Submission: Inquiry into Surrogacy Laws

Submitted by: [redacted]

Parent through surrogacy, QLD

1. Who I Am

   I am a parent through surrogacy after a successful journey here in Australia in 2024. After finding out at the age of 16 that I was born with a condition called MRKH syndrome, I was faced with the reality that surrogacy would be my only option if I ever wanted to have my own child. This made my husband and I incredibly anxious as we knew that in Australia, intended parents have no legal rights to the child and the surrogate could potentially keep our baby. However, having a family was something we were determined to do as both my husband and I really wanted to be parents with all our hearts.

   While we are now incredibly grateful to have our son in our arms, the journey was emotionally complex, difficult and traumatising not only for my husband and I, but also our family and friends whom had to sit back and watch what was unfolding. For this reason, I feel a deep sense of obligation to share our story and experience in the hope that it helps inform and shape a more supportive and consistent framework for others.

2. The Realities We've Faced

   From the outside looking in, our journey appears successful given we were able to find a surrogate and we now have a son born through surrogacy. But beneath the surface, the process was tainted by fear, emotional torment and a significant power imbalance with a complete disregard for the safety of our son.

   Finding a surrogate in Australia can be emotionally challenging and exhausting. With no registry, agency, or even structured guidance, we relied solely on informal online surrogacy communities and information from others whom were on the same path. Eventually we connected with our surrogate, we became fast friends and spend almost every weekend together along with her children. When we connected with her, we never thought she would eventually offer to be our surrogate, due to the fact she had just given birth to a surrogate baby and the parents no longer had any contact with her. She led us to believe that they had used her to have a child, and then ended the relationship. We later found out from our own lived experience that this was not true.

   When our surrogate offered to carry our child, we knew our lives were about to change. My husband and I had done two rounds of IVF resulting in the creating of seven of our own genetic embryos, but due to them being used for surrogacy Medicare refuse to extend the rebate.

   After going through the legal agreement and pre surrogacy counselling, fast forward a year after our surrogate offering, we were ready for transfer – again with no rebate from Medicare. After transfer we waiting 11 days before our surrogate did a blood test which confirmed that she was pregnant and the first transfer was a success. However, at our first

scan two weeks later, everything changed when we found out we were expecting twins. Her whole demeanour changed. However, at roughly 9 weeks' gestation, we had found out that we had lost one due to them sharing the same placenta.

At times, we felt completely trapped, emotionally manipulated and stuck in a relationship we were unable to get out which had become completely one sided. I quickly realised that as intended parents, it doesn't matter what we as a "team" agree upon in the surrogacy agreement, none of it mattered and surrogates can do whatever they want because intended parents have NO legal rights. We found ourselves questioning her intentions, and found it hard to trust her after she repeatedly showed us that we couldn't trust her.

There were so many clear and deeply painful examples that I find extremely difficult to speak about;

- On multiple occasions, she has not only admitted to drinking alcohol and putting our baby at risk, by she would post on social media for everyone to see that she was drinking while pregnant with our baby.
- At 20 weeks pregnant, she began sending me extremely abusive messages which contained threats of termination if I chose to induce lactation so that I could breastfed my baby.
- Throughout the pregnancy our surrogate changed jobs and refused to provide payslips so that we would be able to appropriately reimburse for lost wages. Her response was "Well you should just trust me that's what I earn".
- On multiple occasions she reminded us that because she was technically the birth person, that she could legally name the baby whatever she wanted, that she could keep the baby, and that she "held all the cards"
- At 35 weeks pregnant she requested a birth photographer, this was not something that was in our budget and not something we wanted. But she kept saying things like "Well this is MY last pregnancy and MY last birth so you will be paying for it". When we again said that this wasn't something we could afford as her quotes were $2500+, we were met with her saying "Fine, this will be a photo free birth and you can meet them when a nurse hands him over" "hurts when the goal posts are changed doesn't it". This example is just one of many ways that intended parents are emotionally and financially manipulated by surrogates whom are just taking advantage of vulnerable people and looking for a way to get their "dream pregnancy" because they know someone else is paying for it.
- Fast forward to the due date: It was made clear before any embryo transfer had occurred that if the baby had not been born by 40 weeks, that a caesarean section would need to happen. This was due to her age being over 40, IVF, and her having two previous caesarean sections. The risk of still birth and haemorrhage was too high. This was understood and agreed upon. However, fast forward to 38 weeks, she was offered not one, but TWO chances of inductions which she refused to attend. Then the day of the booked caesarean section, she called the hospital and said "I'm not coming, you can't make me". Our son was then born a week past due date, experiencing the most traumatic birth he could have experienced.
- When she went into labour, we drove her to hospital. As soon as we were in the room she told us to "Get the fuck out". Our son was born within eight minutes of arriving at the hospital. However, due to a placenta abruption while in utero and

swallowing all the haemorrhaging blood, he required four minutes of resuscitation and multiple health issues including a brain bleed resulting in him needing to be transported to another hospital for be in the NICU. When he was released home, he came home attached to an oxygen tank.

- Initially after his birth, no one thought he was going to survive the first 48 hours. Our surrogate signed paperwork at the hospital to deny our families the opportunity to come in and meet their grandson, even though she knew it was a possibility he could die and that they would not have had the chance to meet him.
- When it came time for the parentage order, she dragged her feet and made excuses about signing her affidavit. She even posted on the surrogate community pages about withholding the parentage because she knew she had all the cards and we couldn't do anything until the parentage order had been complete. This meant, no Medicare, no daycare, no CCS for Centrelink ect. She knew that by doing this, it was her last chance to hurt us.

So much more has happened throughout our journey that has caused irreparable emotional damage and trauma, not only for us, but for our extended family and friends whom had to witness the torment at the hands of our surrogate. Needless to say, we do not have a relationship with her anymore. The PTSD this relationship has caused has left us feeling unsafe in our own home, unable to go to the shops alone with the fear of running into her and there being a confrontation, we even had to install security cameras as our home.

3. Connection to ALRC Themes

The challenges we've faced strongly align with the themes outlined by the ALRC:

- Access and Eligibility: Without a national body or registry, intended parents are left to navigate unregulated territory. The emotional risks of mismatched expectations is enormous.
- Legal Parentage: When our son was born, we were not recognised as his legal parents at birth, even though he is our biological child. Given his medical issues, we were not legally entitled to make any decisions about his medical care because in the eyes of the law the surrogate is the one who makes all the decisions. This alone has enabled a space for statements and behaviours that question our authority and decision making as parents.
- Reimbursement and Expenses: There is currently no clear framework regarding what is a reasonable expense or what are legitimate expenses. This creates conflict, distrust, and stress for all parties involved.
- International Surrogacy and Criminalisation: While we chose to remain within Australia, there was one point where we discussed the need for going overseas due to limited surrogates and lack of oversight are major reasons why many parents feel they are left with no option than to travel overseas to pursue their dreams of becoming parents.
- Human Rights and Equality: The current system favours those of legal knowledge, emotional resilience, and financial privilege. Every family deserves equal protection and access to surrogacy.

4. Recommendations for Reform

I would strongly urge the ALRC to consider the following reforms to protect the wellbeing of all parties – especially the child:

- A national surrogacy framework
  Create one clear, inclusive system which spans across Australia as a whole that ensures all family types have equitable access to surrogacy.
- Automatic legal parent recognition at birth where a surrogate is not genetically linked to the child, intended parents should be legally recognised from birth as their child's parents. This would prevent confusion, distress and potential manipulation.
- Decriminalisation of international surrogacy where families whom seek surrogacy overseas are not penalised. The focus should always be on child safety and human rights.
- Establish a national body to oversee surrogacy expenses. Someone who is trained and presents as a case manager or lawyer who may hold funds in a trust, access claims, and distribute reimbursements for legitimate surrogacy related expenses in accordance with a clear national guideline. This would remove emotional pressure from the relationship between the surrogate and intended parents.
- Protect the rights of the intended parents. Intended parents must be able to advocate for their baby as any other parents can, and set boundaries without being seen as unreasonable.
- Mandatory training and education. All parties must undertake pre surrogacy education training covering the expectations, legal rights, boundaries, and emotional readiness of all parties. Public education is strongly advised to reduce stigma and misinformation.
- Improve accessibility and criteria. Surrogacy should not be limited to those who've suffered multiple traumas, years of "proven" infertility. It's not an easy option – It is often a last and most difficult one. Families should be able to access it without having to justify or prove beyond reasonable doubt that their pain and suffering "qualifies" them for surrogacy.

5. Closing Reflections

This journey has changed me in ways I never would have imagined. Although our experience was horrible to say the least, I do still believe in altruistic surrogacy and that surrogacy can be beautiful – when done right. Altruistic surrogacy can only work when its rooted in respect, fairness, and understanding from all parties. Our lived experience has made clear that Australia is far behind on surrogacy laws, and our laws are not strong enough to protect the people they're meant to serve especially the children.

Australia needs a system the values all parties, and provides emotional safety as much as legal process. A system that supports healthy surrogate – intended parent relationships, prevents financial and emotional coercion, and provides independent oversight when trust may be frayed.

Thank you for the opportunity to share our story. My only hope is that our difficult and traumatic experience helps guide the development and change for a clearer, safer and more compassionate surrogacy landscape for all families.

Kind regards,

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Queensland