Submission by the Australian Nursing and Midwifery Federation

Australian Law Reform Commission – Review of Surrogacy Laws

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Australian Nursing & Midwifery Federation

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Introduction

1. The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 345,000 nurses, midwives and care-workers across the country.

2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

5. The ANMF thanks the Australian Law Reform Commission for the opportunity to participate in the 2025 inquiry into Australia's surrogacy laws. Our submission addresses central concerns raised in the Australian Law Reform Commission's *Review of Surrogacy Laws* (Issues Paper 52, 2025). The submission draws upon current research, policy work, and collaborative contributions to national surrogacy guidance to guide how legislative, clinical, and parental recognition systems can be reformed to foster more ethical, equitable, and accessible surrogacy arrangements across Australia for all people.

6. Surrogacy is an important and compassionate family-building option particularly for people who have few to no other opportunities to have children. Although Australia has made

notable progress in creating emerging ethical surrogacy frameworks, there are still critical areas for improvement. Rather than emulating international practices, reforms should reflect the lived realities, rights, and needs of Australian citizens. Enhancing domestic pathways for surrogacy—through inclusive, safe, and well-regulated models—would reduce utilisation of illegal, potentially unsafe, and harmful commercial overseas services and uphold the dignity and wellbeing of all involved.[1] Legal and healthcare systems must evolve together to ensure that surrogates, intended parents, and children are supported with dignity, clarity, and compassion.

7. To meet the needs of modern families, Australia must move toward a nationally consistent, health and wellbeing-focused, rights-based surrogacy system. To achieve this, the ANMF recommends:

    - National evidence-based surrogacy care guidelines co-developed by legal, health, and maternity care experts.
    - Accredited, evidence-based support services for surrogates and intended parents.
    - A pre-birth parentage recognition model.
    - Expanded Medicare support for all family types.
    - Regulated surrogate compensation that reflects ethical standards.
    - Guaranteed workplace entitlements and long-term follow-up for surrogates.
    - Inclusive postnatal care that embraces all family forms.

Reform principles

Question 2: What reform principles should guide this Inquiry?

8. Surrogacy reform should be underpinned by equity, jurisdictional consistency, and evidence-based and health and wellbeing focussed access to surrogacy care and support for all Australians.

Barriers to domestic surrogacy

Question 5: What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome?

9. Access to domestic surrogacy in Australia remains uneven and obstructed by legal inconsistencies, systemic inequities, and limited public or clinical understanding.[2] Legislative approaches vary significantly across states and territories, often producing outcomes that are exclusionary or discriminatory. One clear example is the current law in Western Australia, which bars same-sex male couples from participating in surrogacy arrangements. This restriction is out of step with federal recognition of same-sex marriage and anti-discrimination protections. Surrogacy should be accessible to all Australians who wish to build families—regardless of gender, marital status, or sexual orientation. Laws that prevent same-sex couples from forming families through domestic surrogacy stand in direct contradiction to those principles.

10. A persistent obstacle in the domestic surrogacy landscape is the scarcity of available surrogates. Recent findings show that over half of intended parents were unable to find a surrogate, reflecting a systemic shortfall rather than lack of public interest.[2] This shortage is driven by the absence of practical support, legal clarity, and social recognition for surrogates. Increasing domestic participation will require investment in appropriate supports and resources, not commercialisation. Israel offers a compelling model where surrogacy is altruistically based but legally structured to provide compensation for time, health burdens, and related costs.[3,4] Federal reforms should remove discriminatory provisions, harmonise eligibility criteria across jurisdictions, expand Medicare to equitably cover all intended family types, and develop regulated compensation structures that ethically recognise surrogates' contributions.

Eligibility requirements for surrogacy

Question 6: Should there be eligibility requirements for surrogacy? If so, what should those requirements be?

11. Members of the surrogacy community perceive the inconsistent eligibility requirements as discriminatory.[2] There should be clear and consistent eligibility requirements in Australia that ensure equitable access to surrogacy no matter where a person lives. Due to inconsistencies in eligibility requirements between jurisdictions, intended parents have been able to circumvent local law by engaging with international surrogacy,[5] moving to a more legally permissible jurisdiction in Australia,[2] or by pretending to live in a different state or territory by providing a friend's or family member's address.[6] Inconsistent eligibility requirements also contribute to the complex and confusing nature of Australia's current legal framework on surrogacy.[2] By developing and implementing consistent eligibility requirements at a national level, such complexities can be avoided and intended parents and surrogates can be more effectively and safely supported.

Question 7: Are there any eligibility requirements which should be introduced, changed, or removed?

12. Access to the same surrogacy opportunities should not be dictated by a person's gender, sexual orientation, or relationship status. Such eligibility requirements are not based on evidence and are discriminatory. In addition to unequal domestic access, certain jurisdictions—namely New South Wales, Queensland, and the Australian Capital Territory — criminalise participation in commercial surrogacy arrangements abroad. While intended to discourage exploitative practices, these laws often penalise those with no viable domestic options—especially same-sex male couples who are either legally excluded from surrogacy or ineligible for Medicare-funded fertility care due to lack of a clinical infertility diagnosis. This criminalisation has not curbed demand. Instead, it adds legal risk, emotional strain, and uncertainty for families. Children born from these arrangements may face delays in citizenship, difficulties with registration, or lack of legal parentage recognition. Lawmakers should shift focus away from punishment and toward developing robust, ethical, and

inclusive domestic systems that offer safe, viable alternatives to international surrogacy.

Professional services, including legal and counselling services

Question 11: What are the gaps in professional services for surrogacy in Australia?

13. There is a widespread lack of understanding about surrogacy among both health and maternity care providers and the broader public.[7] In both clinical and community contexts, many people assume surrogacy is prohibited within Australia. Health and maternity care professionals can also share this misunderstanding; surrogacy is still uncommon, so many clinicians will not have experienced providing care and support for a surrogate pregnancy and birth. In the context of the growing popularity of surrogacy, however, this reflects a worrying absence of preparation and knowledge within services expected to support surrogacy births. As a result, intended parents can turn to online platforms or overseas agencies (around 70% do so) for information—despite the risks of unregulated or biased guidance.[8] A coordinated education campaign for both the public and clinicians is essential. Health and maternity care professionals must be equipped to provide knowledgeable, inclusive support, positioning the health system as a credible first point of contact for surrogacy-related care.

Access to Medicare and parental leave

Question 14: What entitlements, if any, should be available to surrogates and intended parents?

14. Currently, Medicare support for fertility treatment is only provided when a medical infertility diagnosis exists. This criterion excludes same-sex male and female couples and singles who are not considered medically infertile but still require reproductive assistance to have children outside 'traditional' surrogacy arrangements. This exclusionary framework denies these groups equitable access to family-building resources. Despite legal recognition of same-sex relationships, the absence of financial support forces many to seek fertility services abroad, often at increased financial and ethical risk. Medicare policy must evolve to reflect Australia's commitment to equality and inclusion.

15. Fertility treatments provided in connection with a surrogacy arrangement should be eligible

for Medicare rebates. Existing exclusions for fertility treatments in the context of surrogacy only exist because surrogacy was not legally permitted in some Australian jurisdictions at the time that the MBS funding for IVF was created. Providing MBS funding for people engaged in surrogacy would help to reduce the high costs of fertility treatments, which is well established to be a significant barrier to access. This recommendation is in line with recommendations made by a Senate Committee,[9] and a Medicare taskforce.[10]

16. Although motivated by altruism, surrogates are often left with limited support after giving birth. Entitlements such as surrogacy leave are inconsistently applied across sectors. A review of higher education enterprise agreements found wide variation in provision.[11] Likewise, Centrelink support is often unclear, particularly in cases where the surrogate does not have custody of the child. Employers should be required to include equitable surrogacy leave provisions in workplace agreements and access to Centrelink should be simplified and clarified.

17. Health and maternity care follow-up for surrogates is also minimal. Surrogates may receive care for just a few weeks after discharge, while biological mothers benefit from long-term maternal and child health services that can last for years. Despite this, surrogates face the same physical recovery period as biological mothers, and are vulnerable to postpartum complications, including depression and hormonal imbalance.[12] The lack of this ongoing support creates unnecessary risk for surrogates. Healthcare systems must extend long-term follow-up care—both physical and emotional—to all surrogates.

Legal parentage of children born through surrogacy

Question 18: What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

18. The fact that intended parents are not granted legal parentage at birth is problematic because it means that the surrogate has the legal responsibility to make decisions about the care of the newborn, including any medical treatment. This could be especially problematic in the increasingly common event where the newborn is not genetically related to the

surrogate but is genetically related to both intended parents. Surrogates have reported being told not to leave the hospital following discharge because the newborn required additional neonatal care, however it would be the intended parents not the surrogate who would be providing that care.[2] The *Surrogacy Management Standards in Public Health Units in South Australia 2021* states that the newborn must be discharged into the surrogate's care. This is in direct odds with the very purpose of a surrogacy arrangement and potentially imposes additional and unnecessary burden and distress upon both surrogates and intended parents and is apparently reasonable, especially when the newborn is genetically related to both intended parents and the surrogate has no intention or desire to provide parenting care to the newborn. This also places members of the clinical team in a challenging position, as there are few to no existing and consistent perinatal guidelines to support clinicians providing care to surrogates, intended parents, and newborns in surrogacy birth contexts.[7] One intending couple reported being asked to leave the hospital just 24 hours after the newborn was born and before their baby was discharged, which is clearly a source of distress.[6]

19. In most states, legal parentage automatically resides with the surrogate at the time of birth, even when intended parents are actively involved throughout pregnancy. This can cause delays in accessing newborn care, hinder consent for medical treatment, and postpone key enrolments like Medicare. The uncertainty this creates is stressful for all involved. Surrogates may be asked to make decisions inconsistent with the emotional intent of the arrangement, and clinicians are left navigating legal ambiguities.[13] A model of conditional pre-birth recognition of intended parents, confirmed postnatally would better align legal frameworks with clinical practice and minimise distress in the postnatal period.

Lack of awareness and education

Question 25: Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices?

20. The ANMF supports initiatives to improve the awareness and understanding of health and birth care providers about surrogacy laws, policies, and practices. Despite surrogacy being

legally permitted in all Australian jurisdictions, only SA and the ACT provide guidance for healthcare providers and even there, might warrant update. Although the use of surrogacy is increasing year on year in Australia, it is still a relatively uncommon pathway to parenthood. Healthcare providers – including those in the ACT and SA - may be uncertain about how to provide appropriate care and many clinicians are likely to be unfamiliar with surrogacy arrangements and births. Members of the surrogacy community report "clumsy" and "insensitive" treatment from healthcare providers.[6] which could be addressed by initiatives targeted at enhancing awareness, understanding, and confidence in providing high quality surrogacy birth care. One surrogate even reported being denied service at a public hospital, being told by a staff member that "we don't really do surrogacy", which forced her to give birth at a private hospital.[2] Most clinicians want to provide safe, inclusive care for all community members, but without the information, training, and support to do this, it can be challenging especially if one is unfamiliar with surrogate pregnancies, births, and the type of care that surrogates and intended parents need and prefer.

Other insights

Question 27: Are there any important issues with regulating surrogacy that we have not identified in the Issues Paper? Do you have any other ideas for reforming how surrogacy is regulated?

21. Surrogacy-related care must be grounded in the principles of human rights. Intended parents—especially same-sex couples—often report feeling excluded from existing parenting programs. Services frequently rely on heteronormative, cisgendered assumptions and language that alienate those outside traditional family structures.[14,15] This exclusion limits engagement and may reinforce the belief that Australia's systems are ill-equipped to support non-traditional families. As a result, many turn to international options perceived as more inclusive, however this is not without its own risks and is illegal in many jurisdictions. Postnatal care programs should be reviewed and restructured to ensure all family types feel welcome and supported. Staff training in inclusive communication and cultural awareness should be standardised across services.

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