[redacted]

July 9th, 2025

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

Dear Commissioner,

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

We are making this submission to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. We are former intended parents, now a parent via an overseas surrogacy arrangement.

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.

Insights from our personal experience of surrogacy

We are a married heterosexual couple who have been together for 11 years. Our journey to parenthood began in 2020, at the height of the COVID-19 pandemic. While in hotel quarantine, I [redacted] was rushed to the hospital with a life-threatening ectopic pregnancy. Emergency surgery was required to remove my fallopian tube and end a non-viable pregnancy. This marked the beginning of a long and painful struggle with infertility.

Over the next five years, we endured a second ectopic pregnancy, five additional surgeries, six rounds of failed IVF, and the heartbreak of losing nine pregnancies and embryos. During this time, I was unable to work, and I battled severe depression, anxiety, and panic attacks, requiring medication and counselling. Eventually, I was diagnosed with a congenital defect—a Müllerian duct anomaly—that explained my inability to carry a pregnancy to term.

Our doctors gave us a glimmer of hope: we were able to create healthy embryos using both of our genetic material. With the help of a gestational surrogate, we could still have a biological child. But the idea of surrogacy was emotionally devastating. No one chooses surrogacy lightly—it is not a first option, but a last hope. It is incredibly demanding, both emotionally and financially, and made harder by social stigma and widespread misunderstanding.

When we explored surrogacy in Australia, we quickly discovered that it was close to impossible. We were told that only 1 in 30 couples in need of a surrogate are able to match with one unless they had a family member willing to help. Without this option and with time running out due to my age, we couldn't accept those odds. The fact that Australian law would also list the surrogate as the child's mother on the birth certificate—only allowing parentage to be transferred months after birth—was deeply unsettling.

Because commercial surrogacy overseas is criminalized for residents of NSW, we were forced to leave our home in Sydney, where I was born and raised, and relocate permanently to the United States to avoid breaking the law.

Our first surrogacy attempt in Greece ended very traumatically due to clinic fraud and negligence—an experience shared by hundreds of Australian families. We lost all of our embryos and savings, and were left with no support or recourse in a foreign country. To this day, we have no answers as victims of this clinic. This is an example of when overseas surrogacy arrangements can go horribly wrong and leave Australians and their children in a highly vulnerable position.

Thankfully, our surrogacy journey in the U.S. was a positive one. The U.S. model of compensated surrogacy is highly regulated, overseen by two ethical bodies—ASRM and SEEDS—and supported by a team of experienced professionals who ensure the rights and wellbeing of all parties. Our daughter was born in the U.S. after nearly five years of heartbreak and struggle.

But this outcome was only possible because we had the financial means to relocate and pursue surrogacy in a country like the US. Most Australians do not have that option. If we hadn't had the resources, we would still be living in Australia, childless. Instead, I write this from the United States, holding my baby daughter in my arms—grateful, but deeply aware that the system back home is failing countless others.

The women who turn to surrogacy are not taking an easy path. They are cancer survivors, women born with congenital defects, those with serious medical complications, and many who have endured years of failed IVF or the heartbreak of stillbirth. Surrogacy is often their only remaining medical pathway to motherhood after many other pathways have failed. These women deserve empathy and a compassionate route to parenthood in their home country.

Equally, men who cannot biologically carry a pregnancy—whether single or in same-sex relationships—deserve recognition and respect. Their longing for parenthood is no less real, and no less worthy of support.

When conducted ethically, surrogacy is not about convenience or exploitation. It is about the fundamental human right and desire to create a family and the respect, teamwork, love and dedication it takes to bring life into the world.

Reform Principles: What reform principles should guide this Inquiry?

We agree with the reform principles set out in the issue paper and have the following comments on them:

1. ***Harm minimisation and the risk of exploitation:*** It is our belief that the absence of a strong national legal framework for compensated surrogacy is the situation that allows the opportunity for exploitation and unethical arrangements due to 'under the table' agreements being reached between parties. Allowing regulated compensation and pre birth parentage orders reduce the risk of exploitation of either party.

2. ***Diverse families:*** We believe it would be beneficial to add respect for diversity in the reform principles. Surrogacy law should reflect the diversity of Australian families today, including single parents, LGBTQ+ couples, and those with reproductive disability.

3. ***Separation of religious views from the law:*** Reform must ensure that the moral or religious beliefs of a minority are not imposed on the broader Australian community, particularly when it comes to family formation. Australia is a secular nation, and our legal system is built on the principle that religion and law are separate. This separation should be upheld in all matters relating to reproductive rights and the creation of families, ensuring that laws are based on evidence, fairness, and human rights—not on religious doctrine.

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

In relation to the section regarding children's rights in the issue paper and Australia's responsibility to uphold the prohibition on the sale of children, we would like to respond to this concern. Compensated surrogacy does not involve the sale of a child. In the USA, it involves compensating a surrogate for the time and effort it takes to undergo the legal and medical processes as well as IVF procedures and pregnancy, with the compensation being received throughout the journey, not as a lump sum at birth. Therefore it is not accurate under this type of arrangement to say that a baby is the end product that is being bought or sold.

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?

We think it's in the best interests of the child to understand their origins so there should be education and counseling for parents around disclosing this information from an early age.

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. The fact that the surrogate is listed on the child's birth certificate and it can take up to a year to have this changed is a major deterrent to all parties. It causes unnecessary distress to all parties involved. The facilitation of a pre-birth court order that allows the intended parent(s) to be recognised prior to birth and named on the birth certificate at birth would alleviate this issue.

2. The lack of compensation for surrogates who devote a significant portion of their time, effort and expertise to helping another family. Surrogacy requires a significant time commitment, taking place over multiple years, is physically demanding, and requires time away from work and family, this effort and time should be compensated in the same way doctors, lawyers and mental health professionals are compensated for their time. There could be a cap on compensation to ensure the amount remains fair for parents and not an amount that could be deemed overly financially coercive for surrogates.

3. Points 1 and 2, contribute to the low numbers of women willing to be surrogates, compared with the number of intended parents. This means it is nearly impossible for most intended parents to match with a surrogate in Australia. Resolving point 1 and 2 could see the number of surrogates rise, creating more opportunities for intended parents to pursue journeys in Australia.

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

In the US, the American Society of Reproductive Medicine (ASRM) provides the following guidelines for surrogates which could also be applicable in Australia:

Gestational surrogates:

- Between the ages of 21-45.
- Demonstrate they live in a healthy, happy and stable environment and have a genuine desire to help another family in need.
- Have experienced at least one successful full-term pregnancy.
- Have experienced uncomplicated pregnancies and deliveries.
- Have not experienced more than 3 previous births by cesarean section.
- Be non-smoker and unexposed to second-hand smoke at home and at work.
- Be willing to abstain from alcohol throughout the entire pregnancy.
- Demonstrate financial security, steady income outside surrogacy, and proof they are not receiving any government assistance.
- Demonstrate a strong support network.
- Participate in a psychological screening by an accredited mental health professional.

Intended Parents:

- Absence of uterus (congenital or acquired);
- Significant uterine anomaly (e.g., irreparable Asherman syndrome; Müllerian duct anomalies associated with recurrent pregnancy loss);
- Absolute psychologic or medical contraindication to pregnancy (e.g., pulmonary hypertension);
- Serious psychological or medical condition that could be exacerbated by pregnancy or cause significant risk to the mother or fetus;
- Biologic inability to conceive or bear a child, such as a single male or homosexual male couple.
- The presence of an unidentified endometrial factor, such as for patients with multiple unexplained previous in vitro fertilization failures despite transfer of good-quality embryos, consideration may be given to the use of GCs.
- No owner, operator, laboratory director, or employee of the practice may serve as a carrier or IP in that practice.
- Intended parents should undergo a psychological screening in addition to surrogates to ensure preparedness for a surrogacy journey.

Should surrogacy agreements be enforceable?

Yes, surrogacy agreements should be enforceable. It is in the best interests for all parties, and in particular that of the child, for a surrogacy agreement to be fulfilled as initially intended. If they are not enforceable is creates serious risk to the child's wellbeing and will deter intended parents from engaging in surrogacy in Australia.

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

Surrogates should be entitled to a base compensation, paid in monthly installments not as a lump sum at the end, a monthly allowance to cover expenses related to the pregnancy, lost wages if unable to work at any time during the pregnancy (as deemed by a medical professional) and an allowance for lost wages post-birth. All of these funds could be held in escrow and payments disbursed throughout the journey. All of this should be agreed upon upfront and be detailed in the surrogacy contract between both parties.

Intended parents should have the legal certainty around the parentage of their child before they are born, thus creating no uncertainty as to their rights.

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

The funds for the surrogacy journey could be obtained upfront (i.e. prior to embryo transfer) and held in independent escrow to protect all parties financially. The surrogate could then submit expenses to the escrow account for reimbursement in a timely manner. This system works very well in the US and reduces any friction between surrogates and intended parents around financial matters.

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?

We believe the term "compensated surrogacy" is more accurate and appropriate than the commonly used term "commercial surrogacy." The word "commercial" carries connotations of business and transaction, which do not reflect the deeply human, personal and emotional nature of surrogacy. Surrogacy is not a transactional exchange, but a collaborative process between individuals working together to bring life into the world.

Using the term "commercial" can unfairly fuel narratives that link surrogacy to the commodification of women and children. In contrast, the term "compensation" reflects the principle of fairness—acknowledging the surrogate's time, effort, and the significant emotional

and physical demands of pregnancy. It ensures language aligns with the dignity and respect all parties deserve in this process.

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

We propose adopting a model similar to that used in the United States. In the U.S., compensated surrogacy is supported by a well-established framework in which surrogacy professionals are regulated by two ethical oversight bodies, American Society for Reproductive Medicine (ASRM) and Society for Ethics in Egg Donation and Surrogacy (SEEDS).

This model enables a team of experienced legal, medical, psychological, and surrogacy professionals to work collaboratively, ensuring robust support systems and the protection of all parties' rights. It empowers women who wish to help others build families to do so with informed consent and to be fairly compensated for the time, effort, and expertise required. Compensation in this context does not diminish altruism—just as teachers, nurses, and other caring professionals can be both altruistic and fairly paid.

The U.S. framework also clearly defines five essential roles that operate under professional standards and oversight. A similar structure could be adopted in Australia, with all involved parties licensed and regulated under a national scheme:

> ***1. Surrogacy Agency:*** An agency would be responsible for initial screening of surrogates and intended parents, facilitating matches between the two, and guiding both parties throughout the process. A government-licensed agency model would be feasible and effective. This agency would operate under clear ethical and legal guidelines.
>
> ***2. Lawyers:*** A list of accredited legal professionals should be established, ensuring both intended parents and surrogates have access to independent legal advice from practitioners with expertise in surrogacy law.
>
> ***3. Mental Health Professionals:*** Only mental health professionals with specific training and government endorsement should provide psychological assessments and support throughout the journey.
>
> ***4. IVF Clinics:*** Clinics offering surrogacy services should be held to consistent national standards and be formally endorsed to provide fertility treatment within the surrogacy context.
>
> ***5. Escrow Providers:*** All financial transactions related to surrogacy, including compensation and reimbursements, should be managed by a government-endorsed escrow provider to ensure transparency and accountability.

By adopting this kind of professional, regulated model, Australia can support safe, ethical, and equitable surrogacy arrangements while protecting the dignity and rights of all participants.

What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy: Australian citizenship; an Australian passport; or an Australian visa.

Obtaining Australian citizenship for our daughter was relatively straightforward, as we share a genetic link with her and are listed as her legal parents on her U.S. birth certificate. However, the process of applying for an Australian passport proved more complex. Despite having a court order and a birth certificate confirming our legal parentage, Australian authorities required our gestational surrogate to provide verbal consent via a phone call and to sign and notarise the passport application.

Because the U.S. parentage order is not currently recognized under Australian law, our surrogate was still considered a person who has parental responsibility for our child in the eyes of the law in Australia. This is both unjust and burdensome—for us as the intended parents, and for the surrogate, who had already entered into a legally binding agreement relinquishing any parental responsibility. The lack of legal recognition in Australia of this court order undermines the rights and intentions of all parties involved.

How could the process for obtaining these documents be improved?

By removing the requirement for a gestational surrogate to give their approval for a passport if a foreign court order detailing parentage is included with the application.

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

Uniform laws across Australia for the protection of children and their families need to be implemented. The current patchwork of different laws causes confusion, stress, and is unjust in the case of the difference between Victorian and NSW laws regarding overseas surrogacy. The current NSW law that criminalizes families formed through overseas surrogacy neither encourages or discourages families from engaging in these arrangements, it simply further stigmatizes the child and creates the opportunity for issues with the recognition of their parentage in Australia. The fact that this law does not exist in VIC further highlights the unjust nature of Australia's current laws.

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

Yes, the courts should review these arrangements to ensure the rights of all parties are protected and enforced.

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

Surrogacy law in Australia urgently needs reform—not only to regulate the practice, but to actively support and encourage it within our borders to keep Australian families safe from potential unethical surrogacy programs overseas as well as protecting all parties from exploitation within uncompensated domestic surrogacy arrangements. When surrogacy is embraced and more families feel safe to share their journeys, awareness and understanding naturally grow, helping to reduce stigma. However, current laws that criminalize international surrogacy for some Australian residents create fear and uncertainty within the community. This drives many families to remain silent or hidden about how their families were formed, perpetuating shame and secrecy.

It is our hope that this inquiry brings about meaningful reform - offering hope for families in need and equity and fairness for the incredible women willing to answer the call to help. A generation of future Australians and their future children will come into existence as a result - creating a lasting legacy for the lawmakers who support these reforms.

Sincere Regards,

[redacted]