From: [redacted]
To: Surrogacy
Cc: [redacted]
Subject: RE: Review of Australia's Surrogacy Laws
Date: Saturday, 26 July 2025 1:19:45 PM

You don't often get email from [redacted] Learn why this is important

25 July 2025

The Commissioner
Australian Law Reform Commission
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 was an altruistic gestational surrogate for my brother and sister-in-law.

My brother and sister-in-law reside in New South Wales. My family and I, however, reside in the United States. It was quite a process navigating the different IVF and surrogacy laws both here within the United States (as it differs between States) and in New South Wales. At one point, in an effort to navigate certain issues, in particular around the parentage order, my brother humorously proposed having me take a train, once I was in labour, for a several hour trip to reach a state that had more progressive laws around parentage orders. I mention this story as the need for a consistent approach between states was so evident to me and my family and I hope that this review either provides greater consistency in approach to surrogacy between the states and territories of Australia, or better yet, provide the foundation for federal laws on the matter.

The IVF transfer took place in NSW. The term of the pregnancy was carried out in the United States during covid and we returned to New South Wales for the birth, delivering in 2020.

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

I request that my submission be 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?

My brother and sister-in-law have their own beautiful family now.

At the time we were embarking on our surrogacy process, New South Wales had a more transparent and structured surrogacy process as compared to other jurisdictions and the professional services involved were receptive to feedback and accommodating given the unusual circumstances.
- What parts of your experience were negative?

Throughout the entire experience (before, during and after the surrogacy) I felt as though my feelings and experiences were secondary to the Intended Parents' feelings and experiences. During the psychological sessions, it was made very clear to me that I should not be sharing any negative aspects of being pregnant with the Intended Parents. This had the effect of making me feel quite isolated, unsupported and feeling like a chattel for the Intended Parents' purposes.
- What could be improved and how?
Based on my experiences and from hearing and reading of other experiences of surrogates, I feel many issues could have been avoided or mitigated by having appropriate support services available to surrogates throughout the entire process which, for example, can help address or advocate for the surrogate's needs without negatively impacting the relationship with the Intended Parents.

2. What reform principles should guide this Inquiry?
The principles noted in paragraph 29 of the Issues Paper are a good guide for this initial Inquiry phase.

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?

Decriminalising international surrogacy arrangements from certain specified jurisdictions (jurisdictions that have adequate human rights with respect to this issue).

With respect to domestic surrogacy, there are aspects of the current process that can have the perceived effect of interfering with a surrogate's human rights, such as their right to autonomy, bodily integrity and privacy. The current shape of surrogacy has been primarily forged and carved out by excellent Intended Parent support/lobby groups, overlaid by a traditional approach to birth. During my 2019 - 2020 surrogacy experience, there was a tendency to prioritize other rights and practicalities over the rights of the surrogate. During and post surrogacy, I was able to provide feedback to various stakeholders (including IVF physicians and counsellors, legal providers and psychologists) highlighting where processes, practices and even terminology could be improved to help respect a surrogate. Based on some recent surrogacy experiences and on reading some of those stakeholders' current views on surrogacy matters, I am relieved to hear that there has been progress and the rights of the surrogate are being considered. The guiding principles set out in the Issues Paper give me hope that this review will go a long way to ensuring that all parties' rights are considered and that with improved laws and harmonisation there can be greater certainty and less fear.

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?

In an ideal world, the children should be informed by their parents and, if the relationship between the Intended Parents and the surrogates family permits, the surrogate would still be involved in some shape or form (eg. yearly catch up). In situations where the genetic material that constitutes the implanted embryo is not solely from the Intended Parents, then the child should have the right to discover the identity of that genetic donor.

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?
The availability of surrogates.

There is a large number of mothers who have completed their family unit (eg. for financial reasons given the cost of living) but are physically and mentally able to carry out another

pregnancy. It is typically due to a lack of awareness of surrogacy, the stigma associated with it or fear as to the costs involved (financial, physical and emotional costs and the impact on their family and relationship with their partner) that these women do not consider pursuing surrogacy.

There are many examples of women considering or becoming a surrogate having heard about another surrogate's experience or Intended Parents' experience. Surrogacy is such a personal and intimate experience, the connection between surrogate and their Intended Parents is key. There needs to be a connection for that team to be successful and if the communication is not open and the parties needs are not met, it can lead to problems. In this situation a surrogate is less likely to promote surrogacy to others or consider it again or, they may consider another surrogacy with new Intended Parents to "make up" for that bad experience.

6. Should there be eligibility criteria for surrogacy? If so, what should those requirements be?
In an effort to preserve a surrogate's human rights, my preference would be to limit eligibility to those medically unable to give birth (which includes homosexual couples). The surrogate eligibility requirement that the surrogate is already a mother to their own child should remain. Going through this process with prior experience and knowledge helps the surrogate alleviate some of the stress and uncertainty for the Intended Parents but it also equips the surrogate with the right mental framing to assist them with the mindset needed to give effect to the surrogacy.

Following my surrogacy, the algorithm flagged a number of surrogacy related articles, most of which I found encouraging. I recall not reacting well to the stories of the celebrities and wealthy individuals who outsourced child-bearing for non-medical reasons (to enable them to pursue their career or maintain their body and bodily functions).

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

With respect to the counselling of an Intended Parent, especially one who has gone through a lot of failed IVF attempts, there should be some re-education to help them avoid projecting their experiences and fears on the surrogate’s pregnancy.

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

If the parties to the agreement are honest communicators, their needs are being met and the parties are feeling supported and involved, there shouldn’t be a need to “enforce” the agreement. As such, my preference is to focus on ensuring that those aspects are evident with any surrogate team rather than defining this team by legal obligations.

9. Should surrogacy agreements be enforceable?

No, but the process should be transparent and collaborative, more support should be given, and made available, to the surrogate and there should be more certainty for the Intended Parents with pre- birth parentage orders.

If the review favours having an enforceable agreement, please ensure that the surrogate's human rights and the rights of her family are respected. For example, in the case where a surrogate on being declared brain dead is then placed on life support, against the family's wishes, for the remaining term of the pregnancy.

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

For domestic surrogacy I don't think there is a need for a pre-approval from a regulatory body.

There needs to be transparency around the Intended Parents and the surrogate's historical, current and future surrogacy experiences and there should be a requirement to update the other party(ies) as and when there are changes.

There should be a requirement for counselling and legal advice prior to entering into a surrogacy agreement. There should also be counselling during and post birth. Counselling of Intended Parents should mentally prepare them for the pregnancy to help avoid projecting their experiences and fears on the surrogate and to help them recognise that the surrogate has prior experience of their bodies going through a successful pregnancy. Support services should be made available to surrogates throughout the surrogacy (including post birth) to ensure that the surrogate is "heard" and her rights are being respected, whilst ensuring that the relationship with the Intended Parents remains positive, open and genuine.

11. What are the gaps in professional services for surrogacy in Australia?
The professional services that are put in place in New South Wales are better in some respects than what can be experienced in the United States. Having said that, there are some improvements needed. Intended Parent support groups have helped form and inform the services that are currently in place. Intended Parents are also the ones footing the bill for those services. As such, there is either a conflict of interest or a bias, perceived or otherwise, that these services are primarily for the benefit of the Intended Parent. Further, the professional services that have been put in place to help safeguard all the parties interests can be perceived as a potential road block or hurdle to overcome to enable the surrogacy arrangements to proceed. This can result in conversations or assessments being positioned to ensure approval success when there is a clear benefit to all parties if these conversations and assessments were utilised properly. There is also a concern regarding the privacy of any surrogate's test or assessment and whether the results are disclosed or summarised in whole or in part to the Intended Parents. The service providers noted the conflict of interest in the "pre-approval" stage but were not transparent as to whether the information was shared.

Based on my reading of the surrogacy arrangements that went sour or litigious, I believe those situations could have been avoided or mitigated with appropriate support services to surrogates throughout the entire process.

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

Collaboratively and to provide regular "checkins" with the parties. Surrogacy is a strange dynamic where the legal processes of pre-approval and the parentage order portrays the parties as adversaries, pitting them against each other, and yet for the 10 plus months of the surrogacy, the parties are in effect a team, on the same side and working towards the same goal. Ideally the professional services should be working towards setting the team up with trust, open communication, transparency and mechanisms and support to help mitigate any issues along the way.

13. How should surrogacy advertising be regulated?

No comment during this phase.

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

15. How could the process for reimbursing surrogates for reasonable expenses be improved? What constitutes "reasonable expenses" needs greater clarity and a commonsense approach. A lack of clarity can create unnecessary angst and hostility between the parties, which may not be communicated in an effort to preserve the relationship.

In my situation, my family and my parents accepted a number of out-of-pocket expenses for the sake of preserving the relationship between the parties to the surrogacy arrangements. The Intended Parents adopted a very conservative approach to what may be perceived as a "reasonable" expense and feared that the judge may take issue with these costs, which they had itemized in the first draft of the parentage order.

The surrogacy agreement should clarify in more detail what type of expenses are considered reasonable, so as to avoid the Intended Parents having to make a call as to how they think the judge will interpret the expense. The means by which those "reasonable expenses" are covered should also be improved. For the sake of certain Intended Parent and surrogate relationships and the need to preserve them post surrogacy, it would be preferable to have a trust or escrow managed by a third party (eg. legal counsel) and a kitty account for any smaller agreed expenses.

16. Do you support a) compensated surrogacy and/or b) ‘commercial’ surrogacy? You might want to consider whether you agree with how we have described compensated and ‘commercial’ surrogacy?

I support compensated surrogacies and think it's worth trialling for a 5 year period after which there should be another review of surrogacy laws and the success and impact on the number of surrogacies assessed then.

If, however the review concludes that it will be opening the doors to third party commercial for-profit surrogacy agencies, then I'm afraid Australia will have to move to a 'commercial' surrogacy model to avoid having our Australian surrogates exploited.

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

Depending on the direction of this review, I'm happy to feed into this at the next stage of the review.

18. What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

The timing of the parentage order needs to be improved for the sake of the Intended Parents (ideally they would be recognised on Day 1) and for the surrogate. With respect to the surrogate, she's dealing with a lot hormonally as her body is physically and mentally processing the birth, the "loss" and the return to "normal". Parentage order preparation can come at a time when it's not great timing from a personal headspace point of view. Ideally, the preparation and perhaps even the submission of the order could be handled pre-birth.

Further, the terminology used in the parentage order needs to be improved out of respect for the parties involved.

The parentage order should recognise that the parties to the surrogacy agreement acknowledge and agree that the expenses have been reasonable and adopt a commonsense

approach to such, rather than needing to itemise those expenses for legal approval.

19. How could the process for intended parents to become the legal parents of children born through surrogacy be improved?
Currently the timing of the preparation of the parentage order is less than ideal given this happens when a surrogate's body is still going through a significant hormonal change post birth. The preparation and perhaps even the submission of the order could be handled pre-birth.

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.

The main problem is the Intended Parents being recognised as the legal parents in a timely manner to enable them to start the process.

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

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

Need to understand the basis for having the different approaches in the first place to be able to assess how best to address that difference.

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

Subject to the Commission's approach to international surrogacy, there could be a need for a national oversight committee for the benefit of the child and the preservation of their human rights. This committee could help Intended Parents with legal recognition of their parental status, to assist and enable permission to enter Australia (visa or passport) and citizenship.

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

To avoid human right issues, surrogacy should be limited to situations where the Intended Parents are medically not able to give birth to a child.

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

Yes as a considerable amount of time is spent by Intended Parents, in particular, as they interpret and navigate the patchwork of laws, policies and practices. You may also have a situation where the people involved can be quite emotionally vulnerable and financially strained from their own IVF experiences or fearful of any legal repercussions that they end up seeking free online advice rather than paying for a professional service to advise.

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

Re paragraph 88 of the Issues Paper, from what I've heard, the surrogacy support groups and various worldwide conferences have been good at informing people interested in exploring surrogacy about the likely costs, processes and hurdles. The support groups on

social media in particular, update their group with real time information and experience. Unless, or until, there is a concern around misinformation or commercial exploitation on these social media accounts, I do not think the review needs to extend to an assessment of the desirability of Australians traveling to any specific jurisdiction.

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?

Thank you for this opportunity to help inform this review to reform and reshape our surrogacy laws.

Yours sinsincerely,

[redacted]