AUSTRALIAN LAW REFORM COMMISSION
REVIEW OF SURROGACY LAWS – FORMAL SUBMISSION

Submitted by:

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Introduction

I commend the Australian Law Reform Commission (ALRC) for undertaking this review into Australia's surrogacy laws. This area of law has been significantly outpaced by reproductive technologies and increasingly divergent from the lived realities of Australian families. As a legal professional with 18 years' experience in commercial litigation, now practising in surrogacy and family creation law through my practice The Family Village, I provide this submission to assist the Commission in developing an inclusive, ethically robust, and practically workable legal framework.

This submission is informed by both professional experience and personal insight. As an intended parent and mother to three children—one of whom was born through a gestational surrogacy arrangement—it reflects a deeply lived understanding of the legal, medical, and emotional terrain that intended parents and surrogates must currently navigate.

Response to Question 1 – Experiences with Surrogacy

My husband and I are parents to three children, including a son born via gestational surrogacy in Queensland. Our path to parenthood involved extensive fertility treatment, including ten rounds of IVF and multiple miscarriages. Following the birth of our second child, I experienced a life-threatening retained placenta, emergency surgery, and a subsequent hysterectomy. This led us to surrogacy.

Under Queensland law, intended parents are prohibited from advertising their need for a surrogate, which significantly delayed our journey. We ultimately connected with a surrogate—previously unknown to us in that context—who had attempted to assist other families but had not been successful. She became aware of our circumstances through informal conversations and generously offered to assist us. I was 41 years old at the start of our journey. Our surrogate was also 41 years old. At no point was our age raised as a barrier by the medical professionals, despite later objections from the clinic.

The mandatory counselling and psychological assessment phase was among the most alienating elements of the process. Despite full compliance with all requirements, we found the sessions unhelpful, poorly trauma-informed, and lacking in emotional or practical guidance. A psychologist was visibly distressed by my medical history and paused the session midway through. The report generated from this process served bureaucratic needs rather than therapeutic ones, and did not offer meaningful preparation or support for either the surrogate or us.

Following legal advice, we entered into a surrogacy agreement and received formal approval from the relevant board. Despite this, the fertility clinic reversed its position—citing an age restriction not grounded in law—and refused to proceed. It took three months of correspondence to clarify that the age limit was not legislated. This delay caused significant emotional and financial distress, highlighting the arbitrary and inconsistent application of clinic policies.

Our first embryo transfer was unsuccessful; our second resulted in the birth of our son, [redacted], in December 2022. The pregnancy was managed with mutual respect and open communication between us and our surrogate. While the hospital experience was less than ideal—staff appeared unfamiliar with surrogacy arrangements—we were able to remain with Vinnie throughout his care due to the surrogate's advocacy. However, there was no clear hospital protocol, and the entire experience relied on goodwill rather than structure.

Obtaining basic identity documentation for [redacted] including a passport, became a bureaucratic ordeal. Government agencies demonstrated limited understanding of surrogacy arrangements, and we were subjected to delays that would have been avoided had parentage orders been available pre-birth. This created significant stress for our family, especially as our surrogate and her family were travelling with us overseas at the time.

This experience underscores the urgent need for surrogacy reform. It reveals systemic gaps in clinical governance, psychological support, and procedural fairness. It also highlights how current laws disproportionately affect LGBTQ+ families and those relying on informal or altruistic arrangements. Our surrogate was a heterosexual, cisgender woman. Her altruism is a testament to the strength of community relationships.

Relationship with our surrogate and loss

Our surrogacy journey was not only life-changing but deeply enriching, marked by a profound and enduring bond with our surrogate. From the outset, our relationship was characterised by mutual trust, kindness, and unwavering respect. At no point did she attempt to assume a parental role, nor did she ever question or criticise the parenting decisions we made. Instead, she remained a steady, respectful, and supportive presence in our lives—a presence that we have come to deeply value and treasure.

We hold immense gratitude towards her, not because she ever asked for it, but because the magnitude of her generosity and selflessness will always be etched into the very fabric of our family. Her role in our journey was never transactional. It was entirely grounded in goodwill and a shared desire to create life and family. Her contribution has permanently shaped our lives in ways we can never fully repay, and her grace continues to inspire us.

Tragically, our beloved son [redacted] passed away unexpectedly just five days before his first birthday. The grief of this loss is immeasurable, yet it has only served to deepen the connection between our families. In his memory, we co-founded “The Family Village,” a support network and law firm dedicated to guiding others through the complexities of surrogacy. This initiative stands as a tribute to [redacted]s life—a life that, though heartbreakingly short, was filled only with love, and that overcame extraordinary odds simply to come into being.

Our son’s legacy is the driving force behind our advocacy for change. Through our personal experience, we have come to understand the transformative potential of

surrogacy—not only for intended parents, but for the wider community of people it brings together. It is this understanding that fuels our determination to push for reform. We believe deeply that surrogacy in Australia should be more accessible, more compassionate, and more reflective of the realities that families like ours live every day.

While writing these submissions has been a profoundly emotional and difficult process, I recognise how vital it is. These stories—raw, painful, and full of love—are what policy must be built upon. My sincere hope is that my contribution will help shape laws that support and protect all parties involved in surrogacy, and that honour the love and courage at the heart of these journeys.

Response to Question 2 – Guiding Principles for Reform

I support the guiding principles for reform outlined in the ALRC Issues Paper (IP 52), including the paramountcy of the best interests of the child, respect for bodily autonomy, non-discrimination, transparency, and the need for nationally consistent regulation.

These principles reflect Australia's commitments under international human rights instruments such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

They also resonate with the lived experiences of intended parents and surrogates navigating the current system, many of whom face structural and emotional barriers that undermine their dignity and legal certainty.

Importantly, these principles must be operationalised through law and policy that recognises the diversity of Australian families, including same-sex, transgender, and gender-diverse parents. Access to surrogacy should not be contingent on conformity with traditional family models but should instead reflect a rights-based approach to family formation, inclusive of all gender identities and sexual orientations.

Response to Question 3 – Risks in Unregulated or Inaccessible Surrogacy

The absence of accessible and ethically regulated surrogacy pathways domestically drives intended parents to seek arrangements overseas, often in jurisdictions with weaker human rights protections and legal ambiguity. This raises serious concerns for the wellbeing of surrogates, intended parents, and—most critically—children.

Unregulated or poorly regulated surrogacy can result in coercion, unsafe medical practices, denial of postnatal care, statelessness, and abandonment of children. Surrogates in commercial international contexts have been documented as lacking access to independent legal advice, adequate health care, and control over critical decisions such as selective termination or birth planning. Children born via such arrangements are at risk of being denied citizenship, legal parentage, or continuity of care. These scenarios are not hypothetical—they are part of the contemporary reality faced by families globally, and by extension, Australian citizens who resort to international surrogacy due to domestic inaccessibility.

Surrogates are particularly vulnerable to exploitation in jurisdictions where legal oversight is absent or weak. Reports and inquiries have documented women coerced into surrogacy, trafficked across borders, or subjected to multiple embryo transfers without adequate medical supervision. In some cases, surrogates are confined to controlled housing, isolated from support systems, and denied postnatal care. They may also face a lack of informed consent, inadequate compensation, or even forced terminations at the behest of clinics or commissioning parents. These conditions represent a profound breach of fundamental human rights and bodily autonomy.

Children born through unregulated surrogacy arrangements also face significant risks. In the absence of enforceable legal parentage mechanisms, children may be left stateless—caught between two legal systems, with no recognised parents or nationality. Others have been denied entry to Australia or access to essential health care and legal identity. There are also reported cases of children being rejected by commissioning parents, particularly when they are born with disabilities or are not of the desired sex. These outcomes violate Australia's international human rights obligations under the Convention on the Rights of the Child.

Commissioning parents, too, are placed at legal and emotional risk. Without adequate safeguards and regulatory guidance, intended parents may unknowingly enter into exploitative or legally precarious arrangements. They may face issues with inaccurate or non-consensual use of genetic material, fraudulent intermediaries, or the inability to obtain timely legal recognition of parentage. In extreme cases, they have been stranded overseas, unable to bring their child home due to legal uncertainty, geopolitical instability, or failures in diplomatic coordination.

These risks are heightened for LGBTQ+ individuals who are often excluded from domestic surrogacy eligibility due to discriminatory laws or clinic policies. Research shows that gay male couples, transgender parents, and single intended parents disproportionately face

barriers, pushing them toward international arrangements that may lack appropriate oversight. The current Australian legal framework, with its state-based inconsistencies and criminalisation of overseas commercial surrogacy in some jurisdictions, contributes to these harms rather than mitigating them.

To uphold Australia's human rights obligations and to reduce reliance on potentially exploitative international practices, a harmonised national framework for surrogacy must be implemented. This framework should: allow for pre-birth parentage recognition; ensure surrogate autonomy and consent; mandate trauma-informed, non-evaluative counselling; and facilitate inclusive access for LGBTQ+ families, single parents, and others who cannot gestate children.

Ultimately, legal reform must be understood not merely as regulatory modernisation, but as a human rights imperative—one that supports safe, ethical, and equitable pathways to parenthood for all Australians.

Response to Question 4 – The Child's Right to Know Their Origins

The right of children to know and understand their genetic, gestational, and legal origins is a foundational principle under of the Convention on the Rights of the Child (CRC), and is reflected in Australian law through various state and territory regimes governing donor conception and adoption. This principle must also be applied to children born through surrogacy arrangements.

There is strong evidence that early, age-appropriate disclosure of a child's surrogacy background supports identity development, mental health, and family cohesion. This principle must be respected, but should not be implemented in a rigid or prescriptive way. The method and timing of disclosure are best determined by the intended parents, taking into account the nature of the arrangement, the child's maturity, and family dynamics. Mandated disclosure obligations imposed on the surrogate or by law would risk undermining parental autonomy and may not account for nuanced family circumstances.

In cases of traditional surrogacy, where there is a genetic link between the surrogate and child, access to identifying information becomes even more important and should be legislatively ensured. This parallels current practices in donor conception law, where donor identity must be preserved for future access. In gestational surrogacy, where there is no genetic connection, records of the arrangement should still be retained and made available to the child in an age-appropriate format.

Current approaches to reproductive education in Australian schools remain narrow and outdated, focusing primarily on conventional biological narratives of sexual reproduction. These pedagogies often exclude or marginalise the lived experiences of individuals and families formed through assisted reproductive technologies (ART), including in vitro fertilisation (IVF), surrogacy, and donor conception. This exclusion not only reflects an increasingly inaccurate account of how families are formed in contemporary Australia, but it also contributes to stigma, misinformation, and silence.

According to the Australian Institute of Health and Welfare, more than one in six Australian women of reproductive age now require some form of medical intervention to conceive. Despite this growing prevalence, school-based sex and health education programs have not evolved to adequately reflect the diversity of family-making practices. The result is a generation of students left without the language, awareness, or empathy needed to understand the full scope of how families are created today.

This educational gap has profound consequences. Children born through surrogacy or donor conception often experience a sense of isolation or difference, particularly when their origin stories are not reflected in the educational content they encounter. Research has consistently shown that early, open, and positive disclosure of a child's origins contributes to better psychological outcomes and identity formation. However, when schools reinforce a singular, heteronormative pathway to parenthood, they create social

environments in which children from alternative family structures are more likely to experience shame, secrecy, or exclusion.

The need for reform is not merely pedagogical but grounded in human rights principles. The United Nations Convention on the Rights of the Child (CRC) requires that education be directed to the development of the child's personality, talents, and mental and physical abilities to their fullest potential, and to the preparation of the child for responsible life in a free society. A curriculum that excludes the realities of assisted reproduction fails to fulfil this standard. It deprives students—particularly those born through ART or raised in non-traditional family structures—of the information and affirmation they deserve.

Comparative jurisdictions have taken meaningful steps to address these shortcomings. In the United Kingdom, guidance from the Department for Education now includes references to donor conception and same-sex parenting as part of Relationships and Sex Education (RSE), recognising the need to reflect diverse family models in teaching materials. Similarly, in parts of Canada and Scandinavia, inclusive family education is framed as a civic competency, essential to the goals of equity, tolerance, and democratic participation.

In Australia, the continued omission of ART and surrogacy from school curricula reinforces the perception that such family-making journeys are abnormal, controversial, or shameful. This marginalisation is particularly acute for LGBTQ+ families, who are often absent from both classroom discussions and curricular resources. Children of gay, lesbian, or transgender parents may find themselves alienated by classroom narratives that fail to acknowledge their families' validity and complexity.

Reproductive education must therefore be reconceptualised—not simply as biological instruction, but as a framework for understanding the emotional, social, legal, and ethical dimensions of creating a family. This includes teaching about the role of IVF, egg and sperm donation, surrogacy, and adoption, as well as the reasons individuals or couples might pursue these paths. Education must also explore the relational dynamics between donors, surrogates, intended parents, and children, and support conversations about consent, ethics, and disclosure in age-appropriate ways.

Ultimately, the act of creating a child—regardless of method—is an expression of care, intention, and love. The 'recipe' may vary, but the essential ingredients—love, commitment, and the desire to nurture—remain consistent across all family forms. By teaching this truth in our schools, we affirm the dignity and validity of all families and empower children to embrace their origins with pride, not fear.

Inclusion in educational content has the power to reshape societal attitudes. Reforming reproductive and family education in Australian schools is not merely a matter of curricular accuracy—it is an essential step in reducing stigma, supporting openness in family narratives, and fostering a more inclusive and empathetic society.

Response to Question 5 – Barriers to Accessing Surrogacy

There are multiple systemic barriers that limit equitable access to surrogacy in Australia. These include:

- Widespread misunderstanding of surrogacy law, including the incorrect belief that all surrogacy is illegal;
- Prohibitions on advertising, which prevent intended parents from finding willing surrogates;
- Cost barriers associated with counselling, legal advice, fertility treatment, and ancillary expenses;
- Inconsistent eligibility criteria and legal requirements across state and territory jurisdictions;
- Lack of clear, consistent definitions of 'medical need', particularly for individuals with non-anatomical infertility;
- Age-related policies imposed by clinics, independent of legal thresholds;
- A limited pool of altruistic surrogates, exacerbated by legal uncertainty and social stigma.

These issues are particularly acute for LGBTQ+ individuals and couples, who may be excluded from eligibility in certain states or face discriminatory clinic practices. Transgender intended parents, for example, report higher rates of procedural confusion and stigma in fertility treatment settings. A nationally consistent surrogacy regime, developed in consultation with clinicians, advocates, and LGBTQ+ communities, is urgently needed to overcome these discriminatory barriers.

Psychological barriers also play a major role. Intended parents often experience deep anxiety over the possibility that a surrogate may not relinquish the child post-birth, particularly where the child is genetically related. This fear is compounded by inconsistent legal protections and the lack of pre-birth parentage orders. Emotional distress is further exacerbated by compulsory police checks, which many intended parents experience as invasive, discriminatory, and stigmatising—especially given that no such requirements are placed on those who conceive without assistance.

Addressing these legal, financial, and psychological obstacles requires a trauma-informed, evidence-based approach that centres compassion, legal clarity, and equitable access. Without reform, Australian families—especially those from LGBTQ+ backgrounds—will continue to seek riskier, offshore alternatives that lack oversight or consistent ethical protections.

Response to Question and 7 – Eligibility Criteria for Surrogacy

Clear and proportionate eligibility criteria for surrogacy are essential to preserving ethical standards, legal coherence, and the dignity of participants in assisted reproductive arrangements. The ALRC Issues Paper 52 notes significant inconsistencies across Australian jurisdictions in defining eligibility criteria, contributing to confusion and inequity for intended parents and surrogates alike.

A nationally harmonised legislative framework is necessary to rectify these disparities and promote fair and equitable access to surrogacy. Such a framework should offer explicit guidance on two core grounds for eligibility: medical need and social need. The Issues Paper acknowledges widespread stakeholder support for recognising both.

Medical need should be defined in consultation with clinicians to ensure clarity for women with retained reproductive capacity but clinical infertility. Social need must be recognised to ensure access for same-sex male couples, transgender individuals, and others who cannot gestate a child, in line with equality and anti-discrimination principles.

At present, individuals who retain their reproductive organs—but are nonetheless unable to conceive or sustain a pregnancy—are frequently deemed ineligible for surrogacy. This results in many being encouraged to continue undergoing multiple IVF cycles, despite poor prognoses and the emotional, physical, and financial toll such procedures impose. In practice, this means that individuals with documented infertility—such as repeated failed IVF transfers or recurrent miscarriage—may still be denied access to surrogacy unless they have undergone hysterectomy or other definitive interventions.

The absence of a consistent and inclusive definition of medical need allows for discretion that can be inconsistently applied by fertility specialists. It is therefore submitted that legislation must include a medically informed definition of infertility that includes, for example, five or more failed IVF cycles or a diagnosis of recurrent pregnancy loss. Such criteria should be developed through consultation with clinicians, legal decision-makers, and ethics experts, and applied consistently by all ART service providers and reviewing bodies.

Rigid age restrictions and other requirements—such as requiring surrogates to have previously given birth—are also potentially unjust barriers. While previous childbirth may assist informed decision-making, it should not be a legal prerequisite. Each case should be assessed based on informed consent and comprehensive counselling, not prescriptive biological criterial.

From a personal standpoint, the requirement to undergo a police check felt both intrusive and discriminatory. As a lawyer and my husband a firefighter, we were made to feel our fitness to parent was being interrogated simply because we needed medical assistance to have a child. This requirement introduced an emotional burden and sense of stigma at an already vulnerable time. It became a focus in counselling sessions, raising unnecessary doubt about our ability to be good parents.

Children conceived naturally or via IVF are not subjected to this scrutiny. To impose such requirements uniquely on intended parents using surrogacy perpetuates inequity and contravenes principles of dignity and autonomy. The consultation notes this discriminatory impact, particularly on LGBTQ+ individuals who already face additional regulatory hurdles.

In terms of age requirements an individual reaching the age of 18 is considered an adult for legal decision making purposes. At the age of 18. they can engage in:

- Marriage;
- Medical consent;
- Voting and civil participation;
- Entering binding legal contracts.

Why should the legal age for surrogacy be different?

Safeguards must exist, but they should be proportionate. Mandatory police checks should only apply in cases of identified risk or prior legal intervention. If retained more broadly, these checks must be transparent, non-stigmatising, and clearly justified by demonstrable risk.

There should be no criteria or requirement that intended parents and surrogates live in the same state or be both residents of the same state (such is currently required in Tasmania).

Having regard to these considerations, it is submitted that eligibility criteria for surrogacy should be clearly defined, but limited to the following:

1. A demonstrated medical or social need, with medical need defined in consultation with clinicians;
2. A minimum age of 18 years for both intended parents and surrogates;
3. Mandatory counselling and independent legal advice that is meaningful and trauma-informed;
4. Police checks only in circumstances where a specific risk or child protection concern is identified.

This approach ensures that the surrogacy framework is accessible, equitable, and grounded in the lived realities of intended parents and surrogates. It upholds Australia's human rights obligations while respecting the diverse pathways to parenthood that contemporary families navigate.

Response to Questions 8 and 9 – Surrogacy Agreements and Enforceability

A central weakness in Australia's current surrogacy framework is the fragmentation of legal standards between states and territories. As outlined in Issues Paper 52, this regulatory inconsistency has contributed to confusion, delays, and uneven access to parentage recognition. Intended parents and surrogates often face legal uncertainty about the validity of agreements, the process for parentage orders, and the legal weight of pre-conception commitments. A nationally harmonised surrogacy law is urgently needed.

Surrogacy agreements should be:

• In writing;

• Executed prior to conception;

• Entered into only after all parties receive independent legal advice.

From our personal experience, the surrogacy agreement—negotiated with the support of legal counsel—was pivotal. It enabled clear and open dialogue about legal obligations and interpersonal expectations, fostering transparency, security, and mutual trust. For our surrogate, it reinforced our commitment to reimburse expenses and engage in a partnership grounded in honesty and respect.

Although disputes over custody are rare, the fear of post-birth conflict—whether based on media narratives or legal uncertainty—can weigh heavily on all parties. Greater legal recognition of surrogacy agreements would help to mitigate this fear by affirming the legitimacy of pre-conception arrangements. Issues Paper 52 notes that enforceability of certain components of agreements—particularly financial, procedural, and consent-related terms—could enhance confidence in the process while preserving the paramountcy of the child's best interests.

International models illustrate the benefits of enforceable, transparent surrogacy agreements. The UK Law Commission' Final Report proposes a pre-conception approval model where parental status is transferred automatically at birth—subject to oversight and safeguards. Similarly, Canadian provinces such as British Columbia recognise expense reimbursement agreements, and U.S. jurisdictions like California and Illinois uphold comprehensive surrogacy agreements under well-defined criteria.

There are particular challenges for LGBTQ+ individuals under the current system. Inconsistent recognition of same-sex male couples (for example in WA where surrogacy remains inaccessible by same sex male couples), a lack of explicit protections for transgender parents, and highly discretionary judicial processes compound the vulnerability of these families. Without national consistency and enforceability of agreements, these groups may be left without reliable recourse. A harmonised approach with inclusive language, clear legal effect, and affirming pre-birth agreements would significantly reduce disparity and promote equity.

It is further submitted that enforceability of surrogacy agreements should be reciprocal and accessible to both intended parents and surrogates, depending on the nature of the alleged breach. Either party should be able to apply to a court to seek enforcement of financial, procedural, or consent-related terms through appropriate remedies—such as declaratory relief, injunctive orders, or directions.

To ensure consistent and expert adjudication, it is recommended that any national surrogacy framework designate a specialised division within the Family Court (or equivalent tribunal), composed of judges with specialised training and experience in surrogacy and assisted reproductive law. These judges would be best placed to manage the nuanced and sensitive nature of surrogacy-related disputes and deliver decisions that protect the integrity of the process while upholding the rights and dignity of all parties involved.

Accordingly, it is submitted that surrogacy agreements should be enforceable in relation to:

1. A rebuttable presumption of consent to a parentage order in favour of the intended parents;

2. Reimbursement of defined surrogacy-related expenses—such as medical care, legal advice, income loss, and travel. I have expanded on this in my answer to question 15 of the issues paper;

3. A temporary parenting plan to apply until legal parentage is formalised in circumstances where pre birth parentage orders are not adopted;

4. Surrogate bodily autonomy, with recourse to declaratory relief where appropriate;

5. Procedures and responsibilities in the tragic event of in utero loss;

6. Mandatory psychological and legal counselling before and during the arrangement.

Response to Question 10 – Oversight, Counselling and Procedural Safeguards

Police Checks and Psychological Assessments

Existing requirements for mandatory police checks and psychological assessments for intended parents remain contentious. While originally introduced to promote child welfare, these measures often impose undue scrutiny on individuals who are already experiencing complex fertility journeys. This scrutiny is not imposed on individuals who conceive naturally or via standard ART procedures. For many, it evokes feelings of stigma, judgement, and inequity.

In our personal experience, these processes were not only invasive, but counterproductive—undermining emotional preparation and reinforcing a sense that we needed to 'prove' our fitness to become parents. My husband and I, despite being long-standing professionals, felt demeaned and marginalised by a system that should have supported us.

These measures are particularly burdensome for same-sex male couples, transgender individuals, and other minority family structures, whose legitimacy as parents is often already subject to external challenge. Rather than enhancing safeguards, mandatory psychological screening may perpetuate systemic inequity and discourage participation in legal domestic surrogacy arrangements.

I submit that psychological report writing should be replaced with a model of therapeutic, trauma-informed counselling—delivered by qualified practitioners trained in reproductive and family dynamics with the provision of a completion certificate only. This support should prioritise wellbeing, emotional readiness, and relationship strength, not clinical 'clearance' or diagnostic review. .

Legal Advice

We strongly endorse the continued requirement for each party to receive independent legal advice prior to entering into a surrogacy agreement. This safeguard ensures that participants are negotiating from an informed position and that their rights, obligations, and legal risks are well understood. When sensitively delivered, legal advice fosters transparency, mutual respect, and collaborative problem-solving.

Importantly, legal advice should not be viewed as adversarial. In our experience, it supported alignment of expectations and clarified important issues without disrupting the relationship between the intended parents and our surrogate. This aspect of the process was one of the most valuable in preparing us for the journey ahead.

Reforming Counselling – A Surrogacy-Specific Model

While I support mandatory counselling in principle, its current statutory implementation is outdated, misdirected, and—at times—harmful. Rather than offering therapeutic support,

statutory counselling is frequently experienced as a ‘tick-box’ exercise focused on generating written reports rather than providing practical help.

Our own mandated sessions were, at times, traumatic. One psychologist, recommended for her surrogacy experience, became visibly distressed as I recounted medical trauma. In another session—paid for by me—a full medical history of our surrogate’s husband was taken, despite no genetic link. These intrusions served no therapeutic purpose and detracted from relationship-building or emotional preparation.

The most meaningful support we received came from independent professionals we engaged privately. These trauma-informed psychologists provided practical tools, emotional validation, and helped us establish relational boundaries. This is the model of counselling that should be embedded in law.

Proposed Counselling Framework

To provide meaningful and equitable support during the surrogacy journey, a revised statutory counselling model is proposed—one that is trauma-informed, non-evaluative, and focused on emotional preparedness, rather than psychological 'fitness' or psychometric testing.

1. Dedicated Surrogacy Medicare Pathway:

    1.1. Introduce a new Medicare item number specifically for surrogacy-related counselling, to ensure accessibility and affordability.

    1.2. Provide funding for at least five individual sessions for each party (intended parents and surrogate), recognising the emotional intensity of the surrogacy process.

    1.3. These sessions are not for psychological screening or character assessment. There should be no psychometric testing. The sessions must not involve a determination of whether a person is 'fit' to become a parent or a surrogate.

    1.4. Instead, each party should engage in therapeutic discussions with a psychologist of their choosing—someone trained in reproductive health and trauma—to explore personal experiences, expectations, possible triggers, boundaries, and their emotional readiness.

2. Joint Supportive Sessions:

    2.1. After individual counselling, two structured sessions should follow involving both intended parents and the surrogate, supported by their respective psychologists.

2.2. These joint sessions serve as a forum to openly discuss shared concerns, develop coping strategies, and establish a communication framework that can endure through the pregnancy and postnatal period.

2.3. Topics may include post-birth contact, navigating medical emergencies, communicating during emotionally heightened stages, or how to support one another across geographical distance.

3. Certificate of Completion:

3.1. At the conclusion of the sessions, the psychologists would provide a Certificate of Completion for filing or registration.

3.2. No formal psychological reports should be generated or disclosed to clinics, courts, or regulatory bodies. Confidentiality is paramount.

3.3. Qualified Practitioner Register: - Counselling must be delivered by psychologists listed on a national register of practitioners with demonstrated expertise in surrogacy, infertility, and family-building. This ensures consistency and quality, protecting parties from outdated or inappropriate counselling practices.

Surrogacy journeys are inherently personal and emotionally complex. The current approach to psychological evaluation and counselling fails to meet the needs of intended parents and surrogates alike. A respectful, tailored, and trauma-informed counselling model will better serve the interests of all participants—including the child—and foster the relational foundation needed for successful surrogacy outcomes.

The proposed framework balances procedural integrity with genuine emotional support and would represent a major step forward in aligning Australian surrogacy law with international best practice.

Response to Question and 12 – Agencies

As I have not had any personal or professional experience with surrogacy agencies, I do not feel sufficiently informed to provide a detailed response to Question and Given the complexity of agency involvement and the diversity of models internationally, I consider it essential that any proposed regulatory approach to agencies be developed with input from those who have directly engaged agency services, as well as from experienced legal, medical, and ethical professionals. I defer to those stakeholders for further guidance on this aspect of surrogacy reform.

Response to Question 13 – Limits on Advertising

1. The existing prohibitions on advertising surrogacy arrangements in Australia—both for intended parents and prospective surrogates—create significant barriers to the formation of ethical, informed, and safe surrogacy relationships. While these provisions may have originally aimed to uphold the altruistic foundation of surrogacy, their current application often inhibits transparency, deters open communication, and hampers the ability of intended parents and surrogates to find one another.

   In our personal experience, the fear of inadvertently breaching advertising laws made us extremely cautious about sharing our desire to grow our family through surrogacy. We were acutely aware that publishing any form of request, even in informal or private contexts, might contravene legal restrictions. This fear of legal exposure delayed our ability to connect with a potential surrogate—who, in fact, later expressed willingness to assist us but was unaware of our intentions until much later. Had we been legally permitted to speak openly, there is a strong likelihood this connection would have occurred earlier, saving considerable time and emotional stress.

   The Issues Paper 52 acknowledges these concerns directly. At page 86, it states: 'Restrictions on advertising may prevent intended parents and potential surrogates from finding each other.' It further observes that these prohibitions may have the unintended effect of 'driving people towards informal or international arrangements, which may lack oversight and safeguards.' This policy outcome is fundamentally misaligned with Australia's broader objectives of promoting ethical and transparent surrogacy practices.

   These restrictions are also counterproductive in that they may unintentionally encourage people to use overseas or online platforms that operate outside Australia's legal framework, increasing the risk of exploitative arrangements and reduced safeguards for all parties, including the child. Moreover, banning advertising does not prevent people from searching for surrogates; it simply forces them to do so in covert or legally ambiguous ways.

   Permitting regulated, non-commercial communication of surrogacy intentions could foster more organic and trusted connections—particularly among known individuals. In many cases, family members, friends, or acquaintances might be willing to explore surrogacy arrangements if they were simply aware of the intended parents' circumstances. These opportunities are currently being missed due to the chilling effect of advertising restrictions.

   I respectfully submit that the current blanket prohibitions on surrogacy advertising in Australia be reviewed and modernised. Specifically, I propose:

1. Removal of blanket advertising bans and their replacement with a nationally consistent framework that:

    1.1. Allows intended parents and surrogates to express interest in forming a surrogacy arrangement,

        1.1.1. Prohibits commercial inducements, and

        1.1.2. Permits advertising only through approved, non-profit, or regulated platforms.

2. Integration with a national surrogacy register or matching service, as foreshadowed in Issue Paper Question and 13, to ensure ethical oversight while facilitating connection between parties.

3. Guidelines for ethical communication, ensuring that any permitted advertising is:

    3.1. Non-commercial,

    3.2. Respectful of privacy,

    3.3. Free from coercion or pressure, and

    3.4. Reviewed or monitored where necessary by an independent body.

This model strikes a balance between preserving ethical integrity and promoting access, transparency, and safety for all parties involved.

Response to Question 14 - Medicare, Parental Leave, and Hospital Policy Reform: Rectifying Systemic Inequities in Surrogacy

Australia's current healthcare, hospital, and parental leave systems have not kept pace with the legal and ethical evolution of surrogacy. Despite lawful access to altruistic surrogacy in all Australian jurisdictions, these frameworks continue to reflect outdated assumptions about family formation—assumptions that disproportionately disadvantage intended parents and surrogates, and most acutely impact same-sex male couples, transgender people, and those relying on gestational carriers due to medical infertility.

As recognised in Issues Paper 52, a number of stakeholders have called for reform to align public funding, Medicare, and leave policies with the "realities of how people build families through surrogacy" (IP 52, pp. 36). In our experience, these misalignments are not merely bureaucratic—they are profoundly distressing and deeply inequitable.

Inadequate Medicare Support for Surrogacy-Related Treatment

Under the current Medicare Benefits Schedule (MBS), intended parents are often excluded from funding for fertility treatment if they are not medically able to carry a baby. In our case, this meant paying full out-of-pocket costs for multiple rounds of IVF and related procedures, despite meeting all medical and legal criteria for surrogacy. The fact that we were not medically able to carry the baby effectively disqualified us from accessing the same support available to others undertaking fertility treatment.

This issue is especially acute for same-sex male couples and transgender individuals who cannot carry a pregnancy due to anatomy or medical transition. They are routinely denied Medicare rebates for necessary fertility testing, gamete preservation, IVF cycles, and embryo transfer. As the Issues Paper notes, this leads to "inconsistent or incomplete Medicare support" and imposes "significant cost burdens" (IP 52, p. 38).

Potential reforms

1. Amend the MBS to fund all medically indicated procedures related to lawful surrogacy, including IVF for intended parents, embryo creation, embryo transfer to the surrogate, and all pregnancy and postnatal care;

2. Ensure Medicare rebates apply regardless of whether the embryo is ultimately transferred to the intended mother or to a surrogate.

3. Introduce a dedicated MBS item for intended parents to remain in hospital post-birth, supporting early bonding and alleviating pressure on the surrogate.

Hospital Policy and Recognition of Intended Parents

One of the most difficult moments of our surrogacy journey came at the hospital. As the birth approached, we learned we would be required to pay over $4,000 to stay in the hospital and care for our own newborn. Because the child was not legally ours until the

parentage order was made, we were not entitled to access maternity ward accommodation—even though the surrogate, by agreement and desire, was not intending to care for the child.

This left us in an impossible situation. The hospital could not house us without payment. Our surrogate—still recovering from birth— may have been placed in the position of physically caring for a baby she was never going to parent. Staff were confused.

Gay male couples, in particular, often encounter this same barrier. Without gestational or birth-parent status, they may be asked to wait in common areas or pay premium rates to be near their child. In jurisdictions without early transfer of parentage, this compounds the existing legal limbo.

One of the most significant gaps in the current system is the lack of formal recognition of intended parents in the hospital setting at the time of birth. As it currently stands, many intended parents—despite being the biological parents of the child—are required to pay thousands of dollars to access basic hospital accommodation, including a room in which to stay and care for their newborn. This occurs across both public and private hospitals and is particularly problematic when the surrogate gives birth in a public hospital.

This lack of recognition means that:

A. The surrogate may be left with the sole responsibility of caring for the baby immediately after birth, even though she does not intend to parent the child;

B. The intended parents are excluded from essential early bonding and caregiving experiences;

C. Hospital staff may be uncertain about who is responsible for the newborn's care, creating risk and confusion;

D. Intended parents face significant and unnecessary out-of-pocket costs just to remain with their child during a medically critical period.

I submit that a formal mechanism should be introduced to allow for recognition of intended parents at hospital level, and to ensure that accommodation and care arrangements are appropriate, equitable, and affordable. This could be achieved through:

1. The creation of a Medicare item number for postnatal accommodation for intended parents in surrogacy arrangements;

2. Inclusion of intended parent hospital stay coverage in private health insurance policies, provided the appropriate level of cover is obtained in advance;

3. Implementation of national best-practice guidelines for hospital and maternity staff, recognising the distinct roles and needs of surrogates and intended parents in these arrangements;

4. Provision for intended parents to be treated (if a system of early parentage orders is not put in place), similarly to parents of a child in neonatal care, ensuring they can stay close to their baby and participate fully in early parenting.

These changes would promote infant welfare, respect the surrogate's boundaries and recovery, and align hospital practice with medical ethics.

Paid Parental Leave: An Unequal System for Surrogates and Parents

Australia's Paid Parental Leave (PPL) scheme includes surrogates in theory, but the practical effect of the income cap - currently $168,865- is to exclude many women from accessing it altogether.

Our surrogate—employed full time at a major bank—was ineligible for government PPL despite meeting all gestation and employment requirements, solely because her income exceeded the cap. This made no sense. She carried a baby for our family, endured physical hardship, postpartum recovery, and emotional weight, yet was denied the support other birthing parents receive.

While her employer [redacted] provided equivalent paid maternity leave, this is not standard. Many surrogates are not so fortunate, and the absence of a legal entitlement perpetuates inequality. As recognised in Issue Paper 52, this is particularly unjust in the context of altruistic surrogacy, where the surrogate receives no financial compensation (p. 37).

Additionally, same-sex male couples may not be afforded equal parental leave opportunities. Some workplace schemes do not treat both men as parents, or restrict access to "secondary carer" leave—despite their equal parental role.

Broader LGBTQ+ Barriers

The current Medicare and workplace frameworks still reflect heteronormative assumptions that exclude or marginalise LGBTQ+ families.

As IP 52 notes, "gay men in particular" face a systemic lack of access to funded ART services, hospital recognition, and leave entitlements (pp. 34, 38). Transgender men who retain reproductive capacity may also experience delays or discrimination in accessing fertility preservation or surrogacy pathways.

The development of a gender-neutral eligibility criteria in Medicare, leave, and hospital policy to support inclusive family formation is required.

It would also assist if training modules for hospital staff and administrators included education about surrogacy, intended parent recognition, and LGBTQ+ cultural

competence. We offer this sort of conference at The Family Village, however, as it isn't considered an issue by hospitals we haven't been asked to assist. Conversely, GP's seem to understand the issue and we have been asked to run information seminars for multiple clinics.

Response to Question 15 to 17 – Reimbursement and Compensated Surrogacy

One of the most fundamental principles in altruistic surrogacy is that a surrogate should never be out of pocket for costs reasonably incurred during the course of the surrogacy journey. These costs extend far beyond the clinical procedures themselves and include expenses that, while variable, are entirely predictable in the context of pregnancy and birth.

From our lived experience, these reimbursable costs should include, but not be limited to:

- Increased private health insurance premiums to obtain pregnancy-related hospital cover;
- Pregnancy-related medical expenses (e.g. medications, obstetric care, allied health);
- Counselling (both pre- and post-birth) and legal costs;
- Maternity clothes;
- Babysitting or childcare costs for the surrogate's own children (particularly if unwell);
- Travel and accommodation costs for medical appointments;
- Pregnancy massage or complementary therapies if requested;
- Birthing courses;
- Post-birth recovery supports (including, for example, placenta encapsulation if the surrogate requests it);
- Emotional and relational supports (e.g. a dinner out with her partner, recognising the toll the pregnancy may have on their relationship).

These are reasonable, incidental, and foreseeable costs directly associated with the pregnancy and the surrogate's wellbeing. In our arrangement, rather than requesting invoices or receipts, we opened a separate bank account in the surrogate's name and deposited agreed-upon funds. She could then draw from that account as needed. This system worked well because of our strong, trusting relationship and the shared view that surrogacy should be equitable and without financial burden to her.

However, I recognise that not all arrangements are as straightforward—particularly where the surrogate and intended parents (IPs) are not previously known to one another or live in different locations. There is a pressing need for clearer national guidance on reimbursement mechanisms, including templates, caps (if any), reporting obligations, and allowable categories of expenditure.

Reimbursement vs. Compensation: Perspectives and Caution

I support the concept of optional compensated surrogacy, as defined in the current Issues Paper—that is, beyond reimbursement, providing fair recognition for the time, effort, and physical burden of pregnancy through regulated, non-commercial compensation.

While I, as an intended parent, would have had no issue with compensating my surrogate, she is firmly against compensation. Her view is that surrogacy should remain entirely altruistic, and compensation—even under a regulated model—risks altering the

motivations behind any arrangement. This divergence of views highlights the need for choice and clarity within any future regulatory framework.

I acknowledge and respect that some surrogates may never seek compensation and should not be required to accept it. But we also recognise that, for others, compensation may serve as a form of dignity and acknowledgement, so long as it is not used coercively or as an inducement for vulnerable women to participate.

There is understandable concern that compensation may increase the risk of exploitation, especially for women who are socioeconomically disadvantaged. However, this risk can be addressed through strict regulation, mandatory counselling, legal oversight, and caps on compensation. Jurisdictions such as the UK, Canada, and certain US states have grappled with these questions—some permitting regulated compensation, others maintaining strict altruism.

International Comparisons: What Can We Learn?

My indepth knowledge of different jurisdictions is limited, however, from a small amount of research it appears that several international models offer useful lessons on how to design ethically sound and transparent systems for reimbursement and/or compensation:

Canada

- Canada operates under an altruistic model, similar to Australia.
- Reimbursement is legal and permitted, but must be well-documented and supported by receipts.
- The Assisted Human Reproduction Act prohibits payment for surrogacy beyond reimbursement.
- The requirement for receipts, while ensuring transparency, has been criticised for being inflexible and undermining trust.

United Kingdom

- Surrogacy in the UK is also altruistic.
- Reimbursement of “reasonable expenses” is permitted and often reviewed by the courts when issuing parental orders.
- No formal list of reimbursable items exists in legislation, but courts have accepted costs including maternity clothing, travel, loss of earnings, and counselling.
- The Law Commission’ Final Report proposes a new regulated surrogacy pathway which would clarify expenses and allow for limited, regulated payments with oversight.

United States

- In many US states (e.g. California), compensated surrogacy is lawful and contractually regulated.
- Surrogates are typically paid in instalments throughout the pregnancy, in addition to full coverage of all medical and associated costs.
- Payments are agreed in a formal legal contract, drafted by attorneys, and executed prior to embryo transfer.
- The US model offers maximum clarity and enforceability, but risks commercialisation if poorly regulated.

Each of these jurisdictions has sought to balance the rights of surrogates with protections against coercion. Australia has an opportunity to combine the best of these systems—allowing optional, modest compensation with robust legal, counselling, and ethical oversight, and guaranteed protection of the surrogate's right to reimbursement without stigma or risk of criminal liability.

How Should Reimbursement or Compensation Be Structured?

There is no perfect model, but options include:

- Staged reimbursements or instalments, aligned with medical milestones (e.g. embryo transfer, 12 weeks, 28 weeks, birth);
- A regulated reimbursement account, similar to how NDIS or trust accounts are managed;
- Clear guidance on allowable categories, without excessive red tape or invasive documentation;
- Optional compensation, negotiated and legally documented, either as a one-off payment post-birth or in tranches up to a capped amount;
- Tax and Centrelink clarity to ensure that reimbursements or compensation do not negatively impact the surrogate's entitlements.

There must also be public education and legal protection to ensure that reasonable supports—such as paying for a dinner out with her partner or helping with household support—are not perceived as improper inducement or illegal benefit.

Reflections on Equity, Empathy, and Vulnerability

A recurring argument in the surrogacy debate is that there is "no right to a child." Legally, this may be correct—but it lacks empathy. That phrase would not be uttered so easily by someone who has suffered the pain of infertility, or who was born without a uterus, survived cancer, or lives with a medical condition that renders pregnancy impossible. These individuals are not seeking entitlement—they are seeking hope.

Surrogacy is a gift—often seen by those who give it and receive it as akin to organ donation while alive. And while we cannot "buy" a kidney, we do not ask a kidney donor

to pay for the hospital costs, medication, and lost wages of their own surgery. So too must we protect surrogates from financial harm.

This issue is complex. There is no perfect answer. But if surrogacy is to remain ethical, safe, and accessible in Australia, our laws must reflect real-world compassion, medical reality, and the rich diversity of views held by those directly affected.

Response to Questions 18 & 19 – Legal Parentage in Surrogacy Arrangements

Personal Experience of Legal Parentage

Our personal experience in obtaining legal parentage of our son through a surrogacy arrangement in Queensland was not burdensome. As a practicing lawyer, I was familiar with the procedural and evidentiary requirements, which undoubtedly made the process more accessible for our family. However, I acknowledge that for intended parents without legal training, the process can feel complex, overwhelming, and emotionally taxing.

Upon filing our application for a parentage order, the presiding judge offered to make the order on the papers. However, our surrogate wished to attend the hearing in person, as a form of closure and recognition of her role in our journey. We attended with all of our children, who were able to witness the formality and joy of the moment. The judge acknowledged the profound nature of the matter and commented that it was among the most rewarding cases he had presided over. While judicial workload should not be the basis for legal reform, it is worth noting the dignified and humanising experience this can offer all parties involved.

Recognition of the Birth Mother as Legal Parent

At various stages of the process, I experienced strong emotions in response to the legal framework, which initially did not recognise me as a parent—despite the child being genetically mine. However, upon reflection and legal consideration, I have come to appreciate the global consistency with which the law recognises the birth mother as the initial legal parent. This presumption provides clarity and predictability in cases of contested parentage and supports a consistent legal foundation across a variety of family formation contexts.

Nonetheless, while the presumption in favour of the birth mother has its rationale, the timing of the legal recognition of intended parents under Australian law is problematic and, in many respects, outdated.

Post-Birth Parentage Orders – Practical and Emotional Challenges

One of the most significant shortcomings of the current Australian model is the requirement for parentage orders to be made only after birth, often several months later.

This has wide-ranging implications:

1. Administrative confusion: Intended parents are routinely forced to navigate healthcare, Medicare, Centrelink, and passport systems without legal recognition as parents. Hospitals, government agencies and even schools may refuse to acknowledge intended parents as legal guardians in the interim.
2. Lack of recognition in stillbirth scenarios: If a child is stillborn, there is no mechanism to recognise the intended parents legally. A particularly heart-wrenching case **A v X; Re Z [2022] NSWSC 971** in NSW illustrated that a

parentage order could not be made where the intended parents had not been living with the child at the time of the hearing as required under the legislation. This leaves grieving parents with no legal or symbolic recognition of their parenthood. While our own son tragically passed away after the parentage order was made, I can deeply empathise with the pain and injustice experienced by families in this position.

Pre-Birth Parentage Orders – A Necessary Reform

There is growing consensus that parentage orders should be made before birth, with legal effect either from birth or from a time shortly thereafter. This reform would remedy many of the practical and emotional challenges outlined above. As noted in the Issues Paper and endorsed by bodies such as the Academy of Law and the Australian Human Rights Commission, there are strong arguments in favour of transitioning to a pre-birth model, subject to adequate safeguards.

International Comparisons

A. United Kingdom: Although the UK currently retains a post-birth model , law reform recommendations from the Law Commission of England and Wales propose introducing a new pathway allowing intended parents to be legal parents from birth, provided the agreement is registered pre-birth and key safeguards are met.

B. California, USA: California permits pre-birth parentage orders, which are recognised immediately upon birth. The orders are made by the Superior Court, based on medical and legal evidence, and grant full legal parentage to intended parents at the time of birth, reducing ambiguity and administrative burden.

C. British Columbia, Canada: Under the Family Law Act , parentage can be established pre-birth through an administrative declaration, recognising the intention-based nature of surrogacy.

Australia has the opportunity to follow suit by introducing a streamlined pre-birth parentage pathway, underpinned by proper oversight, informed consent, and medical confirmation of viability.

Proposed Model

I support a model that permits intended parents to apply for a parentage order during pregnancy, with the order taking effect either upon the child's birth or shortly thereafter.

A simple letter from the treating obstetrician confirming viability (e.g. at 24 weeks gestation) should be sufficient to trigger the legal or administrative process. The process should be supported by independent legal advice, counselling, and formal consent from all parties, including the surrogate.

This would eliminate confusion post-birth and ensure that hospital staff, government departments, and vital records agencies can operate with legal clarity. Moreover, it avoids unnecessary delays in obtaining passports or accessing services during the crucial newborn period.

International Surrogacy – Urgent Need for Recognition

Australia's existing legal framework does not provide an effective or consistent mechanism for recognising legal parentage where children are born to Australian citizens through international surrogacy arrangements. Unlike children born via domestic surrogacy, where parentage orders may be made under state and territory legislation (e.g. Surrogacy Act 2010 (Qld) ; Surrogacy Act 2010 (NSW)), children born overseas are excluded from this statutory pathway.

Instead, intended parents must rely on parenting orders made under the Family Law Act 1975 (Cth), typically under Part VII (Children). While section 61D allows the court to allocate parental responsibility, it does not confer legal parentage, nor does it enable the child's birth certificate to be amended to reflect the intended parents. These orders are therefore incomplete in terms of providing the legal security, recognition, and identity protections that children born through international surrogacy require.

This gap creates not only practical difficulties—such as delays in obtaining passports, Medicare, and access to services—but also represents a failure to uphold the legal rights and dignity of children born into intentional families.

Inconsistency with International Human Rights Obligations

Australia is a party to the United Nations Convention on the Rights of the Child (CRC), and is thus bound to ensure the rights of children regardless of the circumstances of their birth.

Relevant obligations include:

1. "*The child shall be registered immediately after birth and shall have... the right to know and be cared for by his or her parents*."

2. "*States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations*."

3. "*In all actions concerning children... the best interests of the child shall be a primary consideration*."

The denial or significant delay of legal parentage for children born through international surrogacy is inconsistent with these obligations. As the Australian Human Rights Commission noted in it submission to the Department of Social Services:

"*The child's right to legal recognition of their parents is not protected in circumstances of international surrogacy, leaving a significant cohort of children without appropriate legal recognition in their country of nationality*."

Role of the Courts and Viability of Reform

Concerns about ethical misconduct or exploitation in international surrogacy are valid and must be addressed. However, these concerns should not be a reason for wholesale exclusion of legal recognition. Rather, they can be appropriately managed through judicial oversight and discretion, as is already done in other complex areas of family law.

Australian judicial officers—particularly those of the Federal Circuit and Family Court of Australia (FCFCOA)—are well equipped to manage applications involving complex ethical, jurisdictional and family dynamics. Courts routinely address issues of international child abduction (Family Law (Child Abduction Convention) Regulation (Cth)), child protection, and cross-border parenting disputes, often involving vulnerable children and public policy considerations.

It is therefore entirely feasible to establish a system whereby judges or suitably qualified senior registrars are empowered to assess international surrogacy arrangements and make recognition of parentage orders where appropriate.

These judicial officers could be authorised to grant legal recognition on the basis that:

- The surrogacy arrangement complied with local (foreign) law and was not contrary to Australian public policy;
- There is clear, informed, and voluntary consent from the surrogate;
- Independent legal advice and/or counselling was provided to all parties;
- There is no evidence of coercion, exploitation, or trafficking;
- The intended parents are Australian citizens or residents and have assumed care of the child;
- The arrangement aligns with the child's best interests under Family Law Act 1975 (Cth)

This structure is not only achievable, but already exists in analogous contexts such as intercountry adoption (see Family Law (Hague Convention on Intercountry Adoption) Regulation (Cth)), where judicial or administrative bodies assess the integrity of overseas arrangements before granting recognition.

Recommendation: Establish a National Recognition Framework

We recommend that the Australian Government introduce a federal, harmonised legal mechanism for the recognition of parentage in cases of lawful international surrogacy.

This framework should:

1. Enable a court or administrative tribunal to grant a recognition of parentage order, similar in effect to a state-based parentage order;

2. Set out statutory criteria including informed consent, legal advice, absence of coercion, and compliance with foreign and Australian public policy;

3. Authorise only judges or senior registrars with specialised training in surrogacy law, human rights, and family formation to make such orders;

4. Provide mechanisms for registration of overseas birth certificates in Australian systems (e.g. via the Births, Deaths and Marriages Registration Act 1995 (NSW) or equivalent state-based law);

5. Prioritise the best interests of the child, consistent with Family Law Act 1975 (Cth) and the CRC.

The law must not leave children born through international surrogacy in legal limbo. These children, like all others, have the right to identity, stability, and legal recognition of their parent–child relationships. Reform is both necessary and achievable, and Australia must act to close this gap in its legal system by creating a principled, rights-based, and practical solution that reflects the diversity of modern family formation.

Parentage laws should reflect the lived realities of families formed through surrogacy, uphold children's rights, and provide clear, compassionate legal structures for all parties involved.

Response – Question 20 Citizenship, Passports and Visas

While Australia's surrogacy framework is complex and heavily regulated, much of the law reform discussion rightly focuses on legal parentage and intended parent recognition. However, one issue that remains under-discussed—yet causes real-world hardship—is the bureaucratic fallout faced by intended parents navigating government systems post-birth, particularly around travel documents and identity recognition.

We share our personal experience in the hope that it highlights the urgent need for national reform that addresses the administrative and legal limbo faced by families formed through surrogacy.

[redacted] *Story – Born an Australian Citizen, but So Difficult to Get Documents*

We were fortunate that our son [redacted] was eligible for Australian citizenship at birth. However, obtaining a passport for him became a nearly insurmountable hurdle—despite our clear parental intentions, a lawful surrogacy agreement, and full-time caregiving from birth.

Our family is a vibrant part of the Gold Coast community. My husband is a firefighter, and we also run a not-for-profit Kyokushin Karate dojo that provides anti-bullying and self-defence programs for disadvantaged children, women, and the elderly. Surrogacy touched our lives when our surrogate [redacted]—a close friend and part of our Karate community—carried [redacted] for us.

Shortly after a confirmed pregnancy, we made plans to attend an international karate event in Japan, scheduled for four months after [redacted] expected birth. His ticket was booked in anticipation of his arrival. He was born just after Christmas, and we were deeply fortunate to spend the first five days post-birth in the same hospital room with [redacted] transitioning into parenthood with full support and care.

Soon after birth, we commenced steps to obtain [redacted] passport. As required, we submitted his birth certificate, our surrogacy agreement, a parenting plan, and a statutory declaration from [redacted] (who would be travelling with us). At that time, we had not yet finalised post-birth counselling—a mandatory requirement under Queensland law—which meant we could not yet file our application for a parentage order.

We lodged the child passport application in late January 2023, for travel scheduled in early April. Due to the surrogacy context, we were ineligible to pay for an expedited passport or urgent processing, even though we were transparent and compliant.

From this point forward, we were passed from one anonymous bureaucratic response to another. Our application had been referred to a "special team"—a team we were told had no phone number, no email address, and no direct point of contact. This opaque process became not only frustrating but deeply distressing, especially as our travel date neared with no progress.

Despite our efforts—including visiting the Brisbane Passport Office in person—we were unable to escalate the application. At one point, we proposed re-filing a new application under [redacted] name (as the birth mother) and paying the urgent fee. We were told this was not possible because the system would not permit duplicate applications. With just 48 hours before departure, we still had no passport and no way to obtain one.

It was only after significant advocacy, and with the assistance of surrogacy lawyer Sarah Jefford, that we were able to file our application for a parentage order. However, our hearing date was still months away, and the absence of final orders continued to delay access to services.

Eventually—and coincidentally only hours after our in-person visit to the passport office—the “secret team” miraculously contacted us. Within 15 minutes, we received an email confirming the passport was ready for collection – that communication came with a telephone number and email – which we now freely publish on our website for anyone else having difficulty with the “secret team”..

This experience underscores the urgent need for national education, uniform parentage laws, and—critically—the introduction of pre-birth parentage orders to streamline post-birth administrative processes for intended parents.

Response – Questions 22 and 23 – Surrogacy Regulation and Oversight

It is respectfully submitted that the issues raised in Question and 23—regarding appropriate regulatory models and jurisdictional responsibilities—have been substantively addressed throughout the body of this submission. Rather than duplicating content, I refer to my earlier responses, which together articulate a clear vision for reform grounded in lived experience, ethical principles, and international best practice.

Response – Question 24 – Criminal Law

The current approach in several Australian jurisdictions—including Queensland, New South Wales, and the Australian Capital Territory—makes it a criminal offence for individuals ordinarily resident in the state to engage in commercial surrogacy arrangements domestically or internationally, even where those arrangements are legal in the country where they occur.

We submit that criminalising international commercial surrogacy is not an effective or appropriate tool for protecting the best interests of children, preventing exploitation of surrogates, or upholding human rights. Instead, it disproportionately punishes intended parents, creates legal uncertainty for children, and hinders the development of a transparent, ethical, and regulated surrogacy environment.

We recommend that these offences be abolished, and replaced with a national framework that supports ethical international commercial surrogacy through appropriate oversight, safeguards, and post-birth recognition mechanisms in Australia.

The intention behind criminalisation is usually expressed as protecting vulnerable women from exploitation, and discouraging the commodification of reproduction. However, the evidence suggests that these laws are:

- Rarely enforced;
- Ineffective in deterring international surrogacy; and
- Harmful to the rights of children and parents.

Despite the existence of these criminal laws for more than a decade, there have been no known prosecutions under Queensland, NSW or ACT legislation for entering into commercial surrogacy overseas. This underlines the laws' symbolic nature, and demonstrates that they operate not as a real deterrent, but as a punitive threat over families seeking to form through international surrogacy.

"The criminal offence provisions do not prevent people from accessing commercial surrogacy arrangements overseas. Rather, they add a layer of guilt and fear, and discourage openness and accountability."

These laws do not target agencies or actors who may be exploiting women abroad, but rather punish Australian intended parents, many of whom turn to international surrogacy after exhausting domestic options, or because they are excluded from local eligibility criteria.

Often, these are same-sex couples, single parents, or those with medical infertility, who are acting in good faith and through lawful processes in the destination country. The criminalisation of their reproductive choices conflicts with principles of equality and dignity, and imposes stigma on families formed through surrogacy.

Children born through surrogacy are entitled to legal recognition, identity, and protection of their familial relationships. Criminalisation creates a climate of secrecy and fear, leading some parents to avoid disclosing the surrogacy arrangement, which in turn delays or complicates access to identity documents, healthcare, and legal parentage orders.

A Regulatory, Not Criminal, Approach is Needed

Rather than criminalising international surrogacy, a national legal framework that promotes transparency, informed consent, and post-birth recognition would be more effective at preventing exploitation, promoting ethical arrangements, protecting children's identity and family relationships, and supporting reproductive autonomy and equality.

The criminalisation of international commercial surrogacy is neither a practical nor principled solution. It does not prevent unethical conduct, and it does not protect children. Rather, it punishes intended parents—many of whom are acting lawfully in the overseas jurisdiction—and creates unnecessary legal complexity for the children born through such arrangements.

Thank you for the opportunity to contribute to this important review of Australia's surrogacy laws.

This submission has been informed by both lived experience and a deep commitment to ethical, inclusive, and child-focused reform. We commend the Australian Law Reform Commission for undertaking a comprehensive and thoughtful examination of these complex issues.

It is our sincere hope that the Commission's recommendations will reflect the voices and realities of the families, surrogates, and children who navigate the surrogacy process every day. We believe that a nationally consistent, rights-based, and compassionate legal framework will not only improve the experience for all involved but will also uphold the dignity and wellbeing of the children at the heart of every surrogacy journey.

Thank you for your consideration.

Katie Cox

Legal Practitioner Director – The Family Village

Mother through Surrogacy (gestational)

Dated 5 July 2025

In preparing these submissions regard has been had to:

- ALRC Issue Paper 52
- Various Surrogacy Acts in Australia
- Permanent Bureau of the Hague Conference, 'Parentage/Surrogacy Project – HCCH' .
- Convention on the Rights of the Child, Article;
- Z (A Child) (No 2) EWHC 1191 (Fam).
- Parliament of Australia, Inquiry into Surrogacy Arrangements .
- Millbank, J. 'The New Law of Surrogacy in Australia' 39 Melbourne University Law Review
- United Nations Convention on the Rights of the Child, Article
- Golombok, S. 'Modern Families: Parents and Children in New Family Forms' (Cambridge University Press, 2015).
- Australian Institute of Health and Welfare, 'Assisted Reproductive Technology in Australia and New Zealand 2020' (AIHW, 2022).
- Golombok, S. 'Modern Families: Parents and Children in New Family Forms' (Cambridge University Press, 2015).
- United Nations Convention on the Rights of the Child, Article 29
- Golombok, S. . We Are Family: What Really Matters for Parents and Children. Scribe.
- Blyth, E., Crawshaw, M., Frith, L., & Jones, C. . Donor-conceived people's views and experiences of their genetic origins. Journal of Law and Medicine, 19, 769–
- Australian Law Reform Commission, 'Review of the Family Law System – Issues Paper 52' , pp. 6–
- Everingham, S., Stafford-Bell, M., & Hammarberg, K. . Australians use of surrogacy, Medical Journal of Australia, 201, 547–
- Law Commission of England and Wales & Scottish Law Commission, Building Families through Surrogacy: A New Law, Final Report, March
- Department of Social Services (Australia), Paid Parental Leave Scheme Guidelines,