

The Australian Law Reform Commission (ALRC) Discussion Paper represents a **vital and comprehensive blueprint for modernising surrogacy regulation** in Australia, transforming a fragmented system into a cohesive, ethical, and supportive national framework. This inquiry is fundamentally important because it directly addresses the critical need to safeguard the rights of people born through surrogacy, surrogates, and intended parents, while making safe, lawful domestic surrogacy genuinely accessible.

The proposals effectively shift the focus from merely prohibiting commercial conduct to proactively building a robust regulatory system that supports best practice and protects all participants from the risks currently associated with complex and uncertain laws,.

The Necessity of National Harmonisation and a Supportive Framework

The most fundamental reform proposed is the move toward a nationally consistent legal framework (Proposal 1), preferably through uniform legislation,. The existing state and territory laws are a "patchwork" that creates significant confusion, stress, and complexity for all involved parties, including families, surrogates, and professionals,. This inconsistency and confusion acts as a significant barrier to accessing domestic surrogacy,. By establishing consistency, the ALRC removes a key incentive for citizens and permanent residents to seek out complex and potentially exploitative overseas arrangements,,.

Furthermore, the introduction of a **National Regulator** (Proposal 2) and the permission of licensed **Surrogacy Support Organisations (SSOs)** (Proposal 3) are crucial architectural reforms,. This delegation allows SSOs to facilitate matches, coordinate mandatory services, and manage arrangements, replacing the existing reliance on unmoderated social media introductions,. The SSO model promises to make the surrogacy process significantly simpler, easier, and less overwhelming for intended parents, reducing the motivation to travel overseas.

Streamlining Processes and Ensuring Ethical Safeguards

The proposed shift in how agreements are approved marks a profound improvement in efficiency and ethical oversight:

- **Administrative Approval:** The proposal requires mandatory approval of a compliant surrogacy agreement *before* attempting pregnancy (Proposal 4). This process delegates routine assessment and approval to SSOs, largely conducted "on the papers," with a presumption in favour of approval if all mandatory safeguards are met,. This moves away from current models, such as the Victorian Patient Review Panel (PRP), which involves potentially onerous, intimidating, and costly quasi-judicial hearings that can delay the process by months,,.
- **Comprehensive Safeguards:** The mandate for rigorous, standardised threshold requirements—including consistent medical and psychological screening (Proposals

17, 18), and comprehensive implications counselling (Proposal 21)—ensures that surrogacy arrangements are safe and ethical before a child is conceived,. Requiring certification that independent legal advice covering key matters (e.g., reimbursement, autonomy, parentage pathways) has been received (Proposal 20) ensures informed consent and legal clarity,.

Dignifying the Surrogate and Achieving Financial Fairness

The proposals concerning compensation mark a vital step toward recognizing the true contribution and costs borne by surrogates, tackling the problem of the current, overly strict prohibitions that often leave surrogates financially disadvantaged,,.

- **Full Cost Recovery:** The proposal mandates reimbursement for **all expenses reasonably incurred** (Proposal 25), encompassing a wide range of categories, including loss of earnings, health insurance, childcare, and a monthly allowance for incidental expenses for which receipts are difficult to obtain,,. This consistent, broad approach alleviates a key barrier to domestic surrogacy,.

- **Hardship Payments:** Allowing for optional hardship payments at the surrogate’s election (Proposal 26) recognizes the commonly experienced pain, suffering, and assumption of risk, as well as extraordinary medical complications,. This formalises and dignifies the surrogate’s role and contribution,, ensuring they are compensated without profiting from the arrangement.

- **Medicare Access:** The proposed amendment to allow Medicare rebates for assisted reproductive services (Proposal 28) and mandatory preliminary services like psychological assessments and counselling (Proposal 29) reduces a significant financial barrier to access,.

Certainty and Protection for Children Born Through Surrogacy

The reforms ensuring clear legal parentage and access to identity information are paramount to upholding the rights and welfare of children born through surrogacy,.

- **Legal Parentage at Birth:** The proposed Administrative Pathway (Proposal 30) for approved arrangements is critical, ensuring that **intended parents are the legal parents upon birth**,. This radically simplifies the current pathway, which requires a Substitute Parentage Order obtained via an expensive, months-long court process post-birth,,.

- **Right to Identity:** The proposals uphold the child’s right to preserve their identity and know their gestational origins,. This is achieved by collecting information on the **surrogacy register** (Proposal 35) and adding an **addendum to the birth certificate** that alerts the person to the availability of this information from the register (Proposal 33),.

In conclusion, the ALRC Discussion Paper proposes a balanced, ethical, and rights-focused regulatory model that should be strongly supported. By harmonizing laws, streamlining administrative processes through SSOs, ensuring fair reimbursement, and placing the legal recognition of the child's functional family at birth, these reforms achieve the dual objective of mitigating risk and making domestic surrogacy a viable, safe, and positive pathway for Australian families.