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6 July 2025

To the Commissioners
Australian Law Reform Commission

Re: Surrogacy Law Reform in Australia – Legal and Structural Barriers to Parenthood

I write to make a submission regarding the urgent need for reform to Australia's surrogacy laws, which impose significant and unjustifiable barriers to parenthood, particularly for same-sex couples and individuals experiencing medical infertility.

As a resident of New South Wales and a prospective parent, I have encountered a legal system that is outdated, inconsistent, and discriminatory. Under the Surrogacy Act 2010 (NSW), it is a criminal offence for residents to enter into a commercial surrogacy arrangement overseas, even when those arrangements are legal, regulated, and ethical in the jurisdiction in which they occur. This criminalisation denies Australians access to safe and structured surrogacy programs abroad and forces many to either abandon their plans to become parents or take on considerable legal and personal risk.

Within Australia, while altruistic surrogacy is technically legal, it remains almost impossible to access in practice. The prohibition on reasonable compensation beyond narrow expense reimbursement has created a system in which very few women are willing or able to be surrogates. The lack of a lawful, supported pathway for compensated surrogacy leaves most intended parents without any viable domestic option.

Intended parents also face an intrusive and inequitable regulatory burden. Legal advice, counselling, psychological screening, and mandatory approvals are all required prior to proceeding. While safeguards are important, it is discriminatory that these requirements apply only to those requiring assisted reproduction to have children. Fertile heterosexual couples are not subjected to any of this scrutiny. The message this sends is clear: that some people must prove they are fit to parent, while others are presumed to be.

The law also fails to protect the fundamental rights of parents and children through its outdated approach to legal parentage. Intended parents are not recognised as legal parents at birth. Instead, they must apply for a parentage order after the child is born, during which time the surrogate remains the legal mother. This system provides no certainty for families and no legal recognition for the people who are actively parenting the child. In jurisdictions such as the United States, intended parents are recognised as legal parents from birth. Australia's failure to offer similar protections is no longer defensible.

Financial barriers further compound these issues. While Australians can access their superannuation on compassionate grounds for overseas fertility treatment, this access does not extend to medical costs related to surrogacy, such as embryo transfer to a gestational carrier. This distinction discriminates against people who are medically unable to carry a pregnancy. It creates an inequitable financial burden for same-sex couples and individuals with infertility, and fails to account for the reality that many Australians now form families through surrogacy.

Further, parents who have children through commercial surrogacy overseas are excluded from accessing both NSW government and Commonwealth Paid Parental Leave, despite being the legal and physical caregivers from birth. This policy is punitive and reinforces outdated assumptions about what constitutes a legitimate family.

Together, these laws and policies:

- Criminalise access to ethical, regulated international surrogacy for NSW residents
- Make domestic surrogacy effectively inaccessible by prohibiting reasonable compensation
- Subject intended parents to disproportionate psychological and legal scrutiny
- Deny intended parents legal parentage at birth, requiring post-birth court applications
- Permit access to superannuation for some fertility treatments, but not for surrogacy-related care
- Exclude intended parents from parental leave solely based on how their child was born

I respectfully urge the Commission to recommend the following reforms:

- Legalise and regulate compensated surrogacy in Australia, with appropriate safeguards
- Repeal laws that criminalise Australians for accessing commercial surrogacy overseas
- Introduce nationally consistent laws that recognise intended parents as legal parents from birth
- Extend compassionate access to superannuation to include surrogacy-related medical procedures
- Provide equal access to paid parental leave for all parents, regardless of the pathway to parenthood
- Review regulatory processes to ensure they are necessary, proportionate, and applied equitably

Australians who cannot carry a child - whether due to medical conditions, biology, or circumstance, should not be punished by the law for trying to build a family. Our legal framework must evolve to reflect the diversity of family formation today and support, rather than obstruct, those who seek to raise children with love and care.

Yours faithfully

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