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3 July 2025

The Commissioner

Australian Law Reform Commission

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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 was an intended parent (now parent) via surrogacy and I welcome the opportunity to share some of our experiences.

My husband and I waited almost 20 years to meet our boy and the gratitude we have for the people (our donor and our surrogate) who made that possible is limitless. I was diagnosed with unexplained infertility after numerous rounds of unsuccessful cycles which either ended in a failure to conceive or miscarriage. In total I was pregnant 5 times and lost 7 babies (twice with twins). As part of our fertility journey we also moved to known donor created embryos and had 17 transfers of 19 embryos from 3 different donors.

I seek that my submission be published but de-identified.

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

- **What parts of your experience were positive?**
    - The relationships we've formed with both our donor and surrogate are two of the most precious ones in my life. We met our surrogate via the Australian Surrogacy Community Facebook page (a page managed entirely by volunteers) and the community itself was, and still is, a great support to us. We've made lifelong friends with many members of the community which we still maintain.
    - Another very positive aspect of our surrogacy experience was the excellent care we were all provided with by our midwife. Our surrogate lives in a regional area (a 10 hour drive from us) and although we attended each milestone scan, there were some occasions where I dialled in towards the end of the pregnancy. Our midwife made sure I was included and informed of every and each milestone and decision. We were all treated with respect and were able to access all the resources provided to any new parents and woman who had recently birthed.

- What parts of your experience were negative?
    - The lack of Medicare rebates for any surrogacy related treatment is not equitable and contradicts everyone's human right to a family. In our situation we had spent many years and many, many 10s of thousands of dollars for each cycle and add on treatment when transferring to myself. We haven't ever done the sums but it would easily add up to over $200k. Surrogacy was only offered as a final option after all others had been exhausted. To then not be entitled to the usual Medicare rebates was another financial blow. Many in the same situation would have also exhausted finances which is a cruel way to deal with people who have already been through a number of emotional and financial hardships related to fertility.
    - Post birth, we had enormous difficulties with Centrelink, both with having our son placed on our Medicare card and accessing paid parental leave.
        - <u>Medicare</u>

          Despite providing Centrelink with links to their own policy and procedures in relation to surrogacy births that state a child born via surrogacy can be placed on the intended parents' Medicare card provided supporting documentation is provided (e.g. a surrogacy agreement) prior to parentage order being granted, we were denied this access. Although the local Centrelink office was very helpful and professional, we were advised head office had placed a hold on our file advising our son could not be placed on our Medicare card until the parentage order was issued, which is in direct contradiction to policy and procedures. This resulted in a lot of unnecessary administrative effort from us and financial disadvantage as our son was required to see a specialist on a number of occasions prior to the parentage order being granted. Once the parentage order was granted, our son was placed on our Medicare card.

        - <u>Paid parental leave</u>

          As parents of a surrogate birthed child, we are entitled to paid parental leave as is every other parent. We were constantly denied access to paid parental leave and we had ~20 different contact points with the Centrelink team, including a number of in person visits and lengthy phone calls, where although a resolution was agreed, and we were advised we would be contacted with details, nothing was forthcoming. Phone calls included being on the line for 3 hours and 11 minutes on 18 March 2025 and 2.5 hours on 12 April 2024, neither of which resulted in a promised resolution. These were not isolated incidents and each phone call was of more than an hour's duration which I needed to follow up each time. A conservative estimate is that we spent more than 50 hours dealing with Centrelink staff - precious time that should have been spent with our son who we waited so long to meet. The only course of action Centrelink advised were able to follow was applying for a compensation claim despite the many weeks and months of trying to get PPL sorted.

Once the compensation claim was lodged there must have been a change in the decision, as we eventually started to receive PPL payments. We did not receive our full benefit but as we had wasted so many frustrating hours in the process, we moved on.

- What could be improved and how?

  Medicare rebates for surrogacy related treatments. Also regulation and standardisation of fertility clinic fees. Another member of the surrogacy community and myself carried out some research in 2022 and the variation in clinic costs is vast as is the add on of surrogacy management fees. In my experience, the work required for a surrogacy arrangement was completely carried out by the intended parents and the transfer process is the same as any other embryo transfer. A surrogacy management fee is another erroneous fee added to an already exorbitantly expensive process.

  A standardised approach to be granted access to surrogacy for those with unexplained infertility. This would save many thousands of dollars and continued emotional distress for intended parents and would go some way to lowering the financial barries many intended parents face.

  Centrelink understanding and applying their own processes without discrimination is not only necessary but mandatory. The overall Centrelink process resulted in our son being discriminated against purely for the fact that he was born via surrogacy. We didn't expect any special treatment but we did expect to be treated the same as any other parent.

2. What reform principles should guide this Inquiry?

   Equitable treatment for all parents and their children in their human right to create a family.

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?

   The right to have a family.

   Children of surrogacy arrangements right to access their birth information easily and without hindrance.

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?

   I would be comfortable if surrogacy was referenced on the child's birth certificate. This would enable transparency and consistency for all children of surrogacy arrangements.

   I believe children born through surrogacy have an inalienable right to the information about their birth and their genetic information.

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

   Lack of knowledge about surrogacy in Australia.

Expense – may have undergone long, expensive fertility treatments to get to this point. Although surrogacy is altruistic, it's not free. There are clinic, legal, counselling costs including all out of pockets expenses for surrogates including wages and any accrued leave that is foregone because of surrogacy.

Low number of surrogates compared to the number of intended parents. Compensation for surrogates could alleviate this issue somewhat, however as it would also add to the financial burden for intended parents, it may also preclude many from entering into a surrogacy arrangement. Standardising and lowering fertility clinic fees and providing the option of surrogacy earlier would go a small way to alleviate this financial burden. Providing a Medicare rebate for surrogacy related treatments would also assist. Compensation would need to be standardised and regulated.

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

   Is there eligibility criteria placed on parents of naturally conceived children? As the answer is no, I believe the answer for children born via surrogacy arrangements should be the same.

   For surrogates, however, yes but only in relation to any risk to their health, mainly as protection for the surrogate and their future physical and mental well-being.

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

   A surrogacy agreement, while it's helpful to use as a template, is essentially meaningless as it doesn't hold any legal validity.

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

   No

9. Should surrogacy agreements be enforceable?

   Yes. Surrogacy agreements take time and financial resources. It seems contrary to have an agreement drafted by a legal professional that's not enforceable.

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

    Social or medical requirement to need surrogacy to create a family. I believe the medical requirement in relation to unexplained infertility should be standardised and not left up to the opinion of individual specialists. A male same sex couple, male single parent or person without a uterus know from the outset that they require a surrogate to create a family, those of us with unexplained infertility do not. This (as happened in our case) can lead to many years of failed fertility treatments (including very expensive add-ons) and miscarriages.

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

    Navigating Centrelink services should not be as excruciatingly difficult as they have proven to be for many people with children born via surrogacy. There are procedures in place but very few people have the capability to follow and apply them.

Medicare – a child born via surrogacy should be able to be placed on the intended parents' card at birth. I'm aware this has been the case for some intended parents but not all which in itself is discriminatory.

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

    With transparency surrounding fees and services they provide for clinics, psychologists and legal professionals.

    Fertility clinics should be regulated and fees standardised for similar treatments.

    Businesses that operate overseas and advertise as a matching service need to be heavily regulated. There was at least one such service that recently had their charitable status removed as the services they offered were not of a charitable nature and were more accurately a very profitable business, often preying on vulnerable people – both intended parents and surrogates.

    There are a number of social networks for surrogates and intended parents. Businesses who provide somewhat sketchy surrogacy services often pop up offering to 'help' intended parents navigate overseas surrogacy and egg donation. These businesses masquerade as being part of the support network but are in fact very profitable companies with questionable ethics.

13. How should surrogacy advertising be regulated?

    It should be heavily regulated, if allowed at all. I would be more comfortable if the advertising was only provided in clinics.

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

    Paid parental leave should be easily accessible for both surrogates and intended parents. I personally think that 8 weeks for the surrogate is too low and should be extended to at least 12 weeks.

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

    A standardised approach re what is covered with a minimum amount available to the surrogate at all times. Also a minimum amount available for discretional use, e.g. when a surrogate is too tired to cook during the pregnancy or would benefit from a pregnancy massage. Private Health insurance mandatory for surrogates and paid for by intended parents for a minimum period of 12 months post birth.

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 think reasonable compensated surrogacy is a fair way for surrogacy to be applied within Australia.

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

Ideally the process could be straightforward enough to enable intended parents and surrogates to follow the mandated process themselves without the need to include business that currently operate in the overseas surrogacy market. Many of these businesses are unscrupulous and surrogacy in Australia would not benefit from their involvement.

A surrogacy agreement which currently required the use of lawyer could be updated to include a mandated schedule of fees that intended parents are legal obligated to adher to.

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?

    Clearer guidelines on what documentation is required for the parentage order would be hugely beneficial for new parents who are sleep deprived while also navigating Centrelink issues and the complexities of the parentage order. Being granted a parentage order is a process and would benefit greatly from a clear process map being made available to all.

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

    Strengthening the surrogacy agreement to enable intended parents to be placed on their child's birth certificate from birth (with reference to the child being born via surrogacy and an easy way for the child to access their birth information).

    Simplified instructions and parentage order process map.

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

    I this is only appropriate where relationships have broken down. In such cases, there should be an independent body who oversees the arrangement and can refer parties to appropriate support resources and act as an enforcer of what was agreed to as part of the surrogacy agreement.

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

    Only if it is to ensure the safety and well-being of a child born via surrogacy. Also in cases where a surrogate may be at risk physically or mentally.

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

    Absolutely. Many people believe altruistic surrogacy in Australia is illegal.

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

    I would like to see a similar review for fertility clinic operations.

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?

    There has been lots of talk recently quoting that the surrogate does all the work and is the only one not being paid for her efforts. While I agree with this statement, I don't think

it accurately reflects the work that is also done by intended parents. Maintaining a healthy, long-term relationship with someone who is doing the greatest job of nurturing your child takes effort, time, financial resources and a great deal of emotional balancing. Supporting a surrogate doesn't mean just supporting her, it means supporting her and her family and all of life's ups and downs that come with that. I'm not proposing that intended parents be compensated in any way but I feel their needs and the tolls years of infertility have take on them are often diminished and not considered.

Thank you for considering my submission.

Yours Faithfully,

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