How would the ALRC's recommendations change surrogacy laws?

The Final Report contains 47 recommendations for reforming surrogacy laws in Australia. This information sheet summarises how the ALRC's recommendations could change the law.

Current laws

If ALRC recommendations are implemented

Fragmented legislative framework

- Fragmented state and territory legislation creates inconsistencies in the surrogacy regulatory framework.
- This is difficult, complex, and costly to navigate.

Uniform legislative framework

- Uniform Commonwealth legislation (preferred) or substantially consistent state and territory legislation.
- Given practical effect by a National Regulator.
- Laws operate in a fairer, more protective, and more effective way.

Inconsistent and ineffective regulation of overseas surrogacy

- Surrogacy is regulated differently in different states and territories. In some it is not regulated at all.
- Children born through surrogacy, surrogates, and intended parents exposed to higher risk of harm and exploitation.
- Gaps in processes to protect child's rights to identity and a parent-child relationship.

Consistent and effective regulation of overseas surrogacy

- Proactive and responsible approach to overseas surrogacy.
- Safeguards against exploitation, sale of a child, and denial of a child's rights to identity or nationality.
- Post-birth processes record birth circumstances on the National Surrogacy Register and support recognition of the parent-child relationship. This would give effect to the child's right to identity.

Restrictive and unclear rules about surrogate reimbursement

- Narrow and unclear laws can leave surrogates out of pocket and do not cover non-economic losses (for example, the physical impacts of pregnancy).
- Prohibition on surrogacy that is for profit or reward.

Fairer and clearer rules about surrogate reimbursement

- Reimbursement of reasonable costs and economic losses.
- Optional reimbursement for non-economic and extraordinary losses.
- Continued prohibition on surrogacy that is for profit or reward.

Uncertain and delayed legal parentage recognition

- The surrogate (and partner, if any) is the legal parent at birth and parties must later obtain a court order.
- Creates uncertainty and may not be in the child's best interests.

Certainty for legal parentage recognition

- (For approved arrangements) intended parents are legal parents at birth through an administrative pathway.
- Protections for surrogates and a judicial pathway remain.

Lack of support

- Parties rely on limited, often informal pathways to connect and navigate fragmented services and information.

Support for all parties

- Licensed Surrogacy Support Organisations ('SSOs') help intended parents and surrogates connect. SSOs approve compliant arrangements, ensuring surrogacy arrangements only commence when effective safeguards are in place.
- Fewer advertising restrictions.

Inconsistent and inadequate safeguards for children, surrogates, and intended parents

- Legislative safeguards (for example, eligibility criteria, or requirements to obtain legal advice or counselling) are not comprehensive and are inconsistent.
- Assessment of compliance with safeguards generally takes place after birth, meaning there is no opportunity to ensure the surrogate's free and informed consent, or manage issues relevant to child's best interests.

Consistent and effective legislative safeguards

- Legislative safeguards to ensure free and informed consent, and protect the best interests of the child.
- Approval and oversight before an attempt to achieve a pregnancy.

Limited access to information about gestational origins

- State-based systems provide limited access to information about gestational origins.
- Children born through overseas surrogacy cannot access information about their identity or gestational origins.

Access to information about gestational origins

- All children born through surrogacy can access information about their gestational origins.

Read the Final Report and Summary Report **here**