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27th June 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 surrogate and I birthed a child in November 2023 for a same-sex male couple.

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

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

    In 2023, while living in South Australia, I was an altruistic gestational surrogate for a same-sex male couple living in Victoria – an experience that has been one of the most meaningful of my life. I carried and gave birth to a beautiful baby for two loving dads who are now thriving as a family. We shared a respectful,

supportive and transparent journey, one grounded in trust, mutual care, and a shared desire to create their family.

This journey has brought me closer to the couple and strengthened our relationship in a way I never expected and being able to contribute to them becoming parents is a feeling that is indescribable.

Although our experience was overwhelmingly positive, the emotional, legal, logistical and financial realities were significant. I witnessed firsthand how the fragmented, state-based nature of Australian surrogacy laws – along with outdated and inconsistent legal systems – created unnecessary strain on what should have been a joyful and ethical process.

2. **What reform principles should guide this Inquiry?**

   The principles proposed by the ALRC are the right foundation for this inquiry. Feeding in to those principles, my key focus in my submission are the following themes:

   1. Establishing a National Surrogacy Framework
   2. Automatic legal recognition of intended parents at birth
   3. Implement national guidelines for reimbursable expenses
   4. Introduce ethical, regulated surrogacy compensation options
   5. Invest in professional training and public education

   These reforms would promote human rights, reduce harm, ensure fairness and dignity, and create a more accessible and consistent surrogacy system across Australia.

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?**

   Inequitable access for same-sex couples

   Intended parents in same-sex relationships often face more obstacles than heterosexual couples. While we weren't personally denied access, the fact that LGBTQ+ people face differing eligibility criteria depending on where they live is discriminatory. Same-sex couples already face additional challenges in

becoming parents. The complexity of navigating multiple legal systems only compounds the inequality. A child's right to a safe, loving home should not depend on their parent's gender or sexual orientation, nor on the state in which they live. Surrogacy laws should be created to protect all families equally.

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

   Navigating different state laws and processes

   Because I lived in South Australia and the intended parents in Victoria, we had to navigate the legal framework for Victoria. Each state has its own rules around eligibility, counselling, approvals, management of the pregnancy itself and legal parentage. The Victorian process in the lead up to the approvals to access surrogacy was substantially more complex and time-consuming than in South Australia, which we found frustrating. Once approved, I had to travel to Melbourne for transfers, creating significant costs for the intended parents and disruptions to my work and family life due to last-minute travel.

   Speaking to others who completed surrogacy entirely within South Australia, it was clear their processes moved more quickly. While I appreciate the protective intent behind Victoria's framework, the lack of consistency between states is unfair and exclusionary. Families and surrogates shouldn't face extra barriers simply because they live on opposite sides of a border.

   In addition to this the different eligibility requirements for surrogates in each state can make the process difficult to navigate and add to the confusion of the process.

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

   Yes, eligibility criteria are necessary to protect and support both surrogates and intended parents in the process, as well as support the best interests of the child. They should be based on the health, consent and the readiness of both the parents and the surrogate to enter into a surrogacy arrangement and attempt to help reduce risk to all parties during the process. The focus should be on the support and complexities that are needed as part of a surrogacy

arrangement both pre, during and post birth. And these should be implemented at a federal level.

Examples of such criteria for a surrogate that I found helpful in the process:

- An age range, but with flexibility depending on health of the surrogate
- Medical and psychological screening to ensure the surrogate is physically ready as well as emotionally ready for such an experience
- Clear and ongoing consent with the ability to withdraw from the arrangement at any point in time
- Independent legal advice so I could understand my rights and responsibilities

For intended parents:

- Psychological screening to assess readiness for the surrogacy process and support required to give the surrogate
- Legal and financial readiness in relation to being able to support the surrogate's out of pocket expenses and the terms of any agreement that is made
- Independent legal advice so they can understand their rights and responsibilities as intended parents

6. **Should surrogacy agreements be enforceable?**

Yes, I believe surrogacy agreements should be partially enforceable, as long as there are safeguards in place. Not every clause should be enforceable, particularly anything that could override a surrogate's bodily autonomy, but certain aspects of the arrangement, such as expectations around reasonable financial reimbursements for costs incurred as part of the pregnancy, decision making processes (in particular around medical or birth-related decisions) and post birth responsibilities should be legally recognised and upheld to protect all involved.

The surrogate's bodily autonomy should always come first and a surrogate should never feel the need to undergo a procedure or continue a pregnancy against her will.

One way to enforce such agreements could be through the introduction of an independent national surrogacy authority or agency that could oversee elements of the surrogacy process such as:

- Registration of surrogacy agreements
- Counselling required throughout the process, both pre, during and post the birth
- Monitoring compliance with legal requirements and key milestones
- Provide mediation or support if needed
- Uphold enforceable elements of the agreement through a structured process.

This would provide consistency and clarity, and reduce pressure on individuals to resolve conflicts independently and ensure disputes don't escalate.

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

   I feel strongly that surrogacy birth should be covered under workplace agreements. I was fortunate to have an incredibly supportive workplace who approved my accessing parental leave despite surrogacy not being explicitly stated as part of the policy, however I have heard anecdotally of many surrogates who have not been able to access paid parental leave post birth which has been stressful for them and an added financial strain on the intended parents.

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

   Despite intentions to cover all reasonable expenses, I still ended up out of pocket over the course of the journey. Although we had extensive, open conversations – helped by the fact that one of the intended parents was a long-time friend – the lack of national clarity made some decisions feel uncertain. At times we avoided claiming grey-area costs to spare them the burden or to avoid crossing legal lines.

   In our experience the parents set up a bank account for me and agreed to keep it at a certain minimum amount. This worked well for us as it gave me flexibility to

purchase items that we had deemed necessary without having to keep receipts or ask the parents constantly for money.

The current system relies heavily on a surrogate's ability to advocate for herself and navigate uncomfortable conversations, at a time when they are feeling incredibly vulnerable. For those without a strong pre-existing relationship, this ambiguity can lead to tension, unfair financial outcomes, and even breakdowns in the surrogacy arrangement.

Creating a clear, national consistent list of reimbursable costs – including lost income – to ensure surrogates are not left out of pocket would provide clarity, fairness and transparency for all parties. National guidelines on reimbursable expenses would also help reduce financial stress and legal ambiguity.

9. **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?**

   While I entered this surrogacy arrangement fully aware of its altruistic nature, I do believe it's outdated and unfair to ask women to undergo pregnancy and birth – with all the associated risks, time and emotional labor – without any legal option for reasonable compensation beyond reimbursement of expenses. The lack of ethical compensation contributes to a shortage of surrogates, pushes intended parents overseas, and can result in unregulated or hidden payments that make everyone more vulnerable.

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

    Introduce ethical, regulated surrogacy compensation options.

    Allow for reasonable financial compensation under a transparent, regulated model. This honors the risk and labor involved, and acknowledges that altruism and fair compensation are not mutually exclusive.

    - By establishing a national, regulated framework – further reinforcing the need for a federal legal framework for surrogacy
    - A clear definition of what ethical compensation looks like, covering items such as:
        - Time and effort spent (e.g. medical appointments, postnatal recovery)

    - Loss of income (including unpaid leave or casual work missed)
    - Physical and emotional toll of pregnancy
    - Medical risk and recovery
- The goal of such a framework should be fairness, not profit.
- Setting clear legal safeguards to ensure compensation is regulated and not market-driven.
- An independent authority or agency to oversee surrogacy agreements and arrangements
- Offer independent legal advice and mandatory counselling for all parties, consistent across all of Australia. Although this currently exists, the state requirements all differ and such a service would be essential in a compensated model.
- Payments managed by an independent third party organization or individual
- Reimbursement for actual costs incurred to remain separate from 'commercial' compensation and not be considered as part of the commercial arrangement

Surrogates contribute physically, emotionally and logistically. They deserve fair treatment and the option for regulated compensation.

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

After the birth, both my husband and I were listed as the child's legal parents, even though we had no intention of raising the baby, and my husband had no link to the child. The intended parents, both fathers, had to wait months to be legally recognised, even though there was never any dispute over who the child's true parents were. This legal limbo created unnecessary anxiety. I also had to apply for the baby's passport during this period, placing administrative burden on me at a time when I wanted to return to focus on my own family.

Delays in recognizing intended parents create emotional and legal risk for everyone involved. This undermines the child's right to certainty and the dignity of the LGBTQ+ families. It also places unnecessary administrative burdens on surrogates.

A national framework for calculating compensation would be helpful to remove ambiguity of what is fair, but it ultimately should be set by the parties involved. A national body overseeing the surrogacy arrangement could help with ensuring that the amount is fair to all parties and takes into account the individual circumstances of the individuals involved.

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

Automatic legal recognition of intended parents at birth
When a valid surrogacy agreement exists and consent is clear, intended parents should be automatically recognised as legal parents from birth. This is in the best interests of the child and aligns with international best practice.

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

Introducing a single, consistent legal model for all surrogacy arrangements in Australia.
Navigating two state systems highlighted how unfit the current framework is for modern families and provides barriers to potential surrogacy and intended parent matching. Differences between jurisdictions are unfair and can be exclusionary. There should be a nationally consistent model that provides equal access and process for all Australians

State borders should not limit who can become a parent, delay the process, or complicate a surrogate's experience. A federal framework would reduce duplication, streamline costs, and create greater equity and certainty.

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

Yes I do – surrogacy is still a very misunderstood process and there is a need to improve the awareness and understanding of surrogacy laws, policies and practices, both within the public and among professionals who support surrogacy arrangements. In my own experience as a surrogate, I often found myself having to explain the legal process not just to friends and family, but sometimes to health professionals and administrative staff. The lack of clear, accessible information increases confusion, stress and stigma – especially for non-traditional families.

I think an investment in professional training and more public education would normalise surrogacy as another way to make a family, reduce stigmas around it and would encourage more people to consider surrogacy as a way to help build a family. And further to this, a way to reduce the stigma surrounding non-traditional families would be to include diverse family stories in materials to promote acceptance.

Surrogacy is becoming more common, particularly among same-sex couples and people with medical infertility however it feels like community understanding has not caught up. Stigma and a lack of understanding can lead to confusion in healthcare settings. Surrogates and intended parents need confidence that the people supporting them understand the process and their legal rights. Everyone will benefit when surrogacy is better understood – especially the children at the centre of these stories.

In conclusion, surrogacy is one of the most powerful acts of compassion and collaboration. The law should reflect that reality – not restrict it based on outdated assumptions or inconsistent state laws.

My experience as a surrogate was deeply positive, but it was made harder by laws that are unnecessarily complex, inconsistent, and at times unjust. By modernizing surrogacy laws, we can better protect the surrogates and intended parents, as well as the children who are the result of these arrangements, and honor the commitment of those who choose to give life through this process.

Australia needs a national system that is clear, inclusive, compassionate, consistent and ethical – one that treats surrogates, intended parents and children with the dignity and respect they deserve.

Thank you for considering my submission and giving me the opportunity to share my experience and contribute to this important review.

Yours Faithfully,

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