Question 1 If you or someone close to you has had personal experience of surrogacy, please describe:

- What parts of your experience were positive?
- What parts of your experience were negative?
- What could be improved and how?

In your response, please let us know:

a. how you were involved in the process (for example, if you were a surrogate, intended parent, or child born through surrogacy);

b. if the process took place in Australia or overseas;

c. if the process took place overseas, the country in which the surrogacy arrangement took place and what was attractive about that country; and

d. if you think you faced barriers because of certain personal characteristics (for example, if you were in a same-sex relationship or from a culturally or linguistically diverse background).

You might also want to consider the issues discussed below in your response.

Response:

We are intended parents through an international surrogacy arrangement in Mexico, after trying Domestic Surrogacy in Victoria.

Domestic surrogacy arrangements in Victoria were appalling.

The process is designed to protect the rights of the surrogate and the child. In doing so it is also not fit for purpose because it does not consider the rights of the intended parent.

Intended Parents are considered, a burden at best and predators, criminals and people of bad character at worst because the baseline starting point is that Intended Parents are trying to take advantage of a surrogate, may not be fit to be 'good' parents (whatever that may be) and/or are seeking a surrogacy arrangement for nefarious purposes. Intended parents should not be considered bad people from the outset and the system should be designed with their needs in mind, alongside the needs of the surrogate and the child/ren.

The pre-approval process requires Intended Parents to undertake a plethora of examinations and assessments, at cost. Not only is this an expensive and time consuming endeavour but there is no parallel regulatory regime for non surrogacy based pregnancies. Why is it that Intended Parents are required to undergo details and invasive assessments? Why are same sex male intended parents (who are very obviously unable to conceive any other way) treated as if they are criminals from the outset. This was the overall sentiment and feeling we experienced undertaking the surrogacy review and regulatory process in Victoria.

When we finally presented to the panel online, one of the most outstanding moments was when one of the panelists leaned back in his chair and fell asleep. The panelist - someone who was charged with making decisions about our eligibility to become parents, fell asleep. This is not only unacceptable and disgraceful, it makes a mockery of the regulatory process and further reinforces our opinion that the system has not been designed with any consideration for the intended parents.

Our surrogacy journey in Victoria ultimately came to an end as a result of further hurdles and blockages that the Victorian (and Australian) regulatory system has in place. It was always our intent to have two children through surrogacy. As gay men, we always wanted one to have a biological connection to each of us, and to use the same egg donor so that the children will also have a biological connection of their own.

In our case, our surrogate, who is a friend, volunteered to undertake one surrogacy journey for us. This would mean that we would need to find an alternative surrogate here or look internationally for the second child. However, in order to create the biologically connected family as we indicated above, the system does not let us export eggs overseas for commercial purposes, nor import commercially purchased eggs for use in Australia. This highly restrictive limitation was a non-negotiable for us. We were determined and have since succeeded in building a family with the biological interconnections we hoped for. Australian surrogacy laws are too restrictive and limiting and do not enable the flexibility needed to support families like ours.

Eventually we pivoted to Mexico, where our two babies were born in October and November 2024.

The Mexican experience is complicated and fraught with its own challenges. However, once we overcame the domestic challenges in Mexico, the biggest hurdles and challenges we faced were those associated with bringing our children home as Australian Citizens. The Citizenship Process (run by the Dept. of Home Affairs) and the Passport Process (run by the Dept. of Foreign Affairs and Trade) was possibly the most challenging of all. This will be elaborated in answers to Question 20.

Our initial surrogacy journey began in the United States because of the openness and accessibility of surrogacy arrangements available there. Whilst the price for USA surrogacy was exorbitant we were determined to undertake it there for that reason and we also were likely to be able to secure two babies through a twin pregnancy. However, over time it became clear there were fewer and fewer surrogates willing to undertake a twin pregnancy and fewer and fewer clinics and agencies willing to support it too.

Ultimately, we pivoted to Mexico after the failed experience in Victoria. Mexico was attractive to us as we heard mixed reviews about Colombia and Argentina.

In terms of barriers - it would be fair to say yes, as gay men we faced barriers. Whilst the surrogacy system in Australia is agnostic in its approach to sexual orientation, it has been designed in a way that makes it immensely difficult to navigate and complex. For men like us, who have no way to physically conceive a child without the use of a woman, the system is a significant barrier.

Finally, there is a fundamental flaw in the screening process in Victoria. The point of the process is to review and grant eligibility to undertake a surrogacy arrangement. Once approved, the arrangement can be entered into a chld conceived. However, ni Victoria, when the baby is born, and despite the arrangement already being approved, the child is still considered a child of the surrogate and her partner. This is contradictory to the purpose of the screening and approval process.

Reform principles

Question 2 What reform principles should guide this Inquiry?

Response:

All the principles listed should guide this inquiry.

Human rights, accessibility, respect and dignity and pragmatism are all currently missing from the current system - particularly with reference to the intended parents, as mentioned earlier.

Harmonisation - it is fundamentally problematic that Australia has numerous different and inconsistent pathways to surrogacy, and that in particular, there are parts of Australia where an intended parent could technically be imprisoned for participating in overseas commercial surrogacy. Whilst surrogacy is a health issue and regulated at the state and territory level, there should be overarching federal principles, rules and regulations that guide the implementation at the second tier level of government.

In terms of harm minimisation - we agree, there are circumstances where people could be victims of exploitation. That said, the risk of exploitation is everywhere. We need to ensure as much is done to prevent exploitation, as possible, without applying a nanny state approach that shuts down opportunities and eligibility. This is the role of a human centred, mindful, considered and dignified regulatory and legal framework. The principle of harm minimisation should be led by an approach that espouses and prioritises human centred and considered approaches that are dignified rather than prohibitive and over zealous.

An additional point of note in terms of pragmatism - Australia, like most western nations is facing an ageing population crisis. Surrogacy is, alongside conventional birth and immigration, just another way to encourage population growth. The surrogacy system is highly restrictive and prohibitive to the extent that people who couldn't conceive in a conventional way are locked out of contributing to population growth. In the interests of pragmatism and the overall issue of an ageing population, it is in the interest of the government to encourage all methods that contribute to population growth, including surrogacy.

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?

1. **The right to become a parent and to be treated as an equal in the eyes of the law.**

   The current surrogacy regulatory framework significantly limits to an almost prohibitive extent, people who cannot conceive a baby in a conventional way. The human rights of these people are stripped away and they are considered as criminals. Furthermore, in Victoria, they are required to undergo screening and review in order to be eligible to participate in a surrogacy arrangement. This is not equality.

   Parents that conceive in a conventional way are not screened. The personal details of the pregnant woman and of parents in general is not under scrutiny. They are not required to undergo legal, psychological and medical counselling. In fact, there are plenty of babies that are conceived today by people who are unfit to be parents and yet our society does not place restrictions on conventional conception or a regulatory process. Furthermore, who is to say that babies conceived in conventional ways are not victims of human trafficking. With that said we do not advocate the implementation of screen for conventional pregnancies, as that is unrealistic and outrageous.

   The reason the current regime has been designed in its current format is because of two key things:

   a. **A perception that surrogacy is an unethical or exploitative process.**

      As mentioned above, it is fundamentally incorrect and inappropriate to treat intended parents from the outset as having nefarious intentions, as exploitative, manipulative and criminal. A shift in approach is required, to consider surrogacy as a beautiful act and that the vast majority of parents engaged in surrogacy are doing so for honorable reasons.

   b. **The protection of the human rights of the surrogate and the child.**

      Both these people are fundamentally important and their human rights are essential. However, this approach focusses solely on these people to the impediment of the human rights of intended parents, who have an equal right too/

2. **The rights of a child born through surrogacy to an unhindered and unrestricted relationship with its intended parents.**

   The system considers the surrogate as the legal parent of the child, despite the surrogacy arrangement being evidence to the contrary. Furthemore, in domestic arrangements, the regulatory system is so stringent, yet as elaborated in question 1, despite a contract/agreement and screening, and permission, the surrogate is still considered the legal parent.

   The system's brakes are designed to protect the child from human trafficking on the one hand. But on the other, the system places more emphasis on ensuring the intended parents are not exploiting the child over the child's rights to its rightful family and its parents.

Response:

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:

We really dont think this is a critical issue.

Whether a child is born through surrogacy or not and to what extent this information is available to them shouldn't really be a matter for the legal and regulatory systems.

In some surrogacy cases, such as single men and gay couples, it will be abundantly obvious that a child was not conceived and born in a conventional way.

For others, such as hetrosexual couples and single women, it will be less obvious.

Either way, this is something that the intended parents are likely to consider how and what to communicate with their child and further consider the level of involvement of the surrogate in their child's life.

If an intended parent chose to not inform their child that they were born through surrogacy, this is completely up to them. Whilst we may think this a strange decision, particularly where a surrogacy arrangement wouldn't immediately be obvious, that still remains their choice and ultimately, it doesn't really matter, particularly because the surrogate is not biologically connected to the child nor involved in their family life.

Insights about the key issues and potential reform options

Barriers to domestic surrogacy

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

You might want to consider the experiences of any groups who may face greater barriers to accessing domestic surrogacy than others, such as LGBTIQA+ people, people who are financially disadvantaged, or people from culturally and linguistically diverse backgrounds.

Response:

Access:

Given there is no commercial opportunity, people are reliant on volunteers. This is further exacerbated by the inability to be able to advertise for surrogacy, egg and sperm donation.

Similarly, despite being altruistic (i.e. not commercial) the cost of the screening and regulatory process (psychological, legal and medical assessments) and the IVF needed to undertake surrogacy are not covered by Medicare or by any other government assistance. So while the system is designed to be voluntary- there is an immense expense.

Limited surrogacy advocacy:

The restrictions placed on the surrogacy regime make it difficult for advocacy groups to promote this as a legitimate pathway to parenthood. This in itself is a barrier to people entering into Australian surrogacy arrangements.

Complex, non user friendly system:

The system itself is a barrier to accessing surrogacy. In the interests of ease, people would prefer to pay a premium and go overseas to do it where it is significantly more transparent and accessible.

Eligibility requirements for surrogacy

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

Response:

Are there eligibility requirements for people having children in a conventional manner? No.

Therefore, there should not be eligibility requirements for people having children through surrogacy.

Anyone should be entitled to enter into a surrogacy arrangement.

If there is a need for a review of participants to prevent exploitation, this needs to be far less dominant and than at present.

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

Response:

The current system needs to be completely removed.

If there is a need to continue to review participants in surrogacy to prevent exploitation of surrogates and or children, this shouldn't be the primary focus of the surrogacy system as it is at present.

Perhaps something similar to how it is run in the United States is needed where it is the onus on the Clinic/Agency to screen surrogacy candidates and intended parents. This means there would need to be a strict regimen to ensure Clinics/Agencies follow stringent guidelines and rules of practice.

Surrogacy agreements — validity and enforceability

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

Response:

Unless stipulated otherwise, the underlying premise of a surrogacy agreement should be that the surrogate fully relinquishes her rights to the child and is not considered the parent. This should be in perpetuity.

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

a. if all parts of the agreement should be enforceable;

b. who should be able to enforce the agreement; and

c. how agreements could be enforced.

Response:

Of course a surrogacy agreement should be enforceable. The purpose of the agreement is to bring a child to this world. The terms of the agreement should be binding on all parties, as is the case in any other legal contract.

In line with family law, the agreement should be enforceable by the Family Court.

Process requirements for surrogacy

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

a. if counselling should also be available after the child's birth;

b. what should happen if legal advice and counselling are not provided before entering a

surrogacy agreement; and

c. if parentage applications should require proof of legal advice and/or counselling.

Response:

No counselling should be legally binding and there should not be proof of legal advice and/or counselling as part of a parentage order application. There is no requirement for this for conventional pregnancies. There is no point for this for surrogacy cases.

Having experienced the counselling and legal advice process as part of a Victorian surrogacy arrangement, we found these to be:

- **Of little to no use. We got nothing out of the advisory process and it was largely a tick box exercise. In fact the counsellor, psychologist and legal representatives all admitted it be as such.**
- **Costly. This was covered at our expense.**
- **Time consuming. These phases meant that ultimately reaching a pregnancy was severely delayed because of the need to undergo stages of advise.**

That is to say, this still could be an offer as part of the services provided by the clinic/agency, but as an optional extra.

Furthermore, the screening process, including a panel, in Victoria, wield far too much power over intended families and surrogates, all in the name of protection of human rights. These processes and the people who run them are far too onerous and the people involved in decision making have far too much power. Intended parents in particular are beholden to their whims.

Professional services, including legal and counselling services

Question 11 What are the gaps in professional services for surrogacy in Australia? You might want to consider:

a. if surrogacy agencies should operate in Australia; and

b. the availability, accessibility, and subject matter to be covered in legal advice and counselling sessions.

Response:

It is absolutely essential there are surrogacy agencies in Australia. They will play a key role in matching surrogates and intended parents, connecting parents with clinics and medical professionals, connecting parents and surrogates to legal professionals,, and if appropriately regulated could undertake the screening process to ensure there is no exploitation of surrogates and of children. They could ensure surrogates are treated appropriately and prevent women at risk from being surrogates. They could ensure that intended families are appropriately candidates for being parents.

Counselling sessions should be scrapped, they provide little to no use and legal agreements essentially cover the key components of a surrogacy arrangement and this is what is enforceable at law.

Legal professionals with expertise in surrogacy are readily available. Anyone undertaking a surrogacy arrangement should be required by a Surrogacy Agency to obtain appropriate legal representation to protect them and represent their needs. Similarly, a surrogate should also be required to have legal representation.

A surrogacy arrangement should be guided by a binding legal agreement.

Question 12 How should professional services operate in Australia? You might want to consider:

a. what their role should be;

b. if they should be for-profit or not-for-profit, or how they should be funded;

c. if different types of services should operate together or separately, for example, whether counselling services should be independent or integrated within agencies or fertility clinics; and

d. how they could best meet the diverse needs and experiences of people involved in a surrogacy arrangement.

Response:

Limits on advertising

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

a. if advertising should be allowed;

b. who should be allowed to advertise;

c. what advertising content should be allowed; and

d. where advertising should be allowed, for example via newspapers, social media, or by establishing a surrogacy register.

Response:

In the absence of surrogacy agencies, there should be no restriction on individuals posting about or promoting surrogacy arrangements (Whether seeking a surrogate, or seeking to serve as a surrogate, seeking eggs or offering to donate eggs, etc). Should there still be government regulated surrogacy arrangements, as is currently undertaken in most states, it should not be a problem that intended parents and surrogates found one another through advertising. The restriction on advertising is a significant obstruction to accessing surrogacy at present.

It would be preferable however, that the system was regulated through surrogacy agencies. They would be able to advertise - that they are seeking surrogates and that they offer a matching service for intended parents. There would therefore be no need for individuals to advertise as they would not be able to enter into an independent arrangement without an agency.

Access to Medicare and parental leave

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

a. Medicare rebates for fertility treatments;

b. access by surrogates to paid or unpaid parental leave, including through enterprise agreement terms; and

c. if it is desirable to make surrogacy arrangements generally more affordable, and how this could be achieved.

Response:

Medicare should cover the full gamut of costs pertaining to surrogacy, including IVF.

Should the regulatory system still require counselling, medical and psychology assessments, these should be covered by Medicare.

Reimbursing and compensating surrogates

Question 15 How could the process for reimbursing surrogates for reasonable expenses be improved? You might want to consider:

a. what expenses should be reimbursable;

b. how payment should be calculated;

c. if there should be limits on any amounts;

d. the process for reimbursement (for example, whether money should be kept in trust, whether there should be a requirement to produce receipts, etc); and

e. any jurisdictions (either within Australia or overseas) that have processes for reimbursement worth learning from.

Response:

Surrogacy arrangements should be opened up for commercial purposes in Australia. The terms of contracts should set what is paid for, how much, when and by what mechanism.

In our experience in Mexico, this worked very well. Surrogates were paid in line with specific milestones as mentioned in the contract. Monies were held in trust by the agency and/or lawter for this purpose.

There was a strict separation between us and the surrogate, to avoid extortion and exploitation of either party by the other. That is, the surrogate was unable to contact us to claim for extra expenses and costs associated with feeling sick, loss of income, new clothes etc. Similarly, we were unable to contact the Surrogate to make specific claims or requests. All requests were managed through the agency alongside payment.

Question 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.

Response:

As detailed above yes.

Ironically, this is a much more transparent method of engaging in surrogacy. The surrogate is also compensated appropriately for the use of their body and their time.

They are not coerced into the process and appropriate checks and screens would prevent women at risk being exploited by a commercial arrangement.

The commercial surrogacy sector is a growing and very lucrative sector. We urge the ALRC to review the average cost of an international commercial surrogacy arrangement and multiply that by the average number of children (norn through surrogacy) returning to live in Australia per annum. This is a significant loss to the domestic economy.

Question 17 If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented? You might want to consider:

a. how compensation should be calculated;

b. if there should be a limit on the amount of compensation;

c. who should set the amount of compensation;

d. the process for compensation (for example, whether it should be paid in monthly instalments, whether the money should be kept in trust etc); and

e. any jurisdictions (either within Australia or overseas) that have processes for compensation worth learning from.

Response:

This has been answered in part in answer to Question 15.

Legal parentage of children born through surrogacy

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:

Parentage orders and the recognition of the surrogate (and her spouse) as the legal guardian of the child, until a court order deems otherwise.

From our Victorian experience we are astounded that our surrogate's husband would have more legal rights over our child than we would. It is one thing that the surrogate has rights, given it is her body and she carried the baby, but what has her spouse contributed to the pregnancy?

There are pre birth orders available in some states of the United States. This should be applied in Australia.

Furthermore, as mentioned earlier - it makes no sense that a surrogacy arrangement is regulated by strict rules and regulation and that all factors are documented and approved in detail in advance, but once the child is born it is still the legal child of surrogate and her partner.

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:

a. timing (for example, if the process happens before or after the birth of the child);

b. who makes the decision (for example, if it is an administrative or judicial decision);

c. if recognition should be automatic;

d. if the process should be different depending on the circumstances (for example, based on whether the surrogate has a genetic link to the child, the type of payment they received, and whether the surrogacy arrangement was in Australia or overseas);

e. whether intended mothers are or should be treated differently to intended fathers in legal parentage determinations;

f. whether the granting of legal parentage should depend on compliance with process requirements;

g. the importance of prioritising the best interests of the child; and

h. whether we can learn from the processes of any other countries.

Response:

Citizenship, passports and visas

Question 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.

Response:

Australian Citizenship:

Australian Citizenship by descent is obtained through a complex process managed by the Department of Home Affairs.

In comparison with other countries, we do not have a facility where overseas citizenship is handled by the local embassy, rather everything is run through the Department's portal and cases are reviewed onshore by officers in Australia. This is a complicated, impersonal and at times challenging process. While we were in Mexico we met with intended parents from Canada, Belgium, USA, Israel, Spain, France. All of which were astounded we have no contact with the embassy regarding our childrens' citizenship.

The Department's citizenship process for children born through overseas surrogacy (and who would otherwise be resident in Australia if it not for a restrictive domestic surrogacy regime) is the same process used for children born overseas to Australian citizens resident overseas. This is a fundamental issue and a miscalculation/misunderstanding of the needs of families that have engaged in overseas surrogacy.

These surrogacy children are born overseas primarily because Australia poses significant challenges to surrogacy, forcing families overseas. They would otherwise be born and live in Australia and therefore there should be a dedicated approach to citizenship by descent for babies that would otherwise have been born in Australia. This matter is covered by a submission we made to the Australian Human Rights Commission against the Department. Please See Appendix 3 (which covers our submission and the Department's response), see item e.ii.

Another key issue is the way the Dept. of Home Affairs (DHA) conducts itself. There is no way to communicate with anyone regarding questions or concerns and every applicant is treated as a criminal till proven innocent. This makes an already stressful and complicated experience (being a new parent in a foreign country, eager to come home) even more burdensome.

Our experience with the DHA was atrocious, particularly because DHA requests for more information were staggered and delayed the ultimate processing of our cases.

In practice the DHA requested information from us that was inconsistent with the publicly available advice on the application service. For instance, DHA asked for evidence of foreign citizenship. The application service guidance specifically indicates that a foreign passport is sufficient and we provided this with our application. Nonetheless, DHA claimed it was insufficient and requested further information. Please see letter dated 4 February 2024, marked Appendix 1 for more information.

Upon reaching out to the relevant foreign embassy in Mexico City it was clear that the evidence the Department was seeking would take over two months to secure (and this was after us having already spent 4 months in Mexico). The Department demonstrated little to no consideration of our experience or our difficult situation.

A separate and delayed request from DHA was for us to provide a translated copy of the court documentation ordering the issuance of Mexican Birth Certificates. This was never requested at the outset, neither in the application guidance nor at the time the DHA acknowledged receipt of our application and its request for evidence pertaining to foreign citizesnship. This request was costly and time consuming and significantly delayed the process of issuing our children with their citizenship. The Department was inflexible and could have behaved in a far more transparent manner by requesting this information up front. As evidenced by the Department's response to our Australian Human Rights Claim (appendix 3) we consider DHA's rationale as a poor excuse.

Please see Appendix 2, letter dated 4 February for more information.

Ultimately, we engaged the support and advice of multiple members of Federal Parliament to get the citizenship applications moving and to have our requests for dispensation addressed. MPs (and their offices) established direct lines of communication with the Assistant Minister at the time, in DHA to ensure our case was handled. We were in direct communication with representatives of the MPs and they were fundamental in following up our case. We believe that without their influence it would hav taken significantly longer and the Department would not have dispensed with its request for evidence of foreign citizenship (which as mentioned above was expected to take 2 months or more).

Citizenship applications for surrogacy cases require a plethora of additional information and documentation, including evidence demonstrating the surrogate has given permission for the issuance of Australian citizenship. Despite this, Australian law continues to consider the surrogate as a legal parent of the child in question even when overseas authorities have determined otherwise.

Australian Passport;

At a principle level, a major issue is that Passports are issued and processed by the Department of Foreign Affairs and Trade, completely separate from the Department of Home Affairs. This means that all the documentation and evidence provided by intended parents to confirm their child/ren's citizenship is not applied to the passport process. For example -

As part of the citizenship process, evidence is required of the surrogate's permission, identity and consent to the child/ren recieving citizenship. However, the passport application process does not consider this as sufficient. The process requires the intended (and now legally proven parents) to complete forms B4 and B5. Both of which are documentation of a child born through surrogacy, a fact that has already been established as part of the Citizenship process. Furthermore, these forms, B5 in particular require the surrogate's permission to a passport. Should this not already be sufficiently proven whereby the court documents requested, the approval and identity information and the surrogacy contract, all required as part of citizenship processes indicate that the surrogate has given up her rights to the child.

Because the Government has divested passports and citizenship roles to different executive arms this means that two sets of essentially the same checks are undertaken, slowing the process down. There surely could be more efficient approaches for the transfer of the same information between departments.

Nevertheless, the documentation is also still not sufficient, as the Embassy is then responsible for calling the surrogate and the witness to the surrogate's signature and the guarantor listed on the application form. Whilst the purpose of this is to ensure protection of children from human trafficking, it seems over-burdonesome and overkill, given the layers of documentation already required, time and resource intense - and not to mention, the challenges with surrogates. Surrogates in countries like Mexico tend to be women with lower socio economic standing and are working hard to feed their families and make money. The need to call a surrogate to confirm her signature on a form (which she has already given up enough of her time to sign) means that intended parent's are subject to her availability and there may be further delays in receiving a passport for their child if she is unavailable, unwilling to speak to an embassy, or spooked by the idea.

To add complexity to the situation, and in our case, where we had already endured over 4 months in Mexico, we applied for an emergency passport.

There are clear inconsistencies in how emergency passports are issued by DFAT. In our case it was almost a full working week between application and receipt of passport. We know DFAT was working on the case but are unclear of the delay. We have issued FOI requests for the information around our case. And we also engaged, once again the assistance of Members of Parliament to push the process along. At

once point we were directly in contact with advisors to the Assistant Minister responsible for passports.

From our experience in Mexico, other Australian families applied for their children's Emergency Passport and received it the next day. For us, it was unexplainable what the delay was and there was no one, at the Embassy or otherwise willing to assist.

Please see Appendix 4 and 5 for our FOI request history with DFAT and another AHRC claim in this regard.

Appendix 1 letter to DHA regarding request for additional information - foreign citizenship

Appendix 2 letter to DHA regarding request for additional information - court order

Appendix 3 - submission to AHRC and DHA response

Appendix 4 - FOI request to DFAT with regard to our childrens' passport applications

Appendix 5 - submission to AHRC regarding DFAT.

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

Response:

Oversight and harmonisation – Inconsistent laws

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

a. the ways in which surrogacy regulation is inconsistent between jurisdictions;

b. if these inconsistencies are problematic;

c. any impacts of the differences between federal legal regimes (for example, citizenship law and family law);

d. if a judicial process for transferring legal parentage is retained, whether applications for parentage should be determined in state courts, the Federal Circuit Court and Family Court of Australia, or both;

e. how important it is that the approaches are harmonised or made more consistent; and

f. how any harmonisation could be achieved (for example, by regulating surrogacy at a federal level or through uniform or substantively consistent state legislation).

Response:

Oversight and harmonisation – Oversight

Question 23 Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach? You might want to consider:

a. the need for a regulator or oversight body and what it could look like (for example, an administrative body or a tribunal);

b. if oversight should be national or state and territory based; and

c. which groups need oversight (for example, health professionals).

Response:

The role of the criminal law

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

a. if engaging in or facilitating certain forms of surrogacy, whether in Australia or overseas, should be sanctioned or criminalised;

b. the effect of using the criminal law to regulate certain forms of surrogacy; and

c. whether there are regulatory approaches preferable to the criminal law.

Response:

Absolutely not. The law should only be focussed on ensuring everyone, including intended parents, have the right to a family in the way they wish.

Lack of awareness and education

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:

Issues we consider to be out of scope

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

Response:

Other insights

Question 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?

Response: