

**Submission to the Review of the Western Australian
Human Reproductive Technology Act 1991 and
the Surrogacy Act 2008**

Prepared by: Brendan Mahony (individual)



Background

My partner and I are a male same-sex couple. Recently we sought legal advice on the options available for us to have children in the State of Western Australia. We were surprised and dismayed to learn that there are effectively no options under State law for a male same-sex couple to have a child in a way that both men are legally recognised as the child's parents. As I understand it, the current legislative situation in Western Australia is as follows:

- The *Surrogacy Act* specifically excludes same-sex couples from entering into a surrogacy arrangement.
- One partner in a same-sex couple could enter into a surrogacy arrangement with another party but only if one or both parties is medically infertile. In this case the partner who is not part of the surrogacy arrangement has no legal relationship with the child.
- It is possible for a same-sex couple to adopt a child, but given the very low number of children adopted in Australia each year – about 7 across the entire country, I was told – and the significant legal and financial hurdles in the adoption process, this is an entirely impractical option. (Adoption would be our preferred option if this was *not* the case, but that is beyond the scope of this review.)
- A same-sex couple can potentially become foster parents for a child requiring out-of-home care. (We are currently involved in the application process to become foster parents, in the absence of other options.)

Given the above, I would like to make a submission relating to the following items from the Terms of Reference.

Item

The impact on the Surrogacy Act of relevant Commonwealth and State legislation and aspects of legislation of other jurisdictions, which could be incorporated into the Act, including consideration of harmonisation of domestic surrogacy legislation.

Submission

- Several other jurisdictions in Australia, specifically New South Wales, Victoria, Queensland and South Australia, allow same-sex male couples to enter into surrogacy arrangements. I would like to see the same happen in Western Australia.
- The ideal situation would be to enable my partner and I to have a child through a surrogacy arrangement where we are both recognised as the legal parents of the child. The surrogate mother, while not legally recognised as the parent of the child, could still have access to the child as agreed with the legal parents.

- Under existing Western Australian law, one or both parties to a surrogacy arrangement must be medically infertile or otherwise unable to carry a child. This requirement should be removed. The law should allow *any* couple to have a child through a surrogacy arrangement.
- Under existing law, conception under a surrogacy arrangement must take place in a clinical setting, usually via IVF. This requirement should be removed. Consenting adults entering into a surrogacy arrangement should be able to conceive the child by any means available, including intercourse or artificial insemination using household implements, e.g. a “turkey baster”.
- Surrogacy arrangements undertaken in other Australian jurisdictions should be fully recognised in Western Australia.

Item

International commercial surrogacy arrangements.

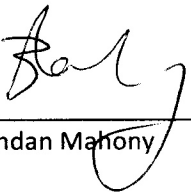
Submission

- If the law in Western Australia were relaxed to allow easier access to surrogacy arrangements within the State, then there would be a reduced need for international surrogacy arrangements. However, should couples choose to access overseas surrogacy, commercial or otherwise, then Western Australian law should be amended to recognise the international surrogacy arrangement.
- If the surrogacy arrangement is commercial in nature, this is the concern of the overseas jurisdiction and should be irrelevant to the recognition of the arrangement in Western Australia.

Thank you for the opportunity to make this submission. Should you wish to contact me, I would prefer email communication. I do not wish for my address, telephone number or email address to be published, but all other information may be published. I also understand that all details in this submission may be accessed under the *Freedom of Information Act*.

Signed:

Date:



Brendan Mahony

3 March 2018
