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11 June 2025

The Commissioner
Australian Law Reform Commission
PO Box 209
Flinders Lane
Victoria 8009
Email: surrogacy@alrc.gov.au

Dear Commissioner,

SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION – REVIEW OF AUSTRALIA'S SURROGACY LAWS

I am making this submission to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. I am a parent through surrogacy, having become a father in 2021, and have been intimately involved in the surrogacy community since around 2018 through online and in-person groups.

I have read the Issues Paper and have responded to the questions posed in the paper below.

I seek that my submission be deconstructed, and relevant sections published but de-identified.

1. If you or someone close to you has had personal experience of surrogacy, please describe:
    - What parts of your experience were positive?
        - We had a smooth experience with pre-birth counselling
    - What parts of your experience were negative?
        - Surrogate's ability to work – our surrogate was too unwell to work from ~8 weeks, but was well enough to study full time, undertake multiple days of unpaid work experience, and complete a degree whilst we covered her wage.
        - Costs – interpretations of what should and should not be covered
        - Hormones – difficulty communicating when hormones prevented logical and reasonable discussions – guidelines and a mediation

    - Retribution and coercion – the constant (weekly or more often) threat of the child or access to the child being withheld if we did not submit to whatever was being required, being blocked from communicating, being removed from appointments about our child due to petty disagreements and hormones.
    - Threats or suggestions of not signing required parentage order documents post-birth.
    - Medicare – difficulties in adding our daughter to our Medicare card. Being told multiple different processes and positions by medicare staff, including that she was not our legal daughter.
    - PPL – extreme difficulty in accessing government paid parental leave. It took almost 3 months for PPL to be approved, and a multitude of approaches to DHS, before an escalation of a complaint saw the case escalate to a manager who luckily understood the process.
- What could be improved and how?
    - Any definition of 'paid employment or work' should include study, work experience and other functional activities to ensure intended parents are only payment for a break from employment when it is genuine.
    - Reimbursable costs should be defined in a manner that also encompass costs that would normally be incurred, i.e.:
        - The increasing costs of feeding growing children is not reimbursable
        - Costs to support non-dependent/adult children are not reimbursable
        - Changes to child support due to age or non-surrogacy related change-in-circumstances is not reimbursable
    - Existing wages must be disclosed up-front, and wage increases during the pregnancy period should be addressed.
    - Clarity around involvement of intended parents, i.e.:
        - IPs should be able to attend <u>all</u> appointments where they relate to the health or progress of their unborn child, the surrogate should not be able to block them from attending
    - Processes to follow in the event of communication breakdown:
        - Mediation and/or decision-maker on key items
        - Avoiding surrogate decision-making on certain items without involvement of Intended Parents
    - Advanced parentage orders
        - Currently in queensland, the absence of one affidavit from any IP or surrogate party prevents a parentage order being lodged. This prevents risk to both sides.
        - In the absence of affidavits from all parties (i.e. a surrogate or an ex-husband), it should still be possible to apply for a

parentage order post-birth, provided that a Judge can reasonably review the request.

- Medicare
  - Introduce a streamlined process where children through surrogacy can be added to their parents (not surrogate) medicare card by default
  - Allow medicare rebates to be paid on surrogacy-related IVF costs
- Paid Parental Leave
  - Introduce clear processes and training for DHS staff so PPL can be quickly and easily processed (including training which covers that you don't tell parents through surrogacy that they are not the actual parents of a child)

2. What reform principles should guide this Inquiry?
   - Certainty for all parties involved
   - Humanity and respect for all parties involved
   - The best interests of the child

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

   For international surrogacy – surrogates being taken advantage of.

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 / facilitated?
   - Birth parent details
   - Genetic information
   - Any counselling reports or assessments of parents/surrogates

Children of surrogacy should have legal rights to access the documents from their source location, if and when they would like to request these.

5. What do you think are the main barriers that prevent people from entering into surrogacy arrangements in Australia, and how could these be overcome?

- Lack of direction and understanding. Until recently, it was difficult to find any information on official government sources. Information was piecemeal and inconsistent.
- Even currently, the surrogacy.gov.au has no mention of Paid Parental Leave or Medicare guidelines relating to children of surrogacy.
- Nationally consistent framework and requirements.

6. Should there be eligibility criteria for surrogacy? If so, what should those requirements be?
    - Cannot have children via traditional methods
    - Have financial means to support a child

7. Are there any current requirements which should be changed or removed?
    - The panel requirements in some states are archaic and insulting to people who need to access surrogacy. The onus should be on IVF clinics to confirm that appropriate counselling and criminal checks have taken place prior to transfer.

8. Are there any requirements for a valid surrogacy agreement you think should be added, removed or changed?
    - The requirement for a partner/husband to consent should be removed.

9. Should surrogacy agreements be enforceable?
    - Yes, however a judge should have the ability to made a judgement to the contrary if the child could face harm or severe disadvantage

10. What process requirements should be in place for surrogacy arrangements?
    - Counselling and independent legal advice
    - The panel process is outdated and bureaucratic, and presents a further barrier and cost in an already expensive process

11. What are the gaps in professional services for surrogacy in Australia?
    - Limited legal services offer surrogacy services.

12. How should surrogacy advertising be regulated?
    - It must be truthful, not misleading, and clearly identify benefit payments and commissions.

13. What entitlements, if any, should be available to surrogates and intended parents?
    - Medicare rebates should be made available

14. How could the process for reimbursing surrogates for reasonable expenses be improved?
    - Clear guidelines on what is considered reasonable expenses, and what is not eligible for reimbursement

15. 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?
    - Would support compensated surrogacy. Not commercial.

16. If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented?
    - Regulated through surrogacy agreements and solicitors. Not through an industry body or panel.

17. What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?
    - The parentage order can only be applied for post-birth. If any party does not provide an affidavit, then the parentage order cannot be applied for.

18. How could the process for intended parents to become the legal parents of children born through surrogacy be improved?
    - Advanced parentage orders as a mandatory surrogacy agreement item.

19. What is the best way to approach differences in surrogacy regulation between or within jurisdictions?
    - Introduce a national framework or legislation standard to remove differences.

20. Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach?
    - No. A regulator will further complicate an already difficult process for all involved.

Thank you for considering my submission.

Yours Faithfully,

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