Thank you for the opportunity to share my story and views in relation to the review of Australian surrogacy laws, policies and practices.

Below are my responses in relation to the questions raised in the review of surrogacy laws issues paper.

Question 1

My same sex male partner and I have four children born through three commercial surrogacy pregnancies in the United States between 2006 and 2014. We initially had a twin pregnancy, followed by two singleton pregnancies. Each pregnancy was with a different surrogate, all of whom lived in California. An anonymous US based egg donor donated the ova. My partner and I provided the sperm used in the fertility process.

We chose to pursue surrogacy in the United States given the established surrogacy industry based there plus the legal framework, which provides protections for all parties involved. The US surrogacy system is state based with rules varying between different jurisdictions. We chose to be matched with surrogates residing in California, in part as this meant we could both be named as the parents on the birth certificates, which is allowed in California, but not in some other states. Even though we were aware that the Australian government would not recognise us as the parents, we wanted the birth certificates to reflect the reality that in every practical sense we are our children's only parents.

We were also attracted to the United States given the similar language and culture, which would allow us to develop lasting relationships with our surrogates. We also wanted our children to have the opportunity to be able to meet and form their own relationships with their surrogates in the future, when they were older, whatever that might be.

Furthermore we were attracted to the fact that US based commercial surrogacies, while involving payment, do not pay life changing amounts of money, which means the motivations of US based surrogates are other than financial.

To highlight this our first surrogate shared that she was often asked by her American peers if she chose to be a surrogate 'for the money'. She would laugh off the suggestion, responding that if money was what she was after, then she would be better off getting a job as a pizza delivery boy as it paid better.

Through our surrogacy journeys we learned that the primary motivation for all our three surrogates was a combination of 1. a love of being pregnant, (some women feel at their best while carrying a baby), 2. a genuine desire to help an infertile couple become parents and 3. the excitement of playing the central role in the surrogacy process with a couple from the other side of the world. One of our surrogates shared that she had dreamt of being a surrogate since she was a child. For her it had been a lifelong ambition.

All three of our surrogates remain immensely proud of the role they have played in our children's beginnings. We maintain a good and positive relationship with all of them.

Question 4

Honesty is always the best policy. We have been very open with our children about all the details of their conception. From a very young age we have told our children the entire true story of their beginnings, including their fertility doctor and surrogacy agency in Los Angeles, their egg donor, their respective surrogates, and the role we played as their genetic parents in making it all happen. We have always felt that the only option was complete disclosure. We have also encouraged our children to have contact with their surrogates. This approach has demystified the process and our children have incorporated the story of their origins into their sense of self. I remain surprised that they rarely ask questions about the process and have never really expressed an interest in making strong connections with their surrogates or egg donor. I think this is probably because they see the family that my partner and I have created as being complete, and all that they need.

The only issue we have withheld from our children, prior to now, is the fact that we are not recognised as their legal parents under Australian law. We felt that sharing this information might make them question their family unit and might make them feel that we had done something wrong or that there was something clandestine about their beginnings or that we might not be worthy to be their parents. We felt telling them this would not be in their best interests.

We have only now raised this with our teenage children, for the first time, as part of this submission, when encouraging them to share with you what they personally think about the fact we have never been recognised as their legal parents in our home country. They were both shocked to learn this and told us it made no sense.

Question 9

Yes I do think surrogacy agreements should be enforceable. I think it is in the best interests of the children born through surrogacy to have the intensions of the initial agreement adhered to.

Question 11

I see no reason why surrogacy agencies should not be able to operate in Australia.

Question 14

I think Medicare funding for surrogacy pregnancies should mirror any funding currently available for other fertility treatments for heterosexual couples struggling with infertility.

Question 16

Yes I support commercial surrogacy because without it my children would never have been born. The world is a better place with them in it.

The financial compensation of surrogates is warranted. The process of surrogacy is not easy. Like any form of fertility treatment, it can be very stressful, time

consuming and carries real risk. Plus the surrogates do go through pain and suffering. It feels right to be able to compensate them for their role. However the figure compensated should not be life changing.

Question 18

The main problem for us regarding obtaining legal parentage is that legal parentage is simply not an option. It is impossible. No such framework exists.

My partner and I are, in every practical sense, our children's parents. One of us is the genetic father of each. We have raised all four children from the day they were born, all on our own, with no external help. We have provided them with a loving and stable home, met all their essential needs and made all parental decisions about their upbringing. We have provided them with a family. We are their only family.

In spite of this reality, as the law reform commission is well aware, there does not exist any avenue in Australia for our role as parents in our children's lives to be legally recognised. This lack of legal recognition is not in our children's best interests.

By contrast, our legal status in the country of their birth is the polar opposite. In the US a pre-birth court order was obtained which named both of us as our children's parents and stipulated that we both be named on the birth certificate as such. So when travelling to the US, as soon as when we got off the plane, we are immediately considered our children's legal parents. However this status is short lived, for the moment we return home to Australia, that recognition evaporates.

In the eyes of Australian law, as I understand it, our children's surrogates and maybe even their husbands would be deemed to be the legal parents. This is ludicrous given that our surrogates share no genetic link and barely know our children at all, spending just a couples days catching up with them every 5 to 10 years.

Our children have needed a number of general anaesthetics for dental and ENT procedures over the years. Each time we have gone through this process I have worried that the hospital might refuse to accept my consent for the operation and instead insist upon our surrogate and or her husband to become involved in order to provide consent. How would it be in our children's best interests for decisions about their medical care to be made by their surrogate, a woman who lives in another country, who has never played a parental role in their lives, and importantly has no interest in doing so, having willingly renounced all parental rights in her home country.

If this logic were to be applied then the surrogates' consent would be required for every single vaccination, doctor's visit, asthma action plan, x-ray, medical procedure, operation, school incursion, school field trip, school camp, parent teacher interview and passport etc.

This would is not be in our children's best interests.

Question 19

In our situation legal parentage of our children was transferred to us in the United States prior to birth via a court order. Our surrogates were involved with the entire court process and consented to the transfer of legal parentage. They freely gave up all parental rights, as per the intentions of the surrogacy agreement.

It is in both the surrogate and the child's best interests to have legal parentage clarified before the birth.

What you don't want is a situation where after the pregnancy, the intended parents perhaps change their minds and no longer want to take the baby.

I support the transferring of legal parentage via a court order prior to the birth similar to the system in California. The court would always have the child's best interests at heart and would be well positioned to decide what was in the child's best interests.

Question 20

Obtaining passports for our children is the one remaining area in which I feel actively discriminated against by the Australian Government. It is a process I dread, a punishment I must endure each 4.5 years. Each time I am reminded once again by the government that Australia views me as having no parental rights over my children. It is demoralising.

In order to renew my children's passports, I am forced to go through the demeaning process of having to ask my children's surrogates to consent to them travelling internationally. It is the sole role our surrogates play in making decisions about our children's lives.

Prior to about 2013 the process of obtaining Australian passports for our children was pretty straightforward. At that stage the government did not insist upon our surrogates' consent. However some time after that there was a change in policy. Since then we have been forced to obtain written consent from each surrogate, each time, in order for our children to be issued an Australian passport. And to rub salt into the wound, every time the Australian authorities in the US double check that we have not submitted a false declaration by personally telephoning our surrogates to clarify the consent form we have provided is genuine.

It is not in our children's best interests for their surrogates to be in a position to approve or deny their ability to travel internationally. This is nonsensical.

Question 21

The process for obtaining Australian passports could be improved by removing the requirement for our children's surrogates to provide written and verbal consent as part of the application process.

Question 24

Issues related to female reproduction have no place in the criminal code.

Just like the law surrounding terminations of pregnancy has been reformed, giving women the power to make decisions over their own bodies, surrogacy pregnancies should also not be criminalised. In particular the use of criminalisation as a deterrent against Australian couples travelling to international jurisdictions where commercial surrogacy is legal should be removed. This only stigmatises the children involved and delegitimizes them. This is not in any children's best interests.