Australian Government

Australian Law Reform Commission

Surrogacy Inquiry – Q&A

What are the ALRC's main recommendations?

The ALRC recommends nationally consistent reforms to improve access to domestic surrogacy, strengthen safeguards, and more effectively regulate overseas surrogacy, including:

- **Creating a nationally consistent surrogacy framework**, with a National Regulator to provide oversight, guidance and consistent administration.
- **Making domestic surrogacy easier to access**, including through licensed, fee-capped 'Surrogacy Support Organisations'.
- **Protecting surrogates from financial disadvantage**, while retaining the prohibition on surrogacy for profit or reward.
- **Providing greater certainty about legal parentage**, including an administrative pathway for approved domestic arrangements that comply with the safeguards.
- **Strengthening safeguards before surrogacy commences**, including requirements relating to independent legal advice, counselling, medical screening, criminal history checks for intended parents, and a compliant written surrogacy agreement.
- **Establishing a National Surrogacy Register,** to better protect the right of children born through surrogacy to information about their identity.
- **Introducing a new national framework for overseas surrogacy**, requiring intended parents to register before entering an overseas arrangement, obtain official guidance and Australian and overseas legal advice, and take reasonable steps to avoid arrangements involving significant risks.

How do the recommendations improve access to domestic surrogacy?

Difficult processes, a shortage of surrogates, and uncertainty about legal parentage can lead intended parents to pursue overseas surrogacy. The recommendations are directed at making domestic surrogacy easier to access and navigate. Licensed Surrogacy Support Organisations would connect and support intended parents throughout the process, complemented by other measures such as fewer advertising restrictions and clearer, nationally consistent laws. Clearer and fairer reimbursement of costs and losses reasonably incurred by a surrogate may encourage more people to consider becoming surrogates. The reforms would also make it simpler to have legal parentage recognised.

How do the recommendations better ensure responsible domestic surrogacy?

The recommendations would expand legislative safeguards and require them to be met before pregnancy, when exploitation and other harms can still be prevented. Currently, safeguards are less comprehensive and compliance is generally assessed after the child's birth.

To obtain approval, and enter the 'administrative pathway' to legal parentage, arrangements would have to meet clear requirements, including independent legal advice, counselling, and medical screening. The administrative pathway would recognise the intended parents as the

child's legal parents from birth, without a court order. Information about the child's gestational origins would be recorded and accessible, and surrogates would receive fair reimbursement for costs and losses. Licensed Surrogacy Support Organisations and national oversight would support more consistent compliance. Unapproved arrangements — including all overseas arrangements — would still require a court order.

How will the recommendations better regulate overseas surrogacy?

The recommendations would replace Australia's inconsistent and largely ineffective approach with a nationally consistent system that proactively reduces human rights risks. Lawful, well-regulated overseas arrangements could proceed, while those posing significant risks of surrogate exploitation, the sale of a child, or denial of a child's rights to identity or nationality would be avoided.

Before entering an overseas arrangement, intended parents would have to register, receive official guidance, and obtain legal advice. They would also have to take reasonable steps in choosing to engage in an overseas arrangement to avoid arrangements that are unlawful in the overseas jurisdiction, fail to meet minimum Australian requirements, and pose significant risks. Non-compliance could attract a civil penalty. Improved processes for legal parentage, citizenship, passports, and visas, and gestational information would better protect children.

How do the recommendations give effect to the rights of the child?

The recommendations would protect children by requiring safeguards to be met before a surrogacy arrangement begins. Recognising intended parents as the child's legal parents from birth would reduce uncertainty and support timely decisions about the child's care. Recording and providing access to information about gestational origins would support the child's right to identity. For overseas arrangements, the proposed regime would guard against the sale of children and the denial of children's rights to identity and nationality, while improving access to citizenship, passports, and visas.

How do the recommendations seek to prevent exploitation and other forms of harm to the surrogate?

The recommendations seek to prevent exploitation and other forms of harm by ensuring that surrogates can provide free and informed consent, are treated fairly, and retain control over their body. For example, they require medical assessment, independent legal advice and counselling; provide for clearer and fairer reimbursement for costs and losses; prohibit agreements from restricting bodily autonomy; prohibit coercion; and require overseas arrangements to meet requirements that protect against exploitation and other forms of harm.

Is the ALRC recommending commercial surrogacy?

No. The ALRC is not recommending commercial surrogacy. Consistent with our Terms of Reference and current laws in Australia that regulate surrogacy, the Final Report recommends maintaining the prohibition on domestic surrogacy for profit or reward.[1] It recommends clearer

[1] The ALRC prefers not to use the 'altruistic/commercial' surrogacy binary because it is inaccurate. Surrogates may have mixed motivations, and exploitation risks can exist regardless of payment. The labels also distract from designing safeguards that more effectively meet the key objectives of the legislation — to protect rights, including by preventing harm and exploitation, and to uphold the best interests of the child. The Report therefore uses the term 'surrogacy that is not for profit or reward'.

and more comprehensive requirements for surrogates to be reimbursed for costs and losses arising from the arrangement. Although surrogates can currently claim costs and losses, they are often left out of pocket, including in relation to non-economic losses, such as the physical and psychological impact of pregnancy and childbirth, or extraordinary losses arising from serious medical complications. The recommendations are intended to prevent unfairness to the surrogate and to ensure they are not financially disadvantaged.