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22/06/2025

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 same-sex intended parent who is now a parent through Surrogacy in Canada to 2 beautiful boys about to turn 5 and 8. [REDACTED]

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

I seek that my submission be **de-identified**.

If you or someone close to you has had personal experience of surrogacy, please describe:

My Partner and I have been together since 2010. We are a same-sex male couple. We first began the process to Foster but soon began to realise that this wasn’t going to be something we could do. Firstly the system was horrendous and although they said they were putting the Child’s best interests first, we didn’t agree. We wanted to start a Family, not have Children come and go from our household. We had also looked into

adoption and realised that wasn't likely to happen. We decided that Fatherhood just might not be on the cards for us.

We started hosting teenage exchange students through AFS. On our First hosting in 2015 we soon realised that we really wanted to be Dads and we heard murmurs through the Gay community that overseas Surrogacy was an option. We already knew we couldn't do Surrogacy here at home in Western Australia.

We started looking into Overseas Surrogacy. We established that India and Asia were no longer options and we thought the USA was the only option. We then attended a Surrogacy Seminar in Perth and found out about Surrogacy in Canada. This was better option, it was much cheaper than the USA and closer to Altruistic Surrogacy like Australia rather than the Commercial Surrogacy in the USA. We were able to connect with a Surrogacy Lawyer and a Surrogacy Agency straight away, who both presented via zoom at the conference.

Having an Agency and Lawyer who understood the local laws and could help with everything going forward was so beneficial. It cost us extra money but it meant we were doing everything correctly and gave us the potential for the best outcome. We then were introduced to Clinics both in Canada and in USA. We ended up going with a Clinic in the USA, mostly because it came highly recommended and had awesome success rates.

I had a Brother and Sister-in-law who are going through IVF here in Perth and they were having a terrible time. From their experience and that of friends I soon came to realise that the IVF in the USA was far and beyond better than both Canada and Australia. It still seems that Australian IVF is far behind the likes of the USA and Canada.

We also needed the help of an Egg Donor and were able to find one through an Egg Donor Agency in Canada.

Before venturing further into Surrogacy I spoke with people in my life who were all adopted (I know quite a few) and also read articles and listened to blogs. I wanted to be sure that us bringing a kid into this world via Surrogacy wasn't going to be of detriment to our Child. Surrogacy being quite new and not widely used, there were no Teens/Adults I knew at this point in time I could get advice from about being born via Surrogacy so Adoption seemed to be the next best thing.

I found that those people who were adopted, always knew they were adopted and were loved and cared for didn't seem to have any mental issues or resentment from being adopted. Those that were lied to did, those that had terrible home lives also did. One of my friends said it was obvious his Mum wanted him but his Dad didn't so he never bonded with his Dad. When he sought out his biological parents his Mum was "trouble",

she took money from him and put him into debt. His biological Dad died soon after them meeting but their relationship was quite good prior to him passing.

This gave me the confidence that our Child/ren would be fine as long as we were open about everything so it became a priority for us that our Egg Donor and Surrogate would both have to be people willing to continue a relationship with us and child ongoing so that our Child would never wonder where he/she came from.

We found our Egg Donor straight away, and matched with a Surrogate within a month. This first match though did not last, her life had been turned upside down by a recent divorce and it just wasn't the right timing for her. We then waited another 5 months before we met our Surrogate.

With today's technology it was easy to have video calls, share videos and become friends on Facebook to feel part of each other's lives, but during the pregnancy we were unable to just pop over and help her out with housework or child minding or cooking or anything she might have needed assistance with, especially towards the end. We were very jealous of those on the East Coast of Australis who could do Surrogacy at home and be close to their Surrogate and be more useful during the pregnancy.

We did however have enough funds to fly over to Canada when we were 20 weeks pregnant. At this time we met our Egg Donor and Surrogate for the first time in real life. It was like catching up with an old friend because we'd now been in each other's lives "virtually" for about 12 months.

During this visit we also met with the hospital to do a birthing plan and meet their Surrogacy liaison. The two of us and our Surrogate attended this meeting and we were able to create a file at the hospital showing how we all expected things to happen, who was in the room etc and who would cut the umbilical cord, who would care for the baby after birth etc. They showed us how to get to the birthing suites from the Main Entrance so that we knew where to go and what to do when we arrived for the Birth. This was amazing and it's not something I hear being done here in Australia. I think it's great they have a Staff Member who is their Surrogacy Liaison and a way of creating a birthing plan on our file so that when the birth comes the Staff on duty know who's who and what's expected.

Our Surrogate was cared for by a Midwife and it was the Midwife who attended the Birth at the hospital not a Doctor. This was also a wonderful experience. She saw our Surrogate all through the pregnancy at her own business/clinic and then met us at the hospital for the birth on the night. She was also able to care for us after the Birth so baby's first checkups were all done by the Midwife at her clinic while we were still in Canada. Our first Son was born July 2017.

Once our Son was born our Surrogate was not allowed, by law, to sign any paperwork for us for one week. This rule was put into place so that IPs could not hound their Surrogate straight after birth to get the paperwork done. I felt this was a really great idea. Keeping in mind that their law unofficially sees us as the Parents at birth, even though the Birth Certificate isn't issued yet. The hospital was aware of the Surrogacy Contract (I'm unsure if they require a copy) and obviously from our meeting with them they were aware that it was our wish and our Surrogate's wish that we be responsible for the baby after birth. I think it's essential that the baby I considered the IPs baby at Birth, even though official parentage hasn't yet taken place.

A week after Birth we completed the Birth Certificate paperwork through our lawyer and our Surrogate signed her part. This paperwork states that it was a Surrogacy Birth, the Surrogate's details are recorded on the record but the actual Birth Certificate issued does not contain any of the Surrogate's details, only us as the Parents were listed.

Our Children can access the name of their Surrogate through the Canadian Government, this forms part of their Surrogacy Laws and I feel it's a great step for the Government to take so that a Child can find out who they were birthed by should they not be given that information by their parents. Funnily enough there it's no requirement to record who the Egg Donor was.

Once we attained the Birth Certificate we applied for a Canadian Passport which was easy and we came home with baby entering Australia as a tourist. Once home we completed the Citizenship Application online. This was the best Government website I have ever used, I found it very easy to complete and we had our Citizenship Papers within 2 weeks. (Some people said theirs took up to 3 months.) The checklist was very thorough on the site and I just found it very easy to complete.

I went to a Medicare office to register our Son on our Medicare Card and this process was very easy. We were able to use our Canadian Birth Certificate and the Citizenship Certificate to do this and the person who assisted me was fantastic and it was completed in that one visit and I was given a temp printed card to use until the official plastic one arrived.

We had already taken our Son to see our GP for a checkup prior to attaining the Medicare Card and they were happy to hold off charging us until the card was issued. I've heard of other couple's Doctors doing the same thing to help them out.

Once we had the Citizenship Certificate, we then applied for an Australian Passport for our Son which is where things got really sticky. Although we have a Birth Certificate from Canada listing us as his Parents, the Passport Office does not recognise that. They required us to fill out 2 extra forms due to our Son being born through Surrogacy. One of which needed to be signed by our Surrogate as they considered her responsible for the child. This was terrible. Under Canadian Law she has no responsibility for the child

and by signing this form it opens a can of worms because she is then implying she does when she doesn't. Our Surrogate was kind enough to sign to just make our lives easier. But this MUST be fixed. These extra forms are totally unnecessary. We have a valid Canadian Birth Certificate stating us as the sole Parents to this Child. Nobody else is responsible for them and nobody else should need to sign for the Passport. There is a terrible injustice here. Heterosexual couples can in fact just not declare their baby is a surrogate baby and have a Passport approved on this Canadian Birth Certificate which has their names on it. I was tempted to say that I birthed him, but I wasn't sure they'd believe me.

This process of getting a Passport is terrible. I felt very discriminated against and so unfairly treated. They also wanted us to supply our Surrogacy Agreement. We should not have to do that either. We are listed as parents, the Citizenship was done, this should be enough.

So far we have had no issues with Schools, Hospitals, Doctors or anybody else apart from the Passport Office. We haven't however had to do anything within the Court System and that is where things will once again fall over. Our Courts will not recognise us as the Parents. Technically my Partner is the "Sperm Donor" and I'm nothing in the eyes of the WA Courts. This is a major problem when it comes to Wills and Child Custody in Family Courts etc if we were to end up there. I hate to think how it might go in our current situation. Our Children currently have no parents under the Law here in Western Australia.

Our second Son was born in June 2020. During COVID! It was the scariest and most uncertain time of our lives ever. Our business was shutdown due to COVID, we had no income and a baby being born late June / early July in Canada. Airlines were closing down and getting to Canada was becoming difficult. We made the decision in April, with the guidance of our Canadian Lawyer to go to Canada. Our boarder was closed and our first application to leave the Country was denied. They denied us going to Canada for our Child's Birth, how ridiculous was that!? If we weren't there our Baby would have ended up in Foster Care during a Pandemic. Our second application was successful with help of Sam from Growing Families who had direct contact with somebody in Government who was Assisting IPs like ourselves to leave the country for births.

We then had to navigate our way into Canada with the help of our Lawyer and even that wasn't guaranteed, but we followed all the steps and pleaded our case at the boarder. We even had Canadian Boarder call us on the phone at the Boarding Gate, here in Perth, to ask us why we were coming and that we might not make it through the boarder dependant on who we happen to be questioned by when we arrive. We made the difficult decision to both fly with our 2 year old Son to Canada to await the Birth.

We took all the precautions we could to avoid catching COVID and successfully went to Canada, lived for 3 months there and returned to Australia all without catching COVID.

Canada was kind enough to let us in, trusted us to self-quarantine in an Air-bnb we'd booked and our Egg Donor and her Parents were kind enough to fill our Airbnb with toys, books, bikes and food for our arrival and to deliver food to our doorstep while we quarantined. These people aren't just our Egg Donor and Surrogate they have become Family. Our Egg Donor's Parents became Family. All of them have been to visit us at different stages here in Australia.

During COVID things were harder but in some ways easier. We were not allowed to fly home with the Baby as a Tourist so we had to do Citizenship prior. So weeks before Son2 was even born I was in contact with the Consulate in Toronto. They asked somebody in our immigration office in Vancouver (I think it was) to contact me. She asked that I complete the online application as soon as I have the Birth Certificate and then email her the application number and she would get it processed as a priority. And she did. It was done within a couple of days! We then had to go to the Consulate for an emergency passport which took 24 hours and then we were ready to come home. So we were ready to come home 2 weeks after birth and luckily by then there were flights back to Perth again.

Son2 was born June 2020 and we had a home birth. We had always planned a home birth as it was something our Surrogate really wanted to do. And with the current restrictions due to COVID it made things a lot easier. Our Midwife and her assistant attended and we were also able to be there. If we'd had the birth in a hospital we wouldn't have been able to attend. Home birth is the most natural thing you will ever experience, it was so much less clinical and I was able to "catch" our Son as he entered the world and be involved in the actual Birth. It was the most amazing experience and for those few hours we totally forgot about the Pandemic and the big scary world we were in and just enjoyed the birth of Son2, for a moment life seemed normal again.

Before coming home we applied for G2G Pass to Quarantine at home as a hotel room was no fit place for a newborn and almost 3 year old and it was granted. On arrival at Perth Airport though, the Police there denied it, with no reason, and herded us like prisoners onto buses with everybody else to a hotel. This was the worst experience of my life. Do you know what it does to a 2 year old to celebrate your 3rd Birthday locked in a Room that's not built to live in, it's built to sleep in!? It was inhumane and since then I have had to seek professional help from the whole ordeal. It was unsanitary and a complete shambles and to top that off we were charged \$5500 for the pleasure of being incarcerated. Held against our will when we had an approved Pass to go home! I originally refused to pay the money but the State Government had their debt collection company hound me multiple times daily until it drove me insane and my Psych insisted I pay it, to just put it in the past and stop the hounding from the debt collection people as

it was mentally destroying me. I paid and also sent a requested for compensation from the WA Health Minister Health Act 2016 Part 13 Division 1, Section 203, which enabled me to apply but to this day they've still not responded.

Jumping to 2025, we wanted to plan a Family Holiday with my in-laws to Singapore and we all needed to renew our Passports and Son2 had only ever had the emergency passport he came home on so we had to get him one. Our 3 passports arrived within 2 weeks but we had to hold off booking our trip because Son2's passport had been held up and months later they requested a fill out a 3rd extra form and once filled out they'd let me know within 7 days IF he can have a passport. The process was even worse than the first time. I felt so discriminated against and it caused flashbacks to our mistreatment on our arrival back into Australia in 2020. We never went on our Family holiday, by the time it was all sorted the stress it had caused took all the fun out of it and we'd been so delayed in booking it the discounts that were originally on offer were no longer available. It's not a great feeling being a second rate citizen in our own Country, to feel like your own Government thinks of you differently. It's something we've had to deal with and have to deal with just because we're Gay.

The Western Australian Government has been in breach of Federal discrimination Laws now for something like 10ish years in it's Surrogacy Act. At first they were given a few extensions to get things sorted and they ran out some 8ish years ago and yet still nothing has changed. They've "pretended" to work on it for years now, with all kinds of stupid excuses but still nothing!

Yet Canada allowed us access to Surrogacy, allowed us access to their Country during a Pandemic when borders were closed and then trusted us (as non-citizens) to do the right thing and Quarantine for 2 weeks at our Airbnb without even checking that we were doing the right thing. Then they also worked to get us a Birth Certificate in a speedy time because we were foreigners wanting to go home and setup and appointment to get a Canadian Passport for Son2 during closure of their offices during the Pandemic. It's a little embarrassing when a foreign Country does more for you than your own. If it wasn't so far away and if it didn't snow there I'd seriously consider living there just because their Government and the People of Canada know how to treat people right.

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?:

From my personal investigation into adoption and effects that had on people in my life and others I was able to study online, I feel it's VERY important and necessary for a Child to have access to their Birthing details. They should know who carried them and who they are biologically linked to. And preferable they should be able to contact

those people. I don't feel that people should be allowed to be Surrogates, Egg Donors or Sperm Donors if they aren't willing to communicate with people they helped create who might have questions. They don't "have to" have a relationship with them but at least be open to answer questions. This information should be recorded at Births/Deaths/Marriages and be available upon application by somebody born via Surrogacy.

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

For us the main barrier was the fact that Western Australian Law forbids same-sex Males from accessing Surrogacy or IVF. We would have most likely had a babies here in Western Australia if the option was available. We had Family and Friends that would have been willing to help.

In my experience from the WA Surrogacy Facebook Group, many heterosexual couples find it difficult to navigate the Surrogacy System here in WA. There seems to be way too many hoops to jump through before they can even get started on a Surrogacy Journey. This a deterrent for Family and Friends to even put their hand up to help as they then have to commit to all of that too.

Surrogacy is very important, there are some definite "hoop jumping" that needs to be there to protect everybody involved, IPs, Surrogates and the Children being born, but the process and system definitely needs to be improved.

Counselling both separately and together as a group is something that is important. Criminal History check are also a must. Yes, heterosexual couples who are able to fall pregnant don't have to forgo any kind of criminal checks etc but as we have the opportunity to and in best interest of everyone involved including the Child I think it's a must. If only we could screen everybody before they are able to be parents, that would make for a better society, but that's a whole other argument.

Some of the Counselling stuff could also be done within the Surrogacy Team. A list of things that they must talk about and come to agreements on beforehand that can then be included in the contract.

Our Lawyer in Canada was very experienced, her name is [REDACTED]
[REDACTED] She has been involved a lot of the law making in regards to Surrogacy in Canada and may be able to offer insight into things that have worked and not worked in Canada. Her contracts are very thorough and forced us to discuss all kinds of scenarios that we hadn't thought of. One of the most confronting was that we had to agree on what would happen if our Surrogate was badly injured but was able to be kept alive on life support so that the baby can stay in the womb for longer would we

all agree that life support would be kept on. We were in tears even thinking about it, what an awful image, but for it to be there, it's probably happened and the last thing you want to be doing is discussing this in that moment with your Surrogate's Partner.

The Agency process involved filling out a thorough profile with lots of questions about what you expected from your Surrogate while carrying your child and contact afterwards. This also ensured you matched with a likeminded person and you were on the same page on things, especially anything that was a dealbreaker for you.

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

If you had asked me this a while ago I would have said to only allow people who are unable carry their own child. This of course means anybody who's been able to get pregnant after exhausting IVF etc and Gay Male Couples and Single Males. This would be to exclude somebody making a "choice" not to fall pregnant and use a Surrogate instead. For example a model or actress who didn't want childbirth to damage her figure and therefore chose Surrogacy just to avoid carrying a baby. Recently I met a lady who had a phobia of getting pregnant and giving birth. So, should she be denied access to Surrogacy? She can physically carry a baby but she isn't mentally able to. So in my mind she should be able to access it but I'm not sure the Actress/Model should be able to in my examples. But I guess there is argument on why can't the Actress/Model access it, she's protecting what she thinks earns her, her living.

I think passing a Criminal History Check, not sure which crimes should stop you being eligible. I guess Violent Crimes, Sexual Crimes etc would definitely exclude you but not sure what else.

This is a difficult question, the more I think about it, the more I think how far should the system be able to go to say whether somebody is a fit parent. This is going to be a long debate for you all I think. Who are we to decide who should or shouldn't be a parent?

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

In WA of course Surrogacy should be opened to allow everybody to access Surrogacy. Including Single Males and Male Couples and other members of LGBITQA community. The current WA Law is very restrictive on who can access Surrogacy.

Should surrogacy agreements be enforceable?

Yes, why have them otherwise. At Birth it would be terrible if a Surrogate could in fact keep the baby when it isn't her baby. This is unlikely to happen, but also, the IPs must not be able to walk away and leave the baby for the Surrogate to look after. Plus IPs

must complete any reimbursement payments that are agreed upon in the Agreement. I think yes it definitely needs to be enforceable.

What process requirements should be in place for surrogacy arrangements?

I think legal advice and counselling is a positive aspect of the Surrogacy Process but should not be too lengthy a process and professionals offering this service should have some guidelines to what their role is. I know in WA couples have struggled to find people qualified who know what they are actually supposed to be doing.

Counselling should be available post Birth for anybody needing it, this was in our contract in Canada. Even if our Surrogate's children needed counselling we would have to have covered the cost as the IPs. Our Surrogates Children knew us throughout the process and they knew the baby was going home with us after birth, but should any of them had been in distress after the birth because baby didn't go home with them, then we would want them to have access to that help. They didn't, and I've not actually heard of any who have but our Surrogate and her kids visited us frequently after Birth while we were in Canada and had cuddles and stuff. And a couple of Summers ago they joined us for Christmas and 4 weeks of an Aussie Summer and her kids were like Cousins to our kids. It was an amazing 4 weeks being able to show them our part of the world and a Summer Christmas.

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

In Canada anybody can open a Surrogacy Agency. This has proven to be a minefield. The bank accounts held by these Surrogacy Agencies are referred to as "TRUST ACCOUNTS" but they have no protections on them. Not like a Trust Account held by a Lawyer. One Agency there recently has been accused of not paying out money to Surrogates for their expenses as they should have and the IPs had to start paying directly and never got back their money they'd already deposited into the Agency's Trust Account. And others who haven't completed a Journey and can't get their money back because, we believe, they are spending Trust Money to pay their everyday running costs instead of what it is for.

Agencies are great though, they understand the law, they can take care of the money side of things, which is the most unpleasant part of Surrogacy. They can ensure the law for reimbursements is adhered to and that the contractual reimbursement rules are also adhered to. They can offer great advice and guidance to those they look after.

I am a big believer in using Agencies and think our decision to use one in Canada for both Journeys was a positive one. I do however think that regulation over them should be a requirement. Nobody should be able to just open an Agency without completing

some kind of course work and have some kind of qualification to run one and it's a must that they have a protected Trust Account just like a Lawyers Trust Account. Depending on a client base this could be a substantial amount of money and it must be protected.

I think Counselling could be integrated into Agencies or Clinics. Agencies would likely require to have a Counsellor who can talk to and advise clients, both Surrogates and IPs along the way if needed anyway regardless of any other counsellor that might be required when applying for Surrogacy.

How should surrogacy advertising be regulated?

I think Advertising should be allowed but with that of course there are pitfalls. Those seeking Surrogates are very vulnerable people. Becoming parents has likely been very difficult for them and it's something they strongly desire, with that comes desperation and makes them an easy target for scammers and con artists.

I know of a couple who were "dating" multiple IPs and telling each of them, well we'll work with you if you buy my husband an xbox or if you buy us a car etc etc. This of course is against the law, this would come under Commercial Surrogacy which is not allowed in Australia. As far as I'm aware this couple was reported to Police, but I'm unsure of the outcome. But the bad part is, they may get away with it and a couple with enough desperation and money might just give in to these requests.

That's where Agencies are great. They can act like a dating site, screen those applying on both sides and although they still can't monitor private chat between those that have matched, they give couples an Authority to report to if something illegal, like this, is going on and those people can be removed from site and possibly blacklisted for other Agencies.

I think Surrogacy advertising should be kept within Agencies/Clinics. People should not be prosecuted for announcing to Family and Friends that they are looking for a Surrogate or if they are wanting to be a Surrogate. But I think formal advertising should be limited to Agencies/Clinics.

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

If Medicare rebates are available to couples for IVF then it should also be available for the IVF of a Surrogacy Journey. To not allow it would be discriminatory.

Surrogate Parental leave should be limited. They don't actually have a baby to look after but they do of course deserve a period of recovery time after the Birth. I'm not expert on this, so a Doctor or Midwife might know better, but they wouldn't need the entire length of normal Parental Leave because they aren't Parenting. The length of time would also

vary depending on whether it was a vaginal birth or a c-section and/or any other complications experienced with the Birth.

IPs on the other hand are Parenting and should be entitled to it.

I think it is desirable to make Surrogacy more affordable but, I also feel that currently Surrogates in Australia are not reimbursed enough. I have heard of Surrogates who at the end of a Surrogacy Journey are out of pocket real money they spent because of the pregnancy that isn't currently able to be reimbursed under our current laws. This is definitely unacceptable. By saying that they deserve to be compensated more does increase the cost of Surrogacy and therefore takes that away from more people who now won't be able to afford it. So there is definitely a balancing needed here between ensuring Surrogates are look after and that Surrogacy is as affordable as possible.

Maybe allowing people the use of their Super to fund part of their Surrogacy etc might be a positive way to make it more affordable. Unfortunately though, it's not an easy thing to make it affordable for everybody. This will mean there are couples who are very deserving to be parents and possibly by no fault of their own are unable to have kids naturally and don't get to realise this dream due to finances.

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

The process for this in Canada was very good, but very broad. Surrogates could only be reimbursed by providing receipts. But they could submit a full grocery receipt and get whole amount reimbursed, they could submit their car repayment (because they need their car to get to appointments and get that reimbursed. But there was a monthly limit to what they could claim but they could, would and were encouraged to submit receipts to the full amount of the monthly reimbursements listed in the contract.

We had the money to pay this and agreed to the amount and we had no problem with it. In "real" terms, they were being reimbursed for more than what I would consider "real" costs of being pregnant but it wasn't over the top like commercial surrogacy in USA where they could ask for any amount.

I mean who's to argue that a car repayment isn't a pregnancy cost, if she uses the car to get to appointments and to get groceries to stay healthy for the pregnancy etc etc then why can't she claim it!?

I do believe the law in Canada has changed now and there is a slightly stricter list of reimbursement receipts that be submitted but I do believe it's still fairly broad.

I feel a compensated system with strict limits is a good way to go. This however will mean higher cost for IPs to do Surrogacy and some couples not being able to afford it.

Choosing to be a Surrogate does not only affect the Surrogate's life, it also impacts on her Children, her Partner and their Family as a whole. Towards the end of the pregnancy when carrying all that extra weight. she's sore, tired, full of hormones and inevitably cranky from it all, it's her Family that cops the shorter temper or grumpy Mum, not the IPs. Any kind of extra compensation that can go towards something to benefit their Family has got to be a positive and well deserved reward for all of them.

I don't think we should be stopping independent Surrogacy Journeys at all, and they should have guidelines to follow for reimbursements so they are still able to do this without an Agency. And Agencies should be able to offer just the service of managing the money without the extra support at a cheaper rate for those doing independent Journeys. Money is a sticking point in life between Friends and between Family so it's a huge benefit if that can be taken care of by a 3rd Party.

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?:

If my interpretation of Compensated Surrogacy is correct I will assume it is similar to that offered in Canada where Surrogates can be reimbursed for expenses and possibly a little more that is a fixed agreed max set by the law and contract.

And Commercial Surrogacy would be open so that people can negotiate their own Financial obligations and Surrogates can ask for what they want per month and any extras that might be covered on top of that if certain things happen.

I think it's a fine line with this decision. The last thing we need is for people doing Surrogacy purely for financial gain. This can lead to many issues. One of which is the Surrogate's Mental Health. If you are doing it purely for financial gain then this must very much increase the chances of a Surrogate regretting choices down the track and causing herself possible Mental Health issues.

This is where Counselling and Assessment before the Agreement can help to identify people who may not cope well with Surrogacy or may be doing it for the purely financial gain. Not to say that there will be people who would do it for financial gain and handle it just fine.

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

There could be set guidelines restricting the max amounts for certain things or a total max restriction and then the amounts are set in each individual contract.

A Family Member may only want their travel, appointments, medication and any time required off work paid to them with nothing more and then another may want the max they can.

So I think a strict guideline could implement it and then individual contracts would be written in line with that. This would mean contracts would need to be enforceable.

Agencies would of course be able to enforce this on behalf of IPs and Surrogates and are likely to adhere to law or risk losing their license to practice.

Those on independent Journeys would need to adhere to the law at the risk of being audited and fined etc?

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 main problem for us in WA who have completed overseas surrogacy is that we CAN'T apply for legal parentage and our Birth Certificates aren't being accepted as proof of us being parents in the eyes of the law.

This process should not be a complicated one. With a proper Surrogacy Agreement in place and the completion of a form signed by IPs and Surrogate under witness this should be a very easy process as it was in Canada for us.

Ontario, Canada has a very simple process for this done at Birth just via paperwork that people can either do on their own or with their lawyers assistance.

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

IPs should be considered the legal parents from Birth. The Surrogacy Agreement itself should be proof enough of this intention and could include a section where it is clearly stated that from Birth this child will be the legal child of the IPs.

How could it be in the best interest of the Child for them for their Parents not to be recognised from Birth as their Legal Parents. This is really a no-brainer if you are only considering the rights of that Child. The intent through the Agreement is that the Surrogate is purely carrying the child for its parents and therefore at Birth those Parents should be recognised, not left in limbo or be considered the Surrogate's child for any period of time.

This is very clear when the Surrogate has no biological link to the child but obviously does look different for Traditional Surrogacy where the Surrogate is the biological

Mother of the child as well as Carrying the child. But once again, all intent should be clearly outlined in the contract and that should then be adhered too regardless.

What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy:

Australian citizenship;

I found the website the best Government website I'd ever completed. I had a checklist of stuff to have ready and scanned etc before I even started the process. I had all those things scanned and sitting in a directory on my computer ready to go and then went through and filled out the online application and uploaded the appropriate files as they were needed. We had no issues with this process and were not even required to do DNA tests because we had paperwork from our Clinic in Las Vegas showing one of us as the Biological Father.

an Australian passport; or

This process is awful. We have a Birth Certificate, a Canadian Birth Certificate, a Country that is part of the Commonwealth and yet that Certificate with both our names on it as the Parents, does not allow for us to have sole discretion in applying for a Passport for our Sons. Being Surrogate Baby's we are required to fill out other forms based purely on that. It's not like these are Birth Certificates that we could have "bought" in a 3rd World Country, these are Canadian Birth Certificates. We are the legal parents of these boys under Canadian Law. The Law here should play no part in this, we are the Parents and we should be able to solely apply for a Passport but instead we are scrutinised and made to fill out two extra forms and the last time a third form because the form signed by our Surrogate was back when our Son was born and not recent. Does it matter when she signed it? She's got no legal rights as Guardian of our Son and she shouldn't have to sign that form in the first place. Heterosexual Couples can just lie and not list their child as a Surrogate Baby and avoid the extra paperwork and just use their Canadian Birth Certificate. We are being unfairly treated in this process and it was an appalling process to go through.

an Australian visa.

Coming home the first time with Son1 we needed the entry visa as a tourist but that was easy to do.

How could the process for obtaining these documents be improved?

Passports!!! Let us apply as every other Family, not require extra forms just because they are Surrogate Babies.

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

This is a MUST! Surrogacy Laws across Australia are extremely varied. How you apply for Parentage is quite different from State to State. We need much more uniformity across the Country, whether that can be done on a State Level or whether the Federal Government should set the rules I'm unsure of with my background, but a more uniform system across the Country would be a huge benefit to us all.

We could have moved to Victoria for instance, had our Children through Surrogacy and gotten Parentage and then moved back to WA and been recognised. I know other couples who did just that. But why should be "have to" do all that!?

Please! Please! Please! Fix the Surrogacy Law in WA!

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

I think this can be achieved but just having it set in the Law what is required and what can and can't be in a contract so that a Lawyer can easily write one that adheres to that law and save the extra process of a panel that has to go over all of them.

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

I'm not sure that "Surrogacy" of any kind should be enforced with Criminal Law. Currently some States in Australia forbid their Citizens from engaging in Commercial Surrogacy overseas or in Australia. This law is not being enforced even when it's become obvious that a Couple has engaged in Commercial Surrogacy Overseas. And if it were enforced, should this Child, who made no choices in this, be subject to losing a Parent to jail just for going overseas to have their child through Surrogacy? I don't think so, the punishment seems to punish the child as much if not more than the Parent.

So I think careful consideration is required for trying to discourage a certain type of Surrogacy.

I think making it easier, cheaper and smoother to do Surrogacy here at home in Australia are the positive ways to encourage people to use Surrogacy here at home rather than seeking Surrogacy overseas.

There will however always be more IPs than Surrogates. So those with money will still be drawn to places like the USA where they can easily find a Surrogate if they are willing to pay enough. Is that a bad thing? Not necessarily, it's legal there and it means it's one

less IP looking for a Surrogate here opening the opportunities to other IPs here in Australia who can't afford to use the USA.

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

Yes, I still meet people who think Surrogacy is illegal in Australia for everybody. And who knows what else they think from the stuff they've seen in the Media. Better education and local bodies such as Agencies that can help spread the truth is definitely a positive.

Thank you for considering my submission. It's been quite an emotional ride writing this and I hope it helps in some way for some very positive changes to Surrogacy Laws across Australia.

Kind Regards

