Tuesday 8th July 2025

The Commissioner
Australian Law Reform Commission
PO Box 209
Flinders Lane
Victoria 8009
Email: surrogacy@alrc.gov.au

Dear Commissioner,

SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION – REVIEW OF AUSTRALIA'S SURROGACY LAWS

I am making this submission to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. I am an: intended parent that has been involved in surrogacy overseas and I feel very strongly that the laws need to change within Australia.

I have read the Issues Paper and have responded to the questions posed in the paper below.

I seek that my submission be published but de-identified.

1. *If you or someone close to you has had personal experience of surrogacy, please describe:*
    - *What parts of your experience were positive?*
    - *What parts of your experience were negative?*
    - *What could be improved and how?*

Submission to the ALRC Review of Surrogacy Laws

From an Australian Mother Through International Surrogacy

It seems almost unbelievable that we can send rockets into space but still fail to offer compassionate, consistent support to women in Australia who are medically unable to carry a pregnancy. That is me.

After years of self-belief, visioning, and undergoing numerous invasive procedures—including surgeries for endometriosis, hundreds of hormone injections in my back and stomach, a devastating diagnosis of extensive and significant adenomyosis, medication that impacted my mental health, and international trips/consultations to the USA —I still couldn't carry a pregnancy to term. My husband and I endured miscarriages, immense psychological toll, and financial hardship totalling more than $250,000. And that only scratches the surface.

Our fertility specialist recommended surrogacy. But even then, we were faced with a cruel irony: after all we had been through, we were met with silence, stigma, and a system that left us unsupported. Few people in our lives knew what we were enduring. Most had children easily. We felt like failures.

We explored domestic surrogacy, but Australia's restrictive, state-based laws made it near impossible. So, we looked abroad. We investigated Ukraine—until the war. Then Greece, Georgia, and ultimately Argentina. Additional hardships included having our embryos released from an Australian fertility clinic and then transporting these embryos overseas. In March 2024, our miracle baby boy was born prematurely in Buenos Aires.

What followed was five of the most emotionally fraught months of our lives.

Due to a legal dispute between Argentinian authorities, our son's birth certificate was delayed. Without it, we couldn't leave the country. He spent two weeks in a neonatal intensive care - complex unit, and we were alone—without family, without language, without proper support. He couldn't even be vaccinated until the Australian consulate intervened. I found myself translating symptoms through a phone app desperately to pharmacists. Meanwhile, our newborn—who we had spent years emotionally, physically, and financially preparing for—was isolated from his extended family. That precious time was stolen from us by bureaucracy and something I resent bitterly.

I advocated for our son and other Australian, Irish, and New Zealand families caught in the same situation. With the help of consular staff and lawyers, we pushed the civil registry to issue our children's birth certificates. We were very lucky however – due to timing and the legal change – our son's birth certificate is published with both mine and my husband's names on it. Other's were not so fortunate and have come home to seek parentage orders across Australian states. Eventually, we were able to come home. But the emotional scars remain.

We are forever grateful to our surrogate—our angel. She is a mother herself, and helped us out of compassion and choice. We remain close and plan to see her again. She is, and always will be, part of our story and our son's identity.

The Need for Reform

Our story is not unique. It reflects a system that:

- Discriminates based on geography, gender, sexuality, and relationship status
- Criminalises loving families who seek international surrogacy when no alternative exists
- Delays legal parentage, creating risk and uncertainty for children
- Offers no consistency or transparency on surrogate reimbursement
- Provides little to no emotional, psychological or legal support to those going through this process
- This patchwork of inconsistent state and territory laws does not reflect the lived reality of Australian families. It actively harms them.

ALRC Reform Themes: How Our Story Connects

Access and Eligibility
Australia's domestic surrogacy system is too limited, slow, and inconsistent. It excludes or discourages couples like us—who are ready and capable of parenthood—from building families. Equal access for all family types is essential.

Legal Parentage
Even after birth, intended parents have to wait months and cross legal hurdles to be recognised as their children's legal parents. Automatic parentage for intended parents at birth would protect children's rights and give families the legal certainty they need.

International Surrogacy
Right now, intended parents risk criminalisation simply for choosing an international pathway. But we had no other option. Decriminalising international surrogacy—and replacing that with transparent safeguards—is essential.

Reimbursement
We still don't fully understand what is "reasonable reimbursement" under Australian law. This lack of clarity puts both intended parents and surrogates at legal risk.

Child's Right to Identity
We are committed to ensuring our son knows his story, and the woman who helped bring him into the world. But Australia lacks a national registry to safeguard this right. It's time we created one.

Education and Professional Support
Throughout this process, we were met with silence and confusion. Too few professionals understand the legal, emotional, and medical complexities of surrogacy. Education is urgently needed across the system.

To protect families like ours and to centre the rights of the child, I urge the ALRC to recommend the following:

A National Surrogacy Framework
Harmonise laws across Australia so all families, regardless of where they live, can access domestic surrogacy under the same rules.

Automatic Legal Parentage at Birth
Recognise intended parents immediately upon the child's birth to ensure continuity of care and legal protection.

Decriminalisation of International Commercial Surrogacy
Replace criminalisation with regulation that ensures ethical, safe, and transparent international arrangements.

Clear National Guidelines on Reimbursable Expenses
Provide clarity for surrogates and parents to avoid legal risk and financial inequity.

A National Donor and Surrogacy Register
Establish a secure, lifelong registry to ensure children can access their birth and biological history.

Professional Training and Public Education
Build knowledge across healthcare, legal, and community sectors to better support all families pursuing surrogacy.

Final Thoughts

Every child deserves a safe, loving start in life. Every parent deserves to be recognised and supported. And every surrogate deserves clarity, safety, and respect.

We didn't choose this path lightly. But we chose it with hope and love. What we need now is a legal system that reflects those values—not one that makes an already difficult journey even harder.

Please, let's build a system that treats families like mine not as legal dilemmas, but as human stories.

2. What reform principles should guide this Inquiry?

The Best Interests of the Child Must Be Paramount
Surrogacy laws must prioritise the welfare, security, identity rights, and emotional wellbeing of the child—both before and after birth. This includes ensuring legal parentage from birth and access to information about genetic and birth origins.

Equality and Non-Discrimination
All individuals—regardless of sexuality, gender, relationship status, or location—should have equal access to surrogacy. Discriminatory restrictions in current state and territory laws must be removed.

Legal Certainty and Timeliness
Intended parents and surrogates need clear, consistent legal processes that provide certainty, especially in areas such as parentage, reimbursement, and cross-border recognition.

Protection and Respect for Surrogates
Surrogates must be treated with dignity, with informed consent, access to independent legal and psychological support, and protection from coercion or exploitation.

National Consistency Through Federal Reform
A harmonised, nationally consistent legal framework is essential. Australia's current patchwork of state and territory laws creates confusion, delays, and inequality.

Respect for International Realities and Cross-Border Families
Laws should reflect the reality that many Australians pursue international surrogacy. Decriminalisation, ethical oversight, and safeguards are needed—rather than punitive or unclear approaches that endanger children and families.

Transparency, Accountability, and Education
All parties—including professionals and the public—should be supported through education, national registries, and ongoing policy review to ensure the system is safe, ethical, and child-centred.

3. *What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements and how should these be addressed?*

Children's Right to Legal Identity and Parentage (UNCRC Articles 7 & 8)

In both domestic and international surrogacy, children are often not legally recognised as the children of their intended parents at birth. This creates uncertainty around citizenship, Medicare access, travel, and inheritance, and violates a child's right to immediate legal identity and care from their parents.

Implement **automatic legal parentage at birth** for intended parents in all surrogacy arrangements.

Ensure parentage laws are **consistent across jurisdictions**, whether a child is born in Australia or overseas.

Children's Right to Know Their Origins

Australia does not yet have a national donor and surrogacy registry, meaning many children conceived through surrogacy—especially internationally—may struggle to access information about their birth or genetic heritage.

Establish a national, lifelong registry that records details of donors and surrogates, accessible to the child when they are ready.

Include this as a legal requirement in both domestic and overseas arrangements.

Right to Family Formation and Equality (ICCPR Articles 17 & 26)

Current laws restrict access to surrogacy based on location, relationship status, sexuality, and gender. This violates the rights of LGBTQ+ individuals and others to form families free from discrimination.

How to address it:

Ensure surrogacy access is equal across Australia, regardless of sexuality, gender identity, or state of residence.

Embed non-discrimination as a core principle in all surrogacy legislation.

Rights of the Surrogate – Dignity, Autonomy, and Protection from Exploitation

Surrogates—especially in international contexts—may not always have full access to informed consent, legal advice, or medical autonomy. In unregulated jurisdictions, there's a risk of coercion, economic exploitation, or lack of post-birth care.

How to address it:

Create minimum ethical standards for both domestic and international surrogacy, including:

Mandatory independent legal and psychological support

Clear consent frameworks

Enforceable agreements that protect the surrogate's health, autonomy, and wellbeing

Right to Health and Family Unity in International Arrangements

Families created overseas often face months of legal limbo, without access to consular support, citizenship, or medical care for their child—despite acting in good faith. These delays can violate rights to health, family life, and freedom from arbitrary interference.

Decriminalise international commercial surrogacy where it's ethically managed and child-focused.

Provide clear pathways for legal recognition and citizenship of children born through international arrangements.

Offer consular support and resources to intended parents abroad.

4. *What information about the circumstances of their birth do you think children born through surrogacy should have access to? How should this be provided / facilitated?*

At a minimum, every child born through surrogacy should have lifelong access to:

1. **Birth details** – including place, date, and medical circumstances surrounding their birth
2. **Details of the surrogate** – name, contact details (where consent is given), and reasons for becoming a surrogate
3. **Details of donors** (if used) – including non-identifying and, later, identifying information (in line with age-appropriate access)
4. **Medical histories** – of the surrogate and any donors, to safeguard future health
5. **Legal and social history** – including parentage orders, court documentation (if any), and the intention behind the surrogacy arrangement
6. **Cultural or ethnic background** – if relevant, particularly in international arrangements
7. **Photographs and letters (optional)** – to humanise and support storytelling, where agreed by the parties involved

How this information should be provided and facilitated;

Establish a National Surrogacy and Donor Registry

- A secure, centralized, government run registry should be created to store and manage all relevant records from surrogacy and donor arrangements, whether domestic or international
- Access should be managed in stages based on age and maturity with identifying information from 18 years or earlier with mutual consent.

Mandatory Record keeping and Reporting

- Surrogacy agreements should include an obligation to submit key details(medical, legal, identifying) to the national registry at the time of the arrangement and post-birth)
- Fertility clinics, lawyers and agencies (domestic and international) must be required to lodge this information to ensure future access

Education and support for Families

- Provide psychosocial resources to help intended parents speak openly with their child about their surrogacy journey from an early age.
- Offer counselling services for children accessing their information, particularly during adolescence and young adulthood.

Include International Arrangements

- The national registry should also accommodate international births, with legal mechanisms to require or encourage cooperation from overseas agencies (where possible) and accept verified records from foreign clinics or authorities.

Ongoing Review and Transparency

- Regular reviews of the system should ensure that it continues to reflect evolving best practice, technology and community expectations.
- Include consultation with donor-conceived and surrogate-born individuals to shape policies over time

5. *What do you think are the main barriers that prevent people from entering into surrogacy arrangements in Australia, and how could these be overcome?*

1. Lack of Available Surrogates

Most intended parents such as ourselves do not have a friend or family member willing or able to be a surrogate. Under current laws, finding a surrogate outside personal networks is almost impossible due to advertising bans and legal constraints. The idea that everyone has someone in their circle willing to carry a child is simply unrealistic.

Allow compassionate, regulated advertising for intended parents and surrogates, including through verified platforms, counselling services, or clinic matching programs. This will make surrogacy accessible to people who do not have private connections, while still protecting all parties through screening and support.

2. Advertising Bans

In many states, it's illegal to advertise for a surrogate or for a surrogate to offer her services. This restricts transparency, blocks legitimate connections and pushes people into secrecy or unregulated online spaces.

Amend laws to allow regulated, ethical advertising with oversight to prevent coercion or exploitation and ensure all parties are fully informed.

3. Complex, Inconsistent Laws

Every state and territory has different rules about who can access surrogacy, how parentage is transferred and what expenses can be reimbursed. This creates legal confusion and unequal access across Australia.

Introduce a national surrogacy framework that standardizes eligibility, parentage ad reimbursement across all states and territories.

4. Stigma and Lack of Support

There remains significant social stigma and misunderstanding around surrogacy especially for LGBTQ+ families, single people, or those using donors.

Fund national education campaigns to normalize surrogacy and promote inclusion. Provide professional training for doctors, lawyers, and psychologists to ensure respectful, informed care.

5. Surrogacy Relationships that become unbalanced

Some intended parents worry – sometimes rightly, that surrogates may become overly involved in their family life after birth. With few guidelines on managing ongoing relationships, this can lead to emotional strain or conflict, or moving to an international process whereupon it would be more difficult for the surrogate to 'invade' lives.

Ensure mandatory, independent counselling for all parties (pre-and post birth) and set clear expectations through written agreements and education. Provide conflict mediation services if relationships become challenging

6. It's easier to Go Overseas

Compared to the lengthy, uncertain and legally complicated process in Australia, international surrogacy – despite its own risks-often appears faster, more predictable and more accessible. Sadly, many Australians, such as myself and my husband, saw this as being our only real, viable option.

Reform domestic surrogacy laws to make ethical, timely and supportive pathways available at home. This includes;

Removing eligibility discrimination

Streamlining legal processes and making them affordable

Allowing appropriate compensation for surrogates and not just reimbursing for wages lost and medical appointments

Supporting a national surrogate – intended parent matching system

6. *Should there be eligibility criteria for surrogacy? If so, what should those requirements be?*

Yes.

A Demonstrated Medical or Social Need

Surrogacy should be available where a person or couple of unable to carry a pregnancy due to medical or social reasons (e.g medical infertility, absence of a uterus, health risk to the parent, or being a male same sex couple).

A medical professional or fertility clinic should assess and support this need, as is current practice

Informed Consent and Psychological Preparedness

Intended parents should undergo mandatory counselling to explore the emotional, legal and relational aspects of surrogacy

Legal Capacity and Residency

Applicants must be over 18, capable of entering into a legal agreement and either citizens or permanent residents of Australia.

No Discrimination Based on Sexuality, Gender or Relationship Status

Surrogacy should be available to individuals and couples of any gender identity or sexual orientation, including single people. Exclusion on the basis of being unmarried, single or LGBTQ+ violates human rights principles.

7. *Are there any current requirements which should be changed or removed?*

Ban on advertising and Matching Services to be removed and replaced with regulated, ethical matching services that allow people to connect safely, with mandatory counselling, legal advice and support built into the process.

Requirement for surrogates to be 'Altruistic Only' Continue to prohibit exploitative commercial surrogacy, but allow for reasonable compensation or structured, capped reimbursement, clearly defined and regulated to protect both parties.

Inconsistent Eligibility rules across States/ Territories Geographic inequality within Australia's borders pushes people across borders or overseas.

Delayed Legal Parentage Transfer Currently in most states, intended parents are not recognized as the legal parents at birth. Instead they must apply to transfer parentage through the courts – sometimes months after the child is born. This creates legal limbo for children and leaves intended parents without legal authority to make medical or welfare decisions. Introduce automatic legal parentage at birth for intended parents in surrogacy arrangements that meet pre-agreed conditions.

Lack of clear rules on Reimbursement Develop a national schedule of reimbursable expenses, with flexibility for individual circumstances, and require clear written agreements.

No National Surrogacy or Donor Registry Establish a mandatory national donor and surrogacy registry that records identifying and non-identifying information, accessible to children when they are of appropriate age or maturity.

Modification in uploading documents to acquire Australian Citizenship – We personally uploaded [redacted] documents proving our biological and documented connection to our child. Unfortunately you cannot advance without loading the birth certificate first which then allows for the evidence to be uploaded. The stress related to this and completing this in an overseas country where on occasions Wi-Fi and electronic passage does not always operate sufficiently could be overcome with uploading relevant documents prior to departure from Australia.

8. *Are there any requirements for a valid surrogacy agreement you think should be added, removed or changed?*

Not answered

9. *Should surrogacy agreements be enforceable?*

Not answered

10. What process requirements should be in place for surrogacy arrangements?

Mandatory Independent and <u>affordable</u> legal advice (for all parties).

We personally sought legal advice from a reputable Brisbane law firm and declined to our disadvantage as we felt that we couldn't afford what was demanded for 30 minutes of legal advice.

Mandatory counselling and Psychological Assessment

All parties should undergo pre-conception counselling.

Written Surrogacy Agreement

Should outline;

Roles and Responsibilities

Expectations during and after pregnancy

Financial Arrangements

Communication preferences

Eligibility Screening and Medical Approval

A fertility specialist must confirm;

The medical or social need for surrogacy (for intended parents)

The medical suitability of the surrogate (based on obstetric history, health status, etc)

National Surrogacy Register Entry

Once an agreement is in place, the arrangement should be lodged in a national surrogacy registry to support transparency, identity access for children and national data collection.

Clear, Pre-Birth Legal Parentage Recognition

In approved surrogacy arrangements, legal parentage should be automatically transferred to the intended parents at birth, removing the need for lengthy post birth court processes.

Post Birth Reporting and Support

Clinics or professionals involved should lodge key documents with the national registry (e.g. birth details, parentage confirmations

Additional safeguards should be applied for International Surrogacy;

Proof of informed consent and legal advice for the overseas surrogate

Health and safety standards compliance for the medical facility used

Prior legal preparation in Australia to ensure automatic recognition of parentage and citizenship at birth

Assurance of ethical and non exploitative arrangements, including fair compensation and voluntariness

Registration of names, details and location of intended parents with the responsible Australian Consulate/ Embassy and notification to DFAT for prior recognition of Australian Citizenship records and uploading of relevant documentation.

11. What are the gaps in professional services for surrogacy in Australia?

Not answered

12. What is the best way for professional services for surrogacy to operate?

Not answered

13. How should surrogacy advertising be regulated?

Allow regulated Advertising in All states and territories

Lift the current bans that prevent intended parents from publicly seeking a surrogate or offering to enter a surrogacy agreement.

Advertising should be permitted in approved platforms and must meet ethical and content guidelines.

Use of Verified, Registered Platforms

Surrogacy matching should be conducted through licensed clinics, national registers or authorized platforms that can vet, guide and support all parties.

Mandatory Pre-Ad approval or Registration

All advertising content should be fact checked and approved by a registered surrogacy professional or agency

Include disclaimers about altruism requirements, legal boundaries, counselling obligations and structured financial payments.

Content Guidelines to Protect Vulnerable Parties

Use respectful, inclusive non coercive language

Explain the nature of the arrangement

Avoid making medical claims or offering direct payments

Respect the privacy and dignity of all parties involved

Centralized Oversight and Reporting

A national surrogacy regulator or ethics committee should be established to;

Set advertising standards

Monitor advertising practices

Handle complaints and disputes

Maintain transparency and accountability

In our journey, one of the greatest barriers was the inability to find a surrogate legally in Australia. We didn't know anyone who could/ would carry for us and advertising wasn't allowed. We felt completely isolated and were left with no safe, legal way to find someone to help us grow our family – so we looked overseas. The decision carried its own risks and emotional trauma, especially once our baby was born. If ethical advertising had been available and supported by professionals, we may never have had to leave the country.

14. What entitlements, if any, should be available to surrogates and intended parents?

Medicare Rebate for Surrogacy related IVF treatment

Currently Medicare only covers IVF treatments when the intended parent is also the person undergoing treatment. This excluded many people who turn to surrogacy due to medical infertility or for whom pregnancy is not possible. Extend Medicare rebates to cover;

IVF treatment for the surrogate (e.g. embryo transfers, monitoring)

Creation of embryos by intended parents for use in a surrogacy arrangement including costs associated with donors

Related medical screening and diagnostics

Paid parental leave for intended parents

Under current law, intended parents in a surrogacy arrangement may not be eligible for government or employer-paid parental leave, as they are not recognized as legal parents at the time of birth.

Allow parents to access;

Government paid parental leave from the child's birth

Employer parental leave entitlements (matching birth or adoptive parents)

Reimbursement Through an Independent Third Party Holding Body

Intended parents deposit funds in advance

Reimbursements are paid to the surrogate according to a pre-approved list of allowable expenses

Transactions are transparent, documented and overseen by an independent third party.

Financial donation is capped from intended parent to surrogate – not paid commercially, but paid an agreed and regulated amount. Financial incentive should be allowed.

Counselling, Legal and Medical Cost Coverage for Surrogates

Surrogates should never be left out of pocket for necessary expenses including;

Independent legal advice

Counselling (pre- and post birth)

Medical and pharmaceutical costs not covered by Medicare

Travel or childcare costs associated with medical appointments

Post Birth Support and Recognition for Surrogates

Consider special leave entitlements or health care cost access for post birth recovery

Offer public acknowledgement and support resources, recognizing surrogacy as a valid and valued form of reproductive labour

15. *How could the process for reimbursing surrogates for reasonable expenses be improved?*

Not answered

16. *Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy? You might want to consider whether you agree with how we have described compensated and 'commercial' surrogacy?*

Yes, I support regulated, fairly compensated surrogacy in Australia.

Surrogacy requires time, emotional labour, physical risk and deep personal commitment. While many surrogates are motivated by altruism, that doesn't mean they should bear personal or financial costs for helping someone else have a child. I believe that we must move beyond the outdated binary of altruistic = good and commercial = bad. Instead the focus should be on ethics, consent, fairness and protection of all parties – especially the child.

1. Surrogates should not be financially disadvantaged. This is not ethical nor sustainable. Allow structured compensation that goes beyond 'reimbursement' to fairly reflect the surrogate's time, pain, risks and responsibilities – without turning surrogacy into a profit-driven industry.
2. Regulated Compensation Reduces Exploitation -Not increases it. Compensation when regulated transparently empowers surrogates to make informed choices and ensures that they are not left vulnerable to hidden costs, pressure, or long term disadvantage.
3. Altruism and Compensation are not mutually exclusive. Many surrogates want to help others out of kindness – but they still have bills to pay, time away from work, and families of their own. Recognizing that with fair compensation honours their contribution, rather than undermines it.
4. 'The middle men are compensated' All medical centres, psychologists and

We paid hundreds of thousands of dollars navigating international surrogacy – not to profit, but because we had no safe or legal option at home. Our surrogate was motivated by love and generosity (for which we are forever in her debt), but she also deserved recognition, respect and support. Compensation did not diminish her gift; it reflected the real cost of what she gave us. A child.

17. *If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented?*

    1. **Create a National Surrogacy Regulatory Body**

Establish a dedicated federal authority to oversee all surrogacy arrangements (domestic and international)

This body would:

- Approve clinics and agencies
- License surrogacy facilitators
- Monitor Compliance and reporting

2. Allow Structured, Regulated Compensation to Surrogates

Surrogates should receive fair and clearly defined compensation for;

- Time off work
- Medical appointments and discomfort
- Emotional and physical toll
- The overall contribution to helping create a family

3. Use a Third -Party Holding System for Payments

All surrogate compensation and reimbursements should be handled through an independent trust account or payment service, overseen by the national authority.

This adds transparency, avoids coercion or haggling and protects both surrogate and intended parents.

Payments to be capped and regulated.

4. Require Mandatory Screening, Legal Advice and Counselling

No surrogate or intended party should enter into a compensated arrangement without;

- Legal advice
- Psychological screening and ongoing counselling
- Medical Clearance

5. Ensure parentage is automatically recognized at Birth

Once all legal and ethical conditions have been met, intended parents should be recognized as the legal parents at birth, without needing court orders.

This gives the child immediate legal protection and simplifies leave, healthcare and travel arrangements.

6. Strict Ethical Safeguards, Not Bans

Commercial surrogacy must not allow:

- Profit driven agencies to exploit vulnerable women
- Payment per child or based on gender or health
- Lack of post-birth support

All arrangements should be screened for consent, voluntariness and ethical conditions – similar to organ donation or adoption procedures.

18. What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

Legal Limbo at Birth

In most domestic surrogacy arrangements the birth mother and her partner (if applicable) are recorded as the child's legal parents at birth, even when everyone agrees the intended parents should be.

The intended parents must then apply to the court post birth for a parentage order, sometimes months later – leaving the baby in legal limbo.

Intended parents cannot immediately consent to medical treatment

They may be ineligible for paid parental leave

Their emotional and legal identity as parents is questioned from the outset.

Costs and Complexity of Parentage Orders

Applying for a parentage order can cost several thousands of dollars, especially when legal representation is required.

The process is time consuming, inconsistent between states and emotionally draining – requiring affidavits, court appearances, and often repeated counselling or police checks

These costs come additionally to IVF, travel, legal and agency fees, leaving intended parents financially exhausted.

International Parentage Recognition is Even More Uncertain

When a child is born overseas via surrogacy Australia does not automatically recognize the intended parents as legal parents.

The process of proving parentage is slow, complex and often requires:

DNA testing

Visa appeals

Lengthy DFAT involvement (In our case, we uploaded [redacted] documents to the DFAT Australian citizenship portal to prove biological linkage and authentic and valid documentation and request)

Psychological Impact on others who can not carry

For many women like myself, the inability to carry a pregnancy is a lifelong source of pain, shame and grief. Words simply cannot express the devastation I feel regarding this issue. To then have the law declare that you are not your child's mother, simply because someone else carried them, is devastating and degrading. For years and years I was the one that endured the pain – physically, emotionally and psychologically relentlessly surrounded by family, friends and an occupation that reveres children. After enduring infertility, loss, invasive treatment and sometimes public silence, we are asked to prove ourselves as 'real' mothers in court. Having to 'apply' to be called your child's 'mother' after everything is humiliating. For me and I am sure many women, grieving the loss of carrying, birthing and

breastfeeding my child is compounded by the suggestion that I wasn't the mother by the legal system.

Lack of National Consistency

Each state and territory has different parentage processes, court requirements and timelines. Families are treated differently depending on postcode!

19. *How could the process for intended parents to become the legal parents of children born through surrogacy be improved?*

1. **Introduce Automatic Legal Parentage at Birth for Approved Surrogacy Arrangements**

When certain conditions are met;

- Pre-surrogacy legal agreement
- Completion of mandatory counselling
- Medical and legal screening
- Surrogacy approval through a registered service or clinic

2. **Replace Court-Based Parentage Orders with an Administrative Process**

A simple administrative recognition model – similar to registering a birth – through a national registry or family law office

3. **Ensure parentage Orders are Free, Fast and Uniform**

If courts remain part of the process:

- Remove filing fees for surrogacy-related parentage applications
- Streamline court documentation with standard national forms
- Require that all orders be made within 30 days of birth, unless contested
- Offer online or remote options to reduce travel and accessibility barriers

4. **Recognise International Surrogacy Parentage Automatically – When Ethically Conducted**

For children born overseas via ethical, legally compliant surrogacy;

- Australia should recognize legal parentage based on foreign birth certificates or court orders, without requiring re-litigation here.
- DFAT, immigration and Births, Deaths & Marriages offices should work together under a national policy to standardize recognition

5. **Use language and Policy that Affirms – Not Diminishes – Intended Mothers**

- Use language that affirms intended parenthood
- Immediate recognition of maternal leave and medical decision-making authority

- Public and professional education about surrogacy, so healthcare and government staff do not stigmatize or question families.

20. What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy:

a. Australian citizenship;

b. an Australian passport; or

c. *an Australian visa*.

1. **Excessive Documentation Burdens – Even when Arrangements are Ethical and Transparent**

Families must provide;

- DNA evidence to prove biological connection
- Birth certificates from foreign jurisdictions (often delayed or in our personal case withheld (for 5 months) due to an appeal of Surrogacy law within Buenos Aires)
- Court orders, legal contracts, and declarations from clinics and surrogates
- Translated, notarised and apostilled documents – sometimes multiple times
- Evidence of the legitimacy of the surrogacy agency or medical providers

2**. Delays in Issuing Citizenship by Descent**

Processing times for Australian Citizenship by Descent Applications are often several months long, even when the parent is an Australian Citizen and DNA links are proven.

These delays leave newborns unable to;

- Access emergency medical care through Medicare
- Travel home to Australia
- Be legally named or recognised as Australian Citizens

Despite having reputable, transparent and fully authenticated documentation, we were still subject to layers of scrutiny and delay. At a time of indescribable pressure and trying to navigate being parents for the first time in a foreign country and not being able to speak the language, we missed five months of bonding with family, delayed health care and emotional trauma – that we still carry.

21. How could the process for obtaining these documents be improved?

Simply allow the process of uploading documentation and evidence (such as shipping of embryos, biological make up of embryos etc…) to be uploaded onto the portal prior to departure overseas. This would substantially reduce the stress involved.

22. What is the best way to approach differences in surrogacy regulation between or within jurisdictions?

Not answered.

23. *Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach?*

Yes – Oversight is not only appropriate, it is essential that all surrogacy arrangements are ethical, informed, transparent, and protective of all parties involved especially the child and the surrogate. However, the type of oversight matters greatly. It must not be punitive or bureaucratic, but supportive, consistent and grounded in best practice.

Consideration should be given to Patient Review Panel (PRP) Model – an independent, multi-disciplinary body that assesses and approves proposed surrogacy arrangements before treatment or embryo transfer begins. A PRP should include;

- Legal professionals with surrogacy expertise
- Fertility and medical specialists
- Psychologists or counsellors with relevant experience
- A representative with lived experience as a surrogate or intended parent
- Ethicists or child development professionals

The panel would assess.

- The psychological readiness and informed consent of all parties
- Medical suitability of the surrogate
- The legal soundness of the agreement
- The clarity of parenting intentions and future contact
- Any unique risk factors or concerns regarding safeguards

24. *Should the law have a role in discouraging or prohibiting certain forms of surrogacy?*

Yes – but only in ways that protect human rights, prevent harm, and ensure informed ethical participation.

The law should not prohibit or discourage surrogacy simply because it involves compensation, occurs overseas, or falls outside a traditional family structure. Instead it should;

- Prohibit exploitative, coercive or unsafe surrogacy arrangements, regardless of location.
- Permit and regulate ethical, transparent and consensual arrangements including compensated ones.
- Encourage best practice by making domestic surrogacy safe, accessible and inclusive – so Australians don't feel forced to go overseas.

25. *Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices?*

Yes, but only after we get the **structure right**.

There is a critical need to improve awareness and understanding of surrogacy in Australia, but education cannot happen in a vacuum. You cannot educate people about a broken system and right now, the laws and frameworks around surrogacy are fragmented, confusing and in many cases, unfit for purpose.

Before we focus on education campaigns or awareness training, we must construct a fair, national, inclusive and consistent surrogacy system – and that system must be shaped by the real stories and voices of the people who have lived through it.

26. Do you have any views about the issues we consider to be in or out of scope?

Yes. While the scope of the ALRC's review is broadly appropriate, I strongly urge that the realities of international surrogacy, the need for compensated arrangements and the lived experiences of intended parents and surrogates remain central to any legislative reform. To be effective and just, this inquiry must consider all facets of surrogacy – domestic and international, altruistic and compensated, logistical and deeply personal. Excluding any of these element's risks further entrenching inequality, delay and distress for the very families and surrogates the law should protect.

27. Are there any important issues with regulating surrogacy that we have not identified in the Issues Paper? Do you have any other ideas for reforming how surrogacy is regulated?

No.

Thank you for considering my submission.