Submission to the Australian Law Reform Commission
Response to Issues Paper 52: Review of Surrogacy Laws (June 2025)
Submitted by: [redacted] Intended Parent, Western Australia

1. Personal Journey: The Human Face of Surrogacy Reform

I was raised in a bustling household where every Christmas, birthday and weekend brought the joyful chaos of nieces, nephews and cousins. My partner and I, both eldest children, stood side-by-side changing nappies, celebrating first steps, and marveling at tiny milestones. We yearned to build our own family amidst that warmth.

When we decided to pursue surrogacy, we naively assumed Australia's legal and medical systems would support us as they did our siblings. Instead, we encountered:

- **Legal Exclusion**: In Western Australia, altruistic surrogacy is closed to same-sex couples and single men.
- **Fragmented Regulation**: Across the country, eligibility, process requirements and parentage pathways vary wildly.
- **Financial Ruin**: Domestic altruistic surrogacy can cost A$25,000–60,000, yet commercial arrangements overseas climb well above A$200,000, forcing us to weigh every dinner out, every car repair, and even job promotions against our dream.
- **Emotional Strain**: Nights spent crying over spreadsheets of IVF invoices, and the fear of growing too old to parent in sync with our peers, have left us isolated.

Our experience mirrors that of many Australians - intended parents trapped in a maze of prohibitions, delays and costs that overpower hope. This submission weaves our story with expert insights and evidence to propose reforms that centre human rights, accessibility, and the best interests of the child.

2. Reform Principles

Our recommendations are guided by the ALRC's six core principles:

1. **Human Rights**
    a. Uphold the child's best interests as paramount.
    b. Protect surrogates' rights to autonomy, bodily integrity, and freedom from exploitation.
    c. Ensure intended parents enjoy freedom from discrimination and the right to found a family.
2. **Harm Minimisation**
    a. Mitigate risks associated with unregulated overseas arrangements.
    b. Introduce safeguards to prevent exploitation of surrogates and children.
3. **Respect and Dignity**
    a. Recognise surrogates' unique contribution with fair compensation and support services.
    b. Treat all parties-children, surrogates, intended parents- with equal respect.
4. **Accessibility**
    a. Remove discriminatory eligibility criteria.
    b. Simplify processes and reduce financial barriers, including via Medicare rebates.
5. **Pragmatism**
    a. Embrace the reality of growing domestic and international surrogacy demand and build a practical regulatory framework.
6. **Harmonisation**
    a. Eliminate the current "patchwork" of state and territory laws in favour of a single, coherent national scheme.

3. Detailed Responses to Key Issues and Questions

3.1 Barriers to Domestic Surrogacy (Q5)

- **Surrogate Shortage**: Only ~130 domestic surrogacy births per year, versus over 300 international, because altruistic surrogacy is the only option and offers no meaningful compensation.

- **Eligibility Exclusions**: WA bans same-sex couples and single men altogether. Other states impose inconsistent age, residency, and medical criteria.
- **Advertising Prohibitions**: All jurisdictions restrict any public advertising for surrogates, leaving intended parents to scour social media or hope a friend steps forward.
- **Lack of Awareness**: Many Australians do not even know domestic surrogacy is possible—misleading overseas agencies fill the information void.
- **Medical Gatekeeping**: Standard fertility clinics and GPs often lack surrogacy expertise, delaying or denying medical clearance.
- **Financial Barriers**: Without Medicare rebates for IVF in surrogacy, every cycle, scan and consultation must be paid in full—often >$25,000 for domestic arrangements.

Recommendations:

- Legalise modest, regulated compensation to expand the surrogate pool (see 3.4).
- Permit targeted advertising via a government-run surrogacy register.
- Launch a centralised, official surrogacy website with unbiased guidance.

3.2 Eligibility Requirements (Q6–7)

Current State: Varying rules on age (18–25), relationship status, medical/social need, prior birth history and residency.

Proposals:

- **Universal Eligibility**: Any adult incapable of bearing a child, regardless of sexuality, marital or parental status.
- **Standardised Criteria**: Harmonise minimum ages (e.g. 21), require basic counselling and legal advice only.
- **Removal of Unnecessary Hurdles**: Eliminate prior-birth requirements for surrogates and residency ties beyond Australian citizenship.

3.3 Surrogacy Agreements: Enforceability (Q8–9)

Current State: Agreements are unenforceable legal "honour pacts," with only expense reimbursement upheld.

Proposals:

- **Enforceable Core Terms**: Make essential provisions (expense reimbursement, parental intent) legally binding, while non-essential personal provisions (e.g. contact schedules) remain unenforceable.
- **Standard National Template**: A uniform agreement form approved by a central body.
- **Third-Party Trust/Escrow**: All reimbursements and compensations held in trust, ensuring timely payment and transparency.

3.4 Reimbursement and Surrogate Compensation (Q15–17)

Current State: Only "reasonable expenses" may be reimbursed - definitions differ by jurisdiction.

Insights from Overseas & Expert Research:

- **US Data**: International research, especially in the United States, shows that surrogates remain motivated by altruism even when compensated - payment does not diminish empathy.
- **Risk of Exploitation**: Zero compensation can coerce surrogates into unsupported financial hardship.

Proposals:

1. **Clear Expense Guidelines**: Publish exhaustive lists of reimbursable costs (medical, travel, legal, childcare).
2. **Capped Compensation Model**: Regulated monthly payments (e.g. up to A$2,000/month) plus lump-sum for pregnancy risk, managed via escrow.

3. **Support Entitlements**: Include paid parental leave, superannuation contributions, life and health insurance.

3.5 Process Requirements & Professional Services (Q10–12)

Current State: Mandatory counselling, legal advice, criminal checks and psychological assessments vary in depth and enforcement. Specialist surrogacy agencies do not exist; some jurisdictions require pre-approval by bodies like Victoria's Patient Review Panel.

Proposals:

- **Streamlined Pre-Approval**: A single national panel to oversee eligibility and agreement validation.
- **Mandatory Post-Birth Counselling**: For both surrogates and intended parents to support transition.
- **Regulated Matching Services**: Licence commercial and not-for-profit surrogacy agencies to facilitate introductions, reporting to a central regulator.

3.6 Advertising & Awareness (Q13, Q25)

Current State: Broad bans on any surrogacy-related advertising; no central info portal.

Proposals:

- **Registered Advertising**: Allow approved agencies and clinics to advertise within regulated platforms.
- **Government Information Hub**: Official website and hotline with up-to-date FAQs, state-by-state guidance, clinic listings, legal templates.
- **Public Education Campaigns**: Normalise and inform Australians about domestic surrogacy options and safeguards.

3.7 Medicare, Parental Leave & Financial Support (Q14)

Current State: IVF and fertility treatments for surrogacy are ineligible for Medicare rebates; Centrelink paid parental leave for surrogates/intended parents is obscure and inconsistently applied; unpaid leave under the NES is minimal.

Proposals:

- **Medicare Inclusion**: Extend rebates to all fertility treatments used in surrogacy.
- **Paid Parental Leave**: Guarantee surrogates receive the same paid leave as birth parents; intended parents to access 18 weeks' paid leave under Centrelink.
- **Employer Mandates**: Require enterprise agreements to include surrogacy leave provisions.

3.8 Legal Parentage: Transfer & Recognition (Q18–19)

Current State: Intended parents must wait until post-natal court applications (often delayed months, costing >A$1,300 in NSW alone) to secure parentage orders. Children born overseas may be denied any recognition.

Proposals:

1. **Pre-Birth Parentage Orders**: Issue orders once medical and legal safeguards are met, so birth certificates list intended parents from the start.
2. **Automatic Recognition**: Where preconditions (agreement, counselling, third-party fund) are satisfied, parental status attaches at birth.
3. **Reciprocity for Overseas Orders**: A statutory mechanism to recognise foreign parentage orders or certified agreements where standards are met.

3.9 Citizenship, Passports & Visas (Q20–21)

Current State: Citizenship by descent and passport applications require a birth certificate listing intended parents; visa pathways are unclear, risking statelessness.

Proposals:

- **Surrogacy Stream**: Allow intended parents to lodge citizenship and passport applications *before* the child's birth, with provisional processing.

- **Passport Issue at Hospital**: Liaise with Passport Office so that the moment a child is born, hospital-issued documentation triggers passport issuance.
- **Clear Visa Classifications**: Define a specific "Child of Australian Citizen by Surrogacy" visa subclass to streamline entry for overseas-born surrogacy children.

3.10 Oversight, Harmonisation & Criminal Law (Q22–23, Q24)

Current State: Criminal offences for engaging in commercial surrogacy for residents of NSW, QLD and ACT—ineffectual deterrents that provoke fear but no prosecutions. State laws diverge on eligibility, process and parental recognition.

Proposals:

- **Decriminalise Commercial Surrogacy**: Remove offences targeting intended parents; focus enforcement on unscrupulous agencies or intermediaries.
- **National Uniform Law**: Achieve harmonisation by one of:
    - **Referral**: States refer surrogacy power to the Commonwealth for a single Act; or
    - **Model Legislation**: All jurisdictions adopt a template national Surrogacy Act.
- **Central Regulator**: Establish a National Surrogacy Authority to licence agencies, publish guidelines, collect data and monitor compliance.

3.11 Hospital Management & Out-of-Scope Insights (Q26, Egg Donation)

- **Maternity Protocols**: Mandate training for obstetricians, midwives and registrars on respect for surrogate autonomy, consent, intended parents' presence and privacy protections.
- **Record-Keeping & Registers**: Create a national unified registry for donor gametes and surrogacy arrangements, with secure access protocols that protect privacy yet honour the child's right to origin information.
- **Egg Donation** (Out-of-Scope but Critical): Recognise egg donor shortages as a barrier; consider parallel reforms to streamline donor recruitment, screening and transport of embryos.

4. Conclusion: An Urgent Plea

Our current laws leave families stranded in legal limbo, burdened by cost, discrimination, and anxiety. Meanwhile, hundreds of Australian children born via international surrogacy await statelessness or insecure parentage.

We implore the ALRC and all Australian governments to adopt these reforms immediately—not in 2026, but now. Let us build a system that treats surrogacy as the noble, human-rights-based path to parenthood it is, rather than a criminalised exception. Let us honour every surrogate with dignity, every child with certainty, and every intended parent with equality and hope.

Australia's families can't wait.

[redacted]

Perth, Western Australia.