



Government of **Western Australia**
Department of **Health**

Review of the *Surrogacy Act 2008*

Report to the Western Australian Parliament

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Executive Summary

This document comprises the report of a review of the operation and effectiveness of the *Surrogacy Act 2008 (WA)* (Act) in accordance with section 45 of the Act. The objective of the Act is to regulate surrogacy arrangements in Western Australia.

Surrogacy is an arrangement where a woman (the birth mother) seeks to become pregnant and to give birth to a child and for a person or persons other than the birth mother (the arranged parent or arranged parents) to raise the child.

A surrogacy arrangement that involves no financial or material gain (altruistic surrogacy) is permitted in Australia, subject to conditions.

A surrogacy arrangement that involves financial or material gain (commercial surrogacy) is not permitted in Australia.

Diverse opinions were expressed about a wide range of issues in the 17 submissions received by the Department of Health.

Some submissions proposed the Act should be more restrictive, while others proposed more permissive regulation of surrogacy.

Issues raised in the submissions included eligibility requirements for surrogacy, restrictions and prohibitions, the approval process, and the requirements for transfer of parentage.

A number of submissions expressed views in relation to commercial surrogacy and international surrogacy arrangements.

There were some issues that were beyond the scope of the review of the Act. These matters may be more appropriately considered at national and international levels.

The recently released Family Law Council 'Report on Parentage and the Family Law Act' (2013) includes recommendations concerning surrogacy legislation within Australia and international commercial surrogacy arrangements. A number of those considerations have been reflected in this report and the recommendations made in this review.

A recent high profile case in Thailand involving Australian citizens has created significant public discussion and highlighted several issues including Western Australia's approach or lack thereof towards overseas surrogacy and the issues of background checks for prospective parents in surrogacy arrangements. These issues are touched on in this report, however the primary reason for this review was to report on the operation and effectiveness of the *Surrogacy Act 2008 (WA)*.

Recommendations:

1. Develop information resources and clear pathways to provide a better understanding of surrogacy legislation and policy for consumers in Western Australia.
2. Consider improvement to the operation of section 17 of the Act through a change to Direction 7 of the Surrogacy Directions (2009), which is given effect by the Chief Executive Officer for Health, to enable the provision of an artificial fertilisation procedure before approval of a surrogacy arrangement, in circumstances where there is a medical need to do so.
3. Encourage and facilitate more research on national and international surrogacy and the long term social and psychological outcomes.
4. Support referral to the Council of Australian Governments to enable a coordinated national approach to surrogacy, relevant legislation and related issues.
5. Support the proposal for the Australian Law Reform Commission to conduct an inquiry into the full range of issues raised by international surrogacy and its impact on Commonwealth and state laws.
6. Support the proposal for the Standing Council on Law and Justice to consider further state, territory and Commonwealth cooperation on harmonisation of parentage laws nationally, including provisions dealing with children born from assisted reproductive technologies and donor genetic material.
7. Undertake a further review of the *Surrogacy Act 2008 (WA)* within five years.

The Department of Health appreciates the time and effort that respondents have taken in providing submissions to the review of the Act.

Part 1 About the Review

1.1 Introduction

This report presents the findings of a review of the operation and effectiveness of the *Surrogacy Act 2008 (WA)* (the Act). Section 45 of the Act reads as follows:

- (1) *The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of four years from its commencement.*
- (2) *The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as is practicable after that preparation, cause that report to be laid before each House of Parliament.*

The review of the Act (review) was undertaken by the Office of the Chief Medical Officer, Department of Health, on behalf of the Minister for Health. This report, of the operation and effectiveness of the Act, has been informed by submissions from interested parties including consumer interest groups, individual members of the public, members of Parliament, and service providers.

1.2 Background to the review

Surrogacy describes an arrangement where a woman (the birth mother) seeks to become pregnant and to give birth to a child and for a person or persons other than the birth mother (the arranged parent or arranged parents) to raise the child.

Traditional (partial) surrogacy is an ancient practice for many cultures. This refers to an arrangement where the birth mother is the genetic parent (as it is her egg) and the arranged father or donor provides the sperm. This can be achieved by means of artificial insemination or sexual intercourse.

Gestational (full) surrogacy is achieved through the use of assisted reproductive technology (*in vitro fertilisation (IVF)*). This refers to an arrangement where the birth mother has no genetic connection to the child. One or both of the arranged parents may be the genetic parent, or there may be no genetic connection to either of the arranged parents through the use of donor egg and sperm or embryo.

A surrogacy arrangement that involves no financial or material gain is known as altruistic surrogacy. This is permissible in Australia, subject to certain conditions.

A surrogacy arrangement that involves financial or material gain is known as commercial surrogacy. This is not permitted in Australia.

Surrogacy is a socially, ethically and legally complex issue, which has been the subject of emotive debates, legislative inquiries and ethical deliberations over many years. Consequently, regulation of surrogacy arrangements varies across Australian jurisdictions.

All Australian jurisdictions, apart from the Northern Territory, have implemented surrogacy legislation. This reflects the changing social landscape and paradigm shifts that have occurred, particularly over the past decade.

The passage of surrogacy legislation in Western Australia was a long journey. A Select Committee report, published in 1999, supported the development of surrogacy legislation in Western Australia (Legislative Assembly Western Australia, 1999). However, it was nearly

a decade later when the Surrogacy Act 2008 received Royal Assent on 9 December 2008. This landmark legislation followed referral of the Surrogacy Bill 2007 to the Legislation Committee for further consideration (Legislation Committee, 2008), as well as considerable parliamentary deliberation.

The Second Reading of the Surrogacy Bill 2007 captured the essence of the objectives of the proposed legislation, and the necessary deliberations regarding the need for regulations that provide safeguards and enable access, while at the same time not imposing unnecessary barriers to altruistic surrogacy.

“The Surrogacy Bill seeks to balance and protect the interests of all parties to surrogacy arrangements by providing a framework for the best interests of the child to be paramount in any decision about surrogacy and legal parentage, requiring careful preparation and assessment of the parties and preventing surrogacy for commercial gain. Surrogacy is not an issue that affects many couples but it is nonetheless very important for those who desperately want to start a family of their own and are unable to do so for medical reasons.” (Hansard, 1 March 2007 p.194a).

The objectives of the Act are to provide for the regulation of surrogacy arrangements in Western Australia and for the transfer of parentage of children born as a result of those arrangements. The legislation specifically prohibits surrogacy for reward (financial or material).

The Act is founded on the principle that the best interests of the child and participants in a surrogacy arrangement are supported through a formal preparation and assessment process.

1.3 Objectives and scope of the review

The objectives and scope of the review are set out in section 45 of the Act:

(1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of four years from its commencement.

1.4 Methods

The methods for the review comprised the following steps:

- The review was publicised by the Office of the Chief Medical Officer, Department of Health. Details of how interested parties could participate and submission instructions were provided.
- A written invitation was sent to known stakeholders to provide comments.
- Submissions received by the Office of the Chief Medical Officer were reviewed and analysed qualitatively according to recurrent themes.
- Government reports, historical documents, and Hansard records, aided the thematic analysis by clarifying the background of understanding in which the Western Australia surrogacy legislation emerged.
- Comparisons were made with other Australian jurisdictions and international trends, and contemporary research where relevant, to shed light on broader implications.
- A report based on the review was prepared for submission to Parliament by the Minister for Health.

1.5 The review process

The review was initiated on 3 February 2014. Details of the surrogacy review and terms of reference were published on the Office of the Chief Medical Officer website. In addition, the Reproductive Technology Council (RTC) website provided a link to the surrogacy review, as many interested parties access the RTC website as a resource.

The surrogacy review was also advertised in the print media. Public notices were placed in two issues of The West Australian newspaper on 3 February 2014 and 7 February 2014 (see Appendix 1). Calls for submissions (Appendix 2) were also sent to 39 stakeholder groups and individuals with a known interest in the issues covered by the Act (Appendix 3).

Part 2 Findings of the review

A total of 17 submissions were received from a range of stakeholders (see Appendix 4 for a list of respondents). All open submissions have been made available on the Office of the Chief Medical Officer website. The author of one submission asked for their name to be withheld and one submission was private and confidential. The respondents comprised:

- Advocacy group (4)
- Clinical psychologist (1)
- Fertility clinic (1)
- Fertility Society Australia (peak professional body) (1)
- Hospital (1)
- Lawyer (1)
- Members of Parliament (1 joint submission)
- Members of the public (2 individuals)
- Member of the public (1 individual - name withheld)
- Private and confidential submission (1)
- Reproductive Technology Council (1)
- Women's interest group (2).

Comments relating to the operation and effectiveness of the Act are presented by themes, with reference to the source individuals or organisations (see Appendix 4 for explanation of abbreviated terms and full names). Where relevant, reference is made to Government reports, Hansard records, and research evidence to provide a wider context. Comparison is also made with other Australian jurisdictions (Appendix 5) and international trends, to shed light on broader issues. The following sections present the main issues raised by submissions related to the operation and effectiveness of the Act.

2.1 Eligibility

Under the Act an eligible couple or eligible person can access altruistic surrogacy due to the following medical needs (section 19):

- (a) unable to conceive a child due to medical reasons; or
- (b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease; or
- (c) although able to conceive a child, is unable for medical reasons to give birth to a child.

2.1.1 Eligible couple or person

The Act specifies that the arranged parent or arranged parents must be eligible as a couple or person as set out in section 19(2):

- eligible couple means 2 people of opposite sexes who are married to, or in a de facto relationship with, each other;
- eligible person means a woman.

Six respondents considered that access to surrogacy should be restricted to heterosexual couples [ACL; AFA; FAVA; Hon Nick Goiran MLC et al; Jones; Nichols]. Three of these submissions considered that there should be a requirement for relationships to be a minimum of three years in duration [ACL; Hon Nick Goiran MLC et al; FAVA]. In addition, one respondent also considered that couples should be married [FAVA].

Conversely, four respondents considered that current legislation unreasonably restricts access to surrogacy for male same sex couples [FSA; Page; SA]. Three submissions supported access to surrogacy for single men [Anon; Concept Fertility Centre; FSA]. A case was cited of a widower who wished to use his embryos to have a child through surrogacy, but is not eligible for surrogacy under current legislation [Anon, Concept Fertility Centre]. However, a woman in the same circumstances may be able to access surrogacy.

The nature of the submissions reflects that the interpretation of family life and personal relationships is value-laden. There are many different traditional and non-traditional family configurations in today's society. A growing body of sociological and psychological research, of all types of family arrangements, shows that a supportive and healthy environment contributes to the development of well-adjusted children (Crouch et al., 2014; Gartrell & Boas, 2010; Golombok et al., 2006; Golombok & Badger, 2010).

The provisions of the Act set out the eligibility requirements for surrogacy in Western Australia, which are for medical reasons only (as required under the *Human Reproductive Technology Act 1991*). This means single men and same sex male couples cannot access surrogacy in Western Australia. New South Wales, Queensland, Tasmania, and Victoria recognise a social need for surrogacy as well as a medical need for surrogacy (Appendix 5).

2.1.2 Age

The Act provides for transfer of parentage and section 19(1)(a) requires that at the time an application is made for a parentage order:

- at least one arranged parent has reached 25 years of age.

Three respondents commented on age requirements for arranged parents [Concept Fertility Centre; FSA; RTC] and suggested that it imposes an unnecessary restriction. Concept Fertility Centre considered:

“This has severely discriminated against mature under 25 year olds who otherwise have met the eligibility criteria for entering into a surrogacy arrangement.”

In addition, the RTC considered that the current preparation and assessment process provides sufficient safeguards to assess the maturity of the applicants, without imposing age restrictions for arranged parents.

Age requirements were the subject of deliberation by the Legislative Council's Legislation Committee (2008) inquiry into the Surrogacy Bill. While it was recognised that age does not necessarily reflect maturity, the minimum age limit under the Act was influenced by the United Nations definition of “youth” which extends to persons under 25 years of age (United Nations, 1983). In view of the complexity and significance of the issues surrounding surrogacy, it was considered appropriate to apply a specific minimum age limit for at least one arranged parent. There was particular concern with regard to the age requirement of an eligible single person (Hansard, 19 June 2008, p.4173-4176).

Across Australian jurisdictions the minimum age of at least one of the arranged parents ranges from 18 years of age (Australian Central Territory; New South Wales; South Australia; Victoria) to 21 years of age (Tasmania) to 25 years of age (Queensland; Western Australia) (Appendix 5).

There is also an age requirement specific to the birth mother, as set out in Section 17(a)(i) of the Act:

- The Council may approve a surrogacy arrangement only if the birth mother has reached 25 years of age.

The Australian Christian Lobby viewed this restriction as appropriate:

“The Act rightly places age restrictions on surrogate mothers. The age of 25 is appropriate because a surrogate mother will be at an optimal age for healthy pregnancy while having reached a level of maturity that is necessary to undertake a surrogacy arrangement.” [ACL]

New South Wales, Queensland, Tasmania and Victoria place the same requirements on the age of the birth mother as in Western Australia (≥ 25 years). The Australian Capital Territory and South Australia require the birth mother to be at least 18 years of age.

2.1.3 Traditional/gestational surrogacy

The Act does not place additional conditions on access to either traditional or gestational surrogacy and there is no requirement for the child to have a genetic link with the arranged parent or arranged parents, unlike some other jurisdictions (Appendix 5).

Family Values Australia highlighted concerns regarding traditional surrogacy. In particular they considered it to involve:

“... more risks than those associated with full surrogacy. The natural bonding between a mother and the child in her womb and after birth is further strengthened when she knows the child is genetically related to her. In partial surrogacy, trauma of relinquishing the child after birth is likely to be greater than with full surrogacy.” [FAVA]

This submission also cited an illustrative example of a well-known case in Australia involving a private traditional surrogacy arrangement, where there was a protracted legal dispute between the birth mother and arranged parents (Otlowski, 1999). This case shows that relinquishment problems, while rare, can arise. Importantly, the outcome may have been different if there had been formal preparation and assessment. Indeed, part of the rationale for regulation is to provide some degree of protection for parties seeking to access surrogacy (Legislation Committee, 2008). In Australian jurisdictions surrogacy arrangements are unenforceable, apart from payment of reasonable expenses.

There is a lack of empirical studies of surrogacy arrangements. One United Kingdom longitudinal study of 34 altruistic surrogacy arrangements (traditional and gestational) did not identify any major issues with relinquishment for the surrogates (Imrie & Jadvá, 2014; Jadvá et al., 2003; Jadvá et al., 2012). While the study numbers are small, and the context is altruistic surrogacy in the United Kingdom, the findings so far are reassuring as most of the surrogates in the study showed no psychological health problems at the time of data collection.

One submission called for traditional surrogacy to be permitted and for the requirement for the child to have a genetic link to one of the arranged parents to be rescinded [Page]. As noted previously, traditional surrogacy arrangements are permissible under the Act, subject to all the conditions being met, including pre-conception approval by the RTC. All surrogacy arrangements, traditional or gestational, must comply with the Act to enable transfer of parentage from the birth parents to the arranged parents. There is no requirement for there to be a genetic link to the arranged parents.

In Victoria and the Australian Capital Territory traditional surrogacy is prohibited, while other states require the child to have a genetic link to at least one arranged parent. Given the variation in conditions and requirements for surrogacy arrangements across jurisdictions, it is not surprising that confusion occurs.

2.2 Approval process

The Act requires that surrogacy arrangements are approved by the RTC (section 17). This approval can only be given prior to conception and at least three months before any approval is given each party to the agreement must have:

- (i) undertaken any counselling about the implications of the surrogacy arrangement that regulations under this Act require; and
- (ii) been assessed by a clinical psychologist and confirmed, in a written report provided to the Council, to be psychologically suitable to be involved in the surrogacy arrangement.

One submission considered the approval processes to be onerous, judgemental, and intrusive, when contrasted with surrogacy regulations in Queensland [PS]. Three submissions considered that restrictive legislation prompted people to seek surrogacy overseas [Page; PS; SA].

In considering the legislative requirements for the Act, independent assessment and approval of the application was viewed as an important measure for mitigation of potential risks (Legislation Committee, 2008). Approval may only be granted if all the requirements listed in section 17 of the Act have been met. This includes a written agreement signed by all parties, implications counselling, psychological assessment, independent legal advice, and assessment by a medical practitioner.

Surrogacy involves pregnancy, birth, and the relinquishment of a child, which are intensely personal and significant life events that require careful consideration and preparation by all parties involved. These concerns were recognised during the second reading of the Surrogacy Bill in 2008:

“It is very strong legislation that is designed to ensure, as best as we can in these very human matters, that we have a system that will deal adequately with the difficulties that will be thrown up by the variety of human experiences.” (Hansard, 2 December 2008, p.747-787)

The RTC submission stated the first application for approval of a surrogacy arrangement was received in 2010 and 18 out of 19 applications have been approved to date. In the State of Victoria the Patient Review Panel (PRP) is the approving body for surrogacy applications. The PRP received 43 surrogacy applications between 2010 and 2013 and none were declined (Department of Health Victoria, 2014). In New Zealand, the National

Ethics Committee on Assisted Human Reproduction (NECAHR) received 104 surrogacy applications over a five-year period (2005 - 2010) with only four declined (Anderson et al., 2012). The authors concluded the high approval rate was due to a robust and thorough application process.

2.2.1 Counselling requirements

Part 3, section 17(c)(i) of the Act requires that in order to approve a surrogacy arrangement the RTC must be satisfied that at least three months before approval is given:

- parties to a surrogacy arrangements have undertaken counselling about the implications of the surrogacy arrangement.

One submission considered that it was operationally effective and appropriate for the counselling to be undertaken independent of psychological assessments [Menaglio].

Counselling is viewed as essential for harm minimisation by ensuring that participants receive accurate information and support throughout the process (Legislation Committee, 2008). This is reflected in the detailed counselling provisions in the Surrogacy Regulations (2009). One other submission considered a wider range of professionals should be able to undertake the counselling role:

“It ought not be merely limited to psychologists who can provide counselling (as is required by section 17(c)(ii)) but potentially a wider class of counsellors.” [Page]

The requirements to be assessed by a clinical psychologist under section 17(c)(ii) should not be confused with the requirements to have received counselling under section 17(c)(i). The Surrogacy Regulations (2009) require counselling to be provided by an approved counsellor. In Western Australia counsellors must be approved by the RTC as meeting the requirements set out in Part 1 of Schedule 4 of the Directions to the *Human Reproductive Technology Act 1991*. This includes appropriate university recognised training and qualifications in counselling theory and technique, involving counselling as an integral and recognisable part of that training. In addition, an approved counsellor must meet the eligibility requirements for full membership of the Australian and New Zealand Infertility Counsellors Association (ANZICA). This may include psychologists, social workers, or psychiatrists.

2.2.2 Psychological assessment

Section 17(c)(ii) of the Act provides that the RTC is satisfied that, at least three months before approval to a surrogacy arrangement is given, all parties to a surrogacy arrangement have:

- been assessed by a clinical psychologist and confirmed in a written report to the RTC, to be psychologically suitable to be involved in the arrangement.

One submission, by a clinical psychologist, identified this requirement to be operationally effective and appropriate.

“To maintain standards in what is a critical report for the decision as to the probable conditions a child will be born into, it is recommended that the requirement for a clinical psychologist to provide a report to the RTC in Western Australia remain.” [Menaglio]

The same submission also suggested that further guidance was required for assessment of the ‘psychological suitability’ and for the RTC to provide a list of questions that need to be addressed by the clinical psychologist.

Psychological assessment for surrogacy arrangements is an emerging area of practice. Consequently it is difficult to generalise and the issue raised in this submission may be more appropriately addressed through the development of guidelines by subject matter experts and professional associations.

2.2.2.1 Background checks

One submission considered that the psychological assessment would be more complete if there was access to the medical and mental health history, and any criminal history of parties to a surrogacy arrangement [Menaglio].

It is a requirement of the Surrogacy Regulations (2009) r5 for a medical report to be submitted with the applications for approval of a surrogacy arrangement, which would include any concerns and details of significant health issues.

In Western Australia there is no requirement under the Act for parties to a surrogacy arrangement to have a criminal record check. The recent high profile Thailand case involving Western Australian residents has highlighted this issue, with the revelation of past criminal convictions for one of the arranged parents. Victoria is the only State that requires criminal record checks and child protection order checks for arranged parents and for the surrogate mother and partner (but not for donors). If the criminal record check indicates that a woman or her partner has had charges proven against them for a sexual or violent offence, or the child protection order check indicates that a child protection order has been made removing a child from the custody or guardianship of a person, a presumption against treatment will apply and the woman can be refused treatment (*Assisted Reproductive Treatment Act 2008* (Vic)).

South Australia no longer requires submission of a statutory declaration to identify criminal records or child protection orders. In the United Kingdom, fertility clinics rely on a welfare of the child assessment by the medical practitioner. This includes asking patients about previous convictions relating to harming children, and if they have had contact with social services about existing children.

Criminal record checks may be an issue for consideration in the provision of consistent surrogacy legislation across jurisdictions.

2.2.3 Restrictions on provision of artificial fertilisation procedures

The purpose of the Surrogacy Directions (2009) is to set the standards for use of an artificial fertilisation procedure in connection with a surrogacy arrangement. Direction 7 provides that:

- A licensee is not to provide an artificial fertilisation procedure in connection with a surrogacy arrangement unless the arrangement has been approved by the Council in accordance with the requirements in the Surrogacy Act 2008 section 17.

Those requirements include that at least three months prior to the RTC giving such approval for a surrogacy arrangement, the parties must have undertaken relevant counselling, been assessed by a clinical psychologist as suitable, and received independent legal advice.

Four submissions [Concept Fertility Centre; FSA; KEMH; RTC] put forward the view that direction 7 of the Surrogacy Directions (2009) imposes unnecessary restrictions in some circumstances, particularly where urgent medical treatment may be required. KEMH noted:

“We cannot consider putting a woman through an IVF cycle to generate embryos, to preserve her fertility, if she is imminently about to have a hysterectomy – as by the law as it currently stands we must have a surrogacy arrangement in place before we could proceed to this IVF cycle.”

It was the view of the Legislation Committee (2008) that relevant parties should receive counselling and assessment before assisted reproductive technology treatment is provided in connection with a surrogacy arrangement. However, the intention of this requirement was to ensure preparation and support of the participants, not to restrict access to treatment.

2.3 Transfer of parentage

Part 3 of the Act provides for transfer of parentage from the birth parents to the arranged parents. The Act requires the court to consider the child’s best interests as paramount in the making of a parentage order (section 13):

- (1) In deciding whether or not to make a particular decision concerning a parentage order or proposed parentage order about a child, the court must regard the best interests of the child as the paramount consideration.
- (2) For the purposes of the Act it is presumed to be in the best interests of the child for the arranged parents to be the parents of the child, unless there is evidence to the contrary.

In six submissions, concern was expressed about provisions for transfer of parentage (section 13(2)) [AFA; FAVA; FINNRAGE; Hon Nick Goiran MLC et al; Jones; WBA]. Hon Nick Goiran MLC et al commented:

“For the purposes of this Act it is presumed to be in the best interests of the child for the arranged parents to be the parents of the child, unless there is evidence to the contrary. This presumption is unwarranted... Abolishing this provision would allow a court to consider all relevant matters, including the natural bond between a child and its birth mother, in determining a child’s best interests.”

Section 13(2) derives from an amendment made by the Legislative Assembly when considering the Surrogacy Bill 2007. It was understood by the Legislation Committee (2008) that section 13(2) was intended to provide a degree of certainty for the arranged parents, given that surrogacy arrangements are not binding on the parties.

Under the Act, surrogacy arrangements are unenforceable, except in relation to the recovery of reasonable expenses (section 7). It was also noted that this aspect of the legislation was contentious, but the court would still be required to consider the interests of the child as paramount.

A further check and balance to the presumption is that the court may only make an order to transfer parentage where the child’s birth parents freely consent to the making of the order. Exceptions to this consent requirement may apply (section 21) in circumstances where the court is satisfied that:

- a birth parent is deceased or incapacitated, or;
- the arranged parents have been unable to contact a birth parent despite reasonable efforts to do so, or;
- where the birth mother is not the child’s genetic parent and at least one arranged parent is the child’s genetic parents.

Four submissions [ACL; AFA; Hon Nick Goiran MLC et al; WBA] expressed the view that transfer of parentage should be in line with adoption regulations, as this allows a period of 28 days for the birth parent to revoke their consent.

The Act provides for support of participants through formal preparation and assessment to reduce the risk of disputes. Importantly, an application for transfer of parentage cannot be lodged with the court earlier than 28 days after the birth of the child and the child must be living with the arranged parents (section 20(2)). As provided for in the Explanatory Memorandum to the Bill, this gives the birth parents time to consider their decision to the making of an order following the birth of the child.

The first surrogacy arrangement in Western Australia was approved in 2010, consequently there is little experience relating to transfer of parentage. Nonetheless, limited research from the United Kingdom found there were few reported problems. Follow-up studies of a small number of surrogacy families (n=34) found no issues with relinquishment, and most families reported a good relationship with the birth mother (Imrie & Jadva, 2014; Jadva et al, 2003; Jadva et al, 2012).

The requirements for transfer of parentage are in line with other Australian jurisdictions, which make provisions that may dispense with the birth parent's consent in certain circumstances (for example see Surrogacy Act 2012, (Tas), section 16(3)).

2.3.1 Genetic testing to establish parentage

Two submissions [FAVA; Hon Nick Goiran MLC et al.,] suggested that genetic testing was necessary to confirm the genetic parentage of the child. It was submitted to the Legislation Committee that:

"...genetic testing is really an intrusive thing to do, and it should not be required unless the parties request it or the Family Court orders it." (Department of Health, Western Australia, Transcript of Evidence, 14, February 2008, p.21)

2.3.2 Access to identifying information

Division 4 of the Act makes provision for access to court records, birth registration details and donor identifying information. Three submissions highlighted the importance of children born as a result of surrogacy arrangements to understand the nature of their birth and to know their genetic origins [FAVA; FINRRAGE; WBA].

Children born as a result of a surrogacy arrangement under the Act are entitled, once they reach 16 years of age, to have access to identifying information about their donors and their birth parents.

2.4 Medicare funding for surrogacy arrangements

Three submissions commented on the cost of surrogacy in Australia [Page; PS; SA]. One submission noted that Medicare funding was not available for surrogacy arrangements [SA]. The Department of Health also previously received correspondence regarding this matter.

Medicare funding is a Commonwealth Government matter. Without Medicare funding surrogacy is very expensive, and the case can be made that easing the financial burden may help to increase access to altruistic surrogacy in Australia. This, in turn, may reduce the number of persons seeking international commercial surrogacy, often in an unregulated environment.

2.5 Surrogacy arrangements for reward

The Act specifically prohibits surrogacy arrangements for reward (commercial surrogacy). The Act refers to a surrogacy arrangement as being for reward if the arrangement provides for any person to receive any payment or valuable consideration other than for reasonable expenses associated with —

- (a) the pregnancy or the birth; or
- (b) any assessment or expert advice in connection with the arrangement.

The continued prohibition of commercial surrogacy arrangements was considered important in seven submissions [ACL; FAVA; FINRRAGE; Hon Nick Goiran MLC et al; Jones; Nichols; WBA].

Three submissions [Page; PS; SA] proposed commercial surrogacy could be allowed in Australia:

“Commercial surrogacy in Western Australia could be undertaken with appropriate safeguards that protect the surrogate, child/ren, the intended parent/s as well as the gamete donor.” [SA]

Some commentators support ‘controlled’ domestic commercial surrogacy on the grounds of harm-minimisation in the face of a powerful global surrogacy market (Millbank, 2014; Van Hoof & Pennings, 2012). The underlying assumption is that this would increase the availability of surrogates in Australia, and consequently reduce the number of Australian citizens seeking international commercial surrogacy, where there is potential exposure to unsafe and unethical practices and difficulties establishing legal parentage.

Opponents of such proposals argue that it causes further concerns and may induce the most vulnerable and needy women in Australia to act as surrogates (Allan, 2014). Importantly, there is a risk that commercialisation can undermine altruistic and other community-spirited motives (Nuffield Council on Bioethics, 2011; The Danish Council of Ethics, 2013) and concerns regarding the commodification of children (Allan, 2014; Report of the Committee of Inquiry into Human Fertilisation and Embryology, 1984).

The current National Health and Medical Research Council Guidelines (NHMRC 2007) provide that it is ethically unacceptable to undertake or facilitate commercial surrogacy. A review of the NHMRC guidelines on the use of assisted reproductive technology in clinical practice is in progress and the consultation specifically sought views about compensation for surrogates and egg donation. The findings of this review will help to inform a much wider public debate regarding donation and the human body.

2.6 Facilitation of surrogacy arrangements

The Act restricts certain activities relating to facilitating surrogacy arrangements by persons or clinical facilities. It prohibits payment for introducing parties to a surrogacy arrangement. Section 9 of the Act reads as follows:

- A person who receives, or seeks to receive, valuable consideration for introducing or agreeing to introduce persons with the intention that they might enter into a surrogacy arrangement commits an offence.

2.6.1 Advertising and brokerage of surrogacy arrangements

Advertising in relation to commercial surrogacy is prohibited under section 10. A person commits an offence if they publish or cause to be published anything:

- that is intended to, or likely to, induce a person to enter into a surrogacy arrangement that is for reward; or
- to the effect that a person who is willing to enter into a surrogacy arrangement that is for reward is sought; or
- to the effect that a person is or might be willing to enter into a surrogacy arrangement that is for reward.

Two submissions indicated a belief that the Act prohibited all advertising [Page; SA]. The Act does not impose restrictions on advertising for a surrogacy arrangement by prospective arranged parents or a prospective birth mother, provided this is not for a commercial arrangement. It is an offence under the Act (section 10) for a person to publish a willingness to make a surrogacy arrangement that is for reward (reward does not include payment of reasonable expenses).

The Directions to the Act prohibit clinics from actively recruiting birth mothers, but they can introduce a woman who has approached the clinic, offering to be a birth mother, to prospective arranged parents (direction 9). Furthermore, the National Health and Medical Research Council Guidelines state that:

“Clinicians should not advertise a service to provide or facilitate surrogacy arrangements nor receive a fee for services to facilitate surrogacy arrangements.”
(NHMRC, 2007, p.57)

Three submissions suggested the development of a professional agency that could match potential arranged parents and potential surrogates [Page; PS; SA].

In the United Kingdom, only not-for-profit agencies can provide services to match arranged parents with birth mothers. Observers have noted a decline in the involvement of United Kingdom not-for-profit agencies in domestic altruistic surrogacy arrangements and a concurrent sharp increase in number of international commercial surrogacy arrangements from 2008 onwards. There is some concern that the long-standing work of United Kingdom agencies, in the provision of high level support and long term follow-up, may be undermined by the growing international commercial surrogacy market (Crawshaw et al., 2012). Further consideration may need to be given on how best, and whether adequate regulation is in place across jurisdictions, to address the actions of brokers who make a business and sometimes substantial profits out of giving ‘advice’ to people on commercial surrogacy arrangements, and who may encourage or facilitate people to engage in such activity even where it is prohibited by the laws of the state.

2.7 Harmonisation of legislation across jurisdictions

Surrogacy legislation across jurisdictions share general similarities in making provisions for altruistic surrogacy arrangements: the prohibition of commercial surrogacy, the welfare of the child, and transfer of parentage.

Two submissions to the review of the Act commented on the different legislative requirements across jurisdictions [Page; PS]. There are differences in eligibility requirements, age restrictions, background checks, types of surrogacy that are permissible

(traditional, genetic links to arranged parents, donor gametes), approval processes, extraterritorial provisions prohibiting commercial surrogacy, advertising restrictions, residency requirements, and requirements for transfer of parentage. These differences can be confusing for practitioners, patients and regulators (Millbank, 2011) and may also encourage ‘forum shopping’ where persons seeking to have a child through surrogacy cross borders to evade local restrictions.

In 2009 the Standing Committee of Attorneys-General (SCAG) (now transitioned to the Standing Council on Law and Justice) outlined proposals to harmonise regulation of surrogacy across Australia (SCAG, 2009 a & b). Draft model provisions were developed based on 15 principles for surrogacy laws, which focused mainly on transfer of parentage and were optional.

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) recent position statement noted that uniformity and clarity of surrogacy legislation would be of benefit to both practitioners and patients (RANZCOG, 2014).

The New South Wales Attorney General is currently reviewing the *Surrogacy Act 2010* (NSW).

It would appear there is increased support for the provision of greater consistency in surrogacy legislation across jurisdictions.

2.8 International commercial surrogacy arrangements

Seven submissions suggested that the Act should provide for extraterritorial reach to specifically prohibit residents of Western Australia from engaging in international commercial surrogacy [ACL; FAVA; FINRRAGE; Hon Nick Goiran MLC et al; Jones; Nichols; WBA].

Public discussion around the recent high profile Thailand case demonstrated the interests and concerns of Western Australians. It should be noted however that while Queensland, New South Wales and the Australian Capital Territory have specific extraterritorial provisions in their legislation, to prosecute residents who commission overseas commercial surrogacy, there does not appear to have been any prosecutions to date despite a significant number of cases. One submission [SA] contends that extraterritorial provisions do not deter people from commissioning overseas surrogacy. The difficulties of evidentiary issues and achieving successful prosecutions in this area are acknowledged. However, explicit provisions providing extraterritorial reach to prohibit commercial surrogacy may nevertheless act as a deterrent. Given the growing concerns regarding international commercial surrogacy, a nationally consistent approach to provisions that may deal with extraterritorial reach is seen as desirable. It has been noted that the policy goals of the welfare of the child and granting parenting orders will invariably outweigh the prohibition of commercial surrogacy (Keyes, 2012).

Three submissions [Page; PS; SA] suggested that current legislation actually undermines the objectives of the Act:

“The Surrogacy Act and related legislation whilst regulating surrogacy does so in a heavy handed manner that in effect it forces people to undertake surrogacy somewhere else.” [Page]

Surrogacy legislation in Australia is framed by the principle that the best interests of the child are paramount. The same cannot be said of international commercial surrogacy, where those with a vested interest (e.g. brokers, businesses, lobby groups) pressure for lessening of restrictions. When surrogacy is viewed from the perspective of the desire to have a child or right-to-parent, competing interests and policy objectives emerge (Trowse, 2013). In August 2014 the Federal Attorney-General released the Family Law Council's Report on Parentage and the Family Law Act (Family Law Council, 2013). The report draws attention to the fact that while many hundreds of Australian citizens have commissioned international commercial surrogacy arrangements, very few have transferred parentage. This is seen as a profound human rights issue (Fronek & Crawshaw, 2014). There have been a number of high profile cases and International Social Services has now declared international surrogacy as a particular focus of interest with a view to protection of the rights of the child in the legal and psycho-social arena (International Social Services, 2013).

Until such time as there is a coordinated international regulatory response to international commercial surrogacy arrangements, the Family Law Council (2013) suggest that the more appropriate course is to assist the family courts to address concerns that underpin current state and territory surrogacy laws (such as concerns about exploitation of surrogates and to protect children's identity rights), whilst also recognising that children born of illegal surrogacy arrangements are not disadvantaged by a lack of legal status. In cases where state and territory Acts do not apply, the Family Law Council supports a process of judicial oversight, including a set of minimum requirements that the court should have regard to in determining whether to transfer parentage, based on similar requirements as currently exist in state and territory laws.

2.8.1 Global marketing of international surrogacy arrangements

The global surrogacy market is a growth industry (Bromfield & Rotabi, 2014). The Indian market alone is estimated at \$450m a year. The Family Law Council (2013) noted that Australian citizenship by descent for 2012 to 2013 included 186 surrogacy births in India and 21 in Thailand.

Surrogacy Australia's submission referred to a survey of Surrogacy Australia and Gay Dads Australia on-line forums (Everingham et al., 2014). A total of 259/1135 potential respondents completed the survey (23%). The reasons altruistic surrogacy in Australia was not considered by 114 respondents included unenforceable arrangements (n= 86), lengthy and complex process (n=78), lack of a surrogate (69) and that surrogacy for 'no reward' was unfair (n=53).

Common reasons for people travelling abroad for fertility treatment (cross-border reproductive care) include reduced costs of treatments, to evade domestic prohibitions such as commercial surrogacy and trade in gametes, embryo gender selection, and postmenopausal fertility treatments (Ferraretti et al., 2010).

Increasing demand for surrogacy arrangements and "an ample supply of carriers willing to assume the risk and accept lower payment for their services in poorly regulated and low-resource countries" has seen the surrogacy market flourish (Knoche, 2014 p.183).

2.8.2 Practical and ethical standards

Difficulties have emerged through the lack of regulation of international commercial surrogacy regarding practice and ethical standards. The survey of Surrogacy Australia and Gay Dads on-line forum found 112 out of 259 respondents had attempted overseas surrogacy, 95 used donor eggs, 62 had a multiple pregnancy, and 35 out of 78 reported births less than 37 weeks gestation (Stafford-Bell et al., 2014).

Routine multiple embryo transfers, the use of anonymous donor gametes, and simultaneously implanting embryos into more than one surrogate are common features of international surrogacy arrangements. Such practice would not be considered as acceptable in Australia and all have public health policy implications. Multiple pregnancies are associated with increased complications including blood pressure problems, premature birth, high Caesarean section rates and haemorrhage. Children born prematurely have a higher incidence of morbidity such as cerebral palsy, chronic respiratory problems, and developmental delay. Where anonymous gametes have been used, inability to access information about a person's genetic origin can have long lasting consequences (Blyth et al., 2012).

Recent research provides some insights into surrogacy arrangements in India, where data was gathered (observation questionnaires, interviews, focus groups) from 100 surrogates (Centre for Social Research, 2012). The surrogates were poor and needed money for their family, housing, education, or to settle their husbands' debts. An in-depth qualitative study of 15 Indian surrogates found the women felt they had no choice but to become surrogates and they also faced ostracism by their community in doing so (Karandikar et al., 2014).

2.8.3 International law issues

There is international concern over commercial surrogacy, regarding the sale, commodification and exploitation of women and children (Allan, 2014; Hague Conference on Private International Law, 2012; 2014). Others take the view that these concerns are baseless and outmoded, as evidenced by the established surrogacy market in some parts of the United States of America (Stumcke, 2011).

Recent events in Thailand, involving Australian citizens, have increased attention on the many complex issues arising from the growth of international commercial surrogacy. Thailand authorities have now moved to prohibit commercial surrogacy. Furthermore, Interpol have launched an investigation into a Japanese man who may have commissioned up to 15 surrogacy arrangements in Thailand, amid fears of child trafficking.

Allan (2014) cited several recent reports, which show the potential dangers of international commercial surrogacy. These include reports over decades of cases of human trafficking involving the sale of women to work as surrogates, such as an illegal surrogacy ring in Thailand where 14 Vietnamese women were misled or forced into surrogacy arrangements and some may have been raped. In 2011 three people were prosecuted in the United States, relating to the sale of unborn babies to prospective parents, while in 2013 a person was prosecuted for defrauding prospective parents and surrogates (Federal Bureau of Investigation, 2011; 2013) and in 2013 a surrogacy broker in Canada was prosecuted for purchasing eggs, paying surrogates, and taking money to arrange surrogacies (Motluk, 2014).

Prohibitions of commercial surrogacy have been listed by the Australia Government as being “an explicit prohibition on the sale of children” pursuant to Australia’s obligation under the Optional Protocol to the Convention on the Rights of the Child (OPCC) on the sale of children, child prostitution and child pornography (Attorney-General’s Department, Commonwealth, 2012). It has been argued that commercial surrogacy is in contravention of human rights law (Allan, 2014; Tobin, 2014), as the sale of children defined in Article 2 of the OPCC is “any act or transaction whereby a child is transferred by another person or group of persons to another for remuneration or any other consideration.”

In 2010 the Special Commission on the Practical Operation of the Hague Convention noted that increasing number of international surrogacy arrangements was an emerging international law issue. Subsequently, the Hague Conference studied the legal issues surrounding international surrogacy to explore the feasibility of drawing up a multilateral regulatory instrument in this area (Hague Conference on Private International Law, 2012; 2014). A final determination is expected in 2015. More recently, the European Parliament has examined policy relating to surrogacy, with particular attention to European law and the European Convention of Human Rights, to assess whether uniform European Union rules relating to surrogacy are feasible or desirable (Brunet et al., 2013). It is of note that there are serious concerns that cross-border reproductive travel has eroded the domestic legislation of European nations (Van Beers, 2014).

The risks of exploitation of participants in international commercial surrogacy arrangements, uncertainty of legal parentage and nationality of the child, and failure to protect their right to a biological and genetic identity, are now a matter of public concern. In Australia, the Family Law Council (2013) considered that a coordinated international regulatory response was required and supports the Hague Conference on Private International Law’s current work in this regard (see Executive Summary, p.xii, xiv, and Report p.100).

Given the scale of international commercial surrogacy arrangements, there is a need to gather demographic information, monitor trends, evaluate outcomes, and investigate the impact of international commercial surrogacy on policies and regulations in Australia.

2.9 Conclusions

A review of the operation and effectiveness of the Act was undertaken in accordance with section 45 of the Act. The objectives of the Act are to provide for the regulation of surrogacy arrangements in Western Australia and for the transfer of parentage of children born as a result of those arrangements. The legislation specifically prohibits surrogacy for reward (financial or material). The Act is founded on the principle that the best interests of the child and participants in a surrogacy arrangement are supported through a formal preparation and assessment process.

A limitation of this review is the small number of submissions. In particular, there were no submissions from past or present surrogacy applicants in Western Australia. The expression of values, attitudes and beliefs in the submissions do not necessarily reflect wide spread public opinion. Surrogacy is a complex, sensitive, and intensely personal issue. Consequently there is a lack of robust evidence, as all aspects of surrogacy arrangements are under researched.

The issues that have been identified in the review are not exhaustive and will clearly be the topic of future discussions and debates. However, there are a number of practical steps that can be taken in response to some of the issues identified in the review of the Act.

The development of clear information and pathways could help people who are contemplating surrogacy to navigate the practical and legal requirements, including information that advertising for altruistic surrogacy is allowed in Western Australia.

The operation of section 17 of the Act could be improved through a change to the Directions to the Act to ensure the provision of artificial fertilisation procedures, with a view to a future surrogacy arrangement, may be considered on a case-by-case basis. This may include instances where a couple seek to create and store embryos for later use, in circumstances where urgent medical treatment may render a woman unable to bear a child. The Surrogacy Directions (2009) are given effect by the Chief Executive Officer, Department of Health, and therefore a change to the Act would not be required.

Medicare funding for surrogacy arrangements may ease financial pressures and help to increase access to altruistic surrogacy in Australia. As such funding falls within the jurisdiction of the Commonwealth Government, consideration could be given to raising this matter in the Council of Australian Governments as part of a coordinated national approach to surrogacy arrangements.

There is a lack of research on all aspects of surrogacy. The Department of Health is working with fertility clinics to undertake research on the experiences and perspectives of people who have been, or are currently, involved in an altruistic surrogacy arrangement in Western Australia. This study could help to shed light on a complex life event, which may help to inform policy and increase public understanding of altruistic surrogacy in Western Australia.

Surrogacy for reward (material or financial) or 'controlled compensation' in Australian jurisdictions will require a much wider debate regarding donation and the human body. The findings of the NHMRC review of the Ethical Guidelines on the Use of Assisted Technology in Clinical Practice and Research (2007) may help to inform future deliberations.

There is an emerging need for a coordinated critical evaluation of current policies and legislation, concerning surrogacy arrangements, to consider further state, territory and Commonwealth cooperation on consistent surrogacy laws nationally.

On a related matter, the Family Law Council (2013) has recommended that the Federal Attorney-General ask the Standing Council on Law and Justice to consider further state, territory and Commonwealth cooperation on harmonising parentage laws nationally (recommendation 7). Of particular interest in the current context are the provisions dealing with children born from assisted reproductive technologies and donor genetic material. Recent developments present an opportunity to address jurisdictional variations in the regulation of surrogacy as well as parentage laws. In order that there be a coordinated national approach in dealing with surrogacy, relevant legislation and related issues, it would be appropriate for these matters to be referred to the Council of Australian Governments for consideration.

There is a need to gather information on international commercial surrogacy trends including which countries people are travelling to, the demographic of the parties involved, and follow-up studies on the families formed through surrogacy, and importantly, the birth mother and her family.

The global marketing of international commercial surrogacy undermines domestic regulation (such as a formal preparation and assessment process) and prohibitions (such as commercial surrogacy and the sale of gametes) put into place for good reason and to minimise the risk of things going wrong. The Family Law Council (2013) also recommended that the Federal Attorney-General request the Australian Law Reform Commission to conduct an inquiry into the full range of issues raised by international surrogacy and its impact on Commonwealth laws (recommendation 17). The Hague Conference on Private International Law's work on a multilateral instrument may, in due course, provide a global regulatory response.

2.10 Recommendations

1. Develop information resources and clear pathways to provide a better understanding of surrogacy legislation and policy for consumers in Western Australia.
2. Consider improvement to the operation of section 17 of the Act through a change to Direction 7 of the Surrogacy Directions (2009), which is given effect by the Chief Executive Officer for Health, to enable the provision of an artificial fertilisation procedure before approval of a surrogacy arrangement, in circumstances where there is a medical need to do so.
3. Encourage and facilitate more research on national and international surrogacy and the long term social and psychological outcomes.
4. Support referral to the Council of Australian Governments to enable a coordinated national approach to surrogacy, relevant legislation and related issues.
5. Support the proposal for the Australian Law Reform Commission to conduct an inquiry into the full range of issues raised by international surrogacy and its impact on Commonwealth and state laws.
6. Support the proposal for the Standing Council on Law and Justice to consider further state, territory and Commonwealth cooperation on harmonisation of parentage laws nationally, including provisions dealing with children born from assisted reproductive technologies and donor genetic material.
7. Undertake a further review of the *Surrogacy Act 2008* (WA) within five years.

The Department of Health appreciates the time and effort that stakeholders have contributed to the review of the operation and effectiveness of the Act.

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Appendix 1: Press advertisements publicly announcing the review



Government of
Western Australia
Department of Health

Review of the Surrogacy Act 2008

A review of the operation and effectiveness of the Surrogacy Act 2008 is being conducted. The Department of Health invites comments and submissions from interested parties.

Copies of the surrogacy legislation and submission instructions can be accessed via:
www.health.wa.gov.au/chiefmedicalofficer

Comments and submissions must reach the Reproductive Technology Unit, Department of Health by close of business Friday, 25 April 2014.

Comments and submissions can be posted to:
Project Officer, Surrogacy Review, Reproductive Technology Unit, Office of the Chief Medical Officer, Department of Health, 2C, 189 Royal Street, Perth, WA 6004 or emailed to surrogacy.review@health.wa.gov.au

adcorp F90603

The West Australian, 3 February 2014, p. 52.
The West Australian, 7 February 2014, p. 82.

Appendix 2: Invitation to submit to the review

Review of the Surrogacy Act 2008

Preparing a submission to the Department of Health

The *Surrogacy Act 2008* (the Act) provides for the regulation of surrogacy arrangements in Western Australia and for the parentage of children born as a result of those arrangements. The legislation also specifically prohibits surrogacy for financial gain. The Act is founded on the principle that the best interests of the child and participants in a surrogacy arrangement are supported through a formal preparation and assessment process.

The Act requires that the Minister for Health shall carry out a review of the operation and effectiveness of the Act as soon as is practicable after the expiry of four years from its commencement. The Department of Health is assisting the Minister to conduct this statutory review and inviting submissions in accordance with the terms of reference. The Act also requires that the Minister is to prepare a report based on the review and your submission will be taken into account in the preparation of such a report. This factsheet is provided to help you prepare your submission.

Terms of Reference

In accordance with section 45 of the Act the statutory review will examine the operation and effectiveness of the *Surrogacy Act 2008*.

Who can make a submission

The Department of Health invites submission from any interested party.

Making a submission

Only written submissions will be accepted. All submissions should be signed and dated and should indicate whether it is being made by an individual or an organisation. Anonymous submissions will not be accepted. Please provide contact details including name, address, telephone number and email. Late submissions may not be accepted.

Please note that submissions or summaries of submissions may be published on the Department of Health website. If you are disclosing personal information or other information you want to remain private and confidential, please indicate this clearly on your submission. However, any submission may be subject to release under the *Freedom of Information Act 1992*.

Copies of the surrogacy legislation are available online at www.slp.wa.gov.au or can be purchased from the State Law Publisher, Ground Floor, 10 William St, Perth, WA 6000.

Submissions may be provided by e-mail: surrogacy.review@health.wa.gov.au or by post to:

Project Officer – Surrogacy Review
Reproductive Technology Unit
Office of the Chief Medical Officer
Department of Health
189 Royal Street
PERTH WA 6004

The closing date for submissions is 25 April 2014.

Contact

For general enquiries about the review, please contact Helen Chester, Project Officer, Reproductive Technology Unit, Department of Health by e-mail helen.chester@health.wa.gov.au or by phone 9222 4334.

Appendix 3: Organisations and individuals notified about the review

Albany Hospital
Biddulph & Turley Lawyers
Buck, Louise; Approved Counsellor
Bunbury Hospital
Bowen Buchbinder Vilensky Lawyers
Clissa, Antonia, Approved Counsellor
Concept Fertility Centre
Cullen Babington Hughes Lawyers
Culshaw Miller Lawyers
DCH Legal Group
Department of Child Protection
Dwyer and Durack Lawyers
Family Court of Western Australia
Fertility North
Fertility Specialists South
Fertility Specialists Western Australia
Foster-Gaitskell, Deborah; Approved Counsellor
Genetic Services of Western Australia, King Edward Memorial Hospital
Health Consumers' Council, Western Australia
Hollywood Fertility Centre
Jordan, Cailin; Approved Counsellor
Joondalup Health Campus
Keogh Institute of Medical Research
Keppel, Margaret van; Approved Counsellor
King Edward Memorial Hospital for Women
Law Society of Western Australia
Leatch Legal
Menaglio, Darryl; Clinical Psychologist
Merryweather, David; Psychologist
Pacey Solicitors
Patterson & Dowding, Lawyers
Perth Psychological Services
Pivet Medical Centre

Reproductive Technology Council

Rodino, Iolanda; Approved Counsellor

Shann Family Lawyers

Surrogacy Australia

Talbot Oliver Lawyers

Webb, Elizabeth; Approved Counsellor

Appendix 4: Respondents to the review

Submissions
Australian Christian Lobby (ACL)
Australian Family Association (AFA) WA
Concept Fertility Centre (Concept)
FamilyVoice Australia (FAVA)
Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE Australia)
Fertility Society of Australia (FSA)
King Edward Memorial Hospital (KEMH)
Hon Nick Goiran MLC, Hon Peter Abetz MLC, Hon Frank Alban MLC and Hon Graham Jacobs MLC (Hon Nick Goiran MLC et al.,)
Individual submission – name withheld (Anon)
Jones, Brendan, Mr. (Individual)
Menaglio, Darryl, Dr. (Clinics Psychologist)
Nichols, Anthony, Mr. (Individual)
Page, Stephen, Mr. (Page)
Private submission – confidential (PS)
Reproductive Technology Council (RTC)
Surrogacy Australia (SA)
Women's Bioethics Alliance (WBA)

Appendix 5: Comparison of regulation across jurisdictions

	WA	VIC	NSW	SA*	TAS	QLD	ACT
Eligibility requirements							
Medical need	✓	✓	✓	✓	✓	✓	
Social need	✗	✓	✓	✗	✓	✓	
Heterosexual couple	✓	✓	✓	✓	✓	✓	✓
Female same-sex couple	✗	✓ ^a	✓ ^a	✗	✓ ^a	✓ ^a	✓
Male same-sex couple	✗	✓	✓	✗	✓	✓	✓
Single female	✓	✓	✓	✗	✓	✓	✗
Single male	✗	✓	✓	✗	✓	✓	✗
Age of arranged parent(s) (years)	≥25 ^b	≥18	≥18	≥18	≥21	≥25	≥18
Age of birth mother (years)	≥25	≥25	≥25	≥18	≥25	≥25	*
Types of surrogacy							
Traditional	✓	✗	✓	✓ ^c	✓	✓	✗
Gestational	✓	✓	✓	✓	✓	✓	✓
Genetic connection with intended parent(s)	✗	✗	✗	✓ ^d	✗	✗	✓
Criminal record screening	✗	✓	✗	✗	✗	✗	✗
Child protection order check	✗	✓	✗	✗	✗	✗	✗
Transfer of parentage: mandatory record keeping	✓	✓	✓	✓	✓	✓	✓
Advertising for altruistic surrogacy by intended parents/surrogate	✓	✗	✓	✗	✓	✗	✗

WA: Western Australia; VIC: Victoria; NSW: New South Wales; SA: South Australia; TAS: Tasmania; QLD: Queensland; ACT: Australian Capital Territory; * Northern Territory follows SA legislation; a If both women meet the medical eligibility requirements. b Applies to at least one arranged parent. c Use of artificial fertilisation procedure mandatory. d Unless medical certificate.



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