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Australian regulation of surrogacy and the needs of surrogates, intended parents and those born through surrogacy

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Abstract

Altruistic surrogacy is legally permitted in Australia. However, around 2 in 3 Australian intended parents complete a commercial arrangement with a foreign surrogate ('international surrogacy'), calling into question the suitability of Australian regulation of surrogacy. Consisting of three sequentially conducted studies, this mixed-methods project aimed to determine whether surrogacy regulations in Australia meet the needs of surrogates, intended parents, and those born through surrogacy.

Study One was a systematic review of published manuscripts (n=64) detailing surrogates' and intended parents' experiences. It revealed that the experiences of surrogates and intended parents are largely satisfactory. However, it also showed that surrogacy can be challenging to navigate, especially in international arrangements where it can be harder for a surrogate and intended parents to form a close relationship. Study One concluded it is in the best interests of both parties to complete domestic surrogacy as opposed to an international arrangement.

Study Two was a survey of intended parents' (n=319) decision to complete domestic or international surrogacy and the characteristics and outcomes of these arrangements. Respondents most commonly chose international surrogacy because domestic arrangements looked like a long and complicated process (69%, 140/203), but almost all reported they would have preferred domestic surrogacy (92%, 186/203). Rates of adverse pregnancy outcomes like preterm birth were higher in international (20%, 22/108) than domestic arrangements (11%, 3/28). Anonymous gamete donation, which is prohibited in Australia because it risks the psychological wellbeing of children, was commonly used in international arrangements (33%, 36/108). Study Two concluded that if it was easier for intended parents to access surrogacy in Australia, more would complete surrogacy at home and less Australian babies would be born overseas where the risk of harm is greater.

In Study Three surrogates, intended parents and professionals involved in surrogacy were interviewed on their views about how access to domestic surrogacy could be improved. Several areas of Australia's current regulatory approach were identified as misaligning with the needs of intended parents and surrogates – the state based approach to regulation, surrogate and intended parent eligibility criteria, the post-birth transfer of parentage process and the criminalisation of commercial surrogacy. Participants further advocated for increased public awareness, more supportive health care, and greater information and support provisions alongside law reform. Study Three concluded that both regulatory and social reform is required to adequately support surrogates and intended parents in Australia.

Taken together, this body of work demonstrates the current regulatory approach to altruistic surrogacy fails to meet the needs of surrogates and intended parents and in doing so, inadvertently

puts the welfare of Australians born through surrogacy at risk. The findings can inform evidence-based policy development and law reform to appropriately respond to the needs of those involved in surrogacy. Future research should investigate the experiences of those born through surrogacy and their attitudes towards the regulation of surrogacy in Australia.

Publications during enrolment

Kneebone E, Beilby K, Hammarberg K (2022) ‘Experiences of surrogates and intended parents of surrogacy arrangements: a systematic review’, *Reproductive BioMedicine Online*, 45(4):815-830, doi: 10.1016/j.rbmo.2022.06.006.

Kneebone E, Hammarberg K, Everingham S, Beilby K (2023) ‘Australian intended parents’ decision-making and characteristics and outcomes of surrogacy arrangements completed in Australia and overseas’, *Human Fertility*, 26(6):1448-1458, doi: 10.1080/14647273.2023.2270157.

Kneebone E, Hammarberg, Beilby K (2024) ‘Surrogates', intended parents' and professionals' perspectives on ways to improve access to surrogacy in Australia’, *International Journal of Law, Policy and the Family*, 38(1):ebae009, doi: 10.1093/lawfam/ebae009.

Thesis including published works declaration

I hereby declare that this thesis contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, or any use of generative artificial intelligence technologies, except where due reference is made in the text of the thesis.

This thesis includes three original papers published in peer reviewed journals. The core theme of the thesis is the regulation of surrogacy in Australia and the needs of surrogates, intended parents and those born through surrogacy. The ideas, development and writing up of all the papers in the thesis were the principal responsibility of myself, the student, working within the Department of Obstetrics and Gynaecology under the supervision of Dr Kiri Beilby.

The inclusion of co-authors reflects the fact that the work came from active collaboration between researchers and acknowledges input into team-based research.

In the case of Chapters 3-5 my contribution to the work involved the following:

Thesis Chapter	Publication Title	Status	Nature and % of student contribution	Co-author name(s) Nature and % of Co-author's contribution*	Co-author(s), Monash student Y/N
3	Experiences of surrogates and intended parents of surrogacy arrangements: a systematic review	Published	70%. Concept, collecting data, analysing data, and writing first draft	1) Kiri Beilby: Concept, collecting data, analysing data, input into manuscript 15% 2) Karin Hammarberg: Concept, analysing data, input into manuscript 15%	No No
4	Australian intended parents' decision-making and characteristics and outcomes of surrogacy arrangements completed in Australia and overseas	Published	70%. Concept, collecting data, analysing data, and writing first draft	1) Kiri Beilby: Concept, collecting data, analysing data, input into manuscript 12.5% 2) Karin Hammarberg: Concept, collecting data, analysing data, input into manuscript 12.5% 3) Sam Everingham: collecting data, analysing data, input into manuscript 5%	No No No
5	Surrogates', intended parents' and professionals' perspectives on ways to improve access to surrogacy in Australia	Published	70%. Concept, collecting data, analysing data, and writing first draft	1) Karin Hammarberg: Concept, collecting data, analysing data, input into manuscript 15% 2) Kiri Beilby: Concept, collecting data, analysing data, input into manuscript 15%	No No

I have/**have not** renumbered sections of submitted or published papers in order to generate a consistent presentation within the thesis.

Student name: Ezra Kneebone

Student signature: **Date:** 08/07/2023

I hereby certify that the above declaration correctly reflects the nature and extent of the student's and co-authors' contributions to this work. In instances where I am not the responsible author I have consulted with the responsible author to agree on the respective contributions of the authors.

Main Supervisor name: Kiri Beilby

Main Supervisor signature: **Date:** 08/07/2023

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Chapter One: Introduction

Surrogacy involves an individual conceiving, carrying a pregnancy and giving birth under the premise of relinquishing the child to the person or couple who intend to parent the child. This practice separates the act of pregnancy and birth from parenting and in doing so challenges normative assumptions about motherhood and the formation of families. This raises consideration of topics which people often hold deep moral convictions about – the use of women's bodies, the welfare of children, and non-nuclear family structures. The question of whether or not surrogacy is morally acceptable has therefore evoked strong and often polarising views, and this is reflected in the diverse and ever evolving regulatory responses seen across the world.In recent years, several jurisdictions have created laws on surrogacy for the first time (e.g. Ireland) while others have reformed their existing laws (e.g New York)– and more are contemplating change (e.g New Zealand) (Horsey 2024). The diverse regulations have led to the globalisation of surrogacy, where intended parents unable or not wanting to complete an arrangement domestically (i.e. in their home country) have entered into surrogacy arrangements with surrogates residing in a foreign country ('international' surrogacy).

Some countries prohibit surrogacy on the basis that the practice causes harm to women, children and society. Surrogacy can be viewed as reinforcing the patriarchal view of a woman's value resting solely in her sexual and reproductive capabilities (Klein 2017) and posits women into a class of 'breeders' (Raymond 1990:11). There are concerns that separating a child from the person who birthed them can cause psychological harm, because of a biological and emotional connection which develops between them during gestation (Agnarfors 2014). Moreover, surrogacy challenges the traditional nuclear family, wherein 'the gift of human life must be actualized in marriage through the specific and exclusive acts of husband and wife' (Vatican City 1987). Because of these views, some governments have prohibited surrogacy arrangements from taking place domestically (Table 1.1). Furthermore, some countries (e.g Italy) have prohibited their citizens from engaging in surrogacy overseas (Chen 2024).

Arguments in support of surrogacy stem from concepts of reproductive liberty and autonomy. Surrogacy can be viewed as a treatment for infertility, providing the opportunity of parenthood to those who historically have been unable to have a child (Stuhmcke 2015b). This may include people without a uterus, with a medical condition contraindicated to pregnancy or childbirth, or people who have experienced recurrent miscarriages or multiple failed IVF attempts. Some also argue that surrogacy provides women with the opportunity to exercise their right to make choices about their bodies (Sifris 2015). Proponents of surrogacy do not necessarily believe that the practice is harmless, but rather that prohibiting access is overly paternalistic and the interests of

those involved can be protected through appropriate safeguards (Blazier & Janssens 2020; Cameron 2018).

One highly controversial aspect of surrogacy regulation is the role of surrogate payment and the associated concerns about the commodification of reproduction (Snow 2016). Payment for the act of pregnancy and birth can be viewed as treating women's reproductive labour and children as commodities, able to be bought and sold, ultimately downgrading their status as human (Anderson 1990). There are also concerns that financially disadvantaged women may be exploited in paid surrogacy because their socioeconomic positions coerces them into acting as a surrogate, calling into question the validity of their consent (Wilkinson 2003). To prevent the commodification of reproduction and the potential exploitation of women, some jurisdictions, like the Australian states and territories, accordingly permit surrogacy but expressly prohibit surrogate payment (Table 1.1). In addition to prohibiting surrogate payment domestically, some jurisdictions (including some Australian states and territories) prohibit their citizens from engaging in international surrogacy arrangements which involve surrogate payment.

Table 1.1. Jurisdictions with different regulatory approaches towards surrogacy. The table includes examples of jurisdictions and is not meant to be a comprehensive list.

Permits surrogacy and surrogate payment	**Permits surrogacy, prohibits surrogate payment**	**Prohibits surrogacy**
Argentina, California, Georgia, Israel, Iran, Mexico, New York, Russia, Ukraine	Australian states and territories, Brazil, Canada, Greece, New Zealand, United Kingdom, South Africa, Thailand	Cambodia, Finland, France, Germany, Italy, Malaysia

Surrogacy arrangements involving surrogate payment are conventionally labelled as 'commercial', while those without payment are referred to as 'altruistic'. This dichotomy has and continues to shape the public policy and legislative approach to surrogacy in many parts of the world (see for e.g. Snow 2016). However, the distinction is, in reality, quite blurred. What counts as an acceptable payment within one altruistic setting might be considered a commercial payment in another. For example, in Australia altruistic surrogacy is defined as an arrangement where the surrogate 'receives no payment or inducement, beyond the *reimbursement* of verifiable out-of-pocket expenses' (National Health and Medical Research Council 2023a:2). Whereas it is a generally accepted practice for surrogates in the United Kingdom to receive a payment amounting to an *estimate* of expenses (Department of Health & Social Care 2018). In Australia, such an approach would be considered inconsistent with altruistic surrogacy.

The dichotomy of altruistic and commercial surrogacy also centres surrogate payment as the defining feature of a commercial arrangement, and not the other commercial entities which may be involved. Surrogacy arrangements are often facilitated through intermediary companies ('agencies') which connect intended parents to lawyers, fertility clinics and surrogates in their home

or ‘destination’ country (König & Jacobson 2023). Whether or not commercial agencies are permitted in jurisdictions which prohibit surrogate payment varies. Some scholars have therefore taken to adapting surrogacy terminology in their work. For example, Horsey (2024) uses ‘commercial’ to describe regulatory frameworks which permit commercial surrogacy agencies, while Sifris and Page (2021) use ‘compensated' to describe frameworks where surrogates are paid beyond reimbursement.

In this PhD project, I use the Australian definition of commercial surrogacy (i.e. a surrogacy arrangement where the surrogate receives payment beyond the reimbursement of expenses). I do so to align my work with the discourse used by Australian policy makers (Snow 2016), the Australian government (Australian Government 2024), and the Australian media public (Selinger-Morris 2022).

International surrogacy is part of a broader phenomenon of people travelling to access fertility treatment, known as cross-border reproductive care (Salama et al. 2018). There is no international regulation of surrogacy which has led to complex legal problems arising in relation to the nationality and legal parentage of the child born (Trimmings & Beaumont 2011). The practice also exacerbates ethical concerns about surrogacy because destinations often arise in less developed countries which lack regulatory oversight of the practice, resulting in an ‘inexpensive, compliant labor force in surrogates’ (Rudrappa 2010:281). In response to the 'burning issue' of international surrogacy (Hague Conference on Private International Law 2024), varying efforts are underway at a national and global level to mitigate the risk of harm that may arise from such arrangements (Giuffrida 2023). For example, at the national level Italy has outlawed its citizens from engaging in international surrogacy (Chen 2024), while global experts in international law and human rights have drafted procedures and safeguards to protect the human rights of those involved in the practice (International Social Service 2021).

Australia is a big ‘exporter’ of intended parents (Everingham & Whittaker 2023). Although the exact number of Australian babies born through surrogacy is unknown, the latest available data suggests that most are born as a result of international arrangements. In 2021, there were 20,690 babies born following assisted reproductive treatment in Australia and New Zealand (Newman et al. 2023). Of these, 0.5% (n=100) were born as part of a surrogacy arrangement. In contrast, 213 were born through an international surrogacy arrangement in the 2021/2022 financial year (Department of Home Affairs 2023). In light of this, there is a general consensus amongst experts that regulatory reform is required to better support intended parents to complete surrogacy domestically as opposed to internationally (Millbank 2015; Standing Committee on Social Policy and Legal Affairs 2016; Gorton 2019:139). However, there is a lack of consensus as to how this should be achieved (Keyes 2012) and little empirical evidence on the impact of Australian surrogacy regulation to guide such reform. To further complicate matters, Australia is a federation

of six states and territories and each jurisdiction differs slightly in their regulatory approach to surrogacy (Johnson 2015).

To facilitate future debates on this topic, this PhD thesis aims to determine whether the regulation of surrogacy in Australia meets the needs of intended parents, surrogates and those born as a result. Following an explanation of the terminology used in this thesis, this chapter provides an overview of the social and legal aspects of surrogacy, both in Australia and worldwide. It identifies several knowledge gaps which may inform decisions surrounding surrogacy regulations. These include the lived experience of Australian surrogacy arrangements, the impact of international surrogacy practices on those born as a result, and surrogate and intended parent perceptions towards the regulations.

1.1 Terminology

There are no universally accepted terms to describe the parties to a surrogacy arrangement. Australian legislation uses a mix of terms including ‘birth mother’, ‘surrogate mother’ and ‘surrogate’ to describe the person carrying the pregnancy, and ‘intended parent’ and ‘commissioning parent’ to describe the person/s who are intending to parent the child. ‘Gestational carrier’ is used in some international contexts to describe the person carrying the pregnancy, primarily in the United States of America (USA). Members of the Australian surrogacy community predominantly use the terms ‘surrogate’ and ‘intended parent/s’ (Surrogacy Australia 2018), and I have consequently adopted the use of these terms in this PhD project. I also use the plural of ‘intended parents’, but I recognise that some seek surrogacy as a single individual.

Surrogacy invariably involves discussions of gender and sex. These terms are commonly used interchangeably, but they are distinct topics (Gahagan 2021). Gender is the social construction of femininity and masculinity while sex is the characteristics associated with biological sex (World Health Organisation 2021). People of any gender can carry a pregnancy and I accordingly refer to surrogates as ‘people’ or ‘individuals’ as opposed to ‘women’. I do, however, use the term ‘women’ when discussing matters relating to gender.

As described above, the Australian definition of commercial surrogacy (i.e. a surrogacy arrangement where the surrogate receives payment beyond the reimbursement of expenses) is used in this PhD project. This is true for the non peer-reviewed chapters (Chapter 1-2 and 6) and the published manuscripts of Study Two and Study Three. In Study One, a broader definition of commercial surrogacy (i.e payment to surrogate and commercial agencies) was used on request of a peer-reviewer.

Finally, this thesis uses the Australian and New Zealand Society for Reproductive Endocrinology and Infertility’s definition of infertility. Infertility is defined as a disease, condition, or status characterised by the inability to achieve a successful pregnancy based on a person’s ‘medical,

sexual, and reproductive history, age, physical findings, diagnostic testing, or any combination of those factors' (ANZREI Executive Committee 2024). This definition includes people unable to achieve a pregnancy as a result of their relationship status or sexual orientation, which more narrow definitions, such as that by the World Health Organisation (2024), exclude.

1.2 Pathways to parenthood through surrogacy

Most individuals, regardless of gender and sexual orientation, desire parenthood (Heywood et al. 2016; Holton et al. 2011; Thompson and Lee 2011). Despite the gendered assumption that parenthood is more important for women, men desire children as much as women do (Hammarberg et al. 2017). Although most LGBTQ+ individuals also want children, they are less likely to do so than heterosexual individuals (Gato et al. 2020; Tate & Patterson 2019; Shenkman et al. 2019; Stolk et al. 2023; Riskind & Tornello 2017). Studies suggest this is due to the psychosocial impacts of homo/lesbo/bi/transphobia, including internalised and felt stigma towards non-heteronormative families (Alday-Mondaca & Lay-Lisboa 2021; Leal et al. 2019; Scandurra et al. 2018).

For those that do desire parenthood, regardless of gender and sexual orientation, having children is perceived as an ‘innate’ desire and a ‘natural’ progression of adulthood (Carneiro et al. 2017; Riggs & Bartholomaeus 2016). The World Health Organisation estimates that one in six people of reproductive age worldwide experience infertility (2024). This can have significant psychosocial implications for those impacted; feelings of despair and grief are associated with being involuntarily childless (Hadley & Henley 2011; Fieldsend & Smith 2020).

1.2.1 Assisted reproductive technologies (ARTs)

The reproductive options available to people experiencing infertility were greatly expanded in the 1980’s due to the development of assisted reproductive technologies (ARTs). First developed to treat infertility caused by blocked or damaged fallopian tubes, the technologies have expanded to treat other forms of infertility, including types caused by male factors.

ART interventions involve the *in vitro* handling of oocytes (eggs) and sperm or embryos for the purposes of establishing a pregnancy (Zegers-Hochschild et al. 2017). These interventions involve a number of steps often described as a ‘treatment cycle’. A typical cycle begins with hormone injections to stimulate the ovaries to produce additional eggs than would be ordinarily produced without stimulation. Eggs are then collected during a day procedure performed under anaesthetic and fertilised with sperm from the reproductive partner or a donor. Assuming the normal development of the embryos, after a few days, one or more of these embryos is transferred into the uterus of the patient. If there are excess embryos, they can be frozen and used in subsequent transfers. A single cycle may involve more than one embryo transfer procedure.

Multiple cycles are often needed for patients to achieve a live birth. Of all patients who began treatment in Australia and New Zealand during 2018-2019, 37% had a live birth after one cycle and this increased to 49% after two cycles (Newman et al. 2023:64). Age is a key factor in the chance of success due to aged-related fertility decline. Fifty-one percent of patients under age 30 achieved a live birth after one cycle, while just 12% of women aged 40-44 years did so (Newman et al. 2023:66,69). Further, ART treatment carries significant financial, physical, and psychological burden and because of this some patients discontinue treatment before obtaining a live birth, regardless of their chances of biological success (Rajkhowa et al. 2006; Verberg et al. 2008; Gameiro et al. 2012).

Medicare is a national insurance scheme that provides free or subsidised healthcare to Australian citizens and permanent residents. Most ART treatments receive a Medicare subsidy. However, the out-of-pocket costs remain high. For example, one IVF clinic in Australia estimates that a treatment cycle costs $10,772, of which $5,358 is an out-of-pocket cost and the remainder is reimbursed by Medicare (Melbourne IVF 2024). Most fertility clinics in Australia operate under a privatised model of care and there are very few public services.

1.2.2 Gamete and embryo donation

Gamete (egg and sperm) and embryo donation is used by those who are unable to use their own reproductive materials. This could be due to medical conditions which impair a person's ability to produce gametes. For example, people who experience early or premature menopause. Single people and same-sex couples also require donor gametes. In addition, people who are at risk of transmitting a genetic condition to their child may use donor gametes to avoid this.

There are different types of donation, based on the identity of the donor. In 'known donation' the recipient knows the identity of the donor at the time of donation, in 'identity release donation' the identity of the donor can be known to the child and their parents when the child reaches a certain age, and in 'anonymous donation' the donor's identity will supposedly never be known to the child or its parents. However, due to the increased availability of direct-to-consumer genetic testing, such as 23 and Me, total anonymity cannot be guaranteed (Harper et al. 2016).

Gamete donation was historically shrouded in secrecy with healthcare professionals advising recipient parents to not disclose how their donor-conceived child came to be (Allan 2012). There is now a general acceptance of the claim that people have 'the right to know' information about their genetic origins (Ravitsky 2010). This is enshrined in Article 8 of the United NationsConvention on the Rights of the Child (1989), to which Australia is a signatory, which specifies 'the right of the child to preserve his or her identity'. Several qualitative reviews of literature on the experiences of donor-conceived individuals have concluded that among those aware of their conception, genetic relatedness is important and many desire information and contact with their donor (Blyth et al.

2012; Canzi et al. 2019; Svanberg et a. 2020; Indekeu et al. 2021). There is accordingly a growing trend of prohibiting anonymous gamete donation. Many countries, including Australia, have donor registries which provide support to donor-conceived individuals contacting their donor (and vice versa) and with their donor siblings.

1.2.3 Surrogacy

Although surrogacy is an age-old phenomenon (Turp et al. 2018), the development of IVF in the 1980s greatly increased the appeal of such arrangements as it meant that surrogates could carry a child who they were not genetically related to (Spar 2005). In 'traditional' surrogacy arrangements, conception is achieved through insemination with sperm from a male intended parent or a donor at the time when the surrogate is ovulating. This can be done via home insemination or artificial insemination at a fertility clinic. In 'gestational' surrogacy, an embryo is created from the intended parents' and/or donor gametes and is transferred to the surrogate's uterus. In gestational surrogacy the surrogate has no genetic link to the child, whereas in traditional surrogacy they do. It is because of this reason that gestational surrogacy has now largely replaced traditional arrangements in popularity (Spar 2005).

There is no surrogacy register in Australia and so the exact number of gestational and traditional arrangements occurring is unknown. However, the scope can be inferred from several different sources. It is mandatory for Australian and New Zealand fertility clinics to submit data annually relating to all ART treatments performed, including the number of babies born through gestational surrogacy, to the Australian and New Zealand Assisted Reproduction Database (ANZARD). The number of babies born through gestational surrogacy in both countries was first recorded in 2005 when six babies were born in total (Wang et al. 2007). The latest figure recorded in 2021 is 100 births – a 16-fold increase (Newman et al. 2023) (Figure 1.1).

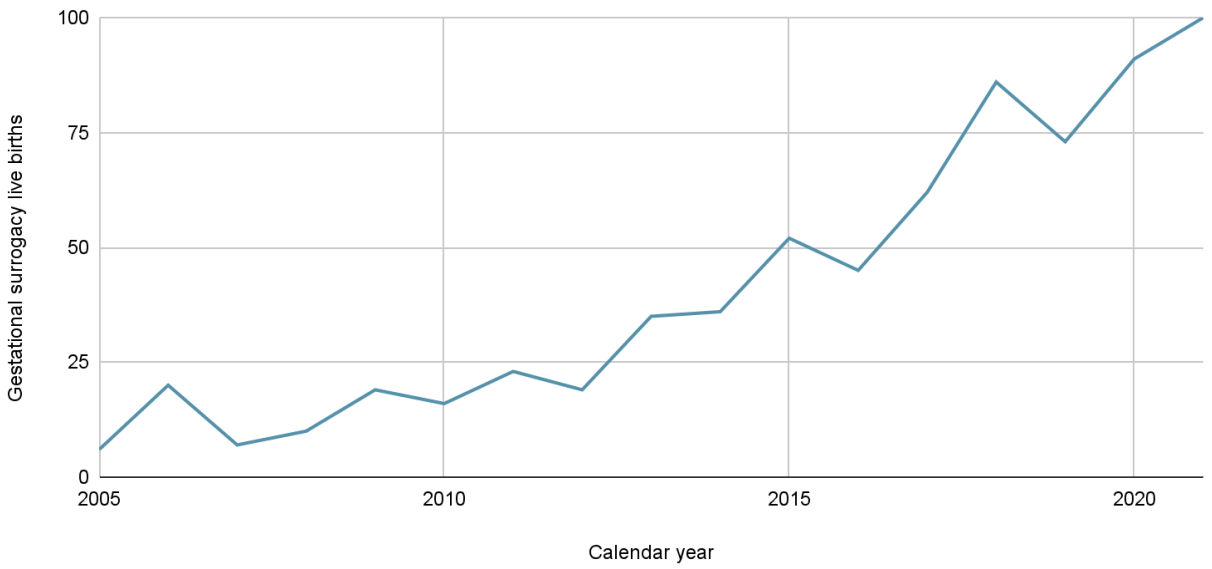

Figure 1.1 The number of babies born through gestational surrogacy in Australia and New Zealand, 2005-2021.

Although ANZARD does not report the number of babies born in Australia and New Zealand separately, the population of New Zealand is much smaller than that of Australia (5.3 versus 31.1 million). This suggests that the majority of births reported by ANZARD are Australian. However, it is unclear as to what extent. ANZARD does not report the number of babies born through traditional surrogacy, as these do not require ART clinic involvement. The number of these births is therefore unknown. Data obtained from other Australian sources indicate that traditional surrogacy is far less common than gestational arrangements, although the exact extent is unknown. The surrogacy lawyer, Sarah Jefford, reports that 15% of the 500 surrogacy arrangements she consulted on between 2021 to 2024 were traditional (Jefford 2024a). In contrast, just two of the 160 surrogacy arrangements which underwent pre-surrogacy counselling at a single clinic between 2002 and 2016 were traditional (Montrone et al. 2020). As such, all that is certain from the available data in Australia is that gestational surrogacy is used more frequently than traditional arrangements, and that more and more babies are being born through gestational surrogacy every year.

1.3 International surrogacy

For intended parents to return to Australia with a child born through international surrogacy, the Australian Government Department of Home Affairs (Home Affairs) must grant the child citizenship and applications to do so have been recorded since the 2011/12 financial year (Home Affairs 2016; Home Affairs 2020; Home Affairs 2023) (Figure 1.2). The number of applications received is likely greater than the number of international surrogacy arrangements completed by Australian intended parents, because multiple applications must be filed in instances of multiple births, i.e. one application per child.

In 2021/22, 213 citizenship applications were received and these stemmed from 20 different international surrogacy destinations, with the USA (n=99), Ukraine (n=49), and Canada (n=21) being the most common (Home Affairs 2023). When compared to the number of babies reported by ANZARD, this suggests that mostAustralian babies born through surrogacy are born as a result of an international arrangement.

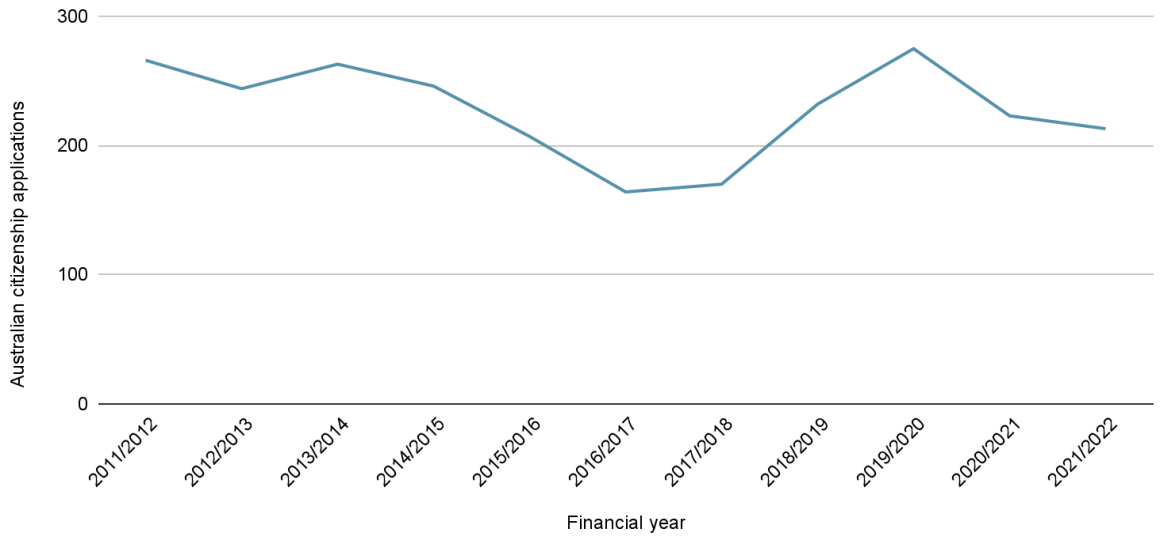

Figure 1.2 The number of citizenship applications received by the Department of Immigration and Border Protection in relation to international surrogacy, 2011/2012-2021/2022.

Data obtained through these Freedom of Information requests include the number of applications for Australian citizenship by country of surrogacy birth since the 2014/2015 financial year. These data show that births as a result of international surrogacy have occurred in 47 countries across each of the five continents – America, Europe, Africa, Asia and Oceania (Figure 1.3).

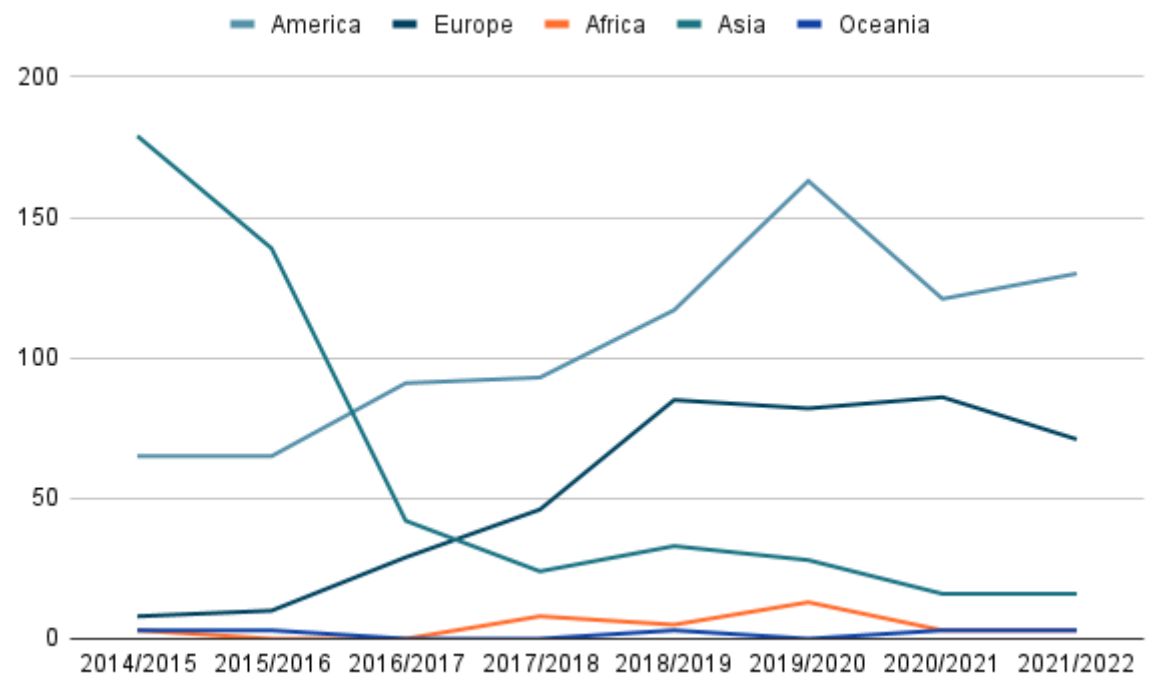

Figure 1.3 The number of citizenship applications received by the Department of Immigration and Border Protection in relation to international surrogacy by continent of birth 2014/2015-2021/2022. The numbers displayed provide an estimate only. This is because in instances where less than five births occurred in a country in a given year, the exact value was not reported to protect the applicants' confidentiality. In these instances, the median value of 2.5 was used to calculate the number of births for each continent.

1.3.1 Surrogacy in America

The two most frequently used American destinations are the USA and Canada. Other countries where births have been reported include Argentina, Brazil, Colombia, Guatemala, Jamaica, Mexico and Panama. Surrogacy in the USA is regulated on a state-by-state basis and, similar to Australia, a variety of regulatory responses exist across the country. The most popular state in the USA for international surrogacy is California, where commercial surrogacy is permitted (Herweck et al. 2024). Commercial surrogacy in the USA can cost between AUD$200,000-$300,000 (Growing Families 2024b) which covers the cost of the donor eggs, donor and surrogate expenses, compensation and insurance, and medical, legal and agency fees. Surrogacy in Canada is also available to all intended parents and can be accessed through an agency, but commercial surrogacy is prohibited. Surrogacy in Canada can cost AUD$90,000-160,000 (Growing Families 2024a). This cost covers the cost of IVF, donor expenses, surrogate expenses, agency fees, legal fees and the intended parent's travel.

1.3.2 Surrogacy in Asia

Up until 2015, the most common destinations for Australian intended parents in Asia were India and Thailand. Other Asian destinations which have been used by Australian intended parents include Bangladesh, China, Iran, Iraq, Kazakhstan, Korea (South), Lebanon, Malaysia, Nepal, Pakistan, Sri Lanka, and the United Arab Emirates. Commercial surrogacy was legal in India and Thailand until 2015 when it was outlawed due to concerns regarding surrogate and child welfare (Rudrappa 2021; Whittaker 2016). The benefit of these destinations, however, was that it provided a lower-cost alternative to commercial surrogacy in the USA.

In the early part of the 2010's a series of cases were reported in the media involving women being trafficked into surrogacy (Kowitwanij 2011) and acting as surrogates out of financial desperation (Gupta 2011). 'Baby Gammy' describes an infamous and tragic international surrogacy case involving Australian intended parents. An Australian couple, one of whom had been convicted of child sex offences, commissioned surrogacy in Thailand where their surrogate gave birth to twins (Harvey 2014). One of the twins had down syndrome and the couple returned home to Australia with only the healthy child. The other child was left in the care of the surrogate. This case drew

worldwide attention to the ethical and legal complexities in international surrogacy and the inherent vulnerabilities faced by surrogates and children (Whittaker 2016:75).

1.3.3 Surrogacy in Europe

Following the prohibition of international surrogacy in India and Thailand, lower-cost destinations in Europe began to be sought by Australian intended parents. Of these, Ukraine and Georgia, where commercial arrangements are permitted, were the most common. Other European destinations which have been used by Australian intended parents include Belarus, Cyprus, Czech Republic, Greece, Hungary, Italy, Russia, Poland, Switzerland, Turkey, and the UK.

A series of surrogacy controversies have occurred in Ukraine in recent years. Hundreds of newborns were left stranded because their parents could not enter the country due to COVID-19 pandemic related travel restrictions (Grytsenko 2020). The Russian invasion also resulted in exacerbating the vulnerabilities inherent in international surrogacy (Marinelli 2022; König 2023). Some intended parents had to enter war zones to collect their child. Some surrogates were threatened by agencies that they would not receive their full payment if they sought refuge in a neighbouring country because it could void the surrogacy contract. Ukrainian ministers have attempted to outlaw international surrogacy in response to these incidents (Beketova 2023); however, no such law has yet been passed.

Georgia has become an increasingly popular destination for international surrogacy following the Russian invasion of Ukraine. In 2023, a draft bill to criminalise commercial surrogacy was introduced due to concerns of surrogate and child welfare and same-sex parenting (Au 2023). However, progress remains stalled.

1.3.4 Risks to Australians

International surrogacy practices pose several risks to Australian intended parents and those born as a result. This is partly because many surrogacy destinations do not regulate or poorly regulate their ART clinical practices. In Australia, ART clinics are audited against compliance with the National Health and Medical Research Council's (NHMRC) guidelines on the ethical use of ART in clinical practice and research (NHMRC 2023a; Fertility Society of Australia and New Zealand 2021). The guidelines aim to ensure ART activities are conducted in a manner that minimises potential harms and supports the ongoing wellbeing of all parties, including those born as a result (NHMRC 2023:11). Some of the standards set by these guidelines are not followed in overseas jurisdictions, potentially putting those involved at risk. However, as will be explained below, there is very little empirical evidence documenting Australians' use of such practices and the impact on those involved.

1.3.4.1 Anonymous gamete donation and closed surrogacy

Anonymous gamete donation is not permitted in Australia (NHMRC 2023:33), nor is closed surrogacy. Closed surrogacy is when the intended parent/s and surrogate are anonymous to each other – either for the first few months of the pregnancy or for the entire arrangement. Closed surrogacy and anonymous donation is practised in some international surrogacy arrangements, such as Ukraine (König 2023; Moskalenko 2023). It's unknown whether Australian intended parents engage with these practices, and if so to what extent. However, as these practices are available it's possible that some Australians born through international surrogacy may not be able to access information about their birth or genetic parent.

In one of the few empirical studies with Australian intended parents who had chosen international surrogacy, 71% of the 112 participants reported they were most comfortable with using an identity-release donor over an anonymous donor (Stafford-Bell 2015). Eighty-seven percent also believed that using an identity-release donor was in the best interests of their child. This study unfortunately did not report the type of donor actually used by participants and so whether a preference for an identity-release donor results in the use of such a donor is unclear. In some jurisdictions, such as Ukraine, intended parents may not have a choice in the type of donor because anonymity is mandated.

The impact not knowing the birth parent could have on those born through international surrogacy has not yet been studied. To date, just one study has included people born through surrogacy – a longitudinal study of people born through ART in the UK (Jadva et al. 2023). At age 20, 35 individuals born via third-party reproduction were interviewed and of these, 21 were either in contact with their donor or surrogate or were wanting to be in contact. The remainder did not want contact (n=8) or were unsure (n=6). Reasons for wanting to meet their donor or surrogate included to thank them, to see what they looked like and to find out why they volunteered.

1.3.4.2 Increased use of multiple embryo transfer

Single embryo transfer is mandatory for Australian gestational surrogates (NHMRC 2023:46). This is to reduce the risk of harm associated with multiple pregnancies such as increased risk of preterm birth and low birthweight (Attawet al al. 2020a). Australian fertility clinics are, for the most part, in compliance with these guidelines. Almost all of the 170 embryo transfers which took place in Victoria between January 2009 and June 2016 were single (97%) (Attawet et al. 2020b) and since ANZARD first started to report the number of embryos transferred in gestational surrogacy cycles in 2020, all have been recorded as single-embryo transfer (Newman et al. 2022; Newman et al. 2023).

While single-embryo transfer is considered best-practice by international professional bodies (Human Fertilisation and Embryology Authority 2021; International Federation of Fertility Societies

Standards and Practice Committee 2011; Shenfield et al. 2011), not all countries mandate its use in surrogacy cycles (Adamson & Norman 2020). Between 2014-2022 in the US, 24% of embryo transfer cycles involving international intended parents used multiple embryos (Herweck et al. 2024). The rates of multiple embryo transfer may be even higher in other jurisdictions. For example, a retrospective study of 63 surrogacy cycles undertaken in a Nigerian surrogacy clinic reported all but one involving the transfer of multiple embryos (Aderonmu et al. 2023).

The use of multiple embryo transfers by Australian intended parents has not been empirically investigated. However, the available data on the outcomes of international surrogacy suggest it is used frequently. In a retrospective survey study of 112 Australians who had undertaken international surrogacy, 55% reported their surrogate had a multiple pregnancy and 45% of births were premature (Stafford-Bell et al. 2014). This indicates frequent use of multiple embryo transfer, because multiple pregnancies and premature births are associated with the practice (Attawet al al. 2020a). In contrast, of the 41 deliveries resulting from the embryo transfers in Victoria between 2009 and 2016, just one was a twin pregnancy and only two were born premature (Attawet et al. 2020b).

1.3.4.3 Limited emotional support and counselling

Intended parents must undergo counselling prior to conception in Australia (NHMRC 2023:46). However, in a survey of 59 Australians and New Zealanders who underwent cross-border reproductive care, just 31% of participants reported that counselling services were made available to them (Rodino et al. 2014). A further 21% percent further reported the clinic did *not* satisfy their overall emotional needs. This finding is supported by an interview study of 12 Australian gay men who completed surrogacy in India (Riggs et al. 2015). Participants recounted more negative experiences of support than positive ones. Negative experiences included inadequate support and information from clinics, such as a lack of counselling about the consequences of multiple embryo transfer and insufficient support following a pregnancy loss. Some participants reported adequate levels of care, which included examples of professionalism and appropriate provision of information, but experiences beyond this were rare. As such, it is possible that those completing international surrogacy are not able to receive sufficient emotional support.

1.3.4.4 Lack of legal parentage

In addition to these physical and psychological risks imposed by varying ART clinical practices, international surrogacy also poses legal problems for the child born. As previously mentioned, the Australian Government Department of Immigration and Border Protection grants the child citizenship. However, most individuals born through international surrogacy will not be considered the legal child of their parents under Australian law (Sifris & Sifris 2022). This is because the law does not recognise children born through international surrogacy as the legal child of their

Australian intended parents (Millbank 2011:200). This is the case even in circumstances where a foreign birth certificate lists the intended parents as the birth parents.

It is possible for parents to apply to the federal family court (the 'Federal Circuit and Family Court of Australia') for a parenting order to grant 'parental responsibility'; however, this does not provide parents with the full raft of rights and responsibilities as legal parentage. Without legal parentage, the child does not have automatic inheritance rights. Furthermore, parental responsibility expires when the child is 18 but legal parentage does not (Harland 2021). Applying for parental responsibility is an expensive and protracted process and consequently few parents do so (Harland & Limon 2016:153). Legal scholars have argued that denying a child legal parents is a form of discrimination which breaches the United Nations Convention of the Rights of the Child (1989) which recognises children's rights to identity and family (Harland 2021). Whether this will have any psychosocial consequences on those born as a result of international surrogacy is currently unknown, and can only become evident as the children age.

1.4 Australian regulation of surrogacy

Australia (officially the Commonwealth of Australia) is a federation comprised of six states – New South Wales (NSW), Queensland (QLD), South Australia (SA), Tasmania (TAS), Victoria (VIC), Western Australia (WA) – and two territories – the Australian Capital Territory (ACT) and the Northern Territory (NT). The Commonwealth Parliament has the power to regulate over certain matters ascribed in the Australian Constitution. Everything else is the responsibility of the state and territory Parliaments.

Australian regulation of surrogacy is highly complex. It is regulated through a combination of federal law, state law and the aforementioned NHMRC guidelines on the ethical use of ARTs. Broadly speaking, family law matters and the use of human tissue are within the federal government's jurisdiction, while ARTs and other matters relating to surrogacy fall to the responsibilities of the states and territories. All Australian fertility clinics must comply with the NHMRC guidelines, but state/territory law may pose additional requirements (Karpin & Millbank 2020). To further complicate matters, surrogacy and ARTs are often regulated by separate legal instruments within the states and territories, and the requirements often differ between the jurisdictions. In an independent review into the regulation of surrogacy in Western Australia, six different Commonwealth Acts and 29 different state/territory Acts were noted to have relevance to surrogacy (Allan 2018 p.42-43). (Table 1.2). The term "patchwork" has been aptly used to categorise the law on ARTs and surrogacy in Australia (Karpin & Millbank 2020).

Table 1.2 State/territory legislation regulating ARTs and surrogacy arrangements. This table includes the most relevant legislation and is not exhaustive.

State/Territory	Legislation
ACT	Parentage (Surrogacy) Amendment Bill 2023*; Assisted Reproductive Technology Act 2024*
NSW	Assisted Reproductive Technology Act 2007; *Surrogacy Act 2010; Assisted Reproductive Technology Regulation 2014; Surrogacy Regulation 2016*
NT	*Surrogacy Act 2022; Surrogacy Regulations 2022*
QLD	*Surrogacy Act 2010*
SA	Assisted Reproductive Treatment Act 1988; Assisted Reproductive Treatment Regulations 2010; *Surrogacy Act 2019; Surrogacy Regulations 2020*
TAS	*Surrogacy Act 2012*
VIC	*Assisted Reproductive Treatment Act 2008; Assisted Reproductive Treatment Regulations* 2019
WA	Artificial Conception Act 1985; Human Reproductive Technology Act 1991; Human Reproductive Technology Regulations 1993 *Surrogacy Act 2008*

Australia's regulatory approach towards surrogacy has emerged from what Millbank categorised in 2011 as two distinct 'waves' of inquiries and law reform. The first wave, occurring in the late 1980s and early 1990s, framed surrogacy as an "abhorrent commodification of children" and this was in response to societal concerns about the threat technological advancements in ART posed to the nuclear family (Millbank 2012 p.102). The resulting state and territory legislation was largely discouraging of both commercial and altruistic arrangements. Commercial surrogacy was considered a greater threat than altruistic arrangements, however, because it introduced a financial element into the act of reproduction (Stuhmcke 1995). Commercial surrogacy was subsequently criminalised in many of Australia's jurisdictions while altruistic arrangements were largely left unregulated (Millbank 2011).

It was not until the second wave of reforms, which occurred in the mid to late 2000s, when altruistic surrogacy was reframed as a "legitimate family formation avenue" (Millbank 2012 p.102). The criminalisation of commercial surrogacy remained and this played a key role in reforming the law on altruistic surrogacy. By associating all unethical practices, such as exploitation and commodification, to the act of surrogate payment, policy-makers effectively positioned altruistic arrangements as the morally acceptable form of surrogacy. Policy-makers justified this through a rhetoric of a 'national consensus' on the immorality of commercial surrogacy (Snow 2016)."

1.4.1 Parentage in Surrogacy

The *Family Law Act 1975* (Cth) deals with family law disputes such as divorce and parenting arrangements. The Act makes presumptions about who is a parent through ART and surrogacy (*Family Law Act 1975* (Cth) s 60H). It specifies that a woman who gives birth to a child (and her de facto or married partner, if applicable) is considered the legal parent. This presumption was originally meant to protect the parentage of those using donor gametes (Ludlow 2015), but it also applies to parentage in surrogacy. This means the intended parents in a surrogacy arrangement are *not* considered the legal parents of their child at birth, regardless of a genetic connection.

Intended parents can obtain legal recognition of parentage by making an application to their local state or territory court. A Parentage Order is a court order which transfers legal parentage from the surrogate (and their partner, if applicable) to the intended parents after birth (Millbank 2011). If the order is granted a birth certificate is reissued listing the intended parents as the birth parents. The re-issued birth certificate does not state that the child was born through surrogacy, but, in VIC if donor gametes were used, the birth certificate contains an addendum which states that there is additional information about their birth available (*Births, Deaths and Marriages Registration Act* 1996 s 17).

The surrogate must also consent to the making of the Parentage Order (e.g. *Surrogacy Act 2010* (NSW) s 31; *Surrogacy Act 2012 (TAS) s 16)*. There are few instances in which a Parentage Order can be granted without the surrogate's consent. These include if the surrogate has died or lost capacity to consent, or cannot be located after reasonable attempts to locate them have failed (e.g. *Surrogacy Act 2019* (SA) s 18; *Surrogacy Act 2022* (NT) s 32). Because these are quite exceptional circumstances, surrogacy arrangements are effectively ‘unenforceable’ in Australia, and this is expressly stated in the law (e.g. *Assisted Reproductive Treatment Act 2008* (VIC) s 44; *Surrogacy Act 2010* QLD s 15)

Parentage Orders are typically only granted following a domestic surrogacy arrangement. This is because Parentage Orders cannot be granted for commercial surrogacy (see for e.g. *Surrogacy Act 2012 (TAS)* s 16) and this excludes most international arrangements. There are also eligibility and process requirements (described below) for a Parentage Order to be granted and these are unlikely to be met in an international arrangement.

1.4.2 Eligibility criteria

Eligibility criteria for surrogates and intended parents are summarised in Table 1.3. The minimum age of a surrogate in all states and territories is 25 years, although exceptions to this can be made in the ACT (*Parentage (Surrogacy) Amendment Bill 2023* (ACT) ss 28), NT (*Surrogacy Act 2022* (NT) s 17) and VIC (*Assisted Reproductive Treatment Act 2008* (VIC) s 41). Neither state and territory law nor the NHMRC guidelines specify the maximum age of a surrogate, although some

fertility clinics will impose their own age restriction, often between the ages of 48 and 52 years (Jefford 2024b). The surrogate must have previously given birth to their own child in TAS (*Surrogacy Act 2012* (TAS) s 16), WA (*Surrogacy Act 2008* (WA) s 17) and VIC (*Assisted Reproductive Treatment Act 2008* (VIC) s 40), but this is not a requirement elsewhere.

The surrogate must be domiciled in the same state or territory as the intended parents in the NT (*Surrogacy Act 2022* (NT) s 33) and in TAS (*Surrogacy Act 2012* (TAS) s 16). In the NT (*Surrogacy Act 2022* (NT) ss 17-18) and SA (*Surrogacy Act 2019* (SA) s 10), both parties must be Australian citizens or permanent residents; however, this is not a requirement elsewhere.

Except for Victoria, all jurisdictions stipulate a minimum age of the intended parents which varies between 18 or 25 years. Heterosexual couples with a medical indication for surrogacy are eligible in all jurisdictions. However, IVF cannot be accessed in instances of age-related fertility decline in WA (*Human Reproductive Technology Act 1991* s 23). Same-sex couples and single individuals are also eligible in most jurisdictions. Although, same-sex male couples and single men are not eligible in WA (*Surrogacy Act 2008* (WA) s 19). Although the WA Government committed to making surrogacy access equitable in 2023, no change has been made (Government of Western Australia 2023). There is no requirement in any Australian jurisdiction for the intended parents to have a genetic connection to the child.

Table 1.3. Surrogate and intended parent eligibility criteria.

IPs' state/ territory	Minimum age of surrogate	Surrogate prior live birth	Surrogate domiciled in state	Australian citizen or permanent resident	Minimum age of IPs	IP genetic connection to child	Same-sex couples are eligible IPs	Single individuals are eligible IPs
ACT	25	❌	❌	❌	18	❌	✅	✅
NSW	25	❌	❌	❌	18	❌	✅	✅
NT	25	❌	✅	✅	25	❌	✅	✅
QLD	25	❌	❌	❌	25	❌	✅	✅
SA	25	❌	❌	✅	25	❌	✅	✅
TAS	25	✅	✅	❌	21	❌	✅	✅
VIC	25	✅	❌	❌	NA	❌	✅	✅
WA	25	✅	❌	❌	At least one IP must be 25 or older	❌	❌	Women only

1.4.3 Process requirements

Process requirements are summarised in Table 1.4. All parties to a surrogacy arrangement must undergo counselling about the arrangement and its social and psychological implications prior to conception. This includes the surrogate and intended parent/s and the surrogates' partner if applicable. Counselling is mandated through the NHMRC guidelines (2023 p. 46) and state and territory law (e.g. *Assisted Reproductive Treatment Act 2008* (VIC) s 43*; Surrogacy Act 2022* (NT) s

22). Several states require the counsellor to be independent from the fertility clinic. A psychological evaluation is also required in WA only (*Surrogacy Act 2008* (WA) s 17). Post-birth counselling is required in QLD (*Surrogacy Act 2010* (QLD) s 32) and TAS (*Surrogacy Act 2012* (TAS) s 16) for all parties, and only for the surrogate (and partner if applicable) in NSW (*Surrogacy Act 2010* (NSW) s 36) and the NT (*Surrogacy Act 2022* (NT) s 23).

State and territory law mandates that the intended parent/s and surrogate (and partner, if applicable) must receive independent legal advice (e.g *Surrogacy Act 2008* (WA) s 17; *Surrogacy Act 2012* (TAS) s 16*)*. In the ACT and in all states bar Victoria, it is also a requirement for the arrangements to be entered into writing and signed by all parties. Unique to SA (*Surrogacy Act 2019* (SA) s 10), both parties must also undergo two checks: a criminal record check, to determine whether either party holds a criminal record and has been found guilty of an offence with or without conviction; and a child protection order check, to determine whether either party has been subject to a court order removing a child from that person's custody or guardianship.

Table 1.4. Process requirements for transfer of parentage.

IPs' state/ territory	Legal advice	Written agreement	Pre-conception counselling	Independent counsellor	Post-birth counselling	Psychological evaluation	Criminal record screening
ACT	✅	✅	✅	✅	❌	❌	❌
NSW	✅	✅	✅	✅	Surrogate + partner only	❌	❌
NT	✅	✅	✅	✅	Surrogate + partner only	❌	❌
QLD	✅	✅	✅	✅	✅	❌	❌
SA	✅	✅	✅	❌	❌	❌	✅
TAS	✅	✅	✅	✅	✅	❌	❌
VIC	✅	❌	✅	❌	❌	❌	❌
WA	✅	✅	✅	❌	❌	✅	❌

1.4.4 Reimbursement of expenses

State and territory legislation also specifies which expenses can be reimbursed under the altruistic model. Excluding WA, the majority of Australian jurisdictions adopt a similar approach to the expenses that surrogates can be reimbursed for. In these states and territories, surrogates can receive reimbursement for:

- medical costs associated with trying to become pregnant, being pregnant and giving birth, health insurance or any other scheme;
- costs incurred in relation to a child born as a result of the arrangement;
- counselling costs incurred as a result of the arrangement;

- legal costs incurred as a result of receiving legal advice associated with the arrangement or being a party to the parentage order;
- income lost by being unable to work on medical grounds associated with the pregnancy or by taking up to two months unpaid leave for the birth;
- insurance premiums for health, life or disability insurance; and
- travel and accommodation costs incurred as a result of the arrangement.

Any further reasonable out-of-pocket expenses associated with the surrogacy arrangement can also be reimbursed in these states and territories. While what constitutes a 'reasonable cost' is not defined in any of the legislation, the *Surrogacy Act 2022* (NT) s 12 and the *Surrogacy Act 2010* (QLD) s 11 list examples of reasonable costs such as childcare, housekeeping and postnatal expenses. Western Australia permits the majority of these expense types, excluding travel and accommodation and other reasonable out-of-pocket expenses (*Surrogacy Act 2008* (WA) s 6).

1.4.5 Criminal offences

The criminal prohibitions in relation to surrogacy are mandated in the state/territory legislation (Table 1.5). Commercial surrogacy is criminalised in every Australian state and territory through local law, and this is reinforced in the NHMRC guidelines which prohibit fertility clinics from facilitating such arrangements (2023 p. 45). The penalty for entering into a commercial surrogacy arrangement ranges between the states and territories – in some the penalty is a maximum fine of 100 penalty units (which equates to $AUD19,500 in the 2023/24 financial year) (*Surrogacy Act 2012* (TAS) s 40), while in others it is a maximum jail time of three years (*Surrogacy Act 2010* (QLD) s 56).

Extraterritorial criminal provisions outlawing commercial arrangements have also been passed in the ACT (*Parentage Act 2004* (ACT) s 45), QLD (*Surrogacy Act 2010* (QLD) ss 54, 56), and NSW (*Surrogacy Act 2010* (NSW) s 11). This makes it a criminal offence for residents of these jurisdictions to complete commercial surrogacy overseas. However, there have been no successful prosecutions under these provisions and they do not seem to prevent people from engaging in such arrangements (Stuhmcke 2015a).

The commercial trading of human sperm, eggs and embryos is also a criminal offence in Australia. Under the *Prohibition of Human Cloning for Reproduction* Act *2002* (Cth) (s 21), an offence is punishable up to 15 years imprisonment. With the exception of the NT, the commercial trading of gametes and embryos is also prohibited under local law (*Human Reproductive Technology Act* 1991 (WA) s 53; *Human Cloning for Reproduction and Other Prohibited Practices Act* (NSW) 2003 s 26; *Prohibition of Human Cloning for Reproduction Act* (QLD) 2003 s 17; *Human Cloning for Reproduction and Other Prohibited Practices Act* (TAS) 2003 s20; *Prohibition of Human Cloning for*

Reproduction Act (SA) 2003; *Human Cloning and Embryo Research Act* (ACT) 2004 s 19; *Prohibition of Human Cloning for Reproduction Act* (VIC) 2008 s 17).

It is a criminal offence to advertise that you are seeking an altruistic surrogate or wishing to be an altruistic surrogate in QLD (*Surrogacy Act 2010* (QLD) s 55) and VIC (*Assisted Reproductive Treatment Act 2008* (VIC) s 45). It is also a criminal offence to do so in NSW (*Surrogacy Act 2010* (NSW) s 10) and TAS (*Surrogacy Act 2012* (TAS) s 41), but only if payment has been made for the advertisement. The penalties for advertising are the same as the penalties for entering into a commercial surrogacy arrangement – ranging from a maximum fine of 100 penalty units to a maximum jail time of three years.

Criminal offences pertaining to brokerage services also exist in some jurisdictions. In the NT (*Surrogacy Act 2022* (NT) s 49), SA (*Surrogacy Act 2019* (SA) s 24) and WA (*Surrogacy Act 2008* (WA) s 9) it is a criminal offence to receive payment to introduce people who are looking to enter into a surrogacy arrangement for a fee. It is also a criminal offence in the ACT even if no payment has been made (*Parentage Act 2004 (ACT)* s 42). In the NT (*Surrogacy Act 2022* (NT) s 49), SA (*Surrogacy Act 2019* (SA) s 24) and TAS (*Surrogacy Act 2012* (TAS) s 41) it is a criminal offence to receive payment to facilitate or organise a surrogacy arrangement on behalf of someone. With the exception of WA, all jurisdictions impose the same penalty for brokerage services as for entering into a commercial surrogacy arrangement. In WA, the penalty for introducing people is a fine of $AUD12,000 or imprisonment for one year, while the penalty for entering a commercial arrangement is a fine of $AUD24,000 or imprisonment for *two* years (*Surrogacy Act 2008* (WA) s 9).

Table 1.5 Criminal offences relating to surrogacy.

IPs' state/ territory	Entering a commercial surrogacy arrangement	Entering a commercial surrogacy arrangement extraterritorially	Commercial trading of human gametes or embryos	Advertising altruistic surrogacy	Introduce people who are looking to enter into a surrogacy arrangement	Arrange or negotiate a surrogacy arrangement on behalf of another
ACT	✅	✅	✅	❌	✅	❌
NSW	✅	✅	✅	Paid only	❌	❌
NT	✅	❌	✅	❌	Paid only	Paid only
QLD	✅	✅	✅	✅	❌	❌
SA	✅	❌	✅	❌	Paid only	Paid only
TAS	✅	❌	✅	Paid only	❌	Paid only
VIC	✅	❌	✅	✅	❌	❌
WA	✅	❌	✅	❌	Paid only	❌

1.4.6 Australia's public health system

As described above, Medicare is Australia's national insurance scheme that provides subsidised ART treatments. Medicare subsidies cannot be applied to ART treatments if the patient is involved in a surrogacy arrangement. This is largely as a consequence of timing, as surrogacy (including altruistic arrangements) was illegal in some states when the ART Medicare items were created. Although a Medicare taskforce in 2020 recommended removing the exclusion of rebates in instances of surrogacy arrangements this has yet to be achieved (Medicare Benefits Schedule Review Taskforce 2020:53).

1.5 Stakeholder perceptions of surrogacy regulations

It is widely accepted that the regulation of surrogacy in Australia requires reform (Keyes 2012). However, the elephant in the room is whether or not commercial surrogacy (i.e surrogate payment beyond the reimbursement of expenses) should remain criminalised in Australia (Plater et al. 2022).

1.5.1 Experts

Following the infamous Baby Gammy case in 2014-2015, a federal government committee inquired into the regulatory and legislative aspects of domestic and international surrogacy (Standing Committee on Social Policy and Legal Affairs 2016). The committee received 124 submissions, primarily from government organisations, academics, industry and religious groups. Submissions from people with a lived experience of surrogacy were underrepresented in the submission – 26 were from intended parents, but only three were from surrogates and none from people born through surrogacy. Nevertheless, the committee report found that intended parents were seeking international surrogacy due to difficulties in accessing altruistic arrangements domestically. Barriers included a shortage of surrogates, unenforceable surrogacy contracts, differences in state/territory legislation, and limited and inconsistent information about altruistic surrogacy. The committee recommended the Australian Law Reform Commission conduct an inquiry into surrogacy laws with the aim of developing a model national law regulating altruistic surrogacy. For reasons unknown, this was never completed.

The findings from the inquiry prompted several states and territories – all except for TAS and QLD – to conduct their own inquiries into surrogacy laws. These inquiries have acknowledge the need for a more accessible and consistent model of altruistic surrogacy (Allan 2019:183; NSW Department of Justice 2018:14-15, 19; Gorton 2019:139; Plater et al. 2018; Standing Committee on Justice and Community Safety 2023) and law reform has made attempts to harmonise the laws across Australia. As described in this chapter, harmony has clearly not been achieved; however, at the time of the federal inquiry there were greater disparities between the states' and territories'

regulations than there are today. For example, surrogacy was not permitted in the NT (Legislative Assembly of the Northern Territory 2022), same-sex male couples were not eligible for surrogacy in SA (Carnie & Brown 2017), and single individuals were ineligible in the ACT (ACT Government Justice and Community Safety Directorate 2024). As such current Australian laws are more harmonious than ever.

None of these inquiries recommended changes to the current criminalisation of commercial surrogacy. In some of the inquiries, commercial surrogacy was excluded from the terms of reference so the topic was not given appropriate consideration (Gorton 2019:139; Plater et al. 2018:1). In others, the authors came to the conclusion that commercial surrogacy should remain criminalised because, even with appropriate regulations, it risks the commodification of children and the exploitation of financially disadvantaged women (NSW Department of Justice 2018:8; Allan 2019:137).

Despite this, the predominant thinking by Australian legal scholars is that criminalisation of commercial surrogacy is unjustified (Skene 2012; Millbank 2015; Johnson 2015; Stuhmcke 2015b; Sifris & Page 2021; Plater et al. 2022). This is underpinned by the view that the distinction between the two types of surrogacy is based on a false assumption that payment negates altruistic motivations and automatically leads to exploitation (Stuhmcke 2015b). Some note benefits to paying a surrogate, such as it could be considered a form of intended parents caring for their surrogate (Cameron 2018). Moreover, it is argued that the criminalisation of commercial surrogacy has failed to prevent intended parents from engaging in such arrangements, and instead pushed the practice offshore (Keyes 2012).

1.5.2 Intended parents

There is a small body of research about Australian intended parents' motivations for international surrogacy (Everingham et al. 2014; Hammarberg et al. 2014; Riggs 2015; Riggs 2016; Jackson et al. 2017). The evidence from these studies suggest that intended parents face difficulties in finding a surrogate and egg donor in Australia, and they prefer legal frameworks which provide greater certainty regarding their parental status at birth and permit commercial surrogacy. This suggests that if there were greater availability of surrogates and egg donors in Australia, as well as law reform permitting commercial surrogacy and providing greater certainty, more intended parents would complete surrogacy domestically rather than internationally. However, as will be described in the following section, it's not possible to know whether these findings can be generalised to all Australian intended parents.

Intended parents are also not the only party to a surrogacy arrangement, and any regulatory reform must also reflect the interests of surrogates. At the time of writing (June 2024), just one study has been conducted with Australian surrogates. This study, published in 2005, interviewed

13 gestational surrogates and reported no experiences of maternal loss or grief following relinquishment (Goble in Victoria Law Reform Commission 2007). Although this finding would be reassuring for those concerned about the impact of surrogacy on surrogates, it does not indicate how the practice of surrogacy should be regulated. As such, there is a gap in the knowledge on Australian surrogates' attitudes towards the current regulatory approach.

1.5.2.1 Legal framework

Australian intended parents' preference for certain aspects of legal frameworks available overseas was first noted in a 2014 survey study of those who were considering, undergoing or had completed surrogacy domestically or internationally (Everingham et al. 2014). Of the 259 participants, 44 percent (n=114) did not consider a domestic arrangement, and the three most common reasons for not doing so were: concerns that the Australian surrogate might decide to keep the child (75%); belief that Australian surrogacy was too long and complicated a process (68%); and having no one they could ask to be their surrogate (61%). Just under half (46%) also indicated altruistic surrogacy as an unfair exchange for a reason for not considering domestic surrogacy.

Additional research further supports these findings. A 2015 interview study of 21 Australians who completed surrogacy in the USA or in India reported the participants perceived completing surrogacy in Australia as legally risky because there was the potential they could be denied legal parentage of their child (Riggs 2015). In a later interview study of 28 people completing cross-border reproductive care, interviewees rejected the assumption that altruistic surrogacy was less morally problematic, with some noting that people could be coerced into acting as an altruistic surrogate for friends or family members (Jackson et al. 2017:28). The participants also noted it is unfair for professional intermediaries, such as lawyers, counsellors and clinicians, to be paid for their role in an altruistic surrogacy arrangement, but for the surrogate to not (Jackson et al. 2017:30). Due to the qualitative nature of these studies, the extent of these beliefs cannot be generalised to the entire community of intended parents who complete international surrogacy, nor to those who complete domestic surrogacy – a phenomenon which has not yet been studied in Australia.

1.5.2.2 Surrogate availability

As mentioned above, 61% of intended parents in Everingham et al.'s study reported not considering domestic surrogacy because they had no one they could ask to be their surrogate. It appears that most arrangements occur between friends and family members in Australia. In Montrone et al.'s study, 80% of surrogates were previously known to their intended parents as a friend or family member, while 20% met online through an internet forum or chat group (2020). A similar proportion was reported by Jefford: 79% of the arrangements she oversaw were between

people with existing relationships while 21% were between people who were new to one another (Jefford 2024a). Taken together, these two data sources suggest that approximately four in five surrogacy arrangements occur between people in existing relationships.

For those unable to find a surrogate within their own social networks, there are limited resources available. There are no surrogacy agencies in Australia and fertility clinics do not recruit surrogates. Surrogacy Australia, a not-for-profit surrogacy organisation founded by Sam Everingham, a gay dad through surrogacy, attempts to fill this gap. Surrogacy Australia runs fortnightly webinars aimed at introducing people to domestic surrogacy. They also provide a for-fee support service, modelled off surrogacy non-profit organisations in the United Kingdom, which provides introductions between potential surrogates and intended parents and provides support to teams over their surrogacy journey. However, only two to three introductions occur on average per year through the support service (Surrogacy Australia 2024) and whether any of the introductions have resulted in the birth of a child through surrogacy is unclear.

Social media, primarily Facebook, is the main avenue for potential surrogates and intended parents to meet (Jefford 2024a). Closed ‘groups’ operate as an online community in which surrogates and intended parents share their journey and seek information and support from people who are also undergoing or have undergone the process. The ‘Australian Surrogacy Community’ is the most popular of the groups, which at the time of writing (June 2024) has 2,300 members (Facebook 2024). However, the number of intended parents in the Facebook groups greatly outweighs the number of surrogates (Culhane-Smith 2022).

1.6 Conclusion

Legislative attempts at preventing Australian intended parents from seeking international commercial surrogacy have failed (Stuhmcke 2015a). The harms associated with the global surrogacy market could be mitigated through international regulations and various mechanisms have been suggested to achieve this. Including through an international convention or treaty (Trimmings & Beaumont 2015) and the accreditation of surrogacy agencies (Humbyrd 2009). What these mechanisms rely on, however, is a consensus towards whether or not surrogacy should be permitted. Scholars have pointed out the arduous nature of such a task considering the widely divergent moral attitudes towards surrogacy (Smietana et al. 2021). In light of these challenges, reducing the demand for international arrangements through supportive domestic approaches is a pragmatic solution (Smietana et al. 2021; Horsey 2024).

An understanding of the needs of intended parents and surrogates is required to guide such a process. As discussed throughout this chapter, a small body of research has investigated intended parents’ motivations for and experiences of international surrogacy (Everingham et al. 2014; Hammerberg et al. 2014; Riggs 2015; Riggs 2016; Jackson et al. 2017). This body of knowledge

suggests the current regulatory approach of criminalising commercial surrogacy and making surrogacy contracts unenforceable is not in line with their preferences. However, these findings cannot be generalised to Australian surrogates or intended parents who complete surrogacy domestically. Their lived experience of surrogacy and their attitudes towards the current regulatory approach has not yet been empirically investigated.

Law reform aimed at improving access to surrogacy in Australia will not be viewed favourably by those who advocate for surrogacy prohibition (Klein 2011). Whilst it could be argued that these views do not reflect popular public sentiment in Australia (Constantinidis & Cook 2012; Tremellen & Everingham 2016; D'Annunzio 2019), improving access to surrogacy will require careful consideration of the welfare of surrogates and those born as a result. There is limited knowledge of how Australian surrogacy regulations impact surrogates and those born through surrogacy. Greater understanding of this would guide debates surrounding whether improving access at a domestic level is an appropriate response to the potential harms posed by international surrogacy, and if so, how to do so while protecting their best interests.

To address these research gaps and to generate evidence to inform future debates surrounding the appropriateness of Australia's regulation of surrogacy, this PhD project aims to determine whether the current regulatory approach meets the needs of surrogates, intended parents, and those born through surrogacy.

Chapter Two: Research Aim + Design

This was a mixed-methods project, consisting of three inter-linked studies – two qualitative and one quantitative. Manuscripts detailing each study have been published and are included in Chapters Three-Five. The methodological considerations for each study are reported in the publications and will not be detailed in this chapter. The methodological considerations relevant to the overall project, however, will be described, and these include the mixed-methods research design, ethical considerations, stakeholder engagement and researcher reflections.

2.1 Research aim and objectives

The overarching aim of this project was to determine whether the regulation of surrogacy in Australia meets the needs of surrogates, intended parents and those born through surrogacy.

As discussed in Chapter One, there are several research gaps on the impact of Australia's regulation of surrogacy. These include the lived experience of Australian surrogacy arrangements, the impact of international surrogacy practices on those born as a result, and surrogate and intended parent perceptions towards the regulations. The current knowledge on intended parents' motivations for international surrogacy is also outdated and would benefit from further investigation. To address these research gaps and to fulfil the aim of this project, the following objectives were set:

1. systematically review the existing literature describing the experiences of surrogates and intended parents;
2. describe the factors that influence Australian intended parents' decision to pursue surrogacy in Australia or internationally;
3. compare the characteristics and outcomes of surrogacy arrangements undertaken by Australian intended parents in Australia and internationally; and
4. describe Australian surrogacy stakeholders' perceptions on how access to arrangements in Australia could be improved.

2.2 Mixed-methods research

Qualitative and quantitative research theory differ in their approach to the generation of knowledge. Quantitative research assumes there is a singular objective reality and attempts to explain or predict a phenomenon through numerical data (Atieno 2009). Qualitative research views reality as something that is socially and psychologically constructed and attempts to describe, through non-numerical data, how a phenomenon is experienced or perceived by a person of interest (Hammarberg et al. 2016). Traditionally, these approaches have been considered incompatible (Howe 1988). However, mixed-methods research is underpinned by a pragmatic paradigm, in

which the dualism of qualitative and quantitative research approaches is rejected (Johnson & Onwuegbuzie 2004).

Mixed-methods research relies on the integration of qualitative and quantitative research components in a single study. The pragmatic paradigm offers a needs-based approach to empirical inquiry, i.e. research approaches should be guided by the research question (Johnson & Onwuegbuzie 2004). This makes mixed-methods research particularly well suited for addressing complex phenomena because multiple viewpoints can be used to develop nuanced and detailed understanding of the topic at hand (Rossman & Wilson 1985). This applies to the focus of this project because it considers the needs of multiple stakeholders (i.e. surrogate, intended parents and those born through surrogacy), and it considers their needs from diverse perspectives (i.e their social, psychological, and physical needs).

2.3 Project design

Three research studies were conducted to achieve the project's four objectives. Study One was a systematic review of the existing global evidence on surrogate and intended parent experience of surrogacy, meeting Objective One. A systematic review method was chosen to ensure as much relevant literature was identified as possible (Khan et al. 2003). The review focused on literature published in the last decade due to the evolving nature of social and regulatory responses to surrogacy. By comparing experiences across different regulatory contexts, an understanding of how regulations can impact the needs of surrogacy participants was developed.

Study Two was designed to achieve Objectives Two and Three; a survey of factors influencing intended parents' decision to pursue surrogacy in Australia or internationally, and the characteristics and outcomes of domestic and international surrogacy arrangements. Australians who had completed surrogacy, were in the process of completing surrogacy, or were planning on pursuing surrogacy in the future were eligible to participate. A cross-sectional survey was used because it collects data from participants at a single point in time and is useful to understand the behaviours, intentions and attitudes of multiple participant groups (Connelly 2016).

Finally, Study Three met Objective Four by interviewing Australian surrogacy stakeholders on their perceptions on how access to surrogacy could be improved. Australian surrogates, intended parents and professionals were eligible to participate because they had experience navigating the surrogacy regulations in Australia. Study Three involved semi-structured interviews. This data collection method was chosen because it is appropriate when the researcher knows enough about the topic to identify the questions that should be asked but cannot anticipate all the possible responses (Morse 2012).

The studies were inter-linked in several ways (Figure 2.1). They were conducted sequentially to allow the findings of one to inform the data collection tools in the next (Fetters et al. 2013). This

was helpful in this project because of the limited empirical evidence available at the project's outset to inform appropriate data collection tools. The studies were also linked through recruitment strategies. At the end of the survey in Study Two, respondents were asked whether they were interested in being contacted for an upcoming interview study. The names and contact information of participants who provided them were then used for recruitment in Study Three.

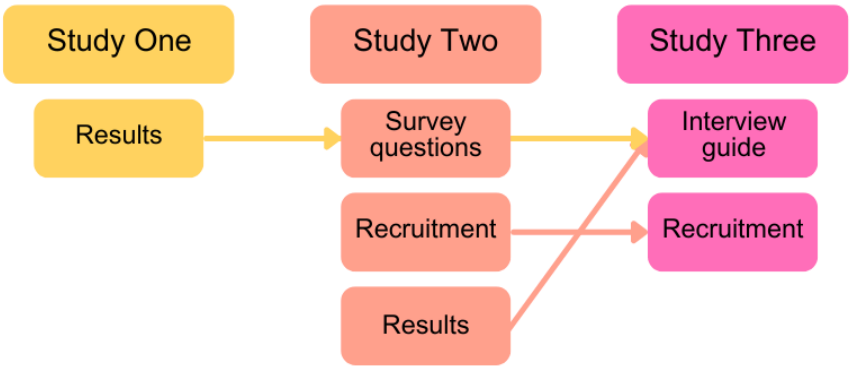

Figure 2.1. Design of the sequential mixed-methods research project, consisting of three inter-linked studies.

The qualitative and quantitative findings from the three studies are integrated and discussed together in the discussion chapter (Chapter Six). In mixed-methods research, the emphasis given to the qualitative and quantitative components can be equal, or one approach can be dominant (Leech & Onwuegbuzie 2009). Dominant status was given to Study Two and Three in this project. This is because the findings from Study One were not specific to the Australian context.

2.4 Ethical considerations

Studies Two and Three involved human participation. According to the National Statement on Ethical Conduct in Human Research, the risks and benefits of the research and the participants' consent must always be considered (National Health & Medical Research Council 2023b). Monash University Human Research Ethics Committee approved Study Two (ID: 28359) and Three (ID: 36145) of this research.

Risks for participants in Studies Two and Three included potential psychological and social harms. Surrogacy can be an emotionally challenging journey and there is the potential for those who have been a part of a surrogacy arrangement to experience distress when being asked about their experiences. Steps were taken to ensure minimal distress to participants. Intended parents were consulted in the development of the data collection tools to ensure the questions posed were worded in a respectful manner. Participants could choose to not answer any question they did not want to and were informed of this on the explanatory statements (Appendix 1, 2). This was also reiterated to the interview participants at the beginning of each interview. Moreover, complimentary

access to an infertility and ART counsellor was made available to all participants and the information needed to contact the counsellor was provided on the explanatory statements. No participant utilised this service.

Surrogacy is viewed by some as controversial practice and it's possible that people may not want to disclose their arrangement, or some aspects of it, to others. This could, for example, include the disclosure of the use of donor gametes. Caution was therefore taken to protect participants' identity. The raw data were not made publicly available and only aggregated data were reported for Study Two. For Study Three, illustrative quotes from the participants are reported; however, only a description of the participants' involvement with surrogacy (surrogate/intended parent/surrogacy professional) is provided for each quote. Other characteristics, for example the participant's age and state/territory of residence, do not accompany quotes.

The participants were not expected to have any direct benefits from participating. Instead, it was anticipated that the findings would have broader community level benefits. However, many of the interview participants expressed gratitude for the opportunity to contribute to the generation of valuable knowledge on the regulation of surrogacy in Australia.

Studies Two and Three employed different strategies to obtain participant consent. Consent was implied from the Study Two participants when they submitted their responses to the survey questions. The Study Two participants were informed on the explanatory statement that they could not withdraw from the study once their responses had been submitted because no personal details were obtained. All Study Three participants signed a consent form prior to the interview (Appendix 3), and were able to review the transcript of their interview and make any changes they deemed necessary. Several participants were interested in reviewing their transcript, but did not request any changes. The voluntary nature of participation was stated in the explanatory statements and in the recruitment email for Study Three (Appendix 4).

2.5 Stakeholder engagement

Stakeholder engagement was essential for the design of this project. I engaged with various members of the Australian surrogacy community, including surrogacy lawyers, surrogacy psychologists, surrogates, intended parents and those born through surrogacy, through personal and professional contacts, as well through social media. The data collection tools used in Studies Two and Three were piloted by stakeholders who provided feedback which was then incorporated into the final versions. Stakeholders also assisted in participant recruitment for both studies, by sharing the advertisements with personal contacts and in closed surrogacy-support Facebook groups, allowing me to access an otherwise hard-to-reach group. Stakeholder engagement therefore played an invaluable role in the outcomes of this project.

Stakeholder engagement provided dissemination opportunities for the findings of Study Two. In 2022, the not-for-profit organisation, Surrogacy Australia, was lobbying the Government for the inclusion of surrogacy in Medicare rebates for ART services. At the organisation's request, I generated a white paper report detailing the findings from Study Two and their policy implications (Appendix 5). Surrogacy Australia submitted this report to the Parliamentary Friends of Women's Health group, a non-partisan forum for members of parliament to meet and interact with stakeholder groups on matters relating to women's health. Shortly after, a separate government body inquired into universal access to reproductive healthcare (The Senate 2023). Based on the findings from Study Two, I made a submission to this inquiry, advocating for Medicare rebates, which was signed in support by 13 other Australian surrogacy researchers (Appendix 6). Medicare rebates for ART services for patients engaged with surrogacy was subsequently recommended by the Community Affairs References Committee in the final report (2023).

My engagement with the surrogacy community also enabled me to raise public awareness of the practice. In 2023, I was invited to co-run and moderate a public seminar on the lived experiences of surrogacy at the Monash Bioethics Centre (Appendix 7). Through my connections with the surrogacy community, I was able to invite a surrogate and person born through surrogacy to share their lived experience.

2.6 Reflexive statement

Reflexivity involves a critical analysis of how the researcher's social, political, and cultural positionings affect the research process. Although reflexivity is typically associated with qualitative research, it is useful in all methodological approaches (Finlay 1998), including mixed-methods (Walker et al. 2013). Research can be impacted by a researcher's own ideological and personal agenda and as such, reflexivity is especially important for political and controversial topics like surrogacy (Jamieson et al. 2023).

At the beginning of this project, I had limited understanding of surrogacy beyond its depiction in the media and popular culture. I was not sure whether I was 'for' or 'against' the practice. I felt as if my feminist views and concerns for the exploitation of women were at odds with my sympathy for infertility patients and support for LGBTQI+ parenthood. I am now of the view that nothing is inherently wrong with surrogacy. Surrogacy is not a single phenomenon, but rather an 'umbrella' term to describe the myriad of contexts that arrangements can occur in (Jadva 2020). Surrogacy is neither inherently bad nor good, but like many other forms of labour and types of relationships, the context in which it occurs can result in negative or positive experiences. This view was formed following the completion of Study One and Two, which documented the spectrum of surrogacy arrangements and how they are experienced. It's likely my view was further influenced through my engagement with the surrogacy community, where I had the opportunity to meet surrogates, egg

donors, and parents through surrogacy. While the people I spoke with recounted both positive and negative experiences, none advocated for the practice of surrogacy to be prohibited.

The political climate in which this project was undertaken is also important to consider. During my candidature, the COVID-19 pandemic and the Russian Invasion of Ukraine impacted the international surrogacy market, preventing intended parents from travelling, leaving babies stranded and leaving surrogates having to care for the child (Kale 2020; Roth 2020; Kale 2022). Both events highlighted the vulnerable nature of those engaged with international surrogacy arrangements and the importance of developing a more accessible model of surrogacy in Australia.

Finally, a researcher's relationship with their participants can impact the type of data which is collected during interviews. I established friendly rapport with the research participants, and this led to rich data being collected. Commonalities between myself and the participants were having a white, upper-middle class Australian background. In a few instances, a friendly collegial relationship with the participant was pre-established through the stakeholder engagement conducted earlier in the project.

Chapter Three: Study One

Chapter Three includes an original manuscript titled ‘Experiences of surrogates and intended parents of surrogacy arrangements: a systematic review’. It was published in Reproductive BioMedicine Online in October 2022. The supplementary material for the manuscript is available in the appendices (see appendix 8).

This chapter represents Study One of the research project and addresses Objective One: to systematically review the existing literature describing the experiences of surrogates and intended parents of surrogacy arrangements.

The findings from 47 studies, published across 64 manuscripts, conducted across 12 countries and investigating predominately gestational surrogacy in a commercial setting, were analysed thematically, and reported in a narrative summary. Five key findings were identified:

1. The experiences of surrogates and intended parents of surrogacy arrangements are largely satisfactory and frequently involve positive relationships forming between one another, which they hope to maintain after birth.
2. Intended parents complete international surrogacy because of barriers they face to accessing surrogacy in their home country, including surrogacy being outlawed, access restricted to heterosexual couples, arrangements being unenforceable, and difficulties in finding surrogates in altruistic settings.
3. The ability of intended parents and surrogates to form a close relationship during international surrogacy arrangements is impacted by the physical distance and the cultural and language differences that often exist between them, and policies of some agencies preventing contact.
4. Intended parents often face legal hurdles when attempting to return home once their baby is born.
5. Multiple reports of clinical practices in India have been published, in which commercial surrogacy was accessed by foreign intended parents, which infringed on surrogates' bodily autonomy during the pregnancy and birth. Practices included compulsory accommodation away from family, diets and fetal reduction and cesarean section procedures.

Following this review's publication, further evidence has emerged from other unregulated international surrogacy destinations, including Thailand and Georgia, documenting infringements on surrogates’ bodily autonomy during the pregnancy and birth (Attawet et al. 2022; Vertommen & Barbagallo 2021). The findings from this review suggest that demand for international arrangements (and the associated unethical practices) could be reduced if the legal barriers to domestic surrogacy were alleviated. It also demonstrates that in doing so, more intended parents could complete surrogacy at home where they would face fewer social and legal hurdles. Those

opposed to all forms of surrogacy would undoubtedly reject this suggestion. However, the findings from this study challenge the claim that surrogacy is inherently harmful to surrogates (Klein 2011) by demonstrating that surrogacy is mostly experienced positively in developed countries.

3.1 Commentary

Shortly after the manuscript was published, a commentary of the findings was published by UK researchers Horsey & Mahmoud (2023). The authors welcomed the review's conclusion of improving access to domestic surrogacy in light of intended parents seeking international arrangements. They suggested this could be achieved by developing legal frameworks which provide greater legal certainty to intended parents, and greater public awareness about the legal permissibility of surrogacy.

These suggestions were informed by empirical evidence collected in the UK. In a survey of 2,233 members of the public, just 25% correctly identified that surrogacy is legal in all British jurisdictions (Progress Educational Trust 2022:15). In Horsey's prior research with surrogates, only 4% of the 99 surrogates who were surveyed agreed they should be considered legal parents at birth (2015:21).

The authors cautioned against expanding the payment that surrogates receive. This is because 71% of the surrogates in the aforementioned survey agreed that surrogates should *only* be able to claim expenses (Horsey 2015). It's important to note here, however, that Australian laws are more restrictive than UK law when it comes to surrogate expenses. Australian laws specify the expenses which can be reimbursed and that payment can only occur after the expense has been incurred. In contrast, UK law does not specify which expenses are reimbursable and surrogates and intended parents usually agree on a set payment prior to conception (Department of Health & Social Care 2018). It's therefore possible this finding is not generalisable to the Australian population of surrogates. Attitudes towards surrogate payment in Australia is explored further in Study Three.

3.2 Manuscript

RBMO

REVIEW

Experiences of surrogates and intended parents of surrogacy arrangements: a systematic review

BIOGRAPHY

Ezra Kneebone obtained her BSc and GradDipRepSc from Monash University. She is currently a PhD candidate investigating surrogacy in Australia and the needs of surrogates and intended parents. Her research interests include the legal, social and ethical implications of assisted reproductive technologies.

Ezra Kneebone[1,*], Kiri Beilby[1], Karin Hammarberg[2]

KEY MESSAGE

This review summarizes research on the experiences of surrogates and intended parents and identifies their motivations for surrogacy and the challenges they may face. These findings can inform national policies, to better meet the needs of those seeking surrogacy, and best practice guidelines to support clinics in providing surrogacy services.

ABSTRACT

This review reports on the experiences of surrogates and intended parents of surrogacy arrangements. The findings from 47 studies, conducted across 12 countries and investigating predominately gestational surrogacy in a commercial setting, were analysed thematically, and are reported in a narrative summary. The findings reveal that the experiences of both parties of surrogacy arrangements are largely satisfactory and frequently involve positive relationships forming between one another, which they hope to maintain after birth. Some surrogacy participants experience challenges, particularly when the surrogate and intended parents reside in different countries. Intended parents face legal hurdles when returning home after an international arrangement. Concerningly, multiple reports of clinical practices in India have been published, in which commercial surrogacy was accessed by foreign intended parents, which infringed on surrogates' autonomy during the pregnancy. Intended parents turn to these international destinations when they face barriers to accessing surrogacy in their home country, such as the prohibition of commercial surrogacy. Looking beyond the altruistic and commercial dichotomy may alleviate some of the barriers to domestic surrogacy. Collaboration between professional fertility organizations to develop best practice guidelines can support clinics in providing international surrogacy services that minimize the risk of harm to those accessing care.

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KEYWORDS
Assisted reproductive technologies
Cross-border reproductive care
Gestational carrier
Infertility
Psychosocial
Surrogacy

INTRODUCTION

Surrogacy involves an individual (the surrogate) carrying and giving birth to the child of another individual or couple (the intended parent or parents). Although surrogacy is an age-old phenomenon (*Turp et al., 2018*), the development of IVF in the 1980s greatly increased the appeal of such arrangements as it meant that surrogates could relinquish a child who they were not genetically related to (*Spar, 2005*).

In traditional surrogacy, the surrogate conceives through artificial insemination with spermatozoa from an intended father or a donor and is genetically related to the child. In gestational surrogacy, an embryo created from the intended parents, donor gametes, or both, is transferred to the surrogate who carries the pregnancy but is not genetically related to the child. Gestational surrogacy has now largely replaced traditional arrangements (*Spar, 2005*) and is becoming an increasingly common family building option (*Perkins et al., 2016*; *White, 2016*).

Legal responses to surrogacy differ widely between jurisdictions. Surrogacy is forbidden by law in many countries, e.g. Sweden and Italy (*Salama et al., 2018*). Whether surrogacy agreements can be legally enforced and the process of assigning legal parenthood also varies between jurisdictions where surrogacy is permitted (*Trimmings and Beaumont, 2011*). In some jurisdictions, the intended parents are granted legal parenthood at birth, whereas, in others, legal parenthood is initially assigned to the surrogate and must be transferred to the intended parents through a post-birth process, which may require a court. There may be restrictions on who can be granted legal parenthood in terms of patient demographics, such as marital status and sexual orientation (*Ethics Committee of the American Society for Reproductive Medicine, 2022*). It is because of these varying legal responses that many intended parents are unable to access surrogacy in their home country.

Surrogacy practices are commonly distinguished between commercial and altruistic models (*van Zyl and Walker, 2013*). Commercial surrogacy arrangements are facilitated through commercial markets (composed of brokers, agents, lawyers and clinics) that provide services to intended parents, such as professional surrogate matching and management of the surrogacy pregnancy. Surrogates in commercial arrangements receive financial reward. Conversely, in altruistic surrogacy, the surrogate only receives compensation for surrogacy-related expenses and any intermediaries facilitating arrangements must operate on a non-profit basis. The distinction between commercial and altruistic surrogacy is contested because what constitutes compensation in altruistic arrangements has been widely interpreted and payment does not negate altruistic motivations (*Law Commission of England and Wales and Scottish Law Commission, 2019*). Nevertheless, this distinction has shaped legal responses to surrogacy, and although some jurisdictions allow commercial arrangements, e.g. Iran, Israel, Russia and some states in the USA, others only permit altruistic surrogacy, e.g. Australia, Canada, Greece, the Czech Republic and the UK (*Salama et al., 2018*).

This diversity in regulatory approaches has led intended parents to travel to access arrangements in destinations where arrangements are easier to obtain and where legislation may be more permissive (*Trimmings and Beaumont, 2011*; *Gonzalez, 2020*). International surrogacy is part of a growing phenomenon of people travelling to access fertility treatment, known as cross-border reproductive care (*Salama et al., 2018*). No international framework currently exists for regulating the quality and safety of international surrogacy practices (*Trimmings and Beaumont, 2011*; *Fenton-Glynn, 2016*), which has raised significant ethical and legal concerns (*Gonzalez, 2020*). India, Mexico and Thailand were once popular international destinations for commercial surrogacy until concerns regarding surrogate and child welfare prompted access being restricted to citizens only (*Cohen, 2015*; *Parry and Ghoshal, 2018*; *Schurr and Militz, 2018*). In response to this, the industry has shifted to include Ukraine, Russia and the Republic of Georgia (*Rudrappa, 2021*). Political and academic discourse in response to these matters include suggestions to establish national policies that help meet the demand for surrogacy domestically and reduce the need for their citizens to seek surrogacy overseas (*Millbank, 2015*; *Fenton-Glynn, 2016*; *Newson, 2016*; *Gunnarsson Payne, 2018*), as well as global efforts to reduce the risk of harm for those engaged in international arrangements (*Trimmings and Beaumont, 2011*; *Davis, 2012*; *Salama et al., 2018*; *Gonzalez, 2020*).

Regulators and policy makers can, and should, be informed by the lived experiences of those involved in surrogacy (*Jackson et al., 2017*). Prior reviews of the psychosocial aspects of surrogacy report that surrogates are altruistically motivated, and arrangements are a positive experience for surrogates and intended parents (*Edelmann, 2004*; *Ciccarelli and Beckman, 2005*; *Ruiz-Robledillo and Moya-Albiol, 2016*; *Soderstrom-Anttila et al., 2016*). The earlier research included in these reviews predominantly investigated domestic surrogacy in high-income countries, and little attention was given to arrangements in other contexts. A more recent review identified a more diverse body of research; however, this review exclusively analysed qualitative reports of surrogacy relationships (*Gunnarsson Payne et al., 2020*). The review reported that relationships are influenced in part by the cultural, legal and economic context of the arrangement. Considering surrogacy is a growing worldwide phenomenon with diverse regulatory responses, an updated review of the experiences of surrogacy arrangements is warranted to guide policy reform.

The aim of this review is to evaluate and summarize the existing evidence on the experiences of surrogates and intended parents of gestational and traditional surrogacy arrangements conducted in altruistic and commercial settings.

MATERIALS AND METHODS

This review is reported in line with the Preferred Reporting Items for Systematic Reviews and Meta-Analyse (PRISMA) guidelines (*Page et al., 2021*). A review protocol was specified in advance and registered with PROSPERO (CRD42020176740).

Data sources and searches

A search strategy was created using Subject Headings and text words relating to 'surrogacy arrangement' and 'experience'. The databases of *Embase* (*Ovid*), *MEDLINE* (*Ovid*), *PsycINFO* (*Ovid*) and *Scopus* were searched on 4 June 2021. The search strategies were

adapted as needed for each platform and are presented in the Supplementary Material. The reference lists of included reports were also checked for additional studies that met the inclusion criteria.

Study inclusion

Qualitative, quantitative and mixed-methods studies published in an English language peer-reviewed journal between January 2011 and June 2021, which reported on the experience of surrogates, intended parents, or both, of a surrogacy arrangement, were included. Studies reporting on the experiences of participants other than intended parents, surrogates, or both, such as surrogacy agents, were excluded if data were not disaggregated.

The search results were exported into *Covidence*, and the titles and abstracts were screened for eligibility by EK. The full texts were then independently assessed for inclusion by two authors (EK and KB or KH). Any discrepancies were discussed until a consensus was reached.

Data extraction and analysis

The following data were extracted: study design; study aim; study methodology; participant characteristics; surrogacy arrangement characteristics (gestational/traditional and altruistic/commercial); and key findings. EK imported the data into an Excel sheet.

The key findings from the included studies were synthesized following a convergent qualitative synthesis approach (*Pluye and Hong, 2014*). In convergent qualitative synthesis, the findings from qualitative, quantitative and mixed-methods studies are synthesized and transformed into qualitative findings. To generate the qualitative findings, EK analysed the key findings from the included studies thematically using an iterative process, which involved reading and re-reading the papers, coding the data and collating codes into themes and subthemes (*Braun and Clarke, 2006*). Codes were assigned in an inductive manner so that the codes (and subsequently the themes and sub-themes) were derived from the findings of the included studies. All authors discussed and agreed on the final themes and sub-themes.

To produce a narrative summary, the data relevant to each theme and sub-theme were collated and textually summarized. In the results section, themes are reported chronologically by whether they relate to experiences before, during or after pregnancy.

Quality assessment

The QualSyst scoring system was used to assess the methodological quality of the included reports (*Kmet et al., 2004*). The scoring system comprises a 10- and 14-item checklist for qualitative and quantitative studies, respectively. Possible scores range from 0 to 1. Each article was scored independently by two authors (EK and KB or KH), and any discrepancies were discussed until a consensus was reached.

RESULTS

Search results

The database search yielded 2154 records (FIGURE 1). Of these, 744 were duplicates and 1212 were excluded after title and abstract screening. Of the remaining 198 records, 141 were excluded after full-text screening. Thirteen records were identified from reference lists of included studies, six of which were excluded. In total, 64 reports with findings from 47 unique studies met the inclusion criteria and are included in this review. A list of the included reports is presented in the Supplementary Material.

Study characteristics

Study setting

The studies were conducted in 12 countries: India (n = 13), the USA (n = 7), Iran (n = 4), Canada (n = 3), Israel (n = 3), Australia (n = 2), Italy (n = 2), Russia (n = 2), Sweden (n = 2), the UK (n = 2), Greece (n = 1) and the Czech Republic (n = 1). Five studies were multinational.

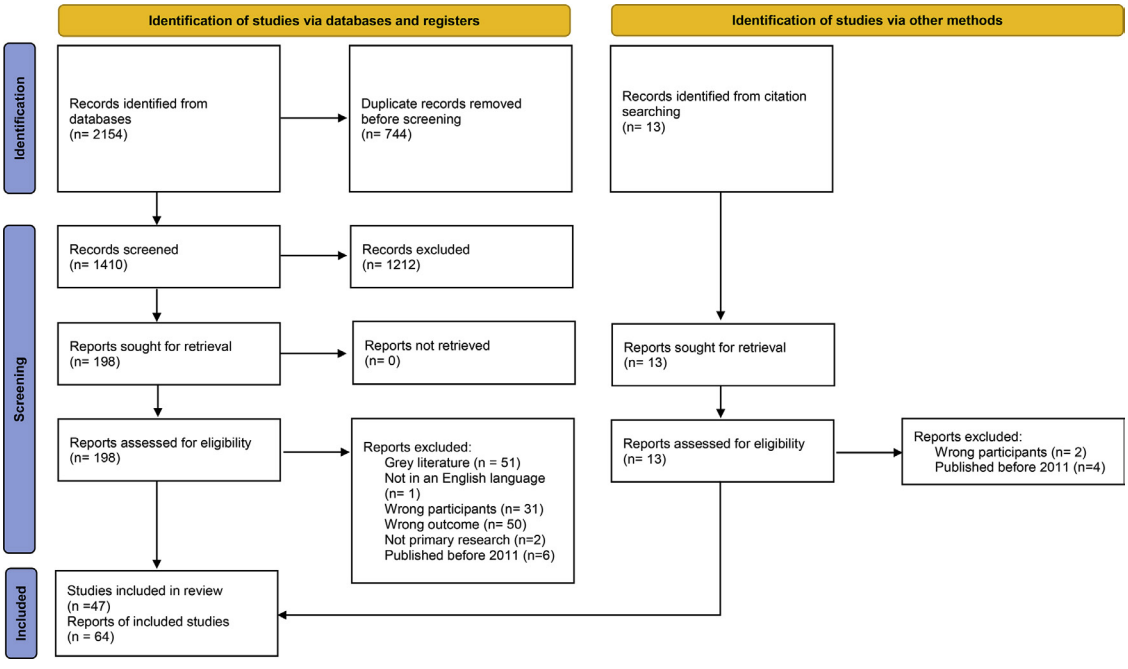

FIGURE 1 PRISMA flow diagram of study identification and selection (*Haddaway and McGuinness, 2022*)

Nine studies were conducted online (*Berend, 2012*; *Everingham et al., 2014*; *Hammarberg et al., 2015*; *Berend, 2016*; *Bromfield, 2016*; *Jadva et al., 2018*; *Jadva et al., 2019*; *Lindheim et al., 2019*; *Yee and Librach, 2019*; *Yee et al., 2019a*; *Yee et al., 2019b*; *Doskočil, 2020*; *Ferolino et al., 2020*; *Khvorostyanov and Yeshua-Katz, 2020*), and the remaining were single- or multi-site studies conducted predominantly within fertility clinics, agencies, hospitals, surrogate housing and participants' homes.

Study design and data sources

Six were quantitative studies and, of these, four were online surveys (*Everingham et al., 2014*; *Hammarberg et al., 2015*; *Jadva et al., 2018*; *Jadva et al., 2019*; *Lindheim et al., 2019*; *Yee and Librach, 2019*; *Yee et al., 2019a*) and two were interview studies (*Blake et al., 2017*; *Lamba et al., 2018*). One study used standardized validated measures (*Lamba et al., 2018*), including the Anxiety, Depression and Stress Scale (*Bhatnagar, 2011*) and the Maternal Fetal Attachment Scale (*Cranley, 1981*), whereas the remaining studies used study-specific questions and interview guides.

Forty-one were qualitative studies. Of these, 25 were interview studies; 12 collected data through interviews in addition to participant observation, case studies, photographs, or posts made within surrogacy internet forums, three studies analysed posts made within surrogacy internet forums; and one analysed online blogs written by surrogates.

Participants

Twenty-four studies reported surrogate experiences, 15 reported intended parent experiences and eight reported on both. Sample sizes ranged from 3–259.

Twenty-four studies reported on people participating in commercial gestational surrogacy; five studies reported on altruistic gestational arrangements; and 12 studies included a combination of arrangement types, although they were predominantly commercial and gestational. Six studies did not specify all surrogacy characteristics (*Zandi et al., 2014*; *Riggs 2015*; *2016*; *Riggs et al., 2015*; *Ivry and Teman, 2018*; *Lindheim et al., 2019*; *Golboni et al., 2020*; *Malmquist and Höjerström, 2020*).

Key findings

The main findings pertaining to intended parents and surrogates from the included studies are presented in TABLE 1 and TABLE 2, respectively. Results of studies that reported on the experiences of both parties are presented in both tables. In these tables the terms 'surrogate' or 'intended parent' are used to describe people who are considering surrogacy or who are participating in or have participated in an arrangement. The terms 'intended mother' and 'intended father' are used when studies specify gender. The term 'foreign' is used to describe participants who were not residents of the country where the study was conducted.

Quality assessment

The quantitative reports received QualSyst scores ranging between 0.83 and 1, with a mean of 0.96. The qualitative reports received QualSyst scores ranging between 0.35 and 0.9, with a mean of 0.78. Ten studies did not report whether they received ethics approval (*Pande, 2011*; *Mukherjee and Sekher, 2015*; *Munjal-Shankar, 2015*; *Pande, 2015*; *Ziff, 2017*; *Siegl, 2018*; *Africawala and Kapadia, 2019*; *Gupta and Prasad, 2019*; *Teman, 2019*; *Ziff, 2019*; *Speier, 2020*).

Main findings

Nine themes and 12 sub-themes emerged from the thematic analysis. The themes were becoming an intended parent; becoming a surrogate; surrogate and intended parent relationships; intended parents' involvement with the pregnancy; challenges for surrogates; relinquishment of the child; legal challenges after international surrogacy; desire for an ongoing relationship; and overall experience. The key findings pertaining to each theme are summarized below and are reported chronologically based on whether they related to before, during or after pregnancy.

Pre-pregnancy experiences

Theme 1: becoming an intended parent

Motivations for surrogacy

Reasons for intended parents undergoing surrogacy included unsuccessful attempts at natural or assisted conception (*Saravanan, 2013*; *Everingham et al., 2014*; *Arvidsson et al., 2015*; *Hammarberg et al., 2015*; *Carone et al., 2017b*; *Gezinski et al., 2018*), wanting to have a genetically related child (*Riggs, 2016*; *Blake et al., 2017*; *Carone et al., 2017b*), being ineligible to adopt (*Arvidsson et al., 2015*; *Gezinski et al., 2018*; *Fantus and Newman, 2019*), wanting to raise a child from birth (*Carone et al., 2017b*; *Fantus and Newman, 2019*), and perceiving the process as easier than adoption (*Riggs, 2016*; *Carone et al., 2017b*; *Smietana 2017*).

Obtaining surrogacy information

Intended parents obtained information about surrogacy from multiple sources, such as online forums (*Hammarberg et al., 2015*; *Gezinski et al., 2018*; *Jadva et al., 2018*; *Doskočil, 2020*), surrogacy agencies (*Hammarberg et al., 2015*; *Gezinski et al., 2018*) and by talking to other intended parents (*Hammarberg et al., 2015*; *Gezinski et al., 2018*; *Jadva et al., 2018*). Intended fathers in Canada encountered a lack of same-sex inclusive resources (*Fantus, 2020*).

Choosing surrogacy destination

Intended parents pursued international surrogacy because arrangements were outlawed in their home country (*Carone et al., 2017a*), access was restricted to heterosexual couples (*Lustenberger, 2017*), they were unable to find an altruistic surrogate (*Everingham et al., 2014*; *Jadva et al., 2018*), the agreement was unenforceable (*Everingham et al., 2014*; *Jadva et al., 2018*) and because international arrangements provided a degree of privacy (*Riggs, 2015*). Factors that were important to intended parents when deciding which country to pursue surrogacy in included the ability to develop a relationship with the surrogate (*Carone et al., 2017a*; *Jadva et al., 2018*) and low costs (*Lustenberger, 2016*; *Jadva et al., 2018*).

Social support

The reaction that intended parents received from friends and family members about their decision to pursue surrogacy varied significantly between studies. Three studies conducted with intended parents from Australia, Canada and the USA reported that most participants received supportive reactions (*Hammarberg et al., 2015*; *Blake et al., 2017*; *Fantus, 2020*), whereas one multinational study reported that the intended parents received little support from friends and family because of negative public perceptions of surrogacy (*Gezinski et al., 2018*).

TABLE 1 STUDY CHARACTERISTICS OF REPORTS ON THE EXPERIENCES OF INTENDED PARENTS OF SURROGACY.

First author (year); country	Qual Syst score	Study aim	Study design, data collection, ethics approval	Place of recruitment; participant characteristics	Key findings related to intended parent experiences
Pande (2011); India.	0.75	To evaluate how foreign IPs and surrogates negotiate the culturally anomalous nature of surrogacy in India.	Ethnography; interviews and participant observation.	Fertility clinic; eight foreign heterosexual IPs and 42 surrogates.	IMs constructed their journey as a mission to help an Indian family from poverty.
Deomampo (2013); India.	0.90	To examine the experiences of foreign IPs and surrogates and perceptions of space and mobility in surrogacy in India.	Ethnography; interviews and participant observation.	Fertility clinics, online sources and snowballing; 39 foreign heterosexual and same-sex IPs and 35 surrogates.	The experiences of IPs were marked by relative immobility and waiting within spaces of luxury. IPs conflated the geographic space of India with the embodiment of the child's identity through its gestation by an Indian surrogate mother in India.
Saravanan (2013); India.	0.80	To examine the manifestations of exploitation in commercial surrogacy in India.	Ethnomethodology; interviews and participant observations.	Surrogacy clinic and snowballing; four foreign heterosexual IPs and 13 surrogates.	IPs were not provided with complete information about possible extra costs they would incur after delivery.
Zandi (2014); Iran.	0.90	To explain the nature of concerns of IMs.	Qualitative; interviews.	Fertility clinics and research institute; 12 heterosexual IMs.	IMs felt concerned about surrogacy being a social taboo, disclosing to others, altered maternal and child's identity, the health of fetus and surrogate, an unknown surrogate and a lack of preparation for maternal role.
Everingham (2014); Australia.	1	To investigate the characteristics of IPs and their behaviour in relation to surrogacy arrangements.	Cross-sectional; online survey.	Surrogacy and gay parenting online forum; 259 heterosexual, same sex and single IPs.	Most Australian IPs consider or use international commercial arrangements. Laws banning commercial surrogacy do not seem to deter those seeking surrogacy arrangements.
Hammarberg (2015); Australia.	1	To explore how IPs reach their decision to pursue international surrogacy; what other avenues they have considered and tried to have children; their sources of information and support; and perceptions of how others view their decision.	Refer to *Everingham (2014)*.		Most heterosexual IPs had tried to conceive naturally and with ART. Most IPs felt supported in their decision to try international surrogacy by close family and friends. Information was mostly sourced online and from people who had completed surrogacy.
Arvidsson (2015); Sweden.	0.80	To explore how Swedish IPs negotiate the exploitation discourses on surrogacy.	Qualitative; interviews.	Infertility websites and snowballing; 20 heterosexual and same-sex IPs.	IPs described surrogacy as a last resort to parenthood, defied the exploitation discourse by emphasizing the surrogates financial gain and advocated for the legalisation of surrogacy in Sweden.
Deomampo (2015); India.	0.65	To consider the ways in which states and institutions define parents and make citizens, as well as how IPs challenge these processes in India.	Refer to Deomampo (2013).		IPs described obtaining citizenship as a stressful, bewildering and maddening process. In many cases, the relative ease of the processes was dependent on the IPs country of origin.
Pande (2015); India.	0.90	To analyse how surrogacy actors negotiate anxieties about global inequities that underpin international surrogacy.	Ethnography; interviews and participant observations.	Fertility clinic and snowballing; 12 IPs and 52 surrogates.	IMs mitigate these anxieties by establishing ties with the gestating fetus through emphasizing their genetic connection with the baby and the labour and pain involved in their surrogacy journey.
Papaligoura (2015); Greece.	0.80	To explore the experiences of Greek IMs of a surrogacy arrangement and the birth of the surrogacy child.	Qualitative; interviews.	Fertility clinics; seven heterosexual IMs.	Surrogacy became the IMs affairs, with their partners offering backstage support. A close bond was developed with the surrogates during the pregnancy but abruptly discontinued after the birth. IMs were grateful to their surrogate.
Riggs (2015a); Australia.	0.60	To analyse whether Australian IPs would have entered an onshore commercial surrogacy arrangement had it been legal.	Qualitative; interviews.	Surrogacy support group; 21 heterosexual, same sex and single IPs.	International surrogacy was perceived by some to be safer and to provide a degree of privacy. For others, domestic surrogacy was perceived as less challenging than international surrogacy.
Riggs (2015b); Australia.	0.50	To analyse the experiences of same sex IFs of support from clinics in India.	Refer to Riggs (2015a).		IFs reported more instances of negative experiences of support than positive. Many participants viewed the clinic as mercenary or solely clinical in their approach.
Ziv (2015); Israel.	0.75	To analyse the emotional experience of pregnancy for same-sex IFs in international surrogacy arrangements.	Qualitative; interviews.	Surrogacy agencies; 16 same-sex IFs.	IFs felt frustration and anxiety owing to their distance from the surrogate and their inability to experience the presence of the fetus. This affected their development of parental sense.
Lustenberger (2016); India.	0.60	To analyse the place of intimacy in the encounters between Israeli gay men and Indian surrogates.	Ethnography; interviews and participant observation.	Surrogacy agency; 17 foreign IPs.	IFs felt affection and appreciation towards the surrogates and felt the need to meet them to bring the relationship to a good end.

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TABLE 1 *(continued)*

First author (year); country	Qual Syst score	Study aim	Study design, data collection, ethics approval	Place of recruitment; participant characteristics	Key findings related to intended parent experiences
Mitra (2016); India	0.80	To reconstruct the experiences of surrogates and IPs of loss and grief when they fail to conceive a surrogate pregnancy.	Qualitative; interviews, participant observation and case studies.	Fertility clinics; 15 foreign heterosexual IPs and 42 surrogates.	IPs experienced a failure in addition to the losses they might have incurred during their previous fertility treatments. The experience of loss of the intended parents was recognized by the clinic but their grief was given no space.
Riggs (2016); Australia.	0.70	To examine how Australian IPs orient to the contentious nature of international surrogacy.	Rhetorical analysis; interviews.	Refer to Riggs (2015a).	IPs valorized genetic relatedness and constructed international surrogacy as a less tenuous route to family formation.
Carone (2017a); Italy	0.90	To explore the experience of Italian same sex IFs of international surrogacy and of the relationship with their surrogate before and after birth.	Phenomenology; interviews.	Gay and lesbian parenting association and snowballing; 30 same sex IFs.	IFs felt a loss of control over the pregnancy, but the surrogate facilitated them in emotionally connecting with their developing child. IFs viewed the surrogate as an 'aunty'.
Carone (2017b); Italy.	0.60	To explore the experiences and motivations for having a child through surrogacy of single IFs and the decisions involved in following this path.	Qualitative; interviews.	Gay parenting association, single parent online groups and snowballing; 33 single IFs.	Most chose surrogacy because they wanted a genetic relation to their child, and they felt that surrogacy would be more legally secure compared with adoption.
Lustenberger (2017); India.	0.85	To address the encounters of Israeli same sex IFs with the bureaucracy of international surrogacy.	Refer to *Lustenberger (2016)*.		IFs were highly involved and emotionally invested in the processes, which seldom worked out smoothly, and brought about many moments of standstill, insecurity and frustration.
Blake (2017); US.	0.83	To explore the motivations of same sex IFs for having a child through surrogacy and the decisions involved in following this path to parenthood.	Cross-sectional; interviews.	Surrogacy agencies, gay father events and snowballing; 74 same-sex IFs.	Most IFs chose surrogacy because they considered adoption to be a less desirable, accessible path to parenthood, or both.
Smietana (2017); US.	0.85	To identify and unpack the narratives that frame American surrogacy from surrogates, same sex IFs and professionals who take part in the process.	Qualitative; interviews and participant observations.	Surrogacy clinics, surrogacy agencies, online surrogacy and LGBTQ community forums, and snowballing; 37 foreign same sex and single IFs and 20 surrogates.	IFs perceived surrogacy as an altruistic gift. Kinship relationships developed between the IFs and the surrogates.
Gezinski (2018); multinational.	0.80	To explore the experiences of IPs in international surrogacy arrangements.	Phenomenology; interviews.	Surrogacy non-government organizations and support groups; 10 German, Australian, Israeli, English and North American heterosexual and same-sex IPs.	International surrogacy was described as a long and arduous journey only undertaken after multiple failed attempts at 'natural' conception. IPs were primarily motivated to undertake international surrogacy by health complications and legal restrictions in their home country. IPs worried about disclosure.
Smietana (2018); US.	0.90	To examine the reproductive decision-making process of same sex IFs in the USA.	Refer to *Smietana (2017)*.		Reproductive decision making was contingent on multiple factors including access to the fertility industry, economics, social support and their emotions and values.
Jadva (2018); UK.	1	To explore the reasons for surrogacy of UK IPs, their preparations for the birth and the practical and legal challenges faced after the birth.	Cross-sectional; online survey.	Surrogacy agency and family law firm; 203 heterosexual, same sex and single IPs.	IPs mostly pursued surrogacy in the UK and the USA to have a relationship with the surrogate and because of a better legal framework, respectively. Parents experienced greater delay and difficulties in obtaining the necessary documents for their return in countries other than the USA.
Jadva (2019); UK.	1	To examine differences and similarities in the relationships with the surrogate of UK IPs during the pregnancy and after the birth based on the sexuality of the IPs or surrogacy destination.	Refer to *Jadva (2018)*.		IPs who had surrogacy in the UK and US felt very involved in the pregnancy compared with those who had surrogacy in Asia. Parents who had surrogacy in the UK and the US described positive relationships with their surrogate.
Lindheim (2019); multinational.	0.88	To survey the decision-making and challenges among same sex cisgender IFs using gestational surrogacy.	Cross-sectional; online survey.	Gay parenting website; 78 North American, French, Swiss, Canadian, Portuguese, Spanish, Dutch, Australian, Thai and Cambodian same sex IF couples.	Most couples found the decision to actively pursue surrogacy 'not difficult'. Conceiving twins was 'important to very important' in over one-half of the couples. Most couples chose to transfer two embryos.

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TABLE 1 *(continued)*

First author (year); country	Qual Syst score	Study aim	Study design, data collection, ethics approval	Place of recruitment; participant characteristics	Key findings related to intended parent experiences
Arvidsson (2019); Sweden.	0.9	To investigate the experiences of Swedish IPs seeking official parenthood status when using international surrogacy.	Refer to *Arvidsson (2015)*.		The process was complex and frustrating. The need for adoption as grounds for parenthood made IPs feel questioned as parents, negatively affecting parental welfare.
Fantus (2019); Canada.	0.8	To explore the motivations of same sex IFs and gestational surrogates to pursue surrogacy in Canada.	Qualitative; interviews.	LGBT organizations, online surrogacy consulting services and social media; 15 same sex and single IFs and six surrogates.	IFs indicated a lifelong desire for children. Procreative decisions were shaped through relationships with partners, siblings and parents, and with regard to Canada's evolving socio-political context.
Doskocil (2020); Czech Republic.	0.8	To survey the most searched and discussed surrogacy-related topics on Czech online discussion forum websites.	Qualitative; comments posted on surrogacy-related threads on an online parenting forum.	NA	IPs were able to obtain relatively precise information about what to do and how to contact a surrogate.
Malmquist (2020); Sweden.	0.85	To analyse how same sex IFs construct the surrogate and donor and the discursive effects of these constructions.	Critical discourse analysis; interviews.	Social media and snowballing; 22 same-sex IFs.	Surrogates were primarily constructed as a close family member. The egg donors were in some interviews constructed as close family members, whereas others talked about them as distant acquaintances.
Fantus (2020); Canada.	0.90	To explore how Canada's socio-political and cultural context influences surrogacy for same sex IFs.	Refer to *Fantus (2019)*.		IFs encountered inadequate same sex inclusive resources and insufficient provider competencies.
Fantus (2021); Canada.	0.90	To explore relationships between same sex IFs and gestational surrogates in Canada.	Refer to *Fantus (2019)*.		IFs expected to develop intimate and long-term relationships with the surrogate. A deeper and more intimate connection evolved during pregnancy for most IFs.
Golboni (2020); Iran.	0.80	To investigate the decision-making process of Iranian IPs to use a surrogate.	Grounded theory study; interviews.	Infertility centres and snowballing; 16 heterosexual IPs.	The hope to have a child was an influential concept in IPs decision to pursue surrogacy.

IF, intended father; IM, intended mother; IP, intended parent; NA, not applicable.

Theme 2: becoming a surrogate

Motivations for becoming a surrogate

Reasons for becoming a commercial or altruistic surrogate included a desire to re-experience pregnancy (*Fantus and Newman, 2019*; *Ziff, 2019*) and wanting to help people overcome infertility (*Saravanan, 2013*; *Imrie and Jadva, 2014*; *Berend, 2016*; *Smietana, 2017*; *Toledano and Zeiler, 2017*; *Fantus and Newman, 2019*; *Yee et al., 2019b*; *Riddle, 2021*). Commercial surrogates in India, Iran and the USA were also motivated by the ability to financially support their own family (*Pande, 2011*; *Saravanan, 2013*; *Karandikar et al., 2014*; *Mukherjee and Sekher, 2015*; *Munjal-Shankar, 2015*; *Berend, 2016*; *Gupta and Prasad, 2019*; *Rozee et al., 2020*; *Taebi et al., 2020*). Surrogates who underwent multiple arrangements were primarily motivated by wanting to help couples have a sibling for an existing child (*Imrie and Jadva, 2014*).

For surrogates in the USA and Canada, the decision was facilitated by knowing someone who had experienced infertility (*Imrie and Jadva, 2014*; *Fantus and Newman, 2019*; *Ziff, 2019*; *Yee et al., 2019b*), knowing someone who had been a surrogate (*Fantus and Newman, 2019*; *Yee et al., 2019b*) and the visibility of surrogates online (*Fantus and Newman, 2019*). Surrogates in India, however, reported being approached by surrogacy agents (*Karandikar et al., 2014*; *Gupta and Prasad, 2019*; *Rozee et al., 2020*) and hearing about surrogacy from friends and family (*Karandikar et al., 2014*; *Rozee et al., 2020*).

Social support

Some husbands of surrogates were initially apprehensive about their wife's decision (*Mukherjee and Sekher, 2015*; *Munjal-Shankar, 2015*; *Africawala and Kapadia, 2019*; *Ziff, 2019*; *Rozee et al., 2020*). Surrogates were able to convince their husbands by explaining that no extra-marital relationships would occur (*Munjal-Shankar, 2015*; *Africawala and Kapadia, 2019*; *Rozee et al., 2020*); that they would not be genetically related to the child they would carry (*Ziff, 2019*); and that they would receive financial reward (*Ziff, 2019*). Some husbands of surrogates viewed the financial reward their wife would receive as a threat to their authority within the family (*Africawala and Kapadia, 2019*).

Some surrogates disclosed their decision to become a surrogate to close friends and immediate family members as they required emotional support (*Yee et al., 2019b*) and help with looking after their own family during the pregnancy (*Karandikar et al., 2014*; *Gupta and Prasad, 2019*; *Ziff, 2019*; *Taebi et al., 2020*). Many surrogates kept their decision a secret from others (*Karandikar et al., 2014*; *Tehran et al., 2014*; *Munjal-Shankar, 2015*; *Karandikar et al., 2017*; *Gupta and Prasad, 2019*; *Yee et al., 2019b*; *Rozee et al., 2020*; *Taebi et al., 2020*) to avoid being perceived negatively as a result of stigma associated with surrogacy (*Karandikar et al., 2014*; *Tehran et al., 2014*; *Munjal-Shankar, 2015*; *Gupta and Prasad, 2019*;

TABLE 2 STUDY CHARACTERISTICS OF REPORTS ON THE EXPERIENCES OF SURROGATES OF SURROGACY.

First author (year); country	Qual Syst Score	Study aim	Study design; data collection	Place of recruitment; participant characteristics	Key findings related to surrogate experiences
Pande (2011); India.	0.75	Refer to *Pande (2011)* in TABLE 1.			Surrogates perceived surrogacy as a God-given opportunity to earn money and help their family. The surrogates formed kinship ties with the IMs.
Berend (2012); USA.	0.90	To analyse the cultural and emotional work surrogates engage in on a surrogacy support website.	Cyberethnography, threads on an online surrogacy forum.	NA	Surrogates conceptualized their journey as one of shared love and hoped for a long-term friendship with their IPs. Surrogates felt betrayed if IPs cut ties with them.
Saravanan (2013); India	0.80	Refer to *Saravanan (2013)* in TABLE 1.			Surrogates were confined to surrogacy housing, not given a contract copy, subjected to unnecessary medical interventions, not provided with medical insurance and expected to breastfeed and bond with the children without any psychological counselling.
Fisher (2013a); Canada.	0.85	To determine surrogates' meaning and experience of gestational surrogacy.	Narrative; interviews and photographs of participants.	Private Facebook group and snowballing; eight surrogates.	The narratives of surrogates depicted non-negotiable rules and behaviour expectations, including no grieving of the child; not forming a close relationship with the child; not making demands on IPs, keeping surrogacy a secret; and only displaying selflessness.
Fisher (2013b); Canada.	0.55	To analyse the religious themes and metaphors that surrogates take up in describing their experiences.	Refer to *Fisher (2013a)*.		Spirituality and religion were often central to women's decisions to become surrogates, accepting medical discourse, negotiating events during their surrogate pregnancy, and within their rationale for understanding their surrogacy experiences retrospectively.
Deomampo (2013a); India.	0.90	Refer to Deomampo (2013) in TABLE 1.			Surrogates were confined to surrogacy housing where their nutrition, health and daily activities were monitored. Surrogates experienced higher levels of stress and anxiety because of restrictions on their mobility and separation from their families.
Deomampo (2013b); India.	0.75	To trace the complexities of agency, constraint and inequality in the lives of Indian surrogates and agents.	Refer to Deomampo (2013) in TABLE 1.		Surrogates reported a lack of transparency and power in negotiating contracts but would not confront doctors and lawyers on issues related to their payment for fear of losing their contract.
Karandikar (2014); India.	0.70	To understand the motivations of surrogates and the role of family and community in their decision.	Qualitative; interviews.	Fertility clinic; 15 surrogates.	Motivations for surrogacy were financial in nature. Surrogates reported stigma from extended family and community forcing them to leave their homes and relocate after surrogacy
Tehran (2014); Iran.	0.85	To assess the emotional experiences of surrogates.	Phenomenology; interviews.	Fertility clinic; eight surrogates.	Surrogates did not view the child as their own. During the pregnancy, they worried about the child's health, the effect surrogacy would have on their family and worried about disclosure. Consequences of surrogacy included pregnancy complications, having no religious legitimation or social acceptance and receiving insufficient payments.
Imrie (2014); UK	0.9	To examine contact arrangements and relationships between surrogates and surrogacy families and the surrogates' motivations and psychological health.	Qualitative; interviews.	Surrogacy organizations and fertility clinics; 34 surrogates.	Most arrangements were viewed as positive experiences. The primary motivation given for multiple surrogacy arrangements was to help couples have a sibling for an existing child.
Pande (2015); India.	0.90	Refer to *Pande (2015)* in TABLE 1.			Surrogates established kinship ties with the developing child and IMs. Surrogates emphasized the ties they have with the baby because of shared substances, blood and sometimes breast milk.
Mukherjee (2015); India.	0.35	To explore the implications of surrogacy on surrogates in India.	Qualitative; interviews.	Not reported; nine surrogates.	Surrogates were financially motivated, and their husbands were supportive of their decision. Many were not informed well about the procedure while being recruited and felt apprehensive about the process. The relationship with the IPs was good.
Munjal-Shankar (2015); India.	0.65	To bring to light the everyday issues that surrogates face with respect to informed consent and autonomy.	Qualitative; interviews.	Fertility clinic; eight surrogates.	The permission of surrogates to undergo fetal reduction was not sought. Surrogates were not informed that they would have to live in surrogacy housing. In the housing, the surrogates were confined indoors and had to eat the provided food.
Bromfield (2016); USA.	0.90	To describe the framing of the experiences by gestational surrogates who keep blogs.	Phenomenology; blogs written by surrogates in the USA.	NA	Surrogates expressed pride in surrogacy work, identification as a member of a special community, commitment to surrogacy education and advocacy, emphasis on the child not being the surrogate's baby and the importance of the relationship with the IPs.

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TABLE 2 *(continued)*

First author (year); country	Qual Syst Score	Study aim	Study design; data collection	Place of recruitment; participant characteristics	Key findings related to surrogate experiences
Mitra (2016); India.	0.80	Refer to Mitra (2016) in **TABLE 1**.			Surrogates who failed to conceive after an embryo transfer grieved the non-arrival of 'good news' as a loss in their quest to achieve social mobility.
Berend (2016); USA.	0.75	To document surrogates' accounts of genetics, gestation and parenthood and their collectively negotiated notions about relatedness.	Refer to *Berend (2012)*		Surrogates maintained that intent and love are firmer bases of parenthood than biogenetic connection. In gestational surrogacy, genetic relatedness between the child and the IPs strengthens claim to parenthood but lack thereof does not call parenthood into question. The biogenetic connection of traditional surrogates to the child they carry is never considered to be grounds for claims to motherhood.
Ziff (2017); USA.	0.80	To examine the narratives of US surrogates who are married to members of the military.	Qualitative; interviews.	Surrogacy online support groups, closed surrogacy social media groups and snowballing; 33 surrogates.	The participants drew upon their military understandings of sacrifice, duty and responsibility to interpret their surrogacy experience as one that made a difference in the lives of others, financially contributed to their own family and gave them a sense of importance.
Toledano (2017); multinational.	0.75	To examine how altruistic surrogates in gestational arrangements with a friend or family member narrated, negotiated and dealt with their surrogacy experience.	Qualitative; interviews.	Surrogates in the media and fertility clinics; seven Australian, Canadian and North American surrogates.	The women offered to act as a surrogate to their friend or family member in response to seeing their frustration and sorrow when failing to conceive. Surrogates felt a sense of responsibility towards a successful pregnancy and helping the IPs create a bond with the developing child.
Smietana (2017); USA.	0.85	Refer to *Smietana (2017)* in **TABLE 1**.			Surrogacy was perceived as an altruistic gift. Kinship relationships developed between the surrogates and the IFs.
Karandikar (2017); India.	0.75	To understand surrogates' experiences of emotional and physical stress and how this tension affects their lives.	Refer to *Karandikar (2014)*.		Surrogates experienced stress about their physical health, their psychological well-being, and the well-being of their families and children.
Teman (2018); multinational.	0.70	To explore the views of surrogates on motherhood and parenthood, relationships and relatedness.	Ethnography; interviews and posts made within online surrogacy forums.	Not reported; 46 surrogates.	Surrogates did not view the child as their own. Genetics and intent constituted parenthood for Israeli and American surrogates, respectively. Surrogates expected to develop a bond with their IPs and viewed their contribution as exceptional moral work.
Ivry (2018); Israel.	0.65	To explore the way that surrogacy and normal pregnancy share cultural assumptions about pregnancy.	Ethnography; participant observations, interviews and posts made within online surrogacy forums.	Not reported; 46 surrogates.	The surrogates drew upon the cultural script of regular pregnancy, where women do not bond with their gestating fetus out of fear of an unsuccessful pregnancy and disregard the gestational influence on fetal health, to detach from the fetus and distance themselves from the pregnancy.
Lamba (2018); India.	0.95	To examine the psychological wellbeing of Indian surrogates and the nature of their prenatal bond to the baby.	Longitudinal; interviews and standardized questionnaires.	Fertility clinic; 50 surrogates.	Surrogates had higher levels of depression during pregnancy and after birth, displayed lower emotional connection to the fetus and greater care towards the healthy growth of the fetus, than the comparison group of non-surrogate expectant mothers.
Siegl (2018); Russia.	0.50	To explore the emotional labour that Russian surrogates fulfil and are expected to fulfil.	Qualitative; interviews and participant observations.	Surrogacy agency and fertility clinic; 40 surrogates.	The emotional labour of surrogates involved keeping emotions at bay and treating it like a business opportunity.
Ziff (2019); USA.	0.80	To examine how military spouses negotiate the decision to become a surrogate with their husband and how the two navigate surrogacy together.	Refer to *Ziff (2017)*.		The decision-making process was egalitarian, and surrogacy was described as a collaborative experience. Most surrogates had their husbands present during the arrangement and were noted as a support system.
Yee (2019a); Canada.	0.75	To determine the experiences of gestational surrogates.	Cross-sectional; Online survey	Surrogacy agencies, fertility lawyers, social media and online surrogacy forums; 184 surrogates.	Many surrogates viewed surrogacy as a positive experience and as something meaningful and impactful to other people's lives. Most surrogates had harmonious relationships with their IPs.
Yee (2019b); Canada.	1	To evaluate the birth experiences of gestational surrogates and their relationships with IPs.	Refer to *Yee (2019a)*.		Surrogates assisting Canadian IPs had an overall better birthing experience compared with those assisting non-residents. There was none or little struggle with the relinquishment of the baby in 96.9% of cases.

(continued on next page)

TABLE 2 *(continued)*

First author (year); country	Qual Syst Score	Study aim	Study design; data collection	Place of recruitment; participant characteristics	Key findings related to surrogate experiences
Yee (2019c); Canada.	1	To explore the views and retrospective experiences of women who had been a gestational surrogate in a Canadian context.	Refer to *Yee (2019a)*.		Being a surrogate for domestic IPs and having a viable pregnancy outcome were determinants of satisfaction. Nine out of 10 participants were comfortable with carrying a pregnancy for same-sex male couples and cancer survivors. Less than one-third were comfortable with being a surrogate for heterosexual couples over 50 years.
Teman (2019); Israel.	0.80	To examine the narratives of Jewish-Israeli surrogates' personal stories and the way this becomes a 'single story'.	Narrative; interviews.	Closed social media groups; 20 surrogates.	Surrogates constructed a narrative of an idealized, romanticized, utopian story that includes an intimate bond with the intended parents, an epic birth and a happy ending that is shared publicly.
Africawala (2019); India.	0.80	To explore the experience of surrogates and to identify their perceived role in decision-making to participate in surrogacy.	Ethnography; interviews and participant observations.	Surrogacy clinic; 41 surrogates.	A total of 68% played a lead role in making the decision and convinced their reluctant spouse about participation in surrogacy; 17% experienced it as a mutually initiated endeavour wherein both women and their spouse were favourable towards participation; and 15% initiated surrogacy on the request or insistence of their spouse.
Gupta (2019); India.	0.60	To discuss the experiences and perceptions of surrogates.	Qualitative; interviews.	Surrogacy clinics and surrogacy hostel; 10 surrogates.	The surrogates faced stigma, feelings of guilt for being separated from their families and negative side-effects from the hormone injections required for the embryo transfer procedure. The financial compensation was empowering.
Fantus (2019); Canada.	0.80	Refer to *Fantus (2019)* in **TABLE 1**.			Factors that influenced decision making included a love of being pregnant, familiar connections to surrogates and infertility, access to surrogacy information through online communities and empathy towards gay men's right to parent.
Doskocil (2020); Czech Republic.	0.80	Refer to Doskocil in **TABLE 1**.			Surrogates used the discussion sites to offer their services.
Ferolino (2020); multinational.	0.80	To explore gestational surrogates' meaning and experience of relinquishment in commercial surrogacy.	Phenomenology; interviews.	Social media and snowballing; three American and Greek surrogates.	Surrogacy was described as a different kind of motherhood, where the relinquishment of the child was viewed as an altruistic experience and encouraged them to perceive their body in a positive way.
Khvorostyanov (2020); Russia.	0.80	To determine the types of stigma experiences discussed by members of an online support forum.	Qualitative; Comments within an online fertility forum.	NA	Surrogates experienced four types of stigma: bad mothers, bad wives, pathetic losers and greedy women.
Rozee (2020); India.	0.85	To analyse surrogates' experiences in commercial international commercial surrogacy in India.	Qualitative; interviews.	Clinics and agencies; 33 surrogates.	The decision to become a surrogate was generally decided with the husband to improve the socioeconomic condition of the family. They had clear views on the child and their work. Surrogates faced social stigma. They had no autonomy in the process although they did not express complaints.
Speier (2020); US.	0.60	To examine the reproductive mobilities imagined and experienced by North American surrogates in international surrogacy.	Ethnography; interviews.	Surrogacy agencies; 12 surrogates.	Surrogates travelled for their treatment cycles; however, their motility was limited and structured by medical appointments and the necessity of bed rest. Surrogates were generally not allowed to travel during their pregnancies. Surrogates were commonly invited to visit the IPs after birth, although not all surrogates had the means to do so.
Taebi (2020); Iran.	0.80	To determine surrogates' experiences, and problems they confront during surrogacy and how they try to solve these problems.	Qualitative; interviews.	Fertility and infertility centres; 15 surrogates.	Surrogates were financially motivated. They experienced pain and suffering, but overall, their experience was perceived positively. They formed an emotional connection with the child but did not view it as their own. IPs, family, the healthcare system and the community were noted as support systems.
Riddle (2021); USA.	0.80	To examine the role of religion and spirituality in how commercial gestational surrogates in the USA conceptualize the experience of reproductive losses.	Qualitative; interviews.	Surrogacy agencies, surrogate websites and snowballing; 17 surrogates.	The decision to become a surrogate was rooted in altruism. Surrogacy was viewed as a religious or spiritual calling and provided existential meaning and purpose to life. Surrogates processed their losses within the context of their beliefs as a means of coping and conceptualizing loss within the experience of surrogacy.
Fantus (2021); Canada.	0.90	Refer to *Fantus (2021)* in **TABLE 1**.			Surrogates expected to develop long-term relationships with their IPs, reported mostly positive perceptions of the relationship, and attempted to show restraint in the frequency of contact post-birth.

IF, intended father; IM, intended mother; IP, intended parent; NA, not applicable.

Khvorostyanov and Yeshua-Katz, 2020; Rozee et al., 2020; Taebi et al., 2020), to avoid insensitive comments as a result of social misconceptions (Yee et al., 2019b) and to protect the privacy of the intended parents (Fisher and Hoskins, 2013).

Experiences during the pregnancy

Theme 3: surrogate and intended parent relationships

Perspective of intended parents

Intended parents who underwent surrogacy in Canada, Greece and the USA established positive relationships with their surrogate (Papaligoura et al., 2015; Ziv and Freund-Eschar, 2015; Carone et al., 2017a; Gezinski et al., 2018; Malmquist and Höjerström, 2020; Fantus, 2021), sometimes describing them as family members (Carone et al., 2017a; Smietana 2017; Malmquist and Höjerström 2020). In international arrangements, relationships with surrogates in these countries were maintained by visiting the surrogates in their home (Ziv and Freund-Eschar, 2015) and by using email, Skype and text messages (Carone et al., 2017a).

Intended parents who pursued surrogacy in Mexico, Thailand and India reported minimal contact with the surrogate (Ziv and Freund-Eschar, 2015; Lustenberger, 2016; Gezinski et al., 2018) due to communication difficulties (Jadva et al., 2018). Intended parents who pursued surrogacy in India felt affection and appreciation towards their surrogate (Lustenberger, 2016) and perceived commercial surrogacy to be a mutually beneficial process as the surrogates received financial reward (Pande, 2011; Arvidsson et al., 2015; Lustenberger 2016; Riggs, 2016).

Surrogates' perspective

Most surrogates described a positive relationship with their intended parents (Mukherjee and Sekher, 2015; Bromfield, 2016; Yee and Librach, 2019; Yee et al., 2019b; Fantus, 2021), which grew in closeness as the pregnancy progressed (Yee and Librach, 2019; Fantus, 2021). Some clinics in India and Russia, however, discouraged the surrogates from having contact with the intended parents (Siegl, 2018; Gupta and Prasad, 2019). Surrogates described their bond with the intended parents in different ways. Surrogates in India described their intended mothers as elder sisters (Pande, 2011; Mukherjee and Sekher, 2015; Pande, 2015; Gupta and Prasad, 2019), whereas surrogates in the USA and Israel described their intended parents as someone who they had chemistry and an intimate relationship with (Berend, 2012; Teman and Berend, 2018).

Theme 4: involvement of intended parents with the pregnancy

Some intended parents in international arrangements described a perceived loss of control over the pregnancy (Ziv and Freund-Eschar, 2015; Carone et al., 2017a). The geographical distance from the surrogate hindered the intended parents in developing a sense of parental identity and emotionally connecting to their child (Ziv and Freund-Eschar, 2015). Intended parents used various strategies to overcome this distance, such as establishing regular contact with the surrogate (Carone et al., 2017a), collecting memorabilia about the pregnancy (Carone et al., 2017a), wearing a fake pregnancy stomach, and sharing music and audio recordings of their voice with the surrogate to play to the baby during the pregnancy (Pande, 2015). In a quantitative study with intended parents residing in the UK, those who underwent surrogacy domestically or in the USA were more likely to feel involved in the pregnancy compared with those who pursued surrogacy in India or Thailand (Jadva et al., 2019).

Theme 5: challenges for surrogates

Emotional challenges

Some surrogates worried about the health of the developing child (Tehran et al., 2014) and reported a sense of enormous responsibility for a successful outcome as it was most likely the intended parent's last opportunity to have a child (Toledano and Zeiler, 2017). In India, surrogates were confined to accommodation provided by the clinic throughout the pregnancy (Saravanan, 2013; Mukherjee and Sekher, 2015; Karandikar et al., 2017). This caused distress as they were separated from their families (Karandikar et al., 2017; Gupta and Prasad, 2019). For some surrogates, living remotely from their communities was perceived positively (Lamba et al., 2018) as it protected them from stigma (Karandikar et al., 2017). A quantitative study measuring the psychological wellbeing of surrogates in India reported that surrogates had higher levels of depression than a comparison group of expectant mothers (Lamba et al., 2018).

Physical challenges

Surrogates experienced physical challenges, such as pregnancy complications (Tehran et al., 2014), physical pain (Taebi et al., 2020) and negative side-effects from the hormone injections required for the embryo transfer procedure (Gupta and Prasad, 2019). Surrogates in India were subjected to medical procedures that they had no say over, such as fetal reduction and caesarean sections (Saravanan, 2013; Munjal-Shankar, 2015; Gupta and Prasad, 2019).

Post-pregnancy experiences

Theme 6: relinquishment of the child

Surrogates in the USA, Canada, Israel and Iran did not view the child they had carried as their own (Tehran et al., 2014; Berend, 2016; Bromfield, 2016; Ivry and Teman, 2018; Teman and Berend, 2018; Yee et al., 2019b) because they did not equate the act of gestation to parenthood (Berend, 2016; Teman and Berend, 2018; Yee et al., 2019b). Instead, the intent to have the child (Berend, 2016; Teman and Berend, 2018), being genetically related to the child (Ivry and Teman, 2018; Teman and Berend, 2018) and raising the child were recognized as the hallmarks of parenthood (Teman and Berend, 2018). Surrogates from the USA, Greece, and Canada reported a few problems with relinquishment (Fisher and Hoskins, 2013; Yee and Librach, 2019; Ferolino et al., 2020).

Studies in India reported a more complicated picture. Some studies reported that the surrogates did not view the child as their own (Mukherjee and Sekher, 2015; Munjal-Shankar, 2015; Rozee et al., 2020) and had little problems with relinquishment (Rozee et al., 2020), whereas others reported that the surrogates made claims on the child because of the labour involved with gestation (Pande, 2015; Gupta and Prasad, 2019). Furthermore, some surrogates in India developed feelings of attachment to the baby when they were required to care for the child after birth because the intended parents arrived late in the country, the intended parents wanted the child to be breastfed or the intended parents wanted a full-time nanny during their stay in India (Saravanan, 2013; Karandikar et al., 2017).

Theme 7: legal challenges after international surrogacy

Intended parents found the process of obtaining citizenship and legal

parenthood for their child born through an international arrangement stressful and frustrating (*Deomampo, 2015*; *Lustenberger, 2017*; *Arvidsson et al., 2019*). Intended parents who were required to adopt their child to be legally recognized as their child's parent felt unfairly treated (*Deomampo, 2015*; *Arvidsson et al., 2019*). Intended parents in India were not provided with complete information from clinics about extra costs that they would incur after delivery and were subsequently faced with unexpected fees associated with the surrogate's caesarean section, neonatal treatment (most children were born premature), and with obtaining the official documents required to leave the country (*Saravanan, 2013*).

Theme 8: desire for an ongoing relationship

Perspective of intended parents

Many intended parents wanted ongoing contact with the surrogate (*Pande, 2011*; *Carone et al., 2017a*; *Fantus, 2021*); however, the frequency of contact decreased after birth (*Papaligoura et al., 2015*). Intended parents in the UK who underwent surrogacy domestically or in the USA were more likely to plan ongoing contact with the surrogate than those who pursued surrogacy in Asia (*Jadva et al., 2019*). Some intended parents in India did not maintain contact with the surrogate as they were apprehensive the surrogate would change her mind (*Pande, 2015*).

Perspective of the surrogate

For surrogates, contact with intended parents generally lessened after birth (*Berend, 2012*; *Fantus, 2021*), and they attempted to show restraint in the frequency of contact to respect the intended parent's transition to parenthood (*Fantus, 2021*). Many surrogates expected to develop a long-term relationship with their intended parents (*Berend, 2012*; *Teman and Berend, 2018*; *Fantus, 2021*) and felt disappointed or betrayed if the intended parents cut contact after the birth (*Berend, 2012*; *Pande, 2015*; *Bromfield, 2016*; *Teman and Berend, 2018*).

Theme 9: overall experience

Surrogates drew upon religious and spiritual metaphors to construct surrogacy as a personal calling to help people create a family (*Fisher, 2013*; *Yee et al., 2019b*; *Riddle, 2021*) or to earn money to support their own families (*Pande, 2011*), and viewed their journey as a positive and rewarding experience (*Imrie and Jadva, 2014*; *Bromfield, 2016*; *Yee et al., 2019b*; *Ferolino et al., 2020*; *Rozee et al., 2020*; *Taebi et al., 2020*). No differences in satisfaction were reported between gestational and traditional surrogates (*Imrie and Jadva, 2014*). Overall, intended parents were satisfied with their decision to pursue surrogacy (*Blake et al., 2017*; *Carone et al., 2017b*).

DISCUSSION

This systematic review summarizes the evidence on the experiences of surrogates and intended parents from reports published in the past decade. The studies were conducted across different cultural and regulatory contexts and, although some findings were generally consistent across settings, other findings were specific to certain contexts. Our findings support previously conducted reviews that conclude that the experiences of both parties of surrogacy arrangements are largely satisfactory and frequently involve positive relationships forming between one another, which they hope to maintain after birth (*Edelmann, 2004*; *Ciccarelli and Beckman, 2005*; *Ruiz-Robledillo and Moya-Albiol, 2016*; *Soderstrom-Anttila et al., 2016*). In certain contexts, participants faced challenges, including social stigma for surrogates in India, Iran, and Russia and legal difficulties for intended parents after international surrogacy. Concerningly, there were multiple reports of clinical practices in India that prevented surrogates from contacting the intended parents and having a say in medical procedures or where they would reside during the pregnancy.

A large proportion of the included studies investigated international commercial surrogacy, most frequently in India. Commercial surrogacy was largely unregulated in India and was eventually outlawed in 2016 owing to concerns about surrogate welfare (*Parry and Ghoshal, 2018*). Although the findings pertaining to India may not be generalizable to all other contexts, the studies highlight how limited public understanding of surrogacy can negatively affect surrogate experience through stigmatization, as was noted in a smaller body of research conducted in Russia (*Khvorostyanov and Yeshua-Katz, 2020*) and Iran (*Tehran et al., 2014*; *Taebi et al., 2020*). Furthermore, the findings highlight how clinical practices infringing on surrogates autonomy can arise in settings in which profit-driven clinics operate with no regulatory oversight (*Shetty, 2012*). Further reports of oppressive living environments, poor surrogate health care and forced late-term abortions have been described in Ukraine and Kenya where international surrogacy practices remain unregulated (*Roache, 2018*; *Lepapa, 2021*).

Alleviating some of the barriers to domestic surrogacy would reduce the number of intended parents engaging with the international market. For jurisdictions that permit only altruistic surrogacy, this would require increasing the number of individuals who are willing to act as surrogates. This could be achieved by expanding the financial compensation that altruistic surrogates receive to better reflect the all-encompassing physical and emotional work carried out as part of the arrangement (*Millbank, 2015*). A moderate payment akin to full-time minimum wage over the 40 weeks of pregnancy has been suggested (*Alghrani and Griffiths, 2017*). There is evidence to suggest that intended parents in altruistic settings support paying surrogates (*Everingham et al., 2014*; *Jackson et al., 2017*); however, support among altruistic surrogates seems to be divided and warrants further investigation (*Horsey, 2018*; *Yee et al., 2019b*).

Many countries are undergoing policy reform in response to the increasing demand for surrogacy. Policy legislating altruistic surrogacy in the UK, Ireland and New Zealand is under reform to provide greater legal certainty to surrogates and intended parents by streamlining the post-birth transfer of parentage process (*Latham, 2020*; *O'Callaghan, 2021*; *Wilson et al., 2021*). Australia is also considering opportunities for greater national consistency in altruistic surrogacy policies across their various states and territories (*Council of Attorneys-General, 2019*). Furthermore, Portugal and New York have recently passed legislation permitting commercial surrogacy arrangements (*Crary, 2021*; *Ranjan, 2021*), same-sex couples are now eligible to pursue surrogacy in Israel and Malta is considering permitting altruistic arrangements (*Calleja, 2022*; *Peleg, 2022*). Although surrogacy laws are becoming more liberal in these contexts, this is not the case worldwide.

In Sweden, a government report into surrogacy concluded that legislation permitting arrangements should not be introduced owing to concerns of surrogate autonomy (*Gunnarsson Payne, 2018*). It is because of the complex ethical considerations that surrogacy raises that reaching a global consensus towards the regulation of surrogacy is unlikely to occur (*Smietana et al., 2021*).

At a domestic level, some governments have published guidance for their citizens pursuing surrogacy or becoming a surrogate (*Department of Health and Social Care, 2018*; *Victorian Assisted Reproductive Treatment Authority, 2021a*; *2021b*). Professional organizations have also developed guidelines for cross-border reproductive care, including the International Federation of Fertility Societies (*IFFS Standards and Practice Committee, 2011*) and the European Society of Human Reproduction and Embryology (*Shenfield et al., 2011*). A similar collaborative effort between professional organizations to develop surrogacy specific guidelines that set minimum standards and address the highly complex nature of international surrogacy arrangements might help minimize the risks of harm to people in such arrangements (*IFFS Practice Committee, 2010*). From our findings, we have identified two strategies to improve the experiences of surrogacy participants. These include providing all international surrogacy participants with legal advice to understand their rights and responsibilities and with psychological counselling to manage any stigma faced from their communities.

Future research

From this review, three areas for future research were identified as they lacked representation within the included literature. Investigation into the experiences of those in unsuccessful arrangements was lacking and could guide counselling procedures and clinics in providing patient-centred care. Research into the experiences of those participating in altruistic domestic arrangements was also under-represented, particularly in arrangements between friends or family members and in their attitudes towards the role of compensation, surrogacy agencies and recognition of parenthood. Investigation into these two areas could inform national policy to improve access to domestic surrogacy.

Although the evidence included in this review was generally of high quality as indicated by the QualSyst tool, many of the qualitative reports did not include reflexivity. Future publications should endeavour to include this as reflexivity is critical for ensuring qualitative research is conducted rigorously (*Jootun et al.,. 2009*).

CONCLUSIONS

Surrogacy can be a positive and rewarding experience for surrogates and intended parents, but some participants may also face social and legal challenges. Looking beyond the altruistic and commercial dichotomy may allow jurisdictions to introduce policies that adequately meet the demand for surrogacy. Finally, best practice guidelines can support clinics in providing international surrogacy services that minimize the risk of physical and psychological harm to those accessing care.

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DATA AVAILABILITY

No data was used for the research described in the article.

SUPPLEMENTARY MATERIALS

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Chapter Four: Study Two

Chapter Four includes an original manuscript titled ‘Australian intended parents’ decision-making and characteristics and outcomes of surrogacy arrangements completed in Australia and overseas’. It was published in Human Fertility in November 2023.

This chapter represents Study Two of the research project and addresses Objectives Two and Three: to describe the factors that influence Australian intended parents’ decision to pursue surrogacy in Australia or internationally; and to compare the characteristics and outcomes of these arrangements.

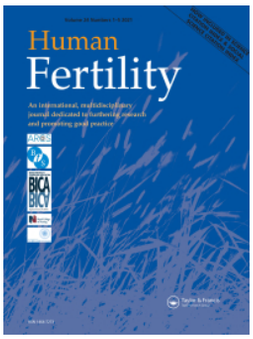
An online survey was completed by 319 Australians who were planning on, in the process of, or who had completed surrogacy. Survey questions were informed, in part, by the findings of Study One, such as the questions ascertaining barriers and enablers of domestic surrogacy (see appendix nine for the full questionnaire). This study had six key findings:

1. Most of the participants were planning on completing, currently completing, or had completed international surrogacy (64%, 203/319). The most common reason for doing so was that surrogacy in Australia looked like a too long and complicated process (69%, 140/203).
2. Almost all survey respondents who were planning on completing, currently completing, or had completed international surrogacy reported they would have rather pursued surrogacy in Australia had it been possible (92%, 186/203).
3. The most common reason for planning on completing, currently completing, or having completed surrogacy in Australia was wanting to be involved in the surrogacy pregnancy (50%, 77/155).
4. Some intended parents did not receive formal Australian legal advice (35%, 38/108) or implications counselling (46%, 48/108) when completing international surrogacy.
5. International gestational surrogacy commonly involved anonymously donated eggs (37%, 36/98) and the transfer of more than one embryo (41%, 40/98).
6. Compared to arrangements completed in Australia, international surrogacy more frequently resulted in multiple birth (0% vs 11%), preterm birth (11% vs 20%) and neonatal intensive care stays (11% vs 20%).

These findings expand upon the findings from Study One by providing further evidence for the need to improve access to surrogacy in Australia. International surrogacy arrangements frequently lacked practices which are mandated in Australia to protect the welfare of all parties involved. These include counselling, legal advice, known or identity-release gamete donation and single embryo transfer. Moreover, this study demonstrates that most intended parents would prefer to complete surrogacy at home, suggesting that if arrangements were more easily accessible in

Australia, less intended parents would go overseas. Strategies for how to achieve this are explored in Study Three.

4.1 Manuscript



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Australian intended parents' decision-making and characteristics and outcomes of surrogacy arrangements completed in Australia and overseas

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ABSTRACT

Markets for international surrogacy often arise in jurisdictions with limited regulations regarding assisted reproductive technologies. In some countries, like Australia, regulated domestic surrogacy services are often sidestepped for international providers. This study describes how Australian intended parents decide where to pursue surrogacy and compares the characteristics and outcomes of arrangements completed within and outside of Australia. The findings show that, although intended parents preferred undergoing surrogacy in Australia, perceiving the process as too long and complicated was a common reason to pursue an international arrangement. Multiple embryo transfer, anonymous gamete donation, and a lack of counselling were common in international surrogacy arrangements. When compared to surrogacy arrangements completed in Australia, where single embryo transfer is mandatory for surrogacy cycles, the rates of multiple birth, preterm birth and neonatal intensive care in international surrogacy were higher. These findings raise concerns about the health and welfare of international surrogacy participants, particularly the surrogates and children. In lieu of any international instrument regulating surrogacy, improving access to surrogacy at a domestic level would reduce the number of people engaging with international arrangements and in turn, reduce the potential for harm.

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Introduction

Surrogacy arrangements involve an individual (a surrogate) conceiving, carrying a pregnancy, and giving birth under the premise of relinquishing the child to the intended parents at or soon after birth. This process provides the opportunity of parenthood to those for whom pregnancy poses a health risk and those who are unable to carry a child, including some infertile women, single men, and same sex-male couples.

Whether there is a genetic relationship between the surrogate and the child born through surrogacy is dependent on the mode of conception used in the arrangement. In 'traditional' surrogacy, conception is achieved through insemination with sperm from an intended father or a donor and a resulting child will be genetically related to the surrogate. In 'gestational' surrogacy, an embryo is created from the intended parents' and/or donor gametes and transferred to the surrogate, so any resulting child is *not* genetically related to the surrogate.

'Cross-border' or 'international' surrogacy describes the growing global phenomenon of people seeking surrogacy arrangements in jurisdictions outside of their own. International surrogacy may be utilised for various reasons. Surrogacy arrangements are forbidden by law in many nations (Salama et al., 2018), people of certain sexual orientations or relationship status may be restricted from becoming intended parents in some jurisdictions (Ethics Committee of the American Society for Reproductive Medicine, 2022), and the surrogacy laws in an international destination may be preferred to the ones at home (Everingham et al., 2014; Fenton-Glynn, 2022; Horsey, 2018; Horsey et al., 2015; Jadva et al., 2021). In some jurisdictions where surrogacy is permitted, such as Australia and the United Kingdom (UK), the majority of children born through surrogacy are born overseas (Department of

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Home Affairs, 2020; Jadva et al., 2021; Newman et al., 2021).

Health and safety concerns have been raised in relation to international surrogacy practices (Knoche, 2014) due to the varying standards of care for assisted reproductive technologies (ART) across the world (Ethics Committee of the American Society for Reproductive Medicine, 2022). Best practices, such as psychosocial counselling (psychological and social implications of the arrangement) and legal advice for surrogacy participants (Blyth et al., 2011), single embryo transfer (Human Fertilisation and Embryology Authority, 2021; International Federation of Fertility Societies Standards and Practice Committee, 2011; Shenfield et al., 2011) and identity-release or open gamete donation (Human Fertilisation and Embryology Authority, 2021; National Health and Medical Research Council, 2017), may not always be available, or required, in every jurisdiction.

It is difficult to obtain evidence on international surrogacy practices. There is no international framework regulating surrogacy (Fenton-Glynn, 2016; Trimmings & Beaumont, 2011), nor is there a global registry recording the details of arrangements (Deonandan, 2015; Salama et al., 2018). Destinations commonly utilised by intended parents also change over time. Many jurisdictions have been prompted to restrict surrogacy access to citizens only following concerns regarding surrogate and child welfare (Cohen, 2015; Parry & Ghoshal, 2018; Schurr & Militz, 2018). Following this, the international industry, which has been described as a 'reproweb' for its flexible nature, expands into new settings with poor or liberal surrogacy regulations (König & Jacobson, 2023; Whittaker et al., 2022).

In 2013, 259 Australians who were considering, were in the process of, or who had completed surrogacy were surveyed (Everingham et al., 2014; Hammarberg et al., 2015; Stafford-Bell et al., 2014). The major barrier to accessing surrogacy in Australia as reported by the study participants was a shortage of women willing to act as surrogates (Everingham et al., 2014). Of respondents that had completed surrogacy overseas, 45% reported their child was born prematurely (Stafford-Bell et al., 2014). In contrast, just 16% of babies born through ART in Australia during 2013 were preterm (Macaldowie et al., 2015). While the transfer of multiple embryos is the primary cause of multiple births and adverse perinatal outcomes in ART (Adamson & Norman, 2020), the study did not collect information regarding the use of single or multiple embryo transfer or the incidence of multiple birth.

The available evidence on the perinatal outcomes of surrogacy suggests that they are comparable to other forms of ART (Söderström-Anttila et al., 2016; Yau et al., 2021). However, this evidence stems from single site studies and fails to capture the differences in ART practices that may exist between jurisdictions. The aims of this study were to describe how intended parents in Australia decide where to pursue surrogacy and to compare the characteristics and outcomes of arrangements completed within and outside of Australia.

Materials and methods

Context

Australia is a federation of six states and two self-governing territories. There are no national laws governing surrogacy in Australia and arrangements are instead regulated at the state and territory level. There are some differences across the jurisdictions' approaches to regulating surrogacy arrangements; however, the fundamental principles remain the same. These include: (1) the surrogate cannot receive financial payment from the intended parents beyond the reimbursement of expenses; (2) the surrogate is the legal mother of the child upon birth and parentage can only be transferred to the intended parent/s through a court order; and (3) the arrangement cannot be legally enforced, meaning the surrogate is under no legal obligation to relinquish the child at or soon after birth, but nor are the intended parents obliged to accept the child (Sifris & Page, 2021).

The various state and territory laws stipulate the requirements for parentage to be transferred and this is where the discrepancies are mostly seen between Australia's jurisdictions, with some being more restrictive than others (Karpin & Millbank, 2020). Heterosexual couples, single women and same-sex female couples with a medical indication for surrogacy, single men and same-sex male couples are eligible to become parents through surrogacy in most states and territories. However, there are some exceptions. Gay male couples and single men are excluded from accessing surrogacy in Western Australia (Parliament of Western Australia, 2008) and single individuals are not eligible in the Australian Capital Territory (Australian Capital Territory Parliamentary Counsel, 2016).

It is also a requirement across all Australian jurisdictions that prior to treatment, the intended parents and surrogate must receive legal advice from a legal practitioner and psychosocial counselling by a qualified counsellor (Johnson, 2015). Egg donors must also receive psychosocial counselling prior to donation

(Karpin & Millbank, 2020). However, in some states and territories, post-birth psychosocial counselling is also required for surrogacy participants (Allan, 2019).

Australian fertility clinics must comply with ethical guidelines governing the use of ART in clinical practice (National Health and Medical Research Council, 2017; Reproductive Technology Accreditation Committee, 2021). As part of these guidelines, clinics are only permitted to perform single embryo transfer in surrogacy arrangements. Furthermore, if a donor is required, the donor must consent to the release of their identifying information once the donor-conceived individual turns 18 years of age.

Ethical approval

The study was approved by the Monash University Human Research Ethics Committee (MUHREC 28359).

Participants and recruitment

Participants were recruited between August and November 2021. Representatives of two surrogacy not-for-profit organizations, Surrogacy Australia and Growing Families, disseminated information about the survey through their email list and social media accounts. An Australian family lawyer who specialises in surrogacy advertised the survey on their social media accounts and within the Australian Surrogacy Community closed Facebook group. Finally, personal contacts of the researchers were invited to participate through email. Australian citizens and permanent residents were eligible to participate if they had completed surrogacy, were in the process of completing surrogacy, or were planning on pursuing surrogacy in the future. Participants who were in a relationship were asked to complete only one survey per couple to avoid data from the same surrogacy arrangement being reported twice. Before participants were able to access the survey questions, they were provided with participant information and consent to participate in the study was implied if participants submitted their survey responses.

Survey development

An anonymous online survey with predominantly fixed-choice questions was hosted through Qualtrics. Questions were informed by the authors' prior research (Everingham et al., 2014; Hammarberg et al., 2015; Kneebone et al., 2022; Stafford-Bell et al., 2014), similar published studies (Jadva et al., 2019, 2021; Lindheim et al., 2019), and one author's (SE) experience of surrogacy and surrogacy advocacy. Survey questions were refined through an iterative process involving consultation with parents through surrogacy. The survey included 73 questions and was structured into three sections.

The first section assessed respondents' motivations for surrogacy, information and support needs, and considerations for domestic and international arrangements. This section was available to all respondents (i.e. those who had completed surrogacy, those in the process of completing surrogacy and those who were planning on pursuing surrogacy). The second section asked questions about attempts at engaging with surrogates and the outcomes of these engagements. Section two was available to those who had completed surrogacy and those in the process of completing surrogacy. The final section assessed the characteristics and outcomes of completed surrogacy arrangements and was available to those who had completed surrogacy. If respondents had completed surrogacy more than once, they were asked to report on their most recent arrangement.

Statistical analysis

Data were imported from Qualtrics to SPSS and analyzed descriptively. Responses to the fixed choice questions are reported as percentages and number of respondents. Continuous data are reported as means when the data are symmetrically distributed and medians when they are skewed. 'Gestational length' is reported in categories defined by the International Glossary on Infertility and Fertility Care (Zegers-Hochschild et al., 2017). 'Professional surrogacy providers' include any individual or organization responsible for the recruitment and screening of surrogates, as well as the facilitation of the arrangement on behalf of intended parents (i.e. surrogacy agencies or fertility clinics). Respondents were not required to answer all survey questions. Where responses were missing, these are identified as 'not reported'.

Results

Of the 334 respondents that began the survey, 320 met the eligibility criteria and completed the survey. One participant was excluded due to the ambiguity of their responses. Of the remaining participants, 43% had completed at least one surrogacy arrangement ($n = 136$), 28% were in the process of completing their first surrogacy arrangement ($n = 90$), and 29% were planning on pursuing surrogacy ($n = 93$). The mean

age of respondents was 40 years (range 24–66). The gender, household income and relationship status are presented in Table 1. Respondents were asked to provide their gender and household income at the time of completing the survey, while relationship status was asked in relation to when they decided to pursue surrogacy. Over half of the respondents' median annual income was greater than $182,000, double the median household income for Australians in 2019–2020 (Australian Bureau of Statistics, 2022). Most respondents were partnered, with only 11% pursuing surrogacy as a single person.

Approximately two-thirds of respondents considered and/or attempted one or more alternative parenting options before deciding to pursue surrogacy ($n = 215$), with adoption (68%, $n = 147$), natural conception (43%, $n = 92$), and assisted conception (40%, $n = 87$) being the three most frequently contemplated/attempted options. Respondents who considered or attempted adoption ultimately decided to pursue surrogacy due to the perceived long wait times associated with adoption (71%, $n = 105$) and a desire to raise a genetically related child from birth (57%, $n = 84$). Respondents accessed information about surrogacy from multiple sources, most frequently online sources including closed Facebook surrogacy groups (66%, $n = 209$), the websites of non-profit surrogacy organizations (57%, $n = 183$), and the websites of overseas surrogacy agencies (54%, $n = 172$).

Australia versus overseas surrogacy

Respondents were asked whether they had completed, were completing or were planning to complete surrogacy in Australia and/or overseas. Almost half selected surrogacy overseas (46%, $n = 147$), while the remaining selected surrogacy in Australia (31%, $n = 99$), surrogacy in Australia *and* overseas (18%, $n = 56$), or that they had not decided yet (5%, $n = 17$).

Of the 203 respondents who selected 'surrogacy overseas' or 'surrogacy in Australia *and* overseas', only 8% reported that overseas was their preference ($n = 17$). Almost all respondents stated they would have rather pursued surrogacy in Australia had it been possible (92%, $n = 186$). Respondents who selected 'surrogacy overseas' or 'surrogacy in Australia *and* overseas' ($n = 203$) were asked to select the reasons for this from a list of eight fixed responses (Table 2). Perceiving surrogacy in Australia as a long and complicated process was the most common reason for pursuing surrogacy overseas (69%, $n = 140$). Respondents who selected 'surrogacy in Australia' or 'surrogacy in Australia *and* overseas' ($n = 155$) were asked to select the reasons for this from a list of seven fixed responses (Table 3). Desiring involvement with the pregnancy was the most frequently reported reason for pursuing surrogacy in Australia (50%, $n = 77$).

Table 1. Sociodemographic characteristics of the intended parents ($n = 319$).

Sociodemographic characteristic	% (*N*)
Gender	
Man	55% (174)
Woman	44% (139)
Non-binary	0% (1)
Not reported	2% (5)
Household income	
<$77,999	8% (25)
$78,000–$103,999	7% (23)
$104,000–$129,999	9% (28)
$130,000–$155,999	7% (23)
$156,000–$181,999	12% (39)
$182,000–$207,999	13% (40)
>$208,000	43% (137)
Not reported	1% (4)
Relationship status	
Heterosexual couple	44% (140)
Same-sex male couple	41% (131)
Same-sex female couple	0% (1)
Single male	7% (22)
Single female	4% (14)
Not reported	3% (11)

Characteristics of arrangements

Of the 136 respondents who had completed a surrogacy arrangement, 79% had completed their most recent arrangement overseas ($n = 108$). The characteristics of Australian and overseas surrogacy arrangements are presented in Table 4. All respondents who completed surrogacy in Australia obtained legal advice from an Australian lawyer and received counselling, while only 65% and 56% respectively did so in overseas surrogacy.

Most pregnancies were a result of an embryo transfer procedure ('gestational' surrogacy) and not insemination ('traditional' surrogacy). Of the transfers completed overseas, 41% involved multiple embryo transfer ($n = 40$). Most multiple embryo transfers were at the respondents' request (35/40). Four reasons for electing to transfer multiple embryos were cited: a desire to have twins; to increase the chance of a successful transfer; following the advice of the doctor or surrogacy provider; and to avoid extra costs associated with a single embryo transfer. Of the donor oocytes used in overseas surrogacy, almost half were anonymously donated.

Outcomes of arrangements

The outcomes of surrogacy arrangements completed in Australia and overseas are presented in Table 5.

Table 2. Reasons for respondents ($n = 203$) choosing international surrogacy.

Reasons for choosing international surrogacy	% of respondents (n)
Surrogacy in Australia looked like too long/or complicated a process	69% (140)
I could not find a surrogate in Australia	56% (114)
I wanted a professional surrogacy provider to screen potential surrogates and facilitate my arrangement	46% (94)
In Australia, the surrogate has the right to keep the child if she changes her mind	43% (88)
I wanted to be able to compensate a surrogate for carrying my child	35% (71)
I was not eligible to pursue surrogacy in my State or Territory	15% (30)
I wanted greater choice of egg donors	14% (29)
I did not want any/much contact with my surrogate	11% (22)

Table 3. Reasons for respondents ($n = 155$) choosing surrogacy in Australia.

Reasons for choosing surrogacy in Australia	% of respondents (n)
Wanting to be involved in the pregnancy	50% (77)
Wanting an ongoing relationship with the surrogate	49% (76)
Australian woman offered to become my/our surrogate	47% (73)
Wanting child to know the surrogate	46% (71)
Difficulties in navigating another country's legal and medical systems	43% (66)
More affordable	35% (54)
Concerns of surrogate treatment overseas	34% (52)

Table 4. Characteristics of Australian ($n = 28$) and overseas ($n = 108$) surrogacy arrangements.

Characteristics	Australian surrogacy ($n = 28$)	Overseas surrogacy ($n = 108$)
Obtained legal advice	100% (28)	65% (70)
Obtained counselling	100% (28)	56% (60)
Mode of conception*		
Insemination	14% (4)	8% (8)
Embryo transfer	86% (24)	92% (98)
Multiple embryo transfer	0% (0)	41% (40)
Donor oocytes	50% (12)	79% (77)
Anonymous donors	0% (0)	47% (36)

*Only 106 respondents who completed surrogacy overseas reported the mode of conception.

Table 5. Outcomes of Australian ($n = 28$) and overseas ($n = 108$) surrogacy arrangements.

	% of respondents	
Outcomes	Australian surrogacy ($n = 28$)	Overseas surrogacy ($n = 108$)
Twin births	0% (0)	11% (12)
Neonatal intensive care	11% (3)	22% (24)
Gestational length*		
28–36	11% (3)	20% (22)
37–42 weeks	89% (24)	79% (85)
>42 weeks	0% (0)	1% (1)

*One respondent who did surrogacy in Australia did not report the gestational length.

There were 12 instances of twin births, all of which occurred in overseas arrangements. All but one twin birth arose from pregnancies resulting from a multiple embryo transfer. Rates of neonatal intensive care and preterm birth were higher in arrangements conducted overseas compared to in Australia. Most of the twin birth babies were preterm (75%, $n = 9$) and required neonatal intensive care (58%, $n = 7$).

Almost all respondents indicated they had disclosed or planned to disclose to their child that they were born through surrogacy (98%, $n = 133$). Only one respondent reported they would not disclose the use of surrogacy, while two reported they were unsure. Of those that used donor oocytes ($n = 89$), the majority reported they had disclosed or planned to disclose to their child their genetic origins (98%, $n = 87$). Two respondents reported they will not or do not plan to disclose the use of donor oocytes to their child.

Surrogacy destinations

Twelve surrogacy destinations were used by respondents: the USA (34%, $n = 37$); Canada (17%, $n = 18$); Ukraine ($n = 11$%, 12); India (10%, $n = 11$); Georgia (9%, $n = 10$); Greece (6%, $n = 7$); Thailand (4%, $n = 4$); Mexico (3%, $n = 3$); Colombia (2%, $n = 2$); Cambodia (1%, $n = 1$); Brazil (1%, $n = 1$); and China (1%, $n = 1$). One respondent who completed overseas surrogacy did not report which country they completed the arrangement in.

The respondents were asked to select the considerations important to them when deciding which destination to pursue surrogacy in from a list of ten fixed responses (Table 6). A country with legal frameworks allowing the intended parents to be listed as the birth parents from birth was most frequently reported as an important consideration (86%, $n = 93$).

Almost all had used a professional surrogacy provider to assist with surrogate recruitment, screening, matching and support ($n = 105$). These respondents were asked to select the considerations important to them when deciding which provider to use from five fixed responses (Table 7). Feeling like they could

Table 6. Important considerations when deciding which overseas destination to engage in ($n = 108$).

Important considerations	% of respondents (n)
The ability to be the sole parent(s) on the birth certificate	86% (93)
Treatment and care of surrogates	84% (91)
Track-record of that country in managing surrogacy arrangements	76% (82)
A surrogacy provider which met all my needs	71% (77)
Affordability	63% (68)
Success rates of clinics	61% (66)
Ability to establish a relationship with my surrogate	53% (57)
Convenience e.g. I have family who live there or cultural ties to the country	12% (13)
Ability to choose the sex of my child	11% (12)
Ability to have little or no contact with the surrogate	8% (9)

Table 7. Important considerations when deciding which surrogacy provider to use ($n = 105$).

Important considerations	% of respondents (n)
Feeling like they could trust the provider	88% (92)
Recommendations from other intended parents	56% (59)
Affordability	56% (59)
Personalized programmes	29% (30)
Live birth guarantee	18% (19)

trust the provider was most frequently chosen (88%, $n = 92$).

Discussion

This study made three important original findings. First, it observed that most Australian intended parents would prefer to pursue surrogacy in their home country if it were more accessible. Second, practices which aim to protect the wellbeing of surrogacy participants (e.g. counselling, single embryo transfer, known or identity-release gamete donation) are frequently absent in international surrogacy arrangements. Third, children born through surrogacy have less favourable outcomes when born overseas as compared to in Australia. These findings raise concerns about the health and welfare of all international surrogacy participants, but particularly for the women acting as surrogates and the children who are born as a result of such arrangements. They also suggest that reducing the barriers to surrogacy would encourage more people to complete arrangements domestically, which in turn would reduce the potential for harm associated with international surrogacy.

The ability to be involved with the pregnancy and to have an ongoing relationship with the surrogate were the most common reasons intended parents wanted to pursue surrogacy at home. This is possible in Australia because surrogacy is framed as an intimate relationship creating life-long friendships, and not simply as a form of conception (Jefford, 2020). While similar approaches to surrogacy exist in some international surrogacy destinations, for example Canada (Fantus, 2021) and the USA (Smietana, 2017), the high cost of surrogacy in such destinations may pose a barrier to some intended parents. In destinations where costs are lower, a relationship with the surrogate may be rare as arrangements can be perceived solely as a business-like exchange (Smietana et al., 2021). Contact between intended parents and surrogates during international arrangements can be further hindered by language barriers (Jadva et al., 2019) and can sometimes be prevented by surrogacy providers (Siegl, 2018). Very few respondents chose international surrogacy because they wanted little or no contact with their surrogate. This supports existing evidence of the significance for intended parents to have a relationship with their surrogate (Kneebone et al., 2022).

Completing surrogacy overseas can be a challenging journey for intended parents (Arvidsson et al., 2019; Gezinski et al., 2018). Stresses may arise from having to navigate a foreign country's legal and medical systems, being separated from the pregnancy, and not having control over the process (Carone et al., 2017; Zandi et al., 2014; Ziv & Freund-Eschar, 2015). Australian legal advice and counselling help intended parents through their surrogacy journey but as this study shows, not all access these services and the reason for this is unclear. The non-profit organization Growing Families urges intended parents to seek legal advice and counselling (Growing Families, 2022). Australian Government information pages regarding international surrogacy also advise intended parents to obtain legal advice, although not counselling (Department of Home Affairs, 2023; Smarttraveller, 2022; Victorian Assisted Reproductive Treatment Authority, 2023). Barriers to accessing these services may be financial or stem from a lack of awareness of their benefits. Research into the attitudes and experiences of intended parents accessing such services in Australia could inform strategies to improve uptake.

While only a small proportion of respondents completed a surrogacy arrangement in Australia, the reported incidence of multiple (0%) and preterm

(11%) births are consistent with the rates reported after ART in Australia (2.8% and 13.8% respectively) (Newman et al., 2022). Concerningly, the rates of multiple and preterm birth were much higher in international surrogacy arrangements. This raises concerns about the health impacts of the common practice of multiple embryo transfer in many international surrogacy destinations on surrogates and those born through surrogacy. Furthermore the health interventions required for babies born prematurely, for example neonatal intensive care, have financial implications for intended parents.

The proportion of preterm births in overseas arrangements observed in this study (20%) was lower than reported in a study conducted almost a decade ago (45%) (Stafford-Bell et al., 2014). This may indicate an increasing use of single embryo transfer, as is the trend for fertility treatments more generally (Adamson & Norman, 2020). However, a firm conclusion cannot be drawn as the earlier study did not collect data on single vs. multiple embryo transfer. It is also important to note that the rate of single embryo transfers can vary considerably between jurisdictions (Adamson & Norman, 2020). A limitation of this study is that, because of the large number of surrogacy destinations reported by respondents, the results were not differentiated by country.

The high use of multiple embryo transfer reported by respondents may seem somewhat contradictory considering that increased risk to surrogates and that 'care of surrogates' was reported as an important consideration in deciding which international surrogacy destination to pursue. There is even evidence to suggest that surrogates are more likely to receive multiple embryo transfers than other women undergoing non-surrogacy cycles (White, 2018). Contributing to this are the intended parents' desires to complete their family, as reported in this and in other studies (Lindheim et al., 2019), and the surrogates' desire to provide a greater 'gift' (Berend, 2010).

The Verona Principles, developed by the International Social Services, are a set of guiding principles for the protection of the rights of children born through surrogacy (International Social Services, 2021). The principles aim to protect the child's identity and access to information about their genetic, gestational and social origins. While there is limited empirical evidence investigating the attitudes and experiences of those born through surrogacy, the available data supports the importance of these principles. In a recent focus group study conducted with children and young people with experience of surrogacy, most participants agreed that children born through surrogacy should know the identity of the surrogate and whether donor gametes were used in their conception (Wade et al., 2023). A longitudinal study investigating the psychological outcomes of people born through third-party reproduction found that young adults born through surrogacy, who in most cases were told about their conception before the age of 4 and were still in contact with their surrogate, felt positive or unconcerned about their method of conception (Jadva et al., 2023). These studies were conducted in the UK where 'altruistic' surrogacy is practised and had a small number of participants. The views of those born through 'commercial' surrogacy or through international surrogacy are unknown.

Whilst there was a high rate of disclosure or intention to disclose to children the way they were conceived in our study, there is still reason to be concerned about the psychosocial outcomes for those born through international surrogacy. This is because, as in this study, anonymous egg donation is common in international surrogacy. Furthermore, intended parents do not necessarily have contact with surrogates overseas and hence those born through surrogacy will likely face difficulties should they wish to find information regarding, or contact, the woman who gave birth to them. Research investigating the wellbeing of individuals born through international surrogacy, including the role of the donor, must be a priority.

The findings of this study support prior research conducted in Australia (Everingham et al., 2014; Riggs, 2015) and internationally (Fenton-Glynn, 2022; Horsey, 2018; Horsey et al., 2015; Jadva et al., 2021) on barriers to domestic surrogacy. International surrogacy, with its greater legal certainty, availability of surrogates and professional surrogacy providers, is often a more accessible option. A recent government inquiry into access to reproductive health care in Australia acknowledged the difficulties faced by intended parents attempting to access surrogacy domestically (Community Affairs References Committee, 2023). The report recommended that the exclusion of patients engaged in surrogacy arrangements from receiving public funding for ART services should be removed. However, it stopped short of recommending reforms that would remove other barriers to domestic surrogacy.

Reviews of current surrogacy legislation have recently been conducted in New Zealand, the Republic of Ireland, and the UK, with the aim of supporting residents to complete domestic surrogacy

rather than go abroad (Department of Health, 2023; Kawharu et al., 2022; The Law Commission of England and Wales and the Scottish Law Commission, 2023). While the recommendations from these reviews do not include removing the prohibitions on surrogate payment or commercial providers, they include establishing non-profit regulated surrogacy organizations and a surrogacy registry, as well as more streamlined pathways for intended parents to be granted legal parenthood at birth (Horsey & Mahmoud, 2023). In the UK, however, the Law Commission of England and Wales and the Scottish Law Commission has made an exception for payments in relation to a modest recuperative holiday for the surrogate and her family (The Law Commission of England and Wales and the Scottish Law Commission, 2023). Similar reforms in other settings, including Australia, may allow more intended parents to complete surrogacy domestically which in turn may lead to better outcomes for children born from surrogacy.

Strengths of this study include its considerable sample size and the range of aspects of surrogacy covered in the survey. The respondents' sociodemographic characteristics and motivations for surrogacy were similar to previously conducted studies, both within Australia (Everingham et al., 2014) and internationally (Fenton-Glynn, 2022; Horsey et al., 2023; Jadva et al., 2021). This suggests findings can be generalized to similar contexts where barriers restrict access to surrogacy.

Limitations must also be acknowledged. As this was an anonymous online survey a response rate cannot be calculated. Also, it is not known if those who completed the survey were representative of all intended parents in Australia. While fixed-choice questions allow for the collection of data from a large number of respondents, they fail to capture complexities of individual experience and the views and experiences not included in the response options provided. Moreover, we treated respondents as a single group but there may be differences between respondents, particularly regarding decision-making factors for heterosexual and same-sex male intended parents.

In conclusion, surrogacy is a legitimate path to parenthood and needs to be recognized and regulated as such by governments (Horsey & Mahmoud, 2023). Nations' attempts to restrict access to surrogacy are ineffective considering the ability to enter international arrangements. This study's findings raise concerns about the health and welfare of international surrogacy participants, particularly surrogates and children. In lieu of any international instrument regulating surrogacy, reducing the barriers to surrogacy at a domestic level would reduce the demand for international arrangements and in turn, reduce the potential for harm.

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Author's roles

All authors contributed to the conception and design of the study, interpreted the data, critically revised the article, gave final approval of the version to be published, and agreed to be accountable for all aspects of the work. EK analyzed the data and drafted the article.

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SE is the Global Director of Growing Families, a non-profit organization educating and advising on third-party reproduction. He is also a board member of a charity supporting Australian surrogacy participants. The remaining authors report there are no competing interests to declare.

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Data availability statement

The data underlying this article cannot be shared publicly due to the confidentiality of the participants. The data will be shared on reasonable request to the corresponding author.

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Chapter Five: Study Three

Chapter Five includes an original manuscript titled ‘Surrogates', intended parents' and professionals' perspectives on ways to improve access to surrogacy in Australia’. It was accepted for publication in the International Journal of Law, Policy and the Family in June 2024.

This chapter represents Study Three of the research project and addresses Objective Four: to describe Australian surrogacy stakeholders’ perceptions on how access to arrangements in Australia could be improved.

Semi-structured interviews were completed with 15 Australian surrogates, intended parents and surrogacy professionals. The interview guide (see appendix 10) was informed, in part, by the findings of Study One and Two. This study had six key findings:

1. Participants identified four areas of the law as not fit-for-purpose: the state-based approach to regulation; restrictions on surrogate and intended parent eligibility criteria; the post-birth transfer of parentage process; and the criminalisation of commercial surrogacy.
2. Participants expressed frustration at the differences in surrogacy laws across Australia’s states and territories, particularly the laws stipulating surrogate and intended parent eligibility, and advocated for uniform laws.
3. Attitudes towards the transfer of parentage process were mixed. Some participants, intended parents in particular, viewed the post-birth transfer of parentage as an unnecessary and expensive process. Others, surrogates in particular, felt it recognised their contribution to the birth of the child and held intended parents accountable for their actions.
4. Attitudes towards commercial surrogacy were mixed. Those in support noted it could increase the number of surrogates and would provide financial acknowledgement of their labour. Those who opposed believed it would negate the altruism that currently underpins surrogacy in Australia and might impact a surrogate’s autonomy.
5. A new model of ‘compensated’ surrogacy was advocated, to prevent surrogates from being left-out-of-pocket and to compensate them for the time and effort involved. Although such a payment would be considered commercial surrogacy under current law, surrogates did not view it as such.
6. In addition to law reform, participants advocated for increased public awareness, greater information and support provisions, and more supportive health care.

At the time these interviews were conducted, single individuals could not access surrogacy in the ACT. This has only recently changed (ACT Government Justice and Community Safety Directorate 2024). The WA government has also committed to reform the law so same-sex couples and single men can access surrogacy (Government of Western Australia 2023). As such, it’s likely that the states will become more harmonious over time. However, these findings demonstrate that a

harmonious approach to regulating altruistic surrogacy is not sufficient to adequately meet the needs of surrogates and intended parents. The findings provide evidence to support the claims made by numerous legal scholars over the years that the criminalisation of commercial surrogacy is unjustified (Skene 2012; Millbank 2015; Johnson 2015; Stuhmcke 2015b; Cameron 2018; Sifris & Page 2021; Plater et al. 2022).

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Surrogates', intended parents', and professionals' perspectives on ways to improve access to surrogacy in Australia

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ABSTRACT

While altruistic surrogacy arrangements are permitted in Australia, commercial ones are not. Regardless of this, most intended parents undertake commercial arrangements by bypassing domestic laws and engaging with foreign surrogates. Considering the welfare risks and ethical concerns associated with international surrogacy, developing a more accessible model of surrogacy in Australia has been proposed as a harm minimization approach. This study aims to describe how Australians who have navigated or facilitated surrogacy believe access to arrangements could be improved. Australian surrogates, intended parents, parents through surrogacy, and surrogacy professionals were interviewed, and interview transcripts were analysed thematically. The themes identified were 'improve public awareness', 'develop policies to guide healthcare practitioners', 'establish agencies', and 'reform the law'. 'Reform the law' had four sub-themes: 'harmonise laws across the states and territories'; 'grant intended parents legal parenthood at birth'; 'legalise commercial surrogacy and gamete donation'; and 'fair surrogate compensation'. Findings indicate that improving access to surrogacy in Australia will require an overhaul of the legislative environment relating to surrogacy and gamete donation, policies to guide healthcare practitioners, and public awareness campaigns.

KEYWORDS: Surrogacy, Law reform, Legal parentage

I. BACKGROUND

Surrogacy arrangements involve a surrogate conceiving, carrying a pregnancy and giving birth under the premise of relinquishing the child to the intended parents at or soon after birth. While this process provides the opportunity of parenthood to those for whom pregnancy poses a health risk and those who are unable to carry a child, it is not a universally accepted means of reproduction. Surrogacy is criminalized in some parts of the world,

including in Italy where the head of the Catholic Church recently called for a worldwide ban on the 'deplorable' practice.[1] In other countries, surrogacy is legally permitted; however, regulatory frameworks for surrogacy practices vary between countries.

It is convention to label surrogacy arrangements altruistic or commercial to distinguish between arrangements where the surrogate is only reimbursed for expenses and those where they are paid an additional fee. These terms are contested by scholars.[2] The distinction falsely implies payment beyond reimbursement cannot coexist with altruism. What counts as a permitted reimbursable expense within one altruistic setting might be considered a commercial payment in another. Moreover, the distinction centres surrogate payment as the defining feature of a commercial arrangement, and not the other commercial entities which may be involved, including fertility clinics and lawyers. Nevertheless, this distinction has shaped legal responses to surrogacy in many parts of the world.

Commercial and altruistic surrogacy arrangements are legal in some jurisdictions, for example, in California, Georgia, and Mexico. In these jurisdictions, third-party agencies match intended parents to a surrogate, coordinate the legal and medical processes on their behalf, and mediate contact between surrogates and intended parents. Also in these jurisdictions, intended parents are typically granted legal parenthood at birth and the surrogate has no parental rights.

Other countries, such as Australia, New Zealand, and the UK, prohibit commercial surrogacy and permit only altruistic arrangements. In these countries, there are typically restrictions on how third parties can operate. For example, third parties in the UK can only operate as not-for-profit organizations. In some Australian jurisdictions, third parties cannot advertise or charge fees for matching a surrogate to intended parents. In these jurisdictions, legal parenthood is typically assigned to the surrogate at birth and is then transferred to the intended parents through a court application.

Surrogacy arrangements often involve donated gametes, particularly donated eggs. Jurisdictions differ in their regulatory approaches to gamete donation. Similar to surrogacy, some only allow altruistic donations, while others permit donor payment beyond the reimbursement of expenses. Also, in some jurisdictions, such as South Africa and Spain, gamete donors are required to be anonymous, whereas in others, such as New Zealand, the UK, and Australia, donor anonymity is banned and donor-conceived individuals have the right to know the identity of their donor at the age of majority.

There are significant barriers for intended parents to access altruistic surrogacy and donor gametes. Australian[3] and British[4] intended parents report difficulties in finding a surrogate and worry about the surrogate not relinquishing the child. There is also a shortage of egg and sperm donors in Australia and the UK. Consequently, many seek commercial surrogacy arrangements overseas ('international' surrogacy).

International surrogacy can be perceived by intended parents as more legally secure and straightforward than an arrangement in the home country. For some intended parents, a legal framework which grants legal parentage at birth provides a sense of legal certainty, not

[1] J. Horowitz, 'Francis Urges Ban on Surrogacy, Calling It "Despicable"' (8 January 2024). *The New York Times*. <https://www.nytimes.com/2024/01/08/world/europe/pope-francis-surrogacy-ban.html> accessed 1 March 2024.

[2] K. Horsey, 'The Future of Surrogacy: A Review of Current Global Trends and National Landscapes' (2023) 48 (5) *Reproductive BioMedicine Online* 1–16.

[3] S.G. Everingham, M.A. Stafford-Bell and K. Hammarberg, 'Australians' Use of Surrogacy' (2014) 201 (5) *Medical Journal of Australia* 270–273; E. Kneebone and others, 'Australian Intended Parents' Decision-Making and Characteristics and Outcomes of Surrogacy Arrangements Completed in Australia and overseas' (2023) 26 (6) *Human Fertility* 1448–1458.

[4] V. Jadva, H. Prosser and N. Gamble, 'Cross-Border and Domestic Surrogacy in the UK Context: An Exploration of Practical and Legal Decision-Making' (2021) 24 (2) *Human Fertility* 93–104; K. Horsey and others, 'Surrogacy in the UK: Myth Busting and Reform: Report of the Surrogacy UK Working Group on Surrogacy Law Reform' (Report, Surrogacy UK, November 2015).

only for themselves but also for their surrogate.[5] Being able to pay a surrogate beyond expenses can also be viewed as a more just and fair approach than having someone carry a baby for no financial reward.[6] Furthermore, international surrogacy may be someone's only option if surrogacy is prohibited in their home country or if eligibility criteria restrict access to married heterosexual couples.

International surrogacy is associated with significant ethical concerns and risks to the welfare of surrogates and children. Concerns pertaining to surrogates arise mostly from jurisdictions in which surrogacy clinics and agencies rely on financially disadvantaged women to act as surrogates. In these destinations, practices infringing on surrogates' bodily autonomy and ability to provide free and informed consent have been reported, including forced late-term abortions, forced caesarean sections, and oppressive living environments.[7]

Individuals born through international surrogacy will likely face difficulties should they wish to find information regarding, or contact, their genetic or gestational mother. This is because anonymous gamete donation is common,[8] and some intended parents do not have contact with their foreign surrogate.[9] While there is a growing trend of prohibiting anonymous gamete donation in recognition of the child's right to know information about their genetic origins,[10] the practice is still common in international surrogacy destinations.[11] There is also an increased risk of multiple births and its associated adverse pregnancy outcomes such as preterm birth due to the unregulated nature of fertility clinics in many of these destinations.[12]

Australia is one of the largest 'exporters' of intended parents in the world.[13] In the 2021–2022 financial year, 213 Australian babies were born through international surrogacy, primarily in the USA.[14] In contrast, just 100 domestic surrogacy births were reported by Australian and New Zealand fertility clinics in 2021.[15] The well-being of Australian children born through international surrogacy has been identified as a major concern for key stakeholders in Australia, such as reproductive specialists, lawyers, and health policy regulators.[16] Evidence suggests that most Australian intended parents would prefer to complete surrogacy in Australia if it were possible.[17] As such, the harms associated with international surrogacy could be reduced if domestic arrangements were more accessible.[18]

[5] C. Fenton-Glynn, 'International Surrogacy Arrangements: A Survey' (3 June 2024). *Cambridge Family Law*. <https://www.family.law.cam.ac.uk/survey-international-surrogacy-arrangements> accessed 5 June 2024.

[6] E. Jackson and others, 'Learning from Cross-Border Reproduction' (2017) 25 (1) *Medical Law Review* 23–46.

[7] N. Lepapa, 'Hard Labour: The Surrogacy Industry in Kenya—Part I' (28 May 2021). *The Elephant*. <https://www.theelephant.info/investigations/2021/05/28/hard-labour-the-surrogacy-industry-in-kenya-part-i/> accessed 1 March 2024; M. Roache, 'Ukraine's "Baby Factories": The Human Cost of Surrogacy' (13 September 2018). *Aljazeera*. <https://www.aljazeera.com/features/2018/9/13/ukraines-baby-factories-the-human-cost-of-surrogacy> accessed 1 March 2024; S. Saravanan, 'An Ethnomethodological Approach to Examine Exploitation in the Context of Capacity, Trust and Experience of Commercial Surrogacy in India' (2013) 8 (10) *Philosophy, Ethics, and Humanities in Medicine* 1–12.

[8] Kneebone and others (n 3).

[9] M. Smietana, S. Rudrappa and C. Weis, 'Moral Frameworks of Commercial Surrogacy within the US, India and Russia' (2021) 29 (1) *Sexual and Reproductive Health Matters* 377–393.

[10] V. Ravitsky, '"Knowing Where You Come From": The Rights of Donor-Conceived Individuals and the Meaning of Genetic Relatedness' (2010) 11 (2) *Minnesota Journal of Law, Science & Technology* 655–684.

[11] Kneebone and others (n 3).

[12] Ibid.

[13] S. Everingham and A. Whittaker, 'Trends in Engagement in Surrogacy by Nationality 2018–2020: A Survey of Surrogacy Agencies' (2023) 8 (1) *Global Reproductive Health* 1–12.

[14] Australian Department of Home Affairs, *Freedom of Information Request FA 22/08/00210* (Freedom of Information Request, 2022).

[15] J. E. Newman, R. C. Paul and G. M. Chambers, 'Assisted Reproductive Technology in Australia and New Zealand 2021' (Report, Sydney: National Perinatal Epidemiology and Statistics Unit, the University of New South Wales, Sydney, 2023).

[16] L. Zannettino and others, 'Untangling the Threads: Stakeholder Perspectives of the Legal and Ethical Issues Involved in Preparing Australian Consumers for Commercial Surrogacy Overseas' (2019) 27 (1) *Journal of Law and Medicine* 94–107.

[17] Kneebone and others (n 3).

[18] J. Millbank, 'Rethinking "Commercial" Surrogacy in Australia' (2015) 12 (3) *Journal of Bioethical Inquiry* 477–490

Legal scholars have long advocated for legalizing commercial surrogacy in Australia to achieve this.[19] Some Australian intended parents pursuing international arrangements believe it is unfair for women to act as surrogates without payment,[20] and would prefer commercial surrogacy to become legalized in Australia[21]. However, commercial surrogacy is a contentious topic which for some members of the Australian public raises concerns about the commodification of reproduction and the potential exploitation of surrogates.[22] Little is known about the broader surrogacy community's attitudes towards the idea.

This study aims to address this gap by exploring the views of Australians who have navigated or facilitated surrogacy on how access to domestic arrangements could be improved.

II. METHODS

1. Context

Australia is a federation of six states—New South Wales (NSW), Queensland (QLD), South Australia (SA), Tasmania (TAS), Victoria (VIC), Western Australia (WA)—and two territories—the Australian Capital Territory (ACT) and the Northern Territory (NT). Each jurisdiction is responsible for regulating surrogacy arrangements within their own borders. This is because the states and territories are responsible for the provision of health services to their residents.

Surrogate and intended parent eligibility requirements differ across Australia's states and territories (Table 1).[23,24] The minimum age of surrogates and intended parents varies, as does the presence of a requirement for both parties to be Australian citizens or permanent residents, and to undergo criminal record screening. Heterosexual couples with a medical indication for surrogacy are eligible in all jurisdictions, but same-sex couples and single individuals are only eligible in certain jurisdictions. In some jurisdictions, the surrogate must have previously given birth or reside in the same state or territory as the intended parents.

Most Australian surrogacy arrangements occur between friends and family members.[25] For those unable to find a surrogate through existing networks, closed Facebook groups are used as a forum for prospective parents and potential surrogates to meet and source information.[26] There are no surrogacy agencies in Australia. However, the charity Surrogacy Australia offers a for-fee support service which includes introductions between potential surrogates and intended parents, although only two to three introductions occur on average per year.[27]

Under federal law, when a surrogate gives birth, she (and her de facto or married partner, if applicable) is considered the legal parent. [28] Intended parents are required to apply to the courts for a Parentage Order to transfer parentage from the surrogate (and her partner if

[19] L. Skene, 'Why Legalising Commercial Surrogacy is a Good Idea' (10 December 2012). *The Conversation.* <https://theconversation.com/why-legalising-commercial-surrogacy-is-a-good-idea-11251> accessed 1 March 2024; T. Johnson, *The Regulation of Commercial Surrogacy in Australia: A Harm Analysis*, PhD Thesis (Queensland University of Technology, 2020).

[20] Everingham and others (n 3); Jackson and others (n 6).

[21] D.W. Riggs, '"25 Degrees of Separation" Versus the "Ease of Doing It Closer to Home": Motivations to Offshore Surrogacy Arrangements Amongst Australian Citizens' (2015) 5 (1) *Somatechnics* 52–68.

[22] K. Tremellen and S. Everingham, 'For Love or Money? Australian Attitudes to Financially Compensated (Commercial) Surrogacy' (2016) 56 (6) *Australian and New Zealand Journal of Obstetrics and Gynaecology* 558–563.

[23] Comments made in relation to legislation are correct at the time of writing (February 2024).

[24] Parentage Act 2004 (ACT); Surrogacy Act 2010 (NSW); Surrogacy Act 2010 (Qld); Surrogacy Act 2019 (SA); Surrogacy Act 2012 (TAS); Assisted Reproductive Treatment Act 2008 (VIC); Surrogacy Act 2008 (WA).

[25] M. Montrone and others, 'A Comparison of Sociodemographic and Psychological Characteristics among Intended Parents, Surrogates, and Partners Involved in Australian Altruistic Surrogacy Arrangements' (2020) 113 (3) *Fertility and Sterility* 642–652.

[26] Jackson and others (n 6).

[27] A. McKie, 'Surrogacy Australia's Support Service (SASS) End of October 2023 - Monthly Report' (Report, Surrogacy Australia, 2023).

[28] Family Law Act 1975 (Cth).

Table 1. Surrogate and intended parent eligibility in each Australian state and territory

IPs' state/territory	Minimum age of surrogate	Surrogate prior live birth	Surrogate domiciled in state/territory	Australian citizen or permanent resident	Criminal record screening	Minimum age of IPs	Same-sex couples are eligible IPs	Single individuals are eligible IPs
ACT	18	✗	✗	✗	✗	18	✓	✗
NSW	25	✗	✗	✗	✗	25	✓	✓
NT	25	✗	✓	✓	✗	25	✓	✓
QLD	25	✗	✗	✗	✗	25	✓	✓
SA	25	✗	✗	✓	✓	25	✓	✓
TAS	25	✓	✓	✗	✗	21	✓	✓
VIC	25	✓	✗	✗	✗	18	✓	✓
WA	25	✓	✗	✗	✗	At least one IP must be ≥25 years	✗	Women only

Note: IP: intended parent.

applicable) to them. The post-birth transfer of parentage process takes, on average, between 2 and 6 months and can cost up to AUD 6,000.[29] If a Parentage Order is granted, the birth certificate of the child is re-issued to list the intended parents as the birth parents. The re-issued birth certificate does not state that the child was born through surrogacy, but, in some states/territories, if donor gametes were used, the birth certificate contains an addendum which states that there is additional information about their birth available.

2. Study design

This was a qualitative study using semi-structured interviews. Qualitative methods can be used to describe how a phenomenon is experienced or perceived by a person of interest.[30] The study was approved by the Monash University Human Research Ethics Committee (36145).

3. Inclusion criteria

Australian surrogates, intended parents, parents through surrogacy, and Australians working in a professional capacity facilitating people through surrogacy were eligible to participate in this study.

4. Recruitment

Professionals, intended parents, and parents through surrogacy were invited to participate via email. The contact details of the professionals were previously known to the researchers as personal contacts or obtained online through their professional web page. The contact details of the intended parents and parents through surrogacy were previously known to the researchers as they were provided by participants in a previous study who were willing to be interviewed for this study. In the previous study, participants were recruited through social media and the support and advocacy organizations, Surrogacy Australia and Growing Families.[31] The surrogates were recruited through snowball sampling—intended parents and parents through surrogacy were asked to share the recruitment email with surrogates.

Surrogates, intended parents, and parents through surrogacy who agreed to participate were asked to fill in a short form which gathered information regarding their state/territory of residence and characteristics relating to their surrogacy journey. We purposively sampled participants until there was an equal number of surrogates, parents through surrogacy, and surrogacy professionals, and all states and the ACT were represented. We did not expect to recruit participants who lived in the NT as surrogacy only became legal there at the time the interviews were conducted (December 2022). Surrogates and parents through surrogacy who had completed their surrogacy arrangement within the last 5 years were prioritized.

Written consent was obtained from participants prior to the interviews. Complimentary access to an infertility and assisted reproductive technology counsellor was offered to all participants; however, none took up this opportunity.

5. Data collection

Semi-structured interviews use researcher knowledge to identify the questions that should be asked to address the research question. The interview guide was informed by our

[29] T. Culhane-Smith, 'Australian Surrogacy Process Chart: A Complete Guide to Surrogacy' (December 2022). *Surrogacy Australia.* <https://www.surrogacyaustralia.org/wp-content/uploads/2023/01/Australian-Surrogacy-Process-Chart-V3.8.pdf> accessed 1 March 2024.

[30] K. Hammarberg, M. Kirkman and S. de Lacey, 'Qualitative Research Methods: When to Use Them and How to Judge Them' (2016) 31 (3) *Human Reproduction* 498–501.

[31] Kneebone and others (n 3).

previous systematic review on the experiences of surrogates and intended parents,[32] and a survey of Australian intended parents' decision making.[33] It included questions about participants' lived experience of surrogacy and of providing professional support to surrogacy participants and their attitudes towards Australia's regulation of surrogacy. Topics included: sources of information and support; experiences of undertaking the preconception legal requirements; experiences of surrogate reimbursement; experiences of the transfer of legal parentage; attitudes towards Australian surrogacy laws; and attitudes towards laws in other countries. The interview guide was reviewed by an experienced qualitative researcher not associated with the study and a parent through surrogacy. Amendments were made based on their feedback. A copy of the interview guide is included in the supplementary materials.

EK conducted the interviews via Zoom between December 2022 and April 2023. The interviews lasted between 46 and 97 minutes, with a mean duration of 63 minutes. The interviews were recorded using Zoom's cloud recording feature, which also generates an audio transcription. EK viewed recordings and edited transcripts to ensure the interviews were transcribed verbatim.

6. Data analysis

Reflexive thematic analysis was used to analyse the interview transcripts.[34] The output of this method is 'themes', patterns of shared meaning across the data set. Data analysis involved six steps: (i) familiarizing yourself with the data; (ii) generating codes; (iii) searching for themes; (iv) reviewing themes; (v) defining and naming themes; and (vi) producing the report.

EK familiarized herself with the data by watching the video recordings and reading the transcripts. Prior to coding, E.K. identified the sections of the transcripts which related to the accessibility of surrogacy. This was done because the interviews explored the participants' experiences of surrogacy more generally than relating to access alone. These sections were copied into Excel and inductively coded line-by-line. All authors (EK, KH, and KB) reviewed, defined, and agreed upon the final themes.

To identify the transcript sections relating to access, the content was mapped to Levesque and others' five dimensions of patient-centred access to healthcare[35]; approachability, acceptability, availability and accommodation, affordability, and appropriateness of the service. Table 2 provides a definition of these as they apply to surrogacy.

The Australian surrogacy community is small, and extra caution was taken to not report findings, which could reveal the participants' identity. Only a description of the participant's involvement with surrogacy (surrogate/parent through surrogacy/surrogacy professional/intended parent) is provided alongside the illustrative quotes in the results section.

7. Reflexivity

Like all research, this project is shaped, in part, by the authors' personal experiences and assumptions. The authors all identify as white women—two of the authors have experienced childbirth and mothering, one of whom did so through donor conception. This study is the final stage of a larger mixed-methods project in which the authors have investigated whether the surrogacy regulations in Australia meet the needs of surrogates, intended parents, and those born through surrogacy. Throughout this project, the authors have met with, collaborated with, and disseminated research findings to members of the surrogacy community.

[32] E. Kneebone, K. Beilby and K. Hammarberg, 'Experiences of Surrogates and Intended Parents of Surrogacy Arrangements: A Systematic Review' (2022) 45 (4) *Reproductive BioMedicine Online* 815–830.

[33] Kneebone and others (n 3).

[34] V. Braun and V. Clarke, 'Using Thematic Analysis in Psychology' (2008) 3 (2) *Qualitative Research in Psychology* 77–101; V. Braun and V. Clarke, 'Reflecting on Reflexive Thematic Analysis' (2019) 11 (4) *Qualitative Research in Sport, Exercise and Health* 589–597.

[35] J. Levesque, M. F. Harris and G. Russel, 'Patient-Centred Access to Health Care: Conceptualising Access at the Interface of Health Systems and Populations' (2013) 12 (18) *International Journal for Equity in Health* 1–9.

Table 2. Levesque and others' five dimensions of access as applied to surrogacy

Dimension	Definition as applied to surrogacy
Approachability	Surrogacy is perceived as a possible and legal route to parenthood.
Acceptability	Surrogacy is a culturally and socially accepted route to parenthood.
Availability and accommodation	The legal and medical requirements of a surrogacy arrangement can be met in a timely manner.
Affordability	Intended parents, surrogates, and their families have the economic capacity to spend the resources and time required to participate in a surrogacy arrangement.
Appropriateness	The fit between the surrogacy arrangement and the needs of intended parents, surrogates, and their families.

Because of this, the author who conducted the interviews (EK) had already established a rapport with some of the interview participants.

III. RESULTS

1. Participants

Fifteen individuals were interviewed (Table 3). All participants identified as white Australians and their ages ranged between 30 and 59 years, although one participant did not provide their age. Participants resided across all Australian states (Table 3), and most lived in capital cities ($n = 13$).

The six professionals worked in legal ($n = 2$), psychological ($n = 2$), and support ($n = 2$) roles. Most had a lived experience of surrogacy—two were parents through surrogacy, and two had acted as a surrogate.

Of the six women who had acted as a surrogate, five had carried for a same-sex male couple and one for a heterosexual couple (Table 4). Four surrogates met their intended parents through online internet forums or Facebook groups, while two carried for family members. Five women had given birth to one child through surrogacy, while one had given birth twice to two singletons to the same intended parents. At thetime of the interview, the age of the children they birthed ranged between 2 months and 4 years.

Of the intended parent and parents through surrogacy, four were in same-sex male relationships and three were members of a heterosexual relationship (Table 5). Of the three heterosexual individuals, two were married to each other and were interviewed together at their request. Four parents through surrogacy had completed surrogacy overseas—in Ukraine, the USA, and India—and two had completed surrogacy in Australia. Two parents had two children through surrogacy and the others had one. At the time of the interview, the age of their children ranged between 2 months and 16 years.

2. Themes

Four overarching strategies to improve access to surrogacy in Australia were identified: 'improve public awareness', 'develop policies to guide healthcare practitioners', 'establish agencies', and 'reform the law'. 'Reform the law' had four sub-themes: 'harmonise laws across the states/territories'; 'grant intended parents legal parenthood at birth'; 'legalise commercial surrogacy and gamete donation'; and 'fair surrogate compensation'.

Table 3. Participant characteristics ($n = 15$)

Participant characteristics	*N*
Involvement with surrogacy[a]	
Professional	6
Intended parent	1
Parent through surrogacy	6
Surrogate	6
Location in Australia	
Queensland	3
New South Wales	4
South Australia	1
Tasmania	1
Victoria	2
Western Australia	4

[a] Number is greater than 15 because some professionals were also parents through surrogacy or had acted as surrogates.

Table 4. Characteristics of the surrogates ($n = 6$)

Surrogate characteristics	*N*
Sexual orientation of IPs	
Same-sex male couple	5
Heterosexual couple	1
Relationship to IPs	
Family member	2
New connection	4
Time since latest surrogacy birth	
0–6 months	1
1–2 years	3
3–4	2

Table 5. Characteristics of the parents through surrogacy ($n = 6$) and intended parent ($n = 1$)

Characteristics	*N*
Relationship status	
Same-sex male couple	4
Heterosexual couple	3
International versus domestic	
International	4
Domestic	3
Number of children through surrogacy	
0	1
1	3
2	3
Age of youngest surrogacy child	
0–6 months	2
1–2 years	1
3–5	1
5–10	0
11–16	2
NA[a]	1

[a] Not applicable because one participant (the intended parent) did not have a child through surrogacy.

A. Improve public awareness

Participants noted that members of the public were poorly informed about whether surrogacy was legal and whether surrogates were paid. Participants explained that this resulted in people asking the '*rudest, weirdest, strangest things*' (P7, parent through surrogacy), eg:

> *It's amazing how many people … that are straight up like 'is it your kid?'.* (P8, parent through surrogacy)

It was common for surrogates to be motivated by second-hand experiences of infertility, such as working within the fertility industry or having same-sex male friends. It was suggested that if surrogacy was normalized and better understood in the community, more women would come forward wanting to act as a surrogate:

> *I don't know if I'd not worked in that [fertility] clinic if I ever would have been a surrogate, because it's such a far-fetched idea.* (P12, surrogate)
> *If it was a more commonplace or less daunting prospect, then I think that Australia would have more surrogates come forward.* (P12, surrogate)

B. Develop policies to guide healthcare practitioners

Participants recounted both positive and negative experiences with healthcare providers. Positive experiences were categorized by providers viewing surrogacy as a legitimate practice and respecting the parenting intentions of the surrogate and intended parents.

> *[The hospital] gave the boys their own room. They treated me and both babies as separate patients. I didn't have to discharge at the same time as the babies did. They sent the home midwives to check on me and the babies separately.* (P13, surrogate)

Conversely, negative experiences involved healthcare providers not recognizing the legitimacy of surrogacy arrangement. One participant (a parent through surrogacy) recounts their hospital experience where their surrogate could not be discharged from the hospital without the baby:

> *[My surrogate] and I got the message loud and clear that if she left, child safety would be notified … I was immediately branded invisible. I wasn't a parent.* (P10, professional, parent through surrogacy)

In one instance, a public hospital refused service:

> *I rang up [the public hospital] and said it was a surrogacy and I'm gonna have the intended mother there and then they said 'no, we don't really do surrogacy'. So we had to go through private.* (P14, surrogate)

A hospital policy relating to surrogacy arrangement was recommended to be developed at the state level:

> *The way it is now, every single hospital has to reinvent the wheel to create a surrogacy policy for themselves … they've got to work it out for themselves each time, with very limited information on how to do this. Let's just have a surrogacy policy at the state level.* (P15, professional)

C. Establish agencies

Attitudes towards surrogacy agencies were mixed. Some participants advocated for them to be established in Australia because currently *'there's nowhere to go for help'* (P7, parent through surrogacy) and they would make it easier for intended parents to find a suitable surrogate.

> *There's a lack of any meaningful process of screening potential surrogates in the Australian context. So some [intended parents] may get a surrogate offer, and then she'll ghost them. She'll vanish after talking to them online for a few months because she's changed her mind or partner's talked it out of her … So many many people I deal with have had that experience.* (P1, professional, parent through surrogacy)

It was also noted that:

> *Having an agency in place moderates some of the behaviour, because [surrogates and intended parents] have to deal with the third party who can say 'No, don't do that. You shouldn't be doing that and this is why'.* (P10, professional, parent through surrogacy)

Some surrogates and professionals raised concerns about the commercial nature of agencies and advocated for non-profit organizations to take on the role of agencies. Concerns were raised about how for-profit models might increase the cost borne by intended parents and attract staff without a lived experience of surrogacy:

> *The amount of fees that [intended parents] pay to this company will end up getting higher and higher and push it out of the way, so that more people can't afford it … It's all people who are being paid to give advice. People who probably haven't even been surrogates or IPs themselves, so really don't know how it feels, giving advice because they've been paid to do so.* (P13, surrogate)

For some surrogates and professionals, however, concerns were raised about the potential for any paid service to take advantage of intended parents who are desperate to find a surrogate, regardless of whether the service provider operates as non-profit or not.

> *I just think a paid service that's privately owned, or privately run … there's all sorts of ethical and integrity issues with it that it just leaves intended parents kind of vulnerable. Like, 'do we join it or not? And if we do, do we actually get anything for it?'.* (P9, professional, surrogate)

D. Reform the law

Harmonize laws across the states/territories

Participants expressed frustration at the differences in surrogacy laws across Australia's states and territories, particularly the laws stipulating surrogate and intended parent eligibility. The requirement for intended parents to be a heterosexual couple and for surrogates to have previously given birth was deemed discriminatory by participants.

I think one [state] doesn't even allow gay couples to go through the process. I just think like it's 2022, like that is so discriminatory! (P5, surrogate)

In some states you can't surrogate for people, even if you haven't had your own children, which you know, some people don't ever want to have their own kids, but would still like to help somebody else out. (P13, surrogate)

Uniform laws across Australia were advocated for so '*there'd be less confusion*' (P14, surrogate) and to prevent people from circumventing local laws by moving interstate:

Uniform laws would be nice … I've got clients that will leave one state and go to another state because the laws in their home state don't suit them. (P9, professional, surrogate)

Grant intended parents legal parenthood at birth

Participants, intended parents in particular, viewed the post-birth transfer of parentage as an unnecessary and expensive bureaucratic process and advocated for automatic recognition of the intended parents' parental status when the child was born.

It's just an expensive bureaucratic process. It would just be so much easier and straightforward to have it all done at the beginning at the birth. (P11, intended parent)

Surrogates and professionals had mixed views towards the post-birth transfer of parentage. While some advocated for automatic recognition of the intended parents' parental status, others were ambivalent or agreed with the status quo. For some, the surrogate's name on the birth certificate was symbolic of her importance in bringing the child to life. Here a professional recounts a time when they asked a surrogate what they thought about the matter:

She said 'it's like I did nothing. If that happened, I did nothing'. She said 'I think it's important that it's documented legally that this is what happened'. (P3, professional)

An alternative approach was proposed in which the intended parents are granted legal parenthood from birth, but the surrogate's role is also formally recognized on the birth certificate:

Ideally there'd be some kind of thing where there's like a birth record, which still officially recognises her role, but also so we can be the legal parents from birth so we don't have to go through all that. (P4, parent through surrogacy)

However, participants also explained that the current process means the intended parents cannot cut ties with the surrogate immediately following the birth and avoid the post-birth expenses.

I don't actually mind the process as it currently is because I think there's a little bit more accountability for the IPs to maintain contact and do the things they're meant to, because until [transfer of parentage] legally goes through, you have to do the right thing. (P9, professional, surrogate)

Legalize commercial surrogacy and gamete donation

Participants had mixed views towards legalizing surrogate payment beyond reimbursement. Those in support noted that it would help to make surrogacy more accessible to intended parents by increasing the number of women willing to act as a surrogate and would recognize the labour performed by surrogates.

> *[Commercial surrogacy] would benefit families who can't have a child, and it would also benefit Australian women. It would put money back into the economy. It wouldn't have to go under the table. They wouldn't have to be on these Facebook weird groups. It would be a win win for both parties I think if you could do a commercial model.* (P7, parent through surrogacy)

> *The baby that I carried cost his dads $60,000. Who earned the $60,000? The IVF clinic, the lawyers, the doctors, the counsellors. I didn't earn a penny. Why shouldn't I earn some like everybody else?* (P6, professional, surrogate)

Parents through surrogacy and professionals noted the shortage of egg donors in Australia and argued that more donors will be required should access to surrogacy be increased. Participants advocated for permitting commercial donation in order to increase the number of people willing to donate.

> *We have commonwealth and state laws that say "don't pay egg donors" and they have up to 15 years jail time and what's the impact? We have a critical shortage of egg donors.* (P10, professional, parent through surrogacy)

Various reasons were proposed for opposing commercial surrogacy. Some believed additional payment would negate the altruism that currently underpins surrogacy in Australia. Others were concerned that further payment could result in the exploitation of financially disadvantaged women and surrogates' autonomy being infringed upon.

> *I've met such wonderful people over time. It's a very special thing they do, and they're doing it because it's a very special thing.* (P3, professional)

> *I think [commercial surrogacy] would then encourage people to do it for the wrong reasons … a lot of women who are perhaps facing a lot of financial hardship or lower [socioeconomic status] background in general … I worry it would lead to the misuse and the abuse of females.* (P5, surrogate)

> *You might also have really bad relationships where the [intended parents] expect the surrogate to do whatever they want, because they're paying them. That doesn't give autonomy to the surrogate. (*P14, surrogate)

Fair surrogate compensation

According to participants, surrogates are frequently left out-of-pocket. In some instances, surrogates were left out-of-pocket because they did not ask for reimbursement of costs incurred (as a result of feeling awkward or not wanting the intended parents to bear the expense). In other instances, it was allegedly because the intended parents did not want to cover all the costs.

> *There were times when I would use my sick days instead of asking them to cover my wages, because I'd be off when I was pregnant … It wasn't because I couldn't ask them, because I could and they would have covered it. But I just kind of felt like it's already expensive enough.* (P13, surrogate)

> *Sometimes, intended parents come in and they view surrogacy as something like a business project. This can result in them viewing their surrogate as a resource in that project. If they are working within a limited budget, this can lead them to putting pressure on their surrogate to minimise her pregnancy or birth related needs. It's like "we've only got $40,000, do you really need that?"* (P15, professional)

To "*make up for all the little bits that you can't ever chase up*" (P12, surrogate), participants advocated for a new model of surrogacy—compensated surrogacy. This model involved the payment of a flat fee to cover all expenses incurred, as well as additional compensation for the time and effort involved with the arrangement. Participants made it clear, however, that the fee should not be so high as to become a financial incentive.

> *It's pretty well understood that surrogates are pretty selfless and don't like asking for things. So rather than having to go cap-in-hand like, "Oh, my back's really killing me. May I please have a massage?", it'd be nice if there was some kind of stipend or something on top of expenses. So they can have a little bit more wriggle room and to try and make the process as stress free as possible.* (P4, parent through surrogacy)

> *The way I describe commercial [surrogacy] is where you pay a woman to have a child, but there's no limit on the cost … So it becomes a sort of a capitalistic endeavour. And then there's the compensated model … it's still altruistic, but it's compensated altruistic, where there's a reasonable amount of expenses that you can expect that will cover a woman for 9 months.* (P2, parent through surrogacy)

IV. DISCUSSION

This study aimed to identify strategies which could improve access to surrogacy arrangements in Australia. The findings suggest that surrogacy is legally, socially, and financially challenging to navigate and that increasing access requires a multipronged approach which includes an overhaul of laws relating to surrogacy and gamete donation, policies to guide healthcare practitioners, and public awareness campaigns. In doing so, the number of Australian intended parents seeking international surrogacy and the associated risks of harm can be reduced.

Increasing access to surrogacy is likely to be opposed by those who view surrogacy as inherently unethical. There is a vocal group who advocate against surrogacy on the basis that it severs the natural bond between a mother and child. In 2023, an international convention (the 'Casablanca Convention') for the global abolition of surrogacy became public.[36] More recently, the group behind the convention held a 2-day international conference in Italy aiming to inform 'public decision-makers about the harmful effects of surrogacy'.[37] Prohibiting

[36] Declaration of Casablanca, Casablanca 2023 (Web Page). <https://declaration-surrogacy-casablanca.org/casablanca-2023/> accessed 5 June 2024.

[37] Declaration of Casablanca, Rome 2024 (Web Page). <https://declaration-surrogacy-casablanca.org/rome-2024/> accessed 5 June 2024.

surrogacy, however, will not protect women and children. It will instead force more intended parents into accessing surrogacy through unregulated or black markets where the welfare risks will be higher. The most feasible way to minimize these risks is to provide intended parents with the opportunity to access safe and ethical surrogacy at home.[38]

Participants reported low community awareness about surrogacy and its regulation in Australia. Although empirical investigation into the Australian public's knowledge has not been conducted, there are anecdotal reports from members of the surrogacy community of the public holding misconceptions towards surrogacy such as 'that it's illegal, that it's impossible, and that there are restrictions that in fact do not exist'.[39] Confusion surrounding the legal status of surrogacy may in part be explained by the divergent regulatory responses to surrogacy seen across the world and even between Australia's states and territories. Improving the public's awareness of surrogacy as a legitimate means of reproduction may increase the number of women wanting to become surrogates. Research with Canadian surrogates revealed that visible representation of surrogacy on social media influenced their decision to pursue surrogacy.[40] Interviews with Australian egg donors have similarly identified the need for raising public awareness about egg donation.[41] Future research into the Australian public's knowledge of surrogacy and its regulation could inform campaigns aimed at raising awareness for the need for surrogacy.

Currently, there are no national or state/territory guidelines available in Australia for healthcare providers detailing the appropriate provision of care for surrogacy teams. This is a significant issue because as demonstrated in this study, some providers lack the expertise to appropriately care for surrogacy teams. The UK Government, in collaboration with surrogacy organizations and healthcare practitioners,[42] has issued guidance on this very matter. The guidance specifies that with the surrogate's consent, the intended parents should be treated as the parents and the baby and surrogate can be discharged separately.[43] This aligns with how the study participants conceptualized positive healthcare experiences. An independent inquiry into South Australian surrogacy laws recommended the development of guidance for healthcare practitioners.[44] While this has yet to be completed, this study provides further evidence for the need of such guidance.

Considering the contentious nature of surrogacy, it's not surprising that the participants had mixed views towards law reform, particularly regarding the topics of surrogate payment and the recognition of parentage. This finding aligns with the results of a recent survey study which aimed to ascertain the views of intended parents and surrogates in the UK towards

[38] N. Gamble and others, 'In Support of Surrogacy: a Response to the Pope's Call for a Universal Ban' (22 January 2024). *BioNews*. <https://www.progress.org.uk/in-support-of-surrogacy-a-response-to-the-popes-call-for-a-universal-ban/> accessed 5 June 2024.

[39] S. Jefford, *Surrogacy Information for Healthcare Providers (Web Page)*. <https://sarahjefford.com/surrogacy-information-for-healthcare-providers/> accessed 5 June 2024.

[40] S. Fantus and P. A. Newman, 'Motivations to Pursue Surrogacy for Gay Fathers in Canada: A Qualitative Investigation' (2019) 15 (4) *Journal of GLBT Family Studies* 342–356.

[41] R. G. Hogan and others, '"Battery Hens" or "Nuggets of Gold": A Qualitative Study on the Barriers and Enablers for Altruistic Egg Donation' (2022) 25 (4) *Human Fertility* 688–696.

[42] Department of Health & Social Care, *The Surrogacy Pathway: Surrogacy and the Legal Process for Intended Parents and Surrogates in England and Wales (Web Page)*. <https://www.gov.uk/government/publications/having-a-child-through-surrogacy/the-surrogacy-pathway-surrogacy-and-the-legal-process-for-intended-parents-and-surrogates-in-england-and-wales> accessed 5 June 2024.

[43] Department of Health & Social Care, *Care in Surrogacy: Guidance for the Care of Surrogates and Intended Parents in Surrogate Births in England and Wales (Web Page)*. <https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales#post-birth> accessed 5 June 2024.

[44] D. Plater and others, 'Surrogacy: A Legislative Framework: A Review of Part 2B of the Family Relationships Act 1975 (SA)' (Report, South Australian Law Reform Institute, 2018).

law reform suggestions.[45] Around half of the participants in that study agreed that the surrogate should be reimbursed for all expenses incurred *and* receive a modest payment on top and three-quarters agreed the surrogate should *not* be the legal parent at birth. The remaining disagreed or were unsure. However, a lack of consensus should not deter lawmakers from considering such reform proposals.

Because surrogacy challenges traditional norms some perceptions may be based more on ideologies rather than lived experience.[46] For example, interview participants who were opposed to commercial surrogacy conflated payment beyond the reimbursement of expenses and the absence of altruistic motivations. This was also reported in a survey study of the Australian public's attitudes towards surrogate payment.[47] While the dichotomous labelling of commercial and altruistic surrogacy does imply that commercial surrogates are not altruistically motivated, this is not necessarily true. Payment does not preclude altruistic motivations, and this has been demonstrated by multiple studies from the US in which commercial surrogates report a desire to help others.[48]

Some scholars use the term *compensated* surrogacy to more accurately describe surrogacy arrangements where surrogates receive payment beyond the reimbursement of expenses, but are still altruistically motivated.[49] Compensated surrogacy was argued for by participants in this study and in a previous interview study of Australians who had completed cross-border reproductive care.[50] Fairly compensating surrogates would prevent them from being left out-of-pocket and provide them with financial recognition for the labour undertaken and the risks involved with pregnancy and childbirth. Any attempt to determine the appropriate fee should be undertaken with consultation with the surrogacy community.

The findings of this study have clear implications for Australia, but also for other countries which similarly permit only 'altruistic' surrogacy. In 2023, the Law Commission of England and Wales and Scottish Law Commission published surrogacy law reform recommendations following 4 years of inquiry.[51] The commission recommended a 'new pathway' for domestic surrogacy which would grant intended parents legal parentage from birth, like participants in this study, in particular intended parents, advocated for. As part of this pathway, surrogates have the ability to withdraw their consent to relinquishment until 6 weeks after the birth. The UK government has decided not to move forward with the commission's recommendations for the time being.[52] The findings from this study support the need for intended parents to be granted legal parentage from birth. However, the proposed new pathway received mixed responses because of the various conditions it imposed on surrogacy participants. For example, the surrogate must be

[45] K. Horsey and others, 'UK Surrogates' Characteristics, Experiences, and Views on Surrogacy Law Reform' (2022) 36 (1) *International Journal of Law, Policy and the Family* 1–16; K. Horsey and others, 'UK Intended Parents' Characteristics, Experiences, and Views on Surrogacy Law Reform' (2023) 37 (1) *International Journal of Law, Policy and the Family* 1–17.

[46] Horsey (n 2).

[47] Tremellen and Everingham (n 22).

[48] M. Smietana, 'Affective De-Commodifying, Economic De-Kinning: Surrogates' and Gay Fathers' Narratives in U.S. Surrogacy' (2017) 22 (2) *Sociological Research Online* 163–175; Z. Berend, 'The Romance of Surrogacy' (2012) 27 (4) *Sociological Forum* 913–936.

[49] P. Gerber, 'Arrests and Uncertainty Overseas Show Why Australia Must Legalise Compensated Surrogacy' (24 November 2016). *The Conversation*. https://theconversation.com/arrests-and-uncertainty-overseas-show-why-australia-must-legalise-compensated-surrogacy-69203; R. Sifris and S. Page, 'Australian Surrogacy Law: Recommendations for Reform' in P. Gerber and M. Castan (eds), *Critical Perspectives on Human Rights Law in Australia* (Thomson Lawbook Co, 2nd ed, 2021).

[50] Jackson and others (n 6).

[51] Law Commission of England and Wales and Scottish Law Commission, 'Building Families Through Surrogacy: A New Law', Report Vol 2 (2023).

[52] A. Fox, 'Proposed Changes to Surrogacy Law "Will Not Be Taken Forward at the Moment"' (10 November 2023) *The Independent*.

domiciled in the UK which would exclude many British intended parents.[53] Further consideration may therefore be needed before law reform is achieved in the UK.

Within the Australian context, granting legal parentage to the intended parents at birth would avoid the overly bureaucratic and expensive court process currently required. The concerns also raised in this study relating to intended parents not abiding by their post-birth responsibilities to the surrogate might be mitigated if the intended parents perceive the surrogate as having the ability to withdraw her consent for a certain period of time post-birth. Crucially, by implementing such a change, the intentions of both parties—the surrogate and intended parents—are appropriately reflected at birth and immediately following.[54]

The primary strength of this study is that it has considered access not just from the perspective of the intended parents, but also from surrogates and those working in the field. In fact, this is the first study in Australia to investigate surrogacy from the perspective of the surrogate. The framework used to guide the analysis was particularly useful in this study because other definitions of access do not address a service's appropriateness and this is crucial for exploring surrogacy access because undesired surrogacy regulations, such as the prohibition of commercial surrogacy, can drive people overseas.[55]

The following limitations should also be considered when interpreting the findings. The participants were largely recruited through social media, particularly via closed Facebook groups, and people not involved with these online communities may have different views. The findings also do not include the views of all those who should be consulted when considering law reform in this area. For example, it will also be important to ascertain the views of those born through surrogacy and gamete donors involved in surrogacy arrangements. We also were not able to recruit participants from the NT or the ACT, which are the two smallest Australian jurisdictions by population.

Since the first laws on surrogacy were introduced in Australia in 1984,[56] over 30 inquiries have been conducted,[57] and yet the current regulatory environment still fails to adequately support people involved with surrogacy. It will become an increasingly common form of family formation and improving access to domestic arrangements—in Australia and elsewhere—protects women and children from the harms associated with the unregulated international market. The findings of this study suggest that while law reform is required to achieve this, policies to guide healthcare practitioners and public awareness campaigns should accompany legislative efforts to support people engaged in surrogacy.

ETHICS APPROVAL

The study was approved by the Monash University Human Research Ethics Committee (36145).

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[54] T. Johnston, 'Through the Looking-Glass: A Proposal for National Reform of Australia's Surrogacy Legislation' in P. Gerber and K. O'Byrne (eds), *Surrogacy, Law and Human Rights* (Ashgate Publishing Limited, 1st ed, 2015)

[55] Riggs (n 21).

[56] A. Stuhmcke, 'Surrogate Motherhood: The Legal Position in Australia' (1994) 2 (1) *Journal of Law and Medicine* 116–124.

[57] Plater and others (n 44); M. Thompson and D. Plater, 'An Issue that is not Going Away: Recent Developments in Surrogacy in South Australia' (2019) 16 (1) *Journal of Bioethical Inquiry* 477–481.

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Chapter Six: Discussion

This mixed-methods PhD project used three sequentially conducted studies to explore whether the regulation of surrogacy in Australia meets the needs of intended parents, surrogates and those born through surrogacy. It demonstrated that Australian surrogacy regulations are not achieving their intended aim of preventing people from exploitation and protecting the best interests of children (Millbank 2011). Study One and Two described how the international surrogacy industry involves clinical practices which harm surrogates and children – anonymous gamete donation, multiple embryo transfer and compulsory fetal reduction and caesarean section procedures. Even though domestic surrogacy is preferred by most intended parents, the majority complete international surrogacy because the process in Australia is perceived as too long and difficult. Australian regulations are therefore inadvertently risking the welfare of foreign surrogates and Australians born through surrogacy by not appropriately supporting intended parents to complete an arrangement at home.

Study Three demonstrates that the three cornerstones of Australian regulation of surrogacy – the criminalisation of 'commercial' surrogacy, the state-based approach to regulation, and the post-birth transfer of parentage process – are not fit for purpose. Surrogacy stakeholders advocated for law reform to establish a nationally harmonious approach to regulation which permits surrogate compensation and removes the need for legal parentage to be transferred post-birth. In doing so, surrogates and intended parents can be better supported to complete surrogacy in Australia. More babies would therefore be born domestically where their welfare is better protected through regulated clinical practices.

6.1 Law reform

6.1.1 National harmony

National harmony of surrogacy laws would alleviate the concerns raised in Study Three about the differences in surrogate and intended parent eligibility criteria between the states and territories. The discriminatory provisions that exist in relation to gender and sexual orientation, such as the exclusion of Western Australian single men and same-sex male couples from accessing surrogacy, could be removed. Not only would this prevent those currently affected from having to move interstate in order to access surrogacy, but it would provide the opportunity of surrogacy to those without the financial or other means to relocate. A consistent approach would also help to lessen the confusion faced by surrogates and intended parents when attempting to make sense of the current complex legal landscape of surrogacy in Australia (Standing Committee on Social Policy and Legal Affairs 2016 p. 6).

National harmony could be achieved through two ways. The state and territory governments could agree to enact consistent legislation regulating ARTs and surrogacy (Willmott 2006) or the federal

government could enact legislation to regulate ARTs and surrogacy across all Australian jurisdictions (Plater et al. 2018). There is a constitutional limitation in the latter occurring. The Australian Constitution does not give the Commonwealth Parliament the power to regulate ARTs or surrogacy and the ability to make laws on the matter sits with the Parliaments of the states and territories. The state and territory governments would then need to refer the power to regulate surrogacy to the Commonwealth Parliament for the federal government to enact a national law. . Regardless of the approach, however, consideration will need to be given to ensure the new legislation(s) is aligned with the federal laws which intersect with surrogacy. These include, but are not limited to, the *Family Law Act 1975* (Cth) which regulates parenting arrangements and the *Prohibition of Human Cloning for Reproduction Act 2002* (Cth) which regulates the use of human tissue, including gametes.

There have been several attempts by various federal government committees to achieve consistent surrogacy regulations between the states and territories. The first of these was in 1991 when the Health and Social Welfare Minister of each Australian jurisdiction agreed to support uniform legislation (Joint Meeting of Australians' Health Ministers Conference and the Council of Social Welfare Ministers 1991 as cited in Stuhmcke 1994). This attempt at unification was never achieved. Legal scholar Stuhmcke has theorised there was limited political interest to uphold the agreement because of the contentious nature of surrogacy, the fact that surrogacy affects few people compared to other public health issues, and lack of empirical evidence on surrogacy's impact on those involved (1994). Two subsequent attempts at unifying the regulations, one in 2009 and one in 2016, have also failed (Standing Committee of Attorneys General 2009; House of Representatives Standing Committee on Social Policy and Legal Affairs 2016).

None of these attempts, however, have included a consideration of the state and territory based ART laws. This is a crucial omission because gestational surrogacy relies on the use of ARTs. For example in Western Australia, the *Surrogacy Act 2008* prohibits single men and gay men from accessing surrogacy, while the *Human Reproductive Technology Act 1991* prohibits single men and same sex male couples from accessing IVF. If this discriminatory clause was repealed from the *Surrogacy Act 2008* but not the *Human Reproductive Technology Act 1991*, single men and same sex male couples could still not access surrogacy because they would be ineligible to seek ARTs.

To my knowledge, no state, territory or federal government body has attempted or recommended harmony through referral of power. However, the independent South Australian Law Reform Institute has recommended it (Plater et al. 2018). The benefit of this approach is that a federal court (specifically the Federal Circuit and Family Court) would assume responsibility from the state courts with regard to legal matters involving surrogacy. This would include the granting of parentage orders and assessing any legal disputes relating to surrogacy. This is a significant

strength, as the Federal Circuit and Family Court has greater expertise than its state counterparts in applying the principle of the best interest of the child, and resolving issues arising from complex family forms (Plater et al. 2018:49-51). Johnson has noted that state and territory governments might be hesitant to give up their power (Johnson 2015). Political interest will therefore be crucial to achieve national harmony, regardless of the means chosen to accomplish it.

6.1.1.1 Enabling national harmony

It's possible that raising public awareness about surrogacy and its (inadequate) regulation may get surrogacy law reform on the political agenda. As identified in this project, the public has limited awareness of the regulations surrounding surrogacy. However, considering the majority of the Australian public is approving of surrogacy (Constantinidis & Cook 2012; Tremellen & Everingham 2016; D'Annunzio 2019), it's possible that if people were aware of the barriers to access, and the increased risk of harm to children who are subsequently born overseas, the public would support law reform. In turn, this might lead to greater political willingness to obtain national harmony of surrogacy regulations in Australia.

This strategy has worked before. Australian surrogacy laws have not always been as tolerant of altruistic surrogacy as they are today. In the early 2000's altruistic surrogacy was largely unregulated and there was no legal mechanism in place to transfer parentage from the surrogate (and partner, if applicable) to the intended parents. It was not until the late 2000's and early 2010's where a 'wave' of reform occurred in most Australian jurisdictions to introduce Parentage Orders (Millbank 2011). This wave of reform was triggered, in part, by a federal senator announcing the birth of his child through surrogacy. The senator completed an interstate surrogacy arrangement due to restrictions in his home state (Nader 2007), and his story was depicted in the media as an example of the 'the restrictive role of law and the prevalence of evasive travel' (Millbank 2012:109).

6.1.2 Surrogate payment

The findings from this project complicate the narrative which Australian surrogacy laws have created, wherein any payment beyond reimbursement is considered ethically unacceptable (National Health & Medical Research Council 2020a:45). Many scholars do not ascribe to this binary on the basis that payment does not inherently result in exploitation, nor does it automatically negate altruistic motivations (Stuhmcke 2015b; Horsey 2024). The participants' conceptualisation of compensated surrogacy also rejects this binary, suggesting that the dichotomy of altruistic and commercial arrangements does not align with the views of those with a lived experience of surrogacy.

Permitting surrogate compensation would alleviate the concerns raised in this project about the current criminalisation of commercial surrogacy resulting in surrogates being financially disadvantaged and feeling undervalued. Various compensatory payments have been proposed in

the literature. Legal scholar Johnson proposed a reasonable compensation could be calculated by weekly installments of the minimum wage over 40 weeks of gestation and one week post-birth (and rounded to the nearest $500) (2015). Taking into account the current weekly minimum wage in Australia is AUD$882.80 (Fair Work 2024), Johnson's proposed payment is equivalent to AUD$36,500 today.

Deriving surrogate payment from the minimum wage might raise concerns of the payment becoming a financial incentive to people who otherwise would be unwilling to act as a surrogate. There is a valid argument that it is unfair to not accept financially motivated surrogates because we live in a capitalist society (Cameron 2018). However, the desire for altruism is so embedded within the discourse surrounding surrogacy, both within the political sphere (Snow 2016) and within the surrogacy community itself, as demonstrated in the interview component of this project. It's possible that surrogates with a sole financial motivation for surrogacy could be 'avoided' through appropriate safeguards like pre-conception counselling and screening, but in the current political climate in Australia, it is unlikely a monthly payment akin to minimum wage for surrogates would receive adequate support. Surrogate and surrogacy lawyer Jefford has suggested a payment of $1,000 for each month of gestation and for three months post birth (Jefford 2024c). This amount aligns more with the compensation advocated for by participants in Study Three. Should the government consider allowing compensation for surrogates, further consultation with members of the surrogacy community would be beneficial to ensure the payment amount appropriately reflects the interests of the surrogacy community.

6.1.3 Enforceability of surrogacy agreements

Granting intended parents legal parentage from birth would mitigate the concerns raised by the interview participants about the current court process being overly expensive and bureaucratic. However, this does not address the question of whether or not surrogacy agreements should be enforceable in Australia. As discussed in Chapter One, prior research indicates the unenforceability of agreements is the most common reason for Australians to pursue international surrogacy (Everingham et al 2013).

The findings from this project indicate intended parents are becoming less concerned about the unenforceability of surrogacy. In the survey component of this project, it was the fourth most common reason for pursuing international surrogacy, selected by just 43% of respondents. Whereas in the previous study, it was the most common reason and selected by 75% of participants. There has only been one case in Australia where relinquishment has not occurred (Montrone & Thorn 2020), and this was in 1998 prior to legislation mandating pre-conception counselling and legal advice (Otlowski 1999). It is possible that fewer intended parents are concerned about unenforceable arrangements because they are unaware of the (un)likelihood of a surrogate not relinquishing.

As has been shown in other jurisdictions, surrogacy arrangements can be unenforceable while at the same time granting the intended parents legal parentage from birth (Law Commission of England and Wales and the Scottish Law Commission 2023). This could be achieved by providing the surrogate with the right to withdraw their consent to relinquishment for a certain period. This approach would mitigate the concerns raised by the interview participants about the post-birth process holding intended parents accountable for their treatment of their surrogate. This concern has also been raised by a minority of surrogates in the UK (Horsey 2023).

6.2 Improving public awareness

The shortage of egg donors and surrogates in Australia may in part be due to lack of awareness in the community about the need for donors and surrogates. Study One found that the decision to become a surrogate was influenced by exposure to the phenomena of infertility and surrogacy, and the surrogates in the interview component of this project reiterated this. Interviews with Australian egg donors have similarly identified the need for raising public awareness about the need for egg donation (Hogan et al. 2022). Raising public awareness about surrogacy and gamete donation may therefore increase the number of people wanting to act as a surrogate or gamete donation.

Communication campaigns aim to inform and influence the behaviour of large audiences and would be suitable for raising awareness about the need for surrogacy and gamete donation (Rice & Atkin 2013). In order for such campaigns to be successful, they must be responsive to the values and needs of the intended audience (Moura et al. 2019). The knowledge of the general public towards surrogacy and gamete donation has not been investigated in Australia and future research into this could inform the development of successful campaigns.

Campaigns aimed at raising understanding about the need for surrogacy and gamete donation in Australia must be inclusive to minority groups. Marketing within the fertility industry can reinforce harmful rhetorics about whose reproduction is most socially desirable. For example, an analysis of fertility clinic and surrogacy agency websites in the USA revealed that less than half directly advertised or appeared to welcome gay men (Jacobson 2018). The surrogacy industry in Mexico further perpetuates racial hierarchies by assigning greater desirability (and value) to white donor gametes (Schurr 2017). While the majority of Australian surrogates and intended parents are caucasian in ethnicity (Montrone et al. 2020), Australia's population is culturally diverse and any attempt at a campaign should be designed to reflect this, as well as be inclusive of diverse family structures.

6.3 Medicare rebates

Parents through surrogacy are typically from advantaged socio-economic groups (Everingham et al. 2014; Kneebone et al. 2023; Montrone et al. 2020). While this is unsurprising considering the high cost of surrogacy and the established link between the affordability and accessibility of fertility

treatments (Chambers et al. 2013), efforts to improve surrogacy accessibility should also consider access from an equitability perspective. Reducing the barriers to surrogacy in Australia would work towards more equitable access because domestic arrangements are often more affordable than international ones (Everingham et al. 2014). Some of the strategies necessary to improve accessibility, such as permitting surrogate compensation, may raise the cost of surrogacy in Australia. However, there are ways to mitigate this, such as permitting patients engaged with surrogacy to receive Medicare rebates for fertility treatments. As discussed in Chapter One, the usual Medicare rebates associated with fertility treatments cannot be applied to patients engaged with surrogacy. The removal of this exclusion was recommended by a 2018 Medicare taskforce and a 2023 national Government inquiry, but has yet to be implemented (Medicare Benefits Schedule Review Taskforce 2020:53; Community Affairs References Committee 2023).

6.4 Welfare of Australians born through surrogacy

Should access to surrogacy be improved in Australia, some intended parents will nevertheless seek international arrangements. International surrogacy may be perceived as offering 'benefits' which domestic arrangements cannot provide. This could include the ability for intended parents to have little or no contact with their surrogate or to have twins by transferring multiple embryos to a surrogate as indicated by a small minority of participants in the survey component of this project. Strategies to protect the welfare of surrogates and those born through international surrogacy are therefore required alongside regulatory and social reforms aimed at increasing access to domestic surrogacy. One possible strategy is to educate intended parents about the benefits domestic surrogacy practices (e.g. mandatory single embryo transfer and non-anonymous gamete donation) have for the child and the surrogate to encourage them to choose international surrogacy providers who follow Australia's standards of care.

Fertility clinics could contribute to this as they have the appropriate expertise. It appears that disclosing to domestic fertility specialists about the decision to pursue international surrogacy is becoming more common. In a survey conducted a decade ago of Australians who were considering, undergoing or who had completed international surrogacy, just 34% (93/249) had disclosed this to a fertility specialist. Of those, 26% received a negative reaction, 34% received a neutral response and 40% received a positive one (Hammarberg et al. 2015). In the survey component of this project, almost half (46%) had disclosed engaging in international surrogacy to their fertility specialist and only 14% had received a negative reaction, while 37% and 49% received a neutral and positive response, respectively.

This change in behaviour from both intended parents and fertility specialists is possibly due to a change in the National Health and Medical Research Council's (NHMRC) ART guidelines (2023a). Prior to 2017, the guidelines prohibited fertility specialists from facilitating commercial surrogacy

and this impacted their ability to provide expert guidance on how to safely pursue such arrangements overseas (Zannettino et al. 2019). The updated guidelines now state:

> ‘Where an individual or couple has made an autonomous decision to seek ART overseas, clinics may provide information aimed at the reduction of harm to the intended parent(s) and the person who would be born. This may include advice aimed at reducing the likelihood of ovarian hyperstimulation, the promotion of single embryo transfer and supporting the right of persons born from donated gametes or embryos to know the details of their genetic origins’ (NHMRC 2023:25).

Whether or not it’s feasible for fertility specialists to deliver harm-reduction education to people considering international surrogacy requires further consideration. An investigation into the knowledge, attitudes and practices of IVF clinic staff regarding international surrogacy should be conducted. The findings from such research could inform strategies to support specialists to provide this information.

The scope of this project did not allow for the lived experiences of those born through surrogacy to be investigated. This should be a priority for future research. In Australia it is generally accepted that the best-interests of those born through surrogacy should guide law and practice (Standing Committee on Social Policy and Legal Affairs 2016; National Health and Medical Research Council 2023). However, non-disclosure of gamete donation was historically thought to be in a child’s best interest and it was not until the advocacy of donor-conceived individuals and increased scholarly attention towards their lived experience, that early disclosure was recognised as being in their best interests (Allan 2012). As such, listening to the voices of those born through surrogacy is necessary to determine whether the laws are truly in their best interest.

To date, just one study has investigated the attitudes of people born through surrogacy about their method of conception. A longitudinal study investigating the psychological outcomes of people born through third-party reproduction found that young adults born through surrogacy, who in most cases were told about their conception before the age of four and were still in contact with their surrogate, felt positive or unconcerned about their conception (Jadva et al. 2023). While this finding is positive, the study was conducted in the UK and the participants were born through a domestic surrogacy arrangement. It is possible that those born through international surrogacy may have different views. The context of international surrogacy differs widely to that of domestic surrogacy for various reasons. A discourse of exploitation surrounds it (Arvidsson et al. 2015) and, as this project identified, it can involve several clinical practices which cause long term harm to those born as a result. Further investigation into the lived experiences of those born through surrogacy, but particularly those born as a result of an international arrangement, is therefore crucial.

6.5 Strengths + limitations

This PhD project's mixed-methods research design enabled an in-depth exploration of a topic which involves multiple stakeholders and spans numerous fields including law, psychology, assisted reproduction, perinatal health, and health policy and regulation. The project has made significant contributions to an otherwise small body of literature. Novel findings were made about stakeholders' lived experience of surrogacy in Australia and the impact of international surrogacy practices on those born as a result. Moreover, people who have navigated and facilitated surrogacy were involved in the design of the data collection tools to ensure the questions reflected issues relevant to their community.

Like all research this project has limitations to be aware of. Firstly, as participants elected to participate, selection bias cannot be ruled out. Secondly, participants were primarily recruited through surrogacy support organisations and social media, primarily through surrogacy Facebook groups and people who do not engage with these sources of support may have different socio demographic characteristics and experiences of surrogacy to those that do. Thirdly, the interview component did not include people who had tried to become a parent through surrogacy but been unsuccessful. It is possible their views and experiences differ to those who were able to have a child through surrogacy. Future research should investigate the reasons for and the experiences of people who do not achieve parenthood through surrogacy to understand their psychosocial needs. Finally, this study did not include people who regretted their decision to become a surrogate. Although Study One found that surrogate experiences are mostly positive, there are media articles and blog posts depicting surrogates who regret their decision (ABC News 2014; Nordic Model Now! 2023). Further research investigating this phenomena would be useful in informing regulatory reform.

6.6 Conclusion

For as long as surrogacy has been regulated in Australia, the appropriateness of its regulation has been the subject of numerous government inquiries and scholarly debate. Yet little empirical evidence about whether the regulations serve the needs of those involved in surrogacy has existed until now. This PhD project drew upon the lived experiences of Australian surrogates and intended parents, and a comparison of domestic and international surrogacy characteristics and outcomes. The evidence generated validates the longstanding critique of Australia's regulatory approach towards surrogacy and provides evidence-based recommendations for law reform. It demonstrates that the current laws create challenges for those wanting to become a surrogate or to have a child through surrogacy. This leads to most intended parents completing surrogacy internationally, where the risks of physical and psychological harm to the child are greater and where safeguards protecting the surrogates from harm may be absent. Regulatory reform is therefore needed to improve access to surrogacy in Australia, to reduce the number of intended parents going

overseas and, crucially, to better protect the welfare of Australians born through surrogacy and overseas surrogates.

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Human Reproductive Technology Act 1991 (WA)

Family Law Act 1975 (Cth)

Parentage Act 2004 (ACT)

Parentage (Surrogacy) Amendment Bill 2023 (ACT)

Prohibition of Human Cloning for Reproduction Act (QLD) 2003

Prohibition of Human Cloning for Reproduction Act (SA) 2003

Prohibition of Human Cloning for Reproduction Act (VIC) 2008

Surrogacy Act 2008 (WA)

Surrogacy Act 2010 (NSW)

Surrogacy Act 2010 (QLD)

Surrogacy Act 2012 (TAS)

Surrogacy Act 2019 (SA)

Appendices

Appendix 1: Explanatory Statement (Study Two)

EXPLANATORY STATEMENT

Australians pursuing surrogacy

Project ID: 28359

Project title: Australians' use of surrogacy

Investigators:

Dr Karin Hammarberg
School of Public Health and Preventative Medicine
Monash University
Phone: [redacted]
Email: [redacted]

Ezra Kneebone
School of Clinical Sciences
Monash University
Phone: [redacted]
Email: [redacted]

Dr Kiri Beilby
School of Clinical Sciences
Monash University
Email: [redacted]

You are invited to take part in this study. Please read this Explanatory Statement in full before deciding whether or not to participate in this research. If you would like further information regarding any aspect of this project, you are encouraged to contact Ezra Kneebone via the phone number or email address listed above.

What does the research involve?

This study aims to describe how Australians decide to pursue surrogacy and the characteristics and outcomes of the arrangements they attempt. It involves completing an online, anonymous questionnaire, estimated to take between 10 and 20 minutes to complete. The questionnaire includes questions about how you decided to pursue surrogacy, the number of times you have pursued surrogacy, and the outcomes of these attempts. You can decline to answer questions that you do not want to answer.

Why were you chosen for this research?

You were chosen for this research because you have responded to an advertisement online, been invited as a personal contact of the researchers, or have responded to an email advertisement from Surrogacy Australia or Growing Families. You are eligible to participate in this study if you are intending to become a parent through surrogacy, have attempted to become a parent through surrogacy and/or are a parent through surrogacy.

Source of funding

Ezra Kneebone receives a PhD Research Training Program scholarship awarded by Monash University.

Consenting to participate in the project and withdrawing from the research

Participation in this research project is voluntary. If after reading this Explanatory Statement you wish to participate in this study, please close this window to return to the questionnaire. Submitting the completed questionnaire will be taken as consent to participate. As the questionnaire is anonymous, it will not be possible to withdraw your consent once you have submitted the completed questionnaire. You may choose to stop completing the questionnaire at any point prior to submission and your responses up until that point will not be recorded.

Possible benefits and risks to participants

While participating in this study may not directly benefit you, your contribution will allow us to gather data to inform policy facilitating access to surrogacy arrangements in Australia.

Surrogacy is psychologically challenging for intended parents. Completion of a questionnaire of your surrogacy journey may be distressing, in particular for those whose journey has been unsuccessful.

Services on offer if adversely affected

If you experience distress as a result of completing this questionnaire you can access complimentary counselling with a trained infertility counsellor. Please see below for her contact details.

Cal Volks
Infertility, Assisted Reproduction & Donor Linking Counsellor
Phone: [redacted]
Email: [redacted]

Confidentiality

You do not have to provide any identifying information and the system used does not store your IP address. Your responses will be combined with those of others and only group data will be reported. The results of this study will be presented at conferences and published in a thesis and in scientific journals.

Storage of data

The responses you provide will be stored on a password protected shared drive at Monash University and only accessible to the named researchers. Data will be stored for a minimum of 5 years after completion of the research, after which data will be destroyed by deleting it.

Use of data for other purposes

At the end of the questionnaire, you will be advised about an upcoming interview study conducted by the researchers and asked if you want to receive information about this study. If you do, you will be asked to click on a link which takes you to a new page where you can record your contact details for this purpose. This is a separate page that is not connected to your questionnaire responses to ensure they remain anonymous. You will only be contacted in the future if you submit your details using this link. The data collected from this study will not be used for any other purposes.

Results

You can receive a summary of the findings from this study via email. You will be provided with a link that you can click on to provide your details for this purpose. This is a separate page that is not connected to your questionnaire responses to ensure they remain anonymous.

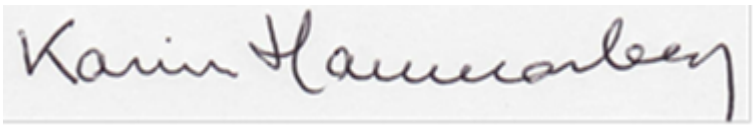
Complaints

Should you have any concerns or complaints about the conduct of the project, you are welcome to contact the Executive Officer, Monash University Human Research Ethics Committee (MUHREC):

Executive Officer
Monash University Human Research Ethics Committee (MUHREC)
Room 111, Chancellery Building D,
26 Sports Walk, Clayton Campus
Research Office
Monash University VIC 3800

Tel: +61 3 9905 2052 Email: muhrec@monash.edu Fax: +61 3 9905 3831

Thank you,



Karin Hammarberg

Appendices

Appendix 2: Explanatory Statement (Study Three)

Professionals

EXPLANATORY STATEMENT

(Surrogacy Professionals)

Project ID: 36145

Project title: Stakeholder perceptions of the regulatory frameworks related to surrogacy in Australia

Chief Investigator **Dr Kiri Beilby** School of Clinical Sciences email: [redacted]	Co-investigator **Dr Karin Hammarberg** School of Public Health and Preventative Medicine email: [redacted]	Student **Ms Ezra Kneebone** School of Clinical Sciences email: [redacted]

You are invited to take part in this student research project. Please read this Explanatory Statement in full before deciding whether or not to participate in this research. If you would like further information regarding any aspect of this project, please contact Ms Ezra Kneebone via the email address listed above**.**

What does the research involve?

This study aims to describe the views of surrogates, parents through surrogacy, and professionals towards the regulation of surrogacy arrangements in Australia. We invite you to participate in an interview where you will be asked about your experiences with surrogacy, your attitudes towards the current regulation of surrogacy arrangements in Australia, and your attitudes towards potential law reforms aimed at improving access to surrogacy. The interviews will be conducted online using Zoom with Ms Ezra Kneebone. It is expected the interviews will take approximately 45-60 minutes and will be conducted at a time suitable for you. The interviews will be audio and video recorded and transcribed using Zoom. After the interviews have been transcribed, you will be recontacted and asked to review your transcript. You can then choose if you would like to add or remove anything from your transcript.

Why were you chosen for this research?

You have been invited to participate in this study because you work in a professional capacity supporting Australians undergoing surrogacy. Your contact details were previously known to the researchers as a personal contact or were obtained from your professional website.

Source of funding

Ms Ezra Kneebone receives a Research Training Program Scholarship issued by the Department of Education.

Consenting to participate in the project and withdrawing from the research

Participation in this research project is voluntary. If you agree to take part in this project, we will ask you to sign and return a consent form prior to the interview. If you agree to take part in this project but later change your mind, you can withdraw at any point up until you have had the opportunity to review your transcript after the interview. Once you have reviewed your transcript (and made any changes if necessary), it will not be possible to withdraw from the study as we would have begun data analysis.

Possible benefits and risks to participants

While you may not personally benefit from taking part in this project, your participation will contribute valuable knowledge on the regulation of surrogacy in Australia, which may lead to improved access of arrangements.

Surrogacy can be an emotionally challenging journey and if you have previously acted as a surrogate or are a parent through surrogacy, there is the potential for you to experience distress during the interviews when recounting your experiences.

Complimentary services on offer if adversely affected

Infertility and Assisted Reproductive Technology Counsellor

Cal Volks
www.calvolks.com
Email: [redacted]
Tel: [redacted]

Confidentiality

Confidentiality will be ensured to the best of our ability. Your name and contact details are only collected for the purpose of recruitment. Any data that is shared from this study will be anonymous.

The data from this study may include direct quotes from your interview. Accompanying these quotes, we may describe your involvement with surrogacy (e.g. lawyer, counsellor) but your name will not appear.

Storage of data

The data will be stored on a Monash University password protected shared drive accessible only by the study investigators. The data will be stored for five years after completion of the research, after which the data will be destroyed.

Results

The project findings will be presented at conferences and shared in journal articles. The data will also form the basis of a thesis. You will receive a summary report of the project findings once the data has been analysed.

Complaints

Should you have any concerns or complaints about the conduct of the project, you are welcome to contact the Executive Officer, Monash University Human Research Ethics (MUHREC):

Executive Officer
Monash University Human Research Ethics Committee (MUHREC)
Room 111, Chancellery Building E,
24 Sports Walk, Clayton Campus
Research Office
Monash University VIC 3800

Tel: +61 3 9905 2052 Email: muhrec@monash.edu Fax: +61 3 9905 3831

Thank you,

Dr Kiri Beilby

Surrogates

EXPLANATORY STATEMENT

(Surrogates)

Project ID: 36145

Project title: Stakeholder perceptions of the regulatory frameworks related to surrogacy in Australia

Chief Investigator **Dr Kiri Beilby** School of Clinical Sciences email: [redacted]	Co-investigator **Dr Karin Hammarberg** School of Public Health and Preventative Medicine email: [redacted]	Student **Ms Ezra Kneebone** School of Clinical Sciences email: [redacted]

You are invited to take part in this student research project. Please read this Explanatory Statement in full before deciding whether or not to participate in this research. If you would like further information regarding any aspect of this project, you are encouraged to contact Ms Ezra Kneebone via the email address listed above**.**

What does the research involve?

This study aims to describe the views of surrogates, parents through surrogacy, and professionals towards the regulation of surrogacy arrangements in Australia. We invite you to complete an interview with Ms Ezra Kneebone. We may not be able to interview everyone and so we invite you to first complete a 'participate questionnaire' to help us choose people with different backgrounds for our interviews.

In the interview, you will be asked about your experiences of being a surrogate, your views on the current regulation of surrogacy arrangements in Australia, and your attitudes towards potential law reforms aimed at improving access to surrogacy. The interviews will be conducted online using Zoom with Ms Ezra Kneebone. The interview will take approximately 45-60 minutes and will be conducted at a time suitable for you. The interview will be audio and video recorded and transcribed using Zoom. After the interviews have been transcribed, you will be recontacted and asked to review your transcript. You can then choose if you would like to add or remove anything from your transcript.

Why were you chosen for this research?

You have been invited to participate in this study because you have acted as a surrogate in Australia and have been invited by another participant in the study.

Source of funding

Ms Ezra Kneebone receives a Research Training Program Scholarship issued by the Department of Education.

Consenting to participate in the project and withdrawing from the research

Participation in this research project is voluntary. If you agree to take part in this project, we will ask you to sign and return a consent form prior to the interview. If you agree to take part in this project but later change your mind, you can withdraw at any point up until you have had the opportunity to review your transcript after the interview. Once you have reviewed your transcript (and made any changes if necessary), it will not be possible to withdraw from the study as we would have begun data analysis. **Possible benefits and risks to participants**

While you may not personally benefit from taking part in this project, your participation will contribute valuable knowledge on the regulation of surrogacy in Australia, which may lead to improved access of arrangements.

Surrogacy can be an emotionally challenging journey and there is the potential for you to experience distress during the interviews when recounting your experiences.

Complimentary services on offer if adversely affected

Infertility and Assisted Reproductive Technology Counsellor

Cal Volks
www.calvolks.com
Email: [redacted]
Tel: [redacted]

Confidentiality

Confidentiality will be ensured to the best of our ability. Your name and contact details are only collected for the purpose of recruitment. Any data that is shared from this study will be anonymous.

The data from this study may include direct quotes from your interview. Accompanying these quotes, we may describe your involvement with surrogacy i.e. a surrogate, parent through surrogacy.

Storage of data

The data will be stored on a Monash University password protected shared drive accessible only by the study investigators. The data will be stored for five years after completion of the research, after which the data will be destroyed.

Results

The project findings will be presented at conferences and shared in journal articles. The data will also form the basis of a thesis. You will receive a summary report of the project findings once the data has been analysed.

Complaints

Should you have any concerns or complaints about the conduct of the project, you are welcome to contact the Executive Officer, Monash University Human Research Ethics (MUHREC):

Executive Officer
Monash University Human Research Ethics Committee (MUHREC)
Room 111, Chancellery Building E,
24 Sports Walk, Clayton Campus
Research Office
Monash University VIC 3800

Tel: +61 3 9905 2052 Email: muhrec@monash.edu Fax: +61 3 9905 3831

Thank you,

Dr Kiri Beilby

EXPLANATORY STATEMENT

(Parents through Surrogacy)

Project ID: 36145

Project title: Stakeholder perceptions of the regulatory frameworks related to surrogacy in Australia

Chief Investigator **Dr Kiri Beilby** School of Clinical Sciences email: [redacted]	Co-investigator **Dr Karin Hammarberg** School of Public Health and Preventative Medicine email: [redacted]	Student **Ms Ezra Kneebone** School of Clinical Sciences email: [redacted]

You are invited to take part in this student research project. Please read this Explanatory Statement in full before deciding whether or not to participate in this research. If you would like further information regarding any aspect of this project, you are encouraged to contact Ms Ezra Kneebone via the email address listed above**.**

What does the research involve?

This study aims to describe the views of surrogates, parents through surrogacy, and professionals towards the regulation of surrogacy arrangements in Australia. We invite you to complete an interview with Ms Ezra Kneebone. We may not be able to interview everyone and so we invite you to first complete a 'participate questionnaire' to help us choose people with different backgrounds for our interviews.

In the interview, you will be asked about your experiences with surrogacy, your views on the current regulation of surrogacy arrangements in Australia, and your attitudes towards potential law reforms aimed at improving access to surrogacy. The interviews will be conducted online using Zoom with Ms Ezra Kneebone. The interview will take approximately 45-60 minutes and will be conducted at a time suitable for you. The interview will be audio and video recorded and transcribed using Zoom. After the interviews have been transcribed, you will be recontacted and asked to review your transcript. You can then choose if you would like to add or remove anything from your transcript.

Why were you chosen for this research?

You have been invited because you are a parent through surrogacy and provided your contact details to us when you completed a survey we conducted last year.

Source of funding

Ms Ezra Kneebone receives a Research Training Program Scholarship issued by the Department of Education.

Consenting to participate in the project and withdrawing from the research

Participation in this research project is voluntary. If you agree to take part in this project, we will ask you to sign and return a consent form prior to the interview. If you agree to take part in this project but later change your mind, you can withdraw at any point up until you have had the opportunity to review your transcript after the interview. Once you have reviewed your transcript (and made any changes if necessary), it will not be possible to withdraw from the study as we would have begun data analysis.

Possible benefits and risks to participants

While you may not personally benefit from taking part in this project, your participation will contribute valuable knowledge on the regulation of surrogacy in Australia, which may lead to improved access of arrangements.

Surrogacy can be an emotionally challenging journey and there is the potential for you to experience distress during the interviews when recounting your experiences.

Complimentary services on offer if adversely affected

Infertility and Assisted Reproductive Technology Counsellor

Cal Volks
www.calvolks.com
Email: [redacted]
Tel: [redacted]

Confidentiality

Confidentiality will be ensured to the best of our ability. Your name and contact details are only collected for the purpose of recruitment. Any data that is shared from this study will be anonymous.

The data from this study may include direct quotes from your interview. Accompanying these quotes, we may describe your involvement with surrogacy i.e. a surrogate, parent through surrogacy.

Storage of data

The data will be stored on a Monash University password protected shared drive accessible only by the study investigators. The data will be stored for five years after completion of the research, after which the data will be destroyed.

Results

The project findings will be presented at conferences and shared in journal articles. The data will also form the basis of a thesis. You will receive a summary report of the project findings once the data has been analysed.

Complaints

Should you have any concerns or complaints about the conduct of the project, you are welcome to contact the Executive Officer, Monash University Human Research Ethics (MUHREC):

Executive Officer
Monash University Human Research Ethics Committee (MUHREC)
Room 111, Chancellery Building E,
24 Sports Walk, Clayton Campus
Research Office
Monash University VIC 3800

Tel: +61 3 9905 2052 Email: muhrec@monash.edu Fax: +61 3 9905 3831

Thank you,

Dr Kiri Beilby

Appendices

Appendix 3: Consent Form (Study Three)

CONSENT FORM

Surrogacy stakeholders

Project ID: 36145

Project title: Stakeholder perceptions of the regulatory frameworks related to surrogacy in Australia

Chief Investigator: Dr Kiri Beilby

I have been asked to take part in the Monash University research project specified above. I have read and understood the Explanatory Statement and I hereby consent to participate in this project.

I consent to the following:	Yes	No
Taking part in an interview		
Audio and/or video recording during the interview		
The use of direct quotes		

Name of Participant _____

Participant Signature _____ Date _____

Appendices

Appendix 4: Recruitment Email (Study Three)

Surrogacy professionals:

Subject Line: Invitation to participate in a study on Australia's approach to regulating surrogacy arrangements.

Dear _____,

You are invited to take part in a study about Australia's approach to regulating surrogacy arrangements. The Chief Investigator is Dr Kiri Beilby at Monash University and the study has the approval of Monash University Human Research Ethics Committee (MUHREC project ID: 36145) and the findings will help us better understand the impact of the regulatory landscape of surrogacy in Australia and identify strategies to reduce barriers to accessing surrogacy.

The study involves completing an interview which is expected to take between 45 and 60 minutes. The interview will be completed online using Zoom at a time that suits you. You have been invited because you work in a professional capacity assisting surrogacy participants and your contact details were previously known to the researchers.

Participation in this study is entirely voluntary. Please read the attached Explanatory Statement and Consent Form to find out more about the project. If you would like to participate, please reply to this email to schedule a time for the interview.

Kind regards,

Ezra Kneebone

Intended parents:

Subject Line: Invitation to participate in a study on Australia's approach to regulating surrogacy arrangements.

Dear _____,

You are invited to take part in a study about Australia's approach to regulating surrogacy arrangements. The Chief Investigator is Dr Kiri Beilby at Monash University and the study has the approval of Monash University Human Research Ethics Committee (MUHREC project ID: 36145) and the findings will help us better understand the impact of the regulatory landscape of surrogacy in Australia and identify strategies to reduce barriers to accessing surrogacy.

The study involves completing an interview which is expected to take between 45 and 60 minutes. The interview will be completed online using Zoom at a time that suits you. You have been invited because you [expressed interest and provided your contact details when you completed a survey we conducted last year].

Participation in this study is entirely voluntary. Please read the attached Explanatory Statement and Consent Form to find out more about the project. If you would like to participate, please click this <link> to express your interest and to answer some questions about your surrogacy journey. Depending on how many people express their interest, we may or may not be able to interview everyone but we will let you know either way.

We are also recruiting surrogates for this study. If you know of any Australian surrogates who may be interested in participating, please share this <link> with them.

Kind regards,

Ezra Kneebone

Appendices

Appendix 5: White Paper (Study Two)

Australians' Use of Surrogacy

Ezra Kneebone, Karin Hammarberg, Kiri Beilby

We are researchers at Monash University with an interest in assisted reproductive technologies, including surrogacy arrangements. We conducted a study in 2021 to investigate how intended parents decide to complete surrogacy in Australia and internationally, and to compare the characteristics and outcomes of these arrangements. The findings of the study have been submitted for publication and will be published in 2023. We summarise these findings in this report.

What we did

We developed an online survey for Australians who were planning, were completing, or who had completed a surrogacy arrangement. The survey was developed with the assistance of Sam Everingham, a parent through surrogacy and the founder of Growing Families. The study was approved by the Monash University Human Research Ethics Committee.

The study was advertised online through various social media channels and Facebook groups related to surrogacy. Growing Families advertised the survey through their email list and the researchers advertised the study to personal contacts.

The survey was completed by 319 respondents: 29% were planning on completing surrogacy, 28% were in the process of completing their first surrogacy arrangement, and 43% had completed at least one surrogacy arrangement.

What we found

Characteristics of intended parents

- Majority of the respondents were in a relationship and there was an even split of same-sex male and heterosexual couples (Table 1).
- The three most common reasons for heterosexual respondents to engage in surrogacy were repeated IVF failures, an absent uterus, and a medical condition putting the woman's health/life at risk if pregnant.
- The median annual income of the respondents was $AUD182,000- $207,999.

Decision making

- Of the respondents who completed surrogacy, 79% completed international surrogacy and 21% completed surrogacy in Australia.
- The three most common reasons for not completing surrogacy in Australia were that it was a long and complicated process, it was difficult to find a surrogate, and not having any third-parties to screen surrogates and facilitate the arrangement.
- Of the respondents who completed international surrogacy, 85% would have preferred to have completed the arrangement in Australia had it been possible.

- All respondents who completed surrogacy in Australia received counselling and legal advice, while only 55% and 65% of respondents who completed international surrogacy did so respectively.

Outcomes and costs

- Of those who completed international surrogacy, the use of anonymously donated eggs and multiple embryo transfers were reported by 33% and 37% of respondents respectively. Both of these practices are prohibited in Australia to protect the wellbeing of donor conceived people and people born through surrogacy.
- Respondents who completed international surrogacy reported twin births, preterm births and neonatal intensive care stays more frequently than respondents who completed surrogacy in Australia (Table 2).
- The median cost that heterosexual couples spent on IVF before deciding to complete surrogacy was $AUD50,000.
- The median cost of surrogacy spent by respondents who completed surrogacy in Australia was $AUD72,500, while the median cost of surrogacy spent by those who completed international surrogacy was $AUD150,000.

What this means

There are high costs associated with surrogacy and the median household income of intended parents is greater than double that of the general Australian population. Providing Medicare Benefit Scheme funding for patients engaged in surrogacy may help to reduce the financial barrier to accessing arrangements.

Because the needs of intended parents are not being met in Australia, the wellbeing of their children, who are subsequently born through international surrogacy, is compromised. Reforming the laws on surrogacy to better support access to arrangements would reduce the number of intended parents engaging with international surrogacy and improve the health outcomes for people born through surrogacy.

Intended parents engaging in international surrogacy need to be better informed about the risks of multiple embryo transfers and anonymous donors and the need for seeking legal advice and counselling. This could be achieved through public awareness campaigns or the development of a website by the Australian Government.

If you would like any further information, please contact Ms Ezra Kneebone via ezra.kneebone@monash.edu.

Tables

Table 1. Relationship status of respondents (n=319).

Relationship status	**% of respondents (n)**
Heterosexual couple	44% (140)
Same-sex male couple	41% (131)
Same-sex female couple	0% (1)
Single male	7% (22)

Single female	4% (14)
Not reported	3% (11)

Table 2. Outcomes of Australian (n=28) and international (n=108) surrogacy arrangements. * One respondent who did surrogacy in Australia did not report the gestational length of the surrogacy pregnancy.

Outcome	**% of arrangements (n)**	
	Australian (28)	**International (108)**
Twin birth	0% (0)	11% (12)
Preterm births*	11% (3)	20% (22)
Neonatal intensive care stays	11% (3)	22% (24)

Appendices

Appendix 6: Senate Inquiry Submission (Study Two)

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

14th December 2022

Dear Committee Secretary,

We write regarding the *Universal Access to Reproductive Healthcare* inquiry. We are researchers from the disciplines and fields of law, bioethics, public health, anthropology, and medicine. We all have expertise in surrogacy and write in response to the following term of reference:

> *b. cost and accessibility of reproductive healthcare, including pregnancy care and termination services across Australia, particularly in regional and remote areas.*

A priority of the National Women's Health Strategy is to remove barriers to support equitable access to affordable reproductive health care. In line with this, we submit that Medicare Benefits Schedule (MBS) items 13200 to 13221, regarding funding of services related to assisted reproduction, be amended to include costs incurred by patients engaged in surrogacy arrangements.

The justifications for our recommendation are as follows:

1. Surrogacy is currently excluded from the relevant MBS item numbers because surrogacy arrangements were illegal in some states at the time when these items were created (Medicare Benefits Schedule Review Taskforce 2020). Altruistic surrogacy is now legal in all Australian states and territories and so the Schedule should be updated to reflect this.

2. Providing MBS funding for patients engaged in surrogacy would help to reduce the high costs of fertility treatments, which is well established to be a significant barrier to access (Gorton 2019).

3. The financial burden is exacerbated for many heterosexual couples who, before turning to surrogacy, have also attempted to conceive with assisted reproductive technologies, spending on average $33,219 on out-of-pocket expenses (Everingham et al. 2014). This cost is now likely to be significantly higher.

4. Reducing the barriers to altruistic surrogacy in Australia may reduce the number of people seeking overseas compensated arrangements. In such instances, there is an increased risk of exploitation and human rights violation for all parties (Standing Committee on Social Policy and Legal Affairs 2016).

5. People engaged with surrogacy arrangements are already entitled to other government assistance. For example, surrogates and intended parents are eligible for the Australian Government's paid parental leave scheme. A consistent national policy on this issue is needed to truly support those engaged with surrogacy.

6. MBS funding for surrogacy would not create a significant government expense, as just 0.36% of all assisted reproductive technologies cycles in Australia and New Zealand in 2020 involved surrogacy arrangements (Newman et al. 2022).

7. It is unlikely that MBS funding for surrogacy would create widespread public disapproval as most of the Australian public is supportive of the practice (Constantinidis & Cook 2012; Tremellen & Everingham 2016).

Please contact Ezra Kneebone via the email address provided if you require any further information.

Yours Sincerely,

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Monash University

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Appendices

Appendix 7: Flyer for Monash Bioethics Centre public seminar

Appendices

Appendix 8: Supplementary Material for Study One Manuscript

Supplementary 1. MEDLINE search strategy.

☐	1	Surrogate Mothers/
☐	2	((surrogat* or surrogac*) adj4 (parent* or couple* or father* or mother* or transnational* or international* or gay*)).mp.
☐	3	(gestational adj (carrier* or mother*)).mp.
☐	4	host mother*.mp.
☐	5	(Cross adj1 border adj1 reproducti*).mp.
☐	6	1 or 2 or 3 or 4 or 5
☐	7	(relations* or experience* or stress* or adjust* or stigma* or feeling* or emotion* or motivation* or satisf* or dissatisf* or support* or counse?ling* or psycholog* or well being or wellbeing or mental health or self esteem or depression* or depressed or anxiety or psychosocial*).mp.
☐	8	family relations/ or family conflict/ or parent-child relations/ or father-child relations/ or mother-child relations/ or parenting/ or sibling relations/
☐	9	adaptation, psychological/ or emotional adjustment/ or social stigma/ or emotions/ or anxiety/ or psychological distress/
☐	10	motivation/ or interpersonal relations/ or depression/ or stress, psychological/ or "Quality of Life"/ or Self-Help Groups/ or informed consent/
☐	11	7 or 8 or 9 or 10
☐	12	6 and 11
☐	13	limit 12 to (english language and yr="2005 -Current")
☐	14	exp animals/ not humans.sh.
☐	15	13 not 14

Supplementary 2. PsycINFO search strategy.

☐	1	"surrogate parents (humans)"/
☐	2	((surrogat* or surrogac*) adj4 (parent* or couple* or father* or mother* or transnational* or international* or gay*)).mp.
☐	3	(gestational adj (carrier* or mother*)).mp.
☐	4	host mother*.mp.
☐	5	(Cross adj1 border adj1 reproducti*).mp.
☐	6	1 or 2 or 3 or 4 or 5
☐	7	(relations* or experience* or stress* or adjust* or stigma* or feeling* or emotion* or motivation* or satisf* or dissatisf* or support* or counse?ling* or psycholog* or well being or wellbeing or mental health or self esteem or depression* or depressed or anxiety or psychosocial*).mp.
☐	8	decision making/ or motivation/ or mental health/ or identity formation/
☐	9	emotions/ or mental health services/ or psychosocial factors/ or quality of life/
☐	10	life experiences/ or kinship/ or parenting/ or parent child relations/
☐	11	parent child communication/ or parenthood status/ or well being/
☐	12	childhood development/ or psychosocial development/ or psychological stress/ or child attitudes/ or family relations/ or emotional adjustment/ or social perception/
☐	13	7 or 8 or 9 or 10 or 11 or 12
☐	14	6 and 13
☐	15	limit 14 to (english language and yr="2005 -Current")
☐	16	exp animals/
☐	17	15 not 16

Supplementary 3. Embase search strategy.

☐	1	surrogate mother/ or gestational carrier/
☐	2	host mother*.mp.
☐	3	(gestational adj (carrier* or mother*)).mp.
☐	4	((surrogat* or surrogac*) adj4 (parent* or couple* or father* or mother* or transnational* or international* or gay*)).mp.
☐	5	(Cross adj1 border adj1 reproducti*).mp.
☐	6	(relations* or experience* or stress* or adjust* or stigma* or feeling* or emotion* or motivation* or satisf* or dissatisf* or support* or counse?ling* or psycholog* or well being or wellbeing or mental health or self esteem or depression* or depressed or anxiety or psychosocial*).mp.
☐	7	child parent relation/ or father child relation/ or mother child relation/ or family study/ or motivation/ or parenthood/ or personal experience/ or social support/ or psychological well-being/ or mental health/ or wellbeing/ or family relation/ or family conflict/ or parental stress/ or stress/ or experience/ or social psychology/ or stigma/ or family conflict/ or coping behavior/ or family coping/ or psychological adjustment/ or emotion/ or "quality of life"/
☐	8	1 or 2 or 3 or 4 or 5
☐	9	6 or 7
☐	10	8 and 9
☐	11	limit 10 to (english language and yr="2005-current")
☐	12	(exp animal/ or non human/) not exp human/
☐	13	11 not 12

Supplementary 4. Scopus search strategy.

TITLE-ABS-KEY-AUTH ((cross W/1 border AND w/w AND reproducti*) OR ("host mother*") OR ("gestational carrier*") OR ("gestational mother*") OR (surrogat* W/4 parent*) OR (surrogat* W/4 couple*) OR (surrogat* W/4 father*) OR (surrogat* W/4 mother*) OR (surrogat* W/4 transnational*) OR (surrogat* W/4 international*) OR (surrogat* W/4 gay*) OR (surrogac* W/4 parent*) OR (surrogac* W/4 couple*) OR (surrogac* W/4 father*) OR (surrogac* W/4 mother*) OR (surrogac* W/4 transnational*) OR (surrogac* W/4 international*) OR (surrogac* W/4 gay*)) AND ((relations* OR experience* OR stress* OR adjust* OR stigma* OR feeling* OR emotion* OR motivation* OR satisf* OR dissatisf* OR support*) OR (psycholog* OR "well being" OR wellbeing OR "mental health" OR "self esteem" OR depression* OR depressed OR anxiety OR psychosocial*) OR (counseling* OR counselling*) AND NOT (mice OR rat* OR mouse)) AND (LIMIT-TO (LANGUAGE , "English")) AND (LIMIT-TO (PUBYEAR , 2020) OR LIMIT-TO (PUBYEAR , 2019) OR LIMIT-TO (PUBYEAR , 2018) OR LIMIT-TO (PUBYEAR , 2017) OR LIMIT-TO (PUBYEAR , 2016) OR LIMIT-TO (PUBYEAR , 2015) OR LIMIT-TO (PUBYEAR , 2014) OR LIMIT-TO (PUBYEAR , 2013) OR LIMIT-TO (PUBYEAR , 2012) OR LIMIT-TO (PUBYEAR , 2011) OR LIMIT-TO (PUBYEAR , 2010) OR LIMIT-TO (PUBYEAR , 2009) OR LIMIT-TO (PUBYEAR , 2008) OR LIMIT-TO (PUBYEAR , 2007) OR LIMIT-TO (PUBYEAR , 2006) OR LIMIT-TO (PUBYEAR , 2005)) AND (LIMIT-TO (DOCTYPE , "ar"))

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Appendices

Appendix 9: Survey questions (Study Two)

Text written in italics describes survey flow and will not be seen by participants.

This survey aims to understand the reasons why Australians pursue surrogacy and their experiences of surrogacy arrangements. We would welcome your responses to this survey if you

a) are intending to become a parent through surrogacy,

b) have attempted to become a parent through surrogacy, and/or

c) are a parent through surrogacy.

Please read this explanatory statement before deciding whether or not to participate in this research.

Explanatory statement attached here

If you are a couple, please complete only one survey per couple.

1. Would you like to participate in this study?

a) Yes

b) No → *Terminate survey (Thank you for the time spent considering this study)*

Block One: Screening

2. Which of the following is true of you?

a) I am intending to become a parent through surrogacy

b) I have attempted to become a parent through surrogacy

c) I am a parent through surrogacy

d) None of the above → *Terminate survey (Unfortunately, you do not meet the inclusion criteria for this study. Thank you for the time spent considering this study)*

3. Which of the following are true of you (and your partner if you have one)? Select all that apply.

a) I am an Australian citizen

b) I am an Australian permanent resident

c) My partner is an Australian citizen

d) My partner is an Australian permanent resident

e) None of the above → *Terminate survey (Unfortunately, you do not meet the inclusion criteria for this study. Thank you for the time spent considering this study)*

Block Two: Decision Making

4. Why did you pursue or are you pursuing surrogacy?

a) I am in a same-sex male relationship → *Skip to Q.6*

b) I am in a heterosexual relationship and we could not conceive for medical reasons

c) I am a single male → *Skip to Q.6*

d) I am a single female, and I could not conceive for medical reasons

e) I am in a same-sex female relationship and we could not conceive for medical reasons

f) Other (please specify)

_____

5. What was the medical reason(s) for pursuing surrogacy? Select all that apply.

a) No uterus

b) Damaged uterus

c) Congenital abnormality of the uterus

d) Repeated miscarriage

e) Repeated (in vitro fertilisation) IVF failure

f) Medication preventing me/my partner from carrying a child

g) I/my partner had cancer treatment in the past

h) Medical condition which would risk my/my partners life or health if I/they carried a child

i) High risk for the baby e.g. history of pregnancy complications with a high risk of recurrence

j) Other (please specify)

_____

6. In considering options to have a child, which of the following did you seriously consider and/or attempt before pursuing surrogacy? Select all that apply.

a) Long-term/permanent foster care

b) Emergency/respite foster care

c) Adoption

d) Co-parenting (sharing parenting with another person)

e) Natural conception

f) Assisted conception (IVF) outside of surrogacy

g) None of the above

Only show Q.7 to those who answered 'assisted conception (IVF) outside of surrogacy' to Q. 6

7. In all, approximately how much money did you spend on IVF treatment in Australia and overseas before deciding to pursue surrogacy? If you pursued IVF treatment overseas, please include costs associated with travel. Please specify in Australian dollars.

_____

Only show Q.8 to those who answered 'long-term/permanent foster care', 'emergency/respite foster care', 'adoption', or 'co-parenting' to Q.6

8. Why did you choose surrogacy over foster care, adoption and/or co-parenting? Select all that apply.

a) I wanted a child genetically related to myself and/or my partner

b) I wanted to be able to raise my child from birth

c) Surrogacy seemed a more legally secure option

d) The wait times for adoption were too long

e) My partner or I was not eligible to foster or adopt

f) Other (please specify)

_____

9. Before deciding to pursue surrogacy, where did you go to find information about surrogacy? Select all that apply.

a) Online forums such as Essential Baby, BubHub ect.

b) Reading blogs or social media posts of those on the surrogacy journey

c) www.SurrogacyAustralia.org

d) www.GrowingFamilies.org

e) www.varta.org.au

f) Overseas surrogacy agency websites

g) Australian IVF clinic websites

h) Closed Facebook surrogacy groups

i) Other websites

j) Ringing/skyping one or more overseas surrogacy agencies

k) Visiting one or more overseas surrogacy agencies

l) Contacting Australian IVF clinic(s)

m) Australian general practitioners

n) Face-to-face or online seminars/conferences

o) Meeting with/speaking to someone who had been through the process

p) Other (please specify)

_____

10. How long did you consider surrogacy before deciding to pursue it?

a) Less than a year

b) Between one and two years

c) Between three and five years

d) Between six and eight years

e) Between nine and eleven years

f) Twelve years or more

11. How satisfied are you with your decision to pursue surrogacy?

a) Very satisfied

b) Satisfied

c) Neutral

d) Dissatisfied

e) Very dissatisfied

12. Do you plan on having or did you have psychological counselling as part of your surrogacy journey?

a) Yes

b) No

13. Do you plan on getting or did you get legal advice from an Australian lawyer as part of your surrogacy journey?

a) Yes

b) No

14. Where are you planning on pursuing or have pursued surrogacy?

a) In Australia

b) Overseas

c) In Australia and overseas

d) Have not decided yet → *Skip to end of block*

Only show Q. 15 to those who answered 'in Australia' or 'in Australia and overseas' to Q. 14

15. Why did you choose to pursue surrogacy in Australia? Select all that apply.

a) A friend or family member offered to be my surrogate

b) I wanted to be involved with the pregnancy

c) I met someone who agreed to be my surrogate

d) I wanted to have an ongoing relationship with the surrogate

e) Navigating another countries legal and medical systems is too difficult

f) Concerned about the treatment of surrogates overseas

g) More affordable

h) I wanted my child to know the woman who gave birth to them

i) Other (please specify)

_____

Only show Q.16-21 to those who answered 'overseas' or 'in Australia and overseas' to Q. 14

16. Why did you choose to pursue surrogacy overseas? Select all that apply.

a) In Australia, the surrogate has the right to keep the child if she changes her mind

b) Surrogacy in Australia looked like too long/or complicated a process

c) I could not find a surrogate in Australia

d) I wanted greater choice of egg donors

e) I wanted a professional surrogacy provider to screen potential surrogates and facilitate my arrangement

f) I was not eligible to pursue surrogacy in my State or Territory

g) I did not want any/much contact with my surrogate

h) I wanted to be able to compensate a surrogate for carrying my child

i) Other (please specify)

_____

17. Would you rather have pursued surrogacy in Australia had it been possible?

a) Yes

b) No, my preference was always overseas

18. If you told any of the following people that you were pursuing overseas surrogacy, what sort of reaction did you initially receive? Please provide one answer per row.

	Positive	Neutral	Negative	Did not discuss with
Australian IVF clinic doctor				
Australian IVF clinic counsellor				
Australian GP				
Close family				
Other relatives				
Close friends				
Acquaintances				
Online acquaintances using surrogacy				

19. What considerations were most important to you when deciding which international destination to pursue surrogacy in? Select all that apply.

a) Affordability

b) Legal frameworks which allowed me/us to be the sole parent(s) on the birth certificate

c) A surrogacy agency which met all my needs

d) The wish to have little or no contact with the surrogate

e) Success rates of clinics

f) Treatment and care of surrogates

g) Being able to establish a relationship with my surrogate

h) Ability to choose the sex of my child

i) Convenience e.g. I have family who live there or cultural ties to the country

j) Track-record of that country in managing surrogacy arrangements

k) Other (please specify)

_____

20. Will/did you engage with a surrogacy provider to assist with surrogate recruitment, screening, matching and support?

a) Yes

b) No → *Skip to end of block*

21. What considerations were most important to you when deciding which surrogacy provider to use? Select all that apply.

a) Affordability

b) Were able to tailor programs to my personal needs

c) Offered guarantee of a live birth

d) Feeling like I could trust them

e) Recommendations from other intended parents

f) Other (please specify)

_____

Block Three: Outcomes of Surrogacy Attempts

22. In total, how many surrogates have you been matched with by an overseas surrogacy provider(s) and/or how many women have offered to be a surrogate for you in Australia?

a) 0 → *Skip to Q. 40*

b) 1

c) 2

d) 3

e) 4

f) 5 or more (please specify)

_____

The following questions ask about the outcomes of these surrogate matches and/or offers. If you have been matched with multiple surrogates and/or had multiple women offer to be your surrogate, please answer the following questions about your first surrogate. You will then be asked the questions again about subsequent matches/offers.

23. What country did this surrogate live in?

a) Australia

b) Cambodia

c) Canada

d) Georgia

e) India

f) Mexico

g) Nepal

h) Thailand

i) Ukraine

j) USA

k) Other (please specify)

_____

Only show Q.24-26 to those who answered 'Australia' to Q.23

24. How did you meet this surrogate?

a) The surrogate was a friend of mine

b) The surrogate was a family member of mine

c) Through the Surrogacy Australia Support Service

d) Through the Australian Surrogacy Community Facebook group

e) Through other social media platforms or internet forums

f) Other (please specify)

_____

25. How long after informing your surrogate that you were seeking surrogacy did she offer to be your surrogate?

a) Less than one month

b) Between one and three months

c) Between four and six months

d) Between seven and twelve months

e) Between one and two years

f) Between three and four years

g) Five years or more

26. What year did this surrogate agree?

_____

Do not show Q.27-28 to those who answered 'Australia' to Q. 23

27. How long after entering an agreement with a surrogacy provider were you matched with this surrogate?

a) Within one month

b) Between two and three months

c) Between four and six months

d) Between seven and nine months

e) Between ten and twelve months

f) Between one and two years

g) Two years or more

28. What year were you matched with this surrogate?

_____

29. Which of the following are true of your experience with this surrogate? Select all that apply.

a) We are proceeding with surrogacy, but the surrogate has not become pregnant yet → *Skip to Q.36*

b) The surrogate is currently pregnant → *Skip to Q.36*

c) Surrogacy was successful and resulted in the birth of my child(ren)

d) Surrogacy was unsuccessful and did not result in the birth of my child(ren) → *Skip to Q.34*

30. How many children did this surrogate give birth to?

a) 1

b) 2

c) 3

Only show Q. 31 to those who answered '1' to Q.30

31. What year did the surrogate give birth?

_____

Only show Q.32 to those who answered '2' to Q.30

32. What year(s) did the surrogate give birth?

Child 1: _____

Child 2:_____

Only show Q.33 to those who answered '3' to Q.30

33. What year(s) did the surrogate give birth?

Child 1: _____

Child 2: _____

Child 3: _____

Only show Q.34 to those who answered 'surrogacy was unsuccessful and did not result in the birth of my child(ren)' to Q. 29

34. Why did surrogacy not succeed with this surrogate? Select all that apply.

a) I could not find an egg donor

b) The surrogate changed her mind about progressing

c) I changed my mind about progressing

d) COVID-19 restrictions

e) Surrogate was ruled out on medical grounds

f) The surrogate did not conceive

g) The surrogate conceived but miscarried

h) Other (please specify)

_____

Only show Q. 35 to those who answered 'the surrogate conceived but miscarried' to Q. 34

35. When did the surrogate miscarry?

a) First trimester

b) Second trimester

c) Third trimester

Only show Q.36 to those who answered '2', '3', '4' or '5 or more to Q. 22

36. In what year did you match with your second surrogate or did a second woman offer to be your surrogate?

_____

Repeat Q.23-35

Only show Q.37 to those who answered '3', '4' or '5 or more to Q. 22

37. In what year did you match with your third surrogate or did a third woman offer to be your surrogate?

_____

Repeat Q.23-35

Only show Q.38 to those who answered '4' or '5 or more to Q. 22

38. In what year did you match with your fourth surrogate or did a fourth woman offer to be your surrogate?

_____

Repeat Q.23-35

Only show Q.39 to those who answered '5 or more to Q. 22

39. In what year did you match with your fifth surrogate or did a fifth woman offer to be your surrogate?

_____

Repeat Q.23-35

40. In total, approximately how much money have you spent on surrogacy? Please give a total cost of all surrogacy attempts in any country, including fees for counselling, legal advice, surrogate medical expenses, surrogate compensation, agency fees, travel and accommodation, egg donors and government applications. Please specify in Australian dollars.

_____

Only show Block Four to those who answered 'I am a parent through surrogacy' to Q. 2

Block Four: Surrogacy Characteristics and Experiences

The following questions will ask about your experiences with surrogacy. If you have more than one child through surrogacy, please answer these questions regarding your surrogacy journey which resulted in the birth of your youngest child.

41. What country did the surrogate live in?

a) Australia

b) Cambodia

c) Canada

d) Georgia

e) India

f) Mexico

g) Nepal

h) Thailand

i) Ukraine

j) USA

k) Other (please specify)

_____

42. How did the surrogate become pregnant?

a) Embryo transfer procedure

b) Home insemination

c) Artificial insemination at a fertility clinic

43. How many insemination and/or embryo transfer attempts were done before your surrogate became pregnant with the child(ren) she gave birth to?

a) 1

b) 2

c) 3

d) 4

e) 5

f) 6 or more

Only show Q.44 to those who answered 'home insemination' or 'artificial insemination at a fertility clinic' to Q.42

44. Was donor sperm used in the final insemination attempt?

a) Yes

b) No

Only show Q.45 to those who answered 'embryo transfer procedure' to Q.42

45. Were donor eggs or donor sperm used to create the embryo that was used in the final transfer attempt? Select all that apply.

a) Donor eggs were used

b) Donor sperm was used

c) No → Skip to Q.48

Only show Q.46 to those who answered 'yes' to Q.44 or 'donor eggs were used' or 'donor sperm was used' to Q.45

46. Have you or do you intend to disclose the use of donor eggs and/or sperm to your child?

a) Yes

b) No

c) Don’t know

Only show Q.47-48 to those who answered ‘donor eggs were used’ to Q.45

47. What country did you obtain donor eggs from?

a) Australia

b) Canada

c) Czech Republic

d) Georgia

e) Greece

f) India

g) South Africa

h) Spain

i) Thailand

j) Ukraine

k) USA

l) Don’t know

m) Other (please specify)

_____

48. In some countries, donors can donate anonymously where there is no opportunity for their offspring to make contact later, or with identity release where offspring may access donor contact details when they reach adulthood. Was the donor you used anonymous, identity release or a person whose identity was known to you?

a) Anonymous

b) Identity release

c) Known to me

d) Do not know

Only show Q.49-51 to those who answered ‘embryo transfer procedure’ to Q.42

49. How many embryos were transferred to your surrogate in the final embryo transfer?

a) 1

b) 2

c) 3

d) 4

50. Did you get a say in how many embryos were transferred?

a) No, I did not get a say

b) I only had one embryo available to transfer

c) I had more than one embryo available for transfer and decided to transfer only one

d) I had more than one embryo available for transfer and decided to transfer more than one

e) Do not recall

Only show Q.51 to those who answered 'I had more than one embryo available for transfer and decided to transfer more than one' to Q.50

51. Why did you decide to transfer more than one embryo? Select all that apply.

a) I was hoping to have twins

b) To increase the chance that the transfer would be successful

c) The doctor or agency recommended it

d) Other (please specify)

_____

52. Was the surrogate initially pregnant with more than one fetus?

a) Yes

b) No, the surrogate was pregnant with a singleton

53. How many babies did the surrogate give birth to?

a) 1

b) 2

c) 3

Only show Q.54 to those who answered 'yes' to Q.52 and '1' to Q.53

54. Did the surrogate undergo a selective reduction procedure?

a) Yes

b) No

55. How involved did you feel with the pregnancy?

a) Very involved

b) Somewhat involved

c) A little involved

d) Not involved

56. How satisfied are you with the level of involvement you had?

a) Very satisfied

b) Satisfied

c) Neither satisfied nor dissatisfied

d) Dissatisfied

e) Very dissatisfied

57. In what week of pregnancy did your surrogate give birth?

_____

58. Were you hoping to be at the birth?

a) Yes

b) No

Do not show Q.59-60 to those who answered 'Australia' to Q.41

59. Were you in [insert answer from Q.41] when your surrogate gave birth?

a) Yes → *Skip to Q. 61*

b) No

60. How long after the birth were you able to see your child(ren)?

_____

Do not show Q.61 to those who answered 'no' to Q.58 or those who answered 'no' to Q.59

61. Were you able to be at the birth?

a) Yes

b) No

62. Did you child(ren) need to spend any time in the neonatal intensive care unit (NICU)?

a) Yes

b) No → *Skip to Q.64*

63. How long did your child(ren) spend in the NICU? Please specify in days and weeks.

_____

64. Did your surrogate experience any pregnancy or birthing complications?

a) No, there were no complications

b) I don't know

c) Infection or sepsis

d) Excessive bleeding after birth

e) Cardiomyopathy

f) Postnatal depression

g) Headaches

h) Pulmonary embolism

i) Low birth weight

j) Other (please specify)

_____

Do not show Q.65-67 to those who answered 'Australia' to Q.41

65. Did you experience any challenges in getting citizenship or a child passport to be able to return home with your baby?

a) Yes

b) No → *Skip to Q.67*

66. What challenges were these? Select all that apply.

a) Had trouble understanding the processes required

b) Longer than usual delay getting birth certificate

c) Errors on birth certificate requiring replacement

d) Difficulties locating surrogate to sign documents

e) Difficulties locating documents required

f) Difficulties getting documents witnessed/notarised

g) Made mistakes on forms requiring resubmission

h) My partner or I was unable to travel which caused delays

i) Passport offices closed due to COVID-19

j) Lack of English fluency

k) Other (please specify)

_____

67. How long did you stay abroad with your baby before you returned home?

a) Less than one month

b) Between one and two months

c) Between three and five months

d) Between six months to one year

e) More than one year

Only show. Q.68 to those who answered 'Australia' to Q.41

68. Will/have you applied for legal recognition of parenthood in Australia through a Parentage Order?

a) Yes

b) No

c) Do not know

69. Have you disclosed or do you intend to disclose the use of surrogacy to your child(ren)?

a) Yes

b) No

c) Do not know

Block Five: Demographic Questions

70. How old are you?

_____

71. What gender do you identify with?

a) Man

b) Woman

c) Nonbinary

d) Prefer not to disclose

e) Prefer to self-describe

_____

72. Where do you live?

a) Australian Capital Territory

b) New South Wales

c) Northern Territory

d) Queensland

e) Tasmania

f) South Australia

g) Victoria

h) Western Australia

i) Outside Australia

73. Which of the following best describes your household's total annual income before tax?

a) < $77,999

b) $78,000- $103,999

c) $104,000-$129,999

d) $130,000-$155,999

e) $156,000-$181,999

f) $182,000- $207,999

g) >$208,000

Appendices

Appendix 10: Interview guide (Study Three)

Interview Guide

Demographic data

- Age
- Gender
- Ethnicity
- Occupation
- Highest level of education
- State/territory
- Relationship status
- Parent to # of children
- Number of surrogacy arrangements
- Country of surrogacy arrangement

Topics

Surrogates + parents through surrogacy

Topic	Main question/s	Prompts
General experience	Could you please tell me about your surrogacy experience?	● Motivations ● Relationship w/ surrogate/IP ● Impact on family ● Financial impact
Information & support	When you were considering surrogacy, where/who did you go to for information and support?	● Online surrogacy community ● SASS ● Growing Families ● Australian medical professionals ● Examples of conversations

Surrogates + parents through domestic surrogacy

Topic	Main question/s	Prompts
Pre-conception legal requirements	Tell me about your experience with fulfilling all the legal requirements prior to conception?	● Qualifying for surrogacy ● Legal advice ● Implications counselling ● Patient review panel/reproductive technology council approval
Clinic experience	Tell me about your experience with the IVF clinic?	● Positive/negative experiences ● Examples of conversations
Surrogate reimbursement	How did you go about discussing reimbursements with	● Main issues ● Navigating issues

	the [surrogate/intended parents]?	
Transfer of legal parentage	Tell me about your experience with transferring parentage to the [intended parents/yourself]?	● Main issues ● Navigating issues

Parents through international surrogacy

Topic	Main question/s	Prompts
Barriers to domestic surrogacy	Why did you pursue surrogacy overseas?	● Difficulties with Australia ● Overseas countries considered ● Altruistic vs commercial surrogacy
Agency experience	Tell me about your experience with the surrogacy agency?	● Surrogate matching ● Positive/negative experiences ● Examples of conversations
Child's citizenship + passport	Tell me about your experience with getting Australian citizenship and a passport for your child?	● Main issues ● Navigating issues ● Timing of process ● Seeking information/support

Professional role

Topic	Main question/s	Prompts
Surrogacy role	Could you please tell me about your role working with people engaged with surrogacy?	● Motivations ● Purpose of role ● Service delivery
Issues for people engaged with surrogacy	Tell me about the issues that people engaged with surrogacy face?	● Ethical/social/legal/emotional issues ● Examples of conversations ● Tools to navigate issues
Law reform	What do you think about Australia's laws on surrogacy as compared to other countries?	● Examples ● Aspects done well ● Changes to laws ● Protecting well-being of intended parents/surrogates/those born through surrogacy

Surrogates, parents through surrogacy and professionals

Topic	Main question/s	Prompts
Law reform	What do you think about Australia's laws on surrogacy as compared to other countries?	● Examples ● Aspects done well ● Changes to laws ● Protecting well-being of intended parents/surrogates/those born through surrogacy
Advice	What advice would you give to someone contemplating surrogacy?	● Australia/overseas

<u>Conclusion</u>

Is there anything else you'd like to say that we haven't yet discussed?

Appendices

Appendix 11: Unpublished data (Study Two)

Table A.1 The reactions received from people when participants (n=203) advised they were pursuing international surrogacy.

People told	Positive	Neutral	Negative	Did not discuss with	Missing responses
Australian IVF clinic doctor	52	39	15	92	5
IVF clinic counsellor	30	18	8	143	4
Australian GP	85	39	11	64	5
Close family	148	24	8	20	3
Other relatives	116	26	8	49	4
Close friends	156	23	5	16	3
Acquaintances	99	27	10	63	4
Online acquaintances using surrogacy	119	17	5	58	4