice and Agreement

The requirement for independent legal advice should remain as per question 7 under the heading '*Requirements for Counselling and Legal Advice'* above.

Post Birth Counselling & Report

Counselling should be available post birth to the surrogate and the surrogate spouse/partner with intended parents bearing the costs– in a similar vein to s15 of the *Surrogacy Act 2019* (SA). However, counselling should not be a mandatory requirement post birth such as pursuant to s35 of the *Surrogacy Act 2010* (NSW) and should not be 'tied' to the making of a parentage order.

While the surrogate partner/spouse should be a party to the arrangement and they should participate in all pre-conception / pre-arrangement requirements of counselling and legal advice, there should not be a requirement for either counselling nor consent to the making of the parentage order post birth.

The requirement for a counsellor's or Surrogacy Guidance Report (i.e. pursuant to s17 of the *Surrogacy Act 2010* (NSW) and s32 of the *Surrogacy Act 2010* (QLD)).

Non-adherence to the pre-conception / pre-arrangement requirements

If the parties do not participate in counselling and legal advice prior to an arrangement, they should participate as soon as practicable. Such counselling and legal advice should be tailored on the basis there is already a pregnancy to ensure parties understand the legal position and

are emotionally supported by a counsellor. It should not be a situation that the requirement is simply not adhered to.

The Court should have discretion to make a parentage order in circumstances in which pre-arrangement requirements such as counselling and legal advice have not been provided if it is in the child's best interests.

Proof of Legal Advice and/or Counselling

A legal practitioner should provide a Statement confirming they have provided legal advice (in the absence of the other party). A letter of advice to the party should not be required to be disclosed. The Statement should cover broadly the advice provided.

A counselling report should be provided confirming counselling has been provided in accordance with ANZICA's guidelines.

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

Response:

Intended parents should be able to advertise their need for assistance to have a family through a surrogacy arrangement. It should be clear that any arrangement is a legal arrangement with no offers of payment etc.

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

Response:

Medicare rebates should be accessible for fertility treatments. If parties have eligibility for surrogacy, they should have access to rebates as per question 5 under the heading '*Medicare*' above.

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:

MRKH Australia recognise the differing requirements State to State in making an application for a parentage order which, in turn, creates differing costs. Uniformity of laws will alleviate this inequity

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:

Response:

MRKH Australia acknowledge and support that the paramount consideration in all surrogacy arrangements must be the best interests of a child born of the arrangement. Approval of any arrangement should be made prior to the parties pursuing a pregnancy. If the arrangement is approved, there should be a presumption of parentage of the intended parents and a pre-birth

parentage order made such that the intended parents are immediately registered on the Birth Certificate.

In relation to children born through an international surrogacy arrangement, the presumption of parentage should be recognised and citizenship granted for the child born of the arrangement.

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

Response:

As per question 5 under the heading '*Uniformity of Laws'* above – MRKH Australia support uniformity of laws creating equitable and non-discriminatory laws regardless of the State in which intended parents reside.

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

Response:

MRKH Australia support decriminalisation of international surrogacy arrangements.

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:

As per question 5 under the heading of '*Limited Information*' – MRKH Australia support a government site providing accurate and up to date information, resources, services (such as mediation) and fact sheets.