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25/06/2025

The Commissioner
Australian Law Reform Commission
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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. My daughter was carried by my sister in law in the UK after 6 years of trying to have a baby.

My partner and I started IVF due to male factor infertility. My partner had no known fertility issues. After our first embryo transfer, she became pregnant with twins. After 9.5 weeks, we suffered a missed miscarriage. The products of conception stayed within her and she still showed all the signs of being pregnant. Unfortunately, an infection caused by the products of conception and / or the subsequent medical intervention, once we found out the twins had passed, led to Asherman's syndrome. Asherman's causes web like scarring in the uterus. Despite this scarring being removed 5 times under general anesthetic, the resulting damage has rendered my partner unable to carry a baby.

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

I seek that my submission be published.

1. If you or someone close to you has had personal experience of surrogacy, please describe:
    - What parts of your experience were positive?

    The process led to my daughter so overall it was a positive process.

- What parts of your experience were negative?

IVF is hard. Surrogacy is hard. It's stressful waiting to hear whether a process has worked or not. Moving embryos internationally was a very difficult experience due to the regulations in the UK, where we were sending them. Their requirements around HIV and other checks meant my partner and I were tested for HIV over 6 times in a 6 month period to demonstrate that the embryos were safe.

- What could be improved and how?

A) Medicare rebates for IVF cycles for surrogacy - This is a huge burden on intended parents who often have already spent money on IVF trying to carry babies themselves. At $10-12k per cycle and no rebate, intended parents have to make decisions like purchasing a house versus making a baby due to the lack of rebates.

B) National Surrogacy Laws – The current state-based system restricts surrogacy. Navigating two different sets of rules whilst going through the stresses of surrogacy just makes things harder. Having one set of rules will allow for clarity and potentially increase the number of surrogacy babies as often the rules restrict making matches.

C) Compensation for surrogates -

Every other party in the surrogacy process is compensated apart from the surrogate. To me, this is an obvious step that Australia should be taking. The surrogate takes the most risk in the process and has the heaviest burden.

D) Pre-birth Orders

Having clarity over the parents prior to the birth will make things so much easier when it comes to registering and bringing babies home if overseas. It also allows for the intended parents to be the decision makers when dealing with any medical issues that arise after the birth. This takes pressure off the surrogate who may be asked to make decisions she doesn't believe are hers to make.

E) Regulating the industry

Regulating the industry will allow clarity for all parties. It will let the intended parents and surrogates know what they are in for right at the start of the process. It will protect all parties too.

F) Decriminalise international commercial surrogacy

This is one of the highest priorities. Imagine having no other option that to go overseas to make your family and then run the risk of prosecution regardless of the fact that all parties were consenting and it all took place in a country where it was legal to do so.

2. What reform principles should guide this Inquiry?

   It should look to expand women's rights not reduce them. It should be supportive of these amazing women who step up and help make a family and should seek to increase access to surrogacy rather than hinder it.

   No doubt the Commission will hear from people or parties with an alternative views about whether surrogacy should be allowed. I urge the Commission to minimize the emphasis on these submissions. These parties are not involved. These people are not required to go through surrogacy if they don't wish to.

   If these parties are pushing their views due to religious beliefs, I think the Commission should adhere to the longheld stance of keeping religion and state separate.

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?

   I don't believe there are any human rights issues.

   If anything, surrogacy supports human rights, the right to have a family.

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?

   This is usually all agreed up front as part of the process between the surrogate and intended parents.

   I have never come across intended parents who intended to do anything other than provide complete transparency with their child. This honours the surrogate who has helped make their family. In the same vein, all surrogates we know, have told their biological children all about the process which I think is important so they understand where the baby has gone (age appropriately).

   In the unlikely situation that a surrogate baby isn't told about how they came to be, they should be allowed to access the information about how they came to be when they turn 18. In traditional surrogacy situations, this may be important for medical reasons.

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?

There isn't a lot of information readily available for intended parents and surrogates. You have to have committed to the process before really finding out much about it. If information was more readily available, there may be more potential surrogates available which would help create more families.

Compensation may also be a barrier for some potential surrogates.

Complicated rules, differing across Australia will also be a barrier.

Pointless restrictions such as they must come from the same state (Tasmania) further hinder the process.

The lack of medicare rebates compounds an already expensive process.

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

   No. There should not be any eligibility criteria other than all parties consenting.

7. Are there any current requirements which should be changed or removed?

   NA

8. Are there any requirements for a valid surrogacy agreement you think should be added, removed or changed?

   NA

9. Should surrogacy agreements be enforceable?

   Yes.

10. What process requirements should be in place for surrogacy arrangements?

    NA. It is between the parties. Templates are useful but ultimately itis for the Intended Parents and Surrogate to decide on. If the agreements are enforceable then the agreement should be reviewed by a solicitor.

    Our counselling process was undertaken in the UK as that is where the embryo transfer happened. I felt it was a very tick and flick process but have no experience of the Australian counselling.

11. What are the gaps in professional services for surrogacy in Australia?

Counselling. There is a chronic shortage in counselling around fertility/ family planning in Australia.

12. What is the best way for professional services for surrogacy to operate?

    NA. Never used them. Didn't see the need for them beyond a matching service (which doesn't seem to happen often).

13. How should surrogacy advertising be regulated?

    It shouldn't providing that it is in line with legislation for example when offering compensation.

14. What entitlements, if any, should be available to surrogates and intended parents?

    Parental leave for all parties.

15. How could the process for reimbursing surrogates for reasonable expenses be improved?

NA

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?

    I support both however agencies' power should be minimized in the process.

17. If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented?

    NA

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?

    The time it takes to get the parental order. Particularly in overseas surrogacy.

19. How could the process for intended parents to become the legal parents of children born through surrogacy be improved?

Put their names on the birth certificate. Even if it means a special certificate that has the surrogate's name on it as well as the parents. We don't care. We just need our names on that certificate for us to become a family, administratively. Dealing with paperwork and legal processes whilst caring for a new born is a lot of work. And yes, it could be outsourced to a solicitor but that is further cost.

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.

My daughter was British by birth as my sister in law and her husband are British. After going through our parental order in the UK court system we then had to apply for her Australian citizenship. We were able to apply in [redacted] 2024 when my daughter was approx. 6 months old. Her citizenship was granted but only from the date of the application not from birth. Both her biological parents are Australian and yet her citizenship only starts 6 months after her birth. I would have loved for her to Australian from birth.

Visas – My daughter has been on a number of visas. When returning to Australia, we had to apply for a tourist visa for her as our parental order in the UK was pending. We travelled back and then had to apply for a child sponsorship visa ($3k) as her tourist visa was running out which put her on a bridging visa A whilst we waited for that and the parental order. We then had to move her on to a bridging visa B ($300) as we believed we had to travel back to the UK for the parental order but luckily the court changed their mind and said we could do it online.

Passport – luckily we had the parental order by then so the process was the same as it would be for non surrogacy families.

21. How could the process for obtaining these documents be improved?

Parents' names on the birth certificate. This will make a huge difference to all the administration processes.

22. What is the best way to approach differences in surrogacy regulation between or within jurisdictions?

Have a national framework.

23. Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach?

    I don't think so. There is enough oversight through the fertility clinics.

24. Should the law have a role in discouraging or prohibiting certain forms of surrogacy?

    No.

25. Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices?

    Yes. It was very hard to find out about what the laws were. We had to find a meet up group to meet other IPs to get a better understanding.

26. Do you have any views about the issues we consider to be in or out of scope?

    Medicare rebates for IVF cycles which are intended for surrogacy.

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?

    NA

Thank you for considering my submission.

Yours Faithfully,

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