VICTORIAN WOMEN LAWYERS

AUSTRALIAN LAW REFORM COMMISSION SURROGACY INQUIRY

TOWARDS A SURROGATE-CENTRED NATIONAL FRAMEWORK

STRENGTHENING DOMESTIC SURROGACY RIGHTS IN AUSTRALIA

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Submission

About Victorian Women Lawyers

Victorian Women Lawyers (**VWL**) is a voluntary association that promotes and protects the interests of women in the legal profession. VWL provides a network for information exchange, social interaction and reform within the legal profession and broader community of women lawyers.

Since 1996, VWL has advocated for the equal representation of women at all levels of the legal profession and has promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating gender-based and sex-based discrimination, to achieve justice and equality for all women.

Details of our publications and submissions are available at www.vwl.asn.au.

Introduction

VWL welcomes the opportunity to contribute to the ALRC's Review of Surrogacy Laws. Our submission calls for the creation of a harmonised national legal framework that centres surrogate autonomy, ensures timely recognition of parentage, and provides appropriate legal, health, and economic protections to all parties involved in altruistic surrogacy arrangements.

Executive summary

Domestic surrogacy in Australia is legal but is subject to eight separate State and Territory statutes. Divergent eligibility rules, counselling standards and expense regimes create a "postcode lottery" that discourages intended parents and leaves surrogate mothers without uniform health, employment or psychosocial protections, in circumstances where Australians are reported as the largest client market for international surrogacy arrangements[1].

Current legal landscape and identified gaps

Recent Government reviews and practices underscore three systemic problems.

- **Fragmentation and uncertainty**. As the Australian Law Reform Commission's Issues Paper acknowledges, Australian surrogacy laws are nationally inconsistent[2]. For example:
    - in Tasmania, both intended parents must be Tasmanian residents,
    - in Western Australia, single men and same-sex couples may be prevented from entering surrogacy arrangements,

[1] Human Rights Law Centre. (2015). Regulating Surrogacy in Australia. Human Rights Law Centre. Regulating Surrogacy in Australia - Human Rights Law Centre.
[2] Australian Law Reform Commission. (2025). Review of Surrogacy Laws: Issues Paper Released. Australian Government. Review of Surrogacy Laws: Issues Paper Released | ALRC.

- in South Australia, despite acknowledging interstate arrangements, under-developed legal frameworks render some arrangements unlawful, and
- Victoria insists on its own Court-issued registration orders, adding unnecessary, delays and burdens[3].

- **Delayed parentage transfer**. Under most Australian laws[4], legal parentage rests with the surrogate (and sometimes their partner) at birth. Parentage must then be transferred to the intended surrogate by Court order[5]. Since the surrogate is still the legal parent, they may be liable for decisions or responsibilities (e.g. consenting to medical treatment, registering the birth, or being contacted by authorities in legal matters) even if the intended parents are caring for the child.

Together, these challenges interact to make Australia's domestic surrogacy process more complex, protracted, and under-supported—profoundly eroding both surrogates' and intended parents' confidence in and willingness to engage with the system.

Recommendations

1. **Regulate surrogacy under Federal law**

   Consolidate and / or harmonise all State/Territory surrogacy laws so that surrogacy can be nationally regulated, for example, under the *Family Law Act 1975* (Cth), as well as have consistent provisions in various State/Territory surrogacy laws.

   We note, for example, that Federal regulation may not be sufficient on its own and that certain health or child protection requirements may need to also be regulated at a State / Territory level. Where this occurs, we consider that laws should be harmonised, to the extent possible.

   The Federal Government may also consider establishing a national authority to oversee compliance, for example, a "National Surrogacy Authority".

2. **Review workplace protections**

   Consider whether existing workplace protections under the *Fair Work Act 2009* (Cth) and *Sex Discrimination Act 1984* (Cth) adequately recognise surrogacy arrangements.

3. **Resource counselling for surrogates and prospective parents**

   We urge the Federal Government to fund counselling services for surrogates and

[3] Ea, H. (2025). Reforming Australia's surrogacy landscape. LSJ Online. Reforming Australia's surrogacy landscape - Law Society Journal.
[4] *Family Law Act 1975* (Cth).
[5] Australian Government. (2025). Recognition of parentage in Australia. Australian Government. Recognition of parentage in Australia | Surrogacy in Australia.

prospective parents[6].

Conclusion

By embedding surrogate welfare at the heart of a uniform framework, and delivering timely legal parenthood for intended parents, the reforms proposed here could protect all parties, reduce reliance on risky overseas pathways and strengthen public confidence in family-building through surrogacy.

[6] Chambliss, K. (2025). The role of counselling in preparing for surrogacy. Kristen Chambliss. Navigating Surrogacy: Counseling Guide for Intended Parents.