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# Review of Australia's surrogacy laws: Response to Issues Paper (June 2025)

## Introduction

Rainbow Families welcomes the opportunity to contribute to the ALRC's review of surrogacy laws in Australia. Rainbow Families has been actively advocating for surrogacy law reform for ten years and despite this ongoing advocacy work there has been little progress in surrogacy law reform in that time.

Children in our community are born and raised with love, however some children in our community do not have the same legal protections as others. All children deserve emotional, financial and legal security that comes with their parents being recognised as their legal parents - and for many children born through surrogacy this is not the case, and is not possible under the current laws.

Australia's current patchwork of federal and state surrogacy laws is outdated, overly restrictive, and does not reflect the realities of how many families are formed today. These legal and practical barriers discourage people from pursuing surrogacy in Australia, limit the availability of surrogates, and ultimately push intended parents to seek arrangements overseas to create their families. Domestic surrogacy provides stronger protections for all parties involved. It reduces the risks associated with overseas arrangements, including legal uncertainty, inconsistent healthcare and record-keeping standards, and limited access to counselling and support.

Rainbow Families has been advocating and will continue to advocate for surrogacy laws in Australia that:

- hold the rights and best interests of children at their core.
- increase access to domestic surrogacy to enable those living in Australia to fulfill their dream of creating a family, so that parents are discouraged from undertaking surrogacy overseas.
- recognise international surrogacy arrangements and provide a pathway to recognitional of legal parentage for these families.
- streamline the process of legal parentage for domestic surrogacy arrangements with a pre-birth court order, or by surrogacy agreement supported by the confirmation of the surrogate's consent shortly following the birth.
- no longer criminalise international surrogacy and advertising by parties to surrogacy.

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## About Rainbow Families

Rainbow Families was formed in 2015 as the peak body for lesbian, gay, bisexual, transgender, and queer (LGBTQ+) families. The mission of Rainbow Families is to build a community that fosters resiliency by connecting, supporting and empowering LGBTQ+ families. Rainbow Families has a growing community and includes people from across Australia.

## What is a Rainbow Family?

A rainbow family is an LGBTQ+ parented family. At Rainbow Families, we define a rainbow family as: any lesbian, gay, bisexual, transgender, or queer person who has a child or children; or is planning on having a child or children by way of donor insemination (known or open-ID), surrogacy (altruistic or commercial), foster care, foster to adoption, adoption (domestic or international), previous heterosexual relationships, or co-parenting.

Rainbow families, like many modern families, come in all shapes and sizes and are formed in many different ways. What we all have in common is that our families are created through love. Over thirty years of peer reviewed research into same-sex parented families shows that children from these families do as well as their peers from heterosexual-parented families.[1] While an emerging area of research, a systematic review found there were no major psychological differences between children born after surrogacy and children born after other types of ART, or after natural conception (in relation to children up to 10 years old).[2]

## Background

To inform this submission we consulted with our community to understand the experiences and perspectives of our community - mainly gay dads who have created their families through surrogacy. We have also drawn on previous community consultations that have included questions on surrogacy.

In this submission we won't address all questions raised in the Issues Paper. We have worked closely with Equality Australia on our surrogacy advocacy over the past 4 years and we endorse Equality Australia's submissions, which go into more detail about the law reform options.
The Rainbow Families community is diverse and creates families in a variety of ways. For gay dads the options are fewer than for lesbian couples, for solo parents or couples where one member was assigned female at birth. We know from our community that surrogacy is a very common way for gay men to create families, via both international and domestic surrogacy.

[1] Research on LGBTQ+ parents via surrogacy is very limited, but a study of children raised in lesbian relationships since the 1980s is notable – the National Longitudinal Lesbian Family Study found that children are thriving, despite their non-traditional origins (including donor conception).
[2] Viveca Soderstrom-Anttila, Ulla-Britt Wennerholm, Anne Loft et al, 'Surrogacy: outcomes for surrogate mothers, children and the resulting families—a systematic review' Human Reproduction Update, Vol.22, No.2 pp. 260–276, 2016.

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For some LGBTQ+ families, traditional pathways to parenthood can be fraught with barriers, including discrimination and lengthy, invasive processes. Responses to our community consultations shared the joy of welcoming a baby into their family, often after long struggles to become parents.

> *"We tried fostering for 10 years however met a lot of homophobia along the way so we decided to have our own children (through surrogacy), which has always been our desire."*

Some community members expressed that surrogacy was their only option to become a parent for a variety of reasons.

> *"The adoption process was taking years."*
>
> *"No other possible way to have children in my case."*
>
> *"No other realistic option."*
>
> *"We wanted biological children"*
>
> *"Very few adoptions available in Australia and altruistic surrogacy appealed to us."*

## Question 2 and 3: Reform principles and human rights

We support the reform principles as set out in the Issues Paper.

We believe the best interests of children born through surrogacy should guide this inquiry. Access to information about surrogates, and where relevant donor connections (donors and donor siblings) is in the best interest of our children. To facilitate this where possible surrogacy journeys should be undertaken in Australia so ensure that information is recorded and accessible, and that children can seek out contact with surrogates, donors and donor siblings, should they wish to.

## Question 4: Children's right to information

Like people born through donor conception, children born through surrogacy have a right to know about their origins. This includes access to information about both their genetic and gestational background, such as the identity of the surrogate, the identity of any donor(s) once the child reaches maturity, and de-identified details about donor siblings. There should also be a way for donor-conceived siblings to be linked if requested by the child or family, as well as access to relevant medical information about the donor, especially if there are significant changes to their health status.

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Just as donor information should be recorded and maintained in a centralised system, information relating to surrogacy should also be stored in a nationally coordinated database. Given that donors or surrogates live in different states or may be overseas, state-based registers are not the most reliable and consistent way to store and access information. A national approach would help ensure that children born through surrogacy have consistent and reliable access to information about their origins.

## Question 5: Barriers to domestic surrogacy

One of the major issues with surrogacy in Australia is the lack of surrogates available compared with the number of people looking to start a family through surrogacy. In our view, the best way to increase the number of surrogates in Australia is to properly compensate surrogates for their emotional and physical labour.

We would also like to see a streamlined process for the transfer of parentage to the parents for both domestic and international surrogacy arrangements. We consider that the post-birth order system is creating undue delays, failing families and children, and may also deter domestic surrogacy. We will not go into detail about what this process should entail, as we know Equality Australia will cover this in depth in their submission and we endorse their submission.

The gay dads community in Western Australia is most disadvantaged when seeking to start a family through surrogacy, with surrogacy in that state restricted to heterosexual couples and single women deemed medically infertile. These restrictions are outdated, discriminatory and are driving gay men to overseas surrogacy destinations as their only option to have a genetic child of their own. When we asked families about the main barriers to surrogacy arrangements in Australia, most people told us that the issue is local availability of surrogates:

> *"The main barrier to people doing surrogacy in Australia is the lack of surrogates. This can be remedied by allowing surrogates to be compensated which will encourage more people to consider being a surrogate."*

> *"The main barrier is the altruistic model. There are many stories of surrogates being left out of pocket which makes it difficult to attract more surrogates. Being able to provide reasonable compensation (and not the exorbitant amounts some surrogates in the US want) might make more women comfortable with making the sacrifice to their family and to their body."*

> *"Lack of surrogates - without a personal connection, there's minimal ones who want to sacrifice so much for strangers, they should be acknowledged for their time and efforts similar to other countries (not allowed to have it as a primary income) so that we entice more home grown teams within the safety of Australia's medical system."*

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*"We decided not to do it locally even though it is cheaper as we did not have any family or friends who would be willing to be a surrogate for us, which is how most people in Australia match with their surrogate. The rest have to try and find someone elsewhere, such as on Facebook groups. It wasn't natural for us trying to put ourselves out there to get noticed, and there are far too many IPs compared to surrogates. We did not want to wait years to try and match as we didn't want to be too old before becoming parents."*

*"We wished that commercial surrogacy was legal in Australia as it would have been so much simpler, cheaper and more accessible. Ideally it would be partly under Medicare."*

Cost is a huge barrier to domestic surrogacy and can be easily remedied by allowing access to Medicare rebates for IVF associated with surrogacy.

*"Financial support. Access to Medicare/private health to support the process."*

*"Cost is massive. Lack of information. Everything is disjointed > do fertility on your own, find a surrogate privately, lawyer separately etc, Lack of government support."*

We also heard that the bureaucracy and difficulty in getting started with surrogacy in Australia is another barrier to engaging in surrogacy in Australia:

*"Going through the endless process in Victoria was painful and felt unachievable so we started a new process in Mexico…"*

*"Bureaucracy, cost, being powerless when it comes to finding a surrogate and egg donor, discrimination from the government, length of process - this requires changing regulations."*

*"I am an intended parent about to have a baby in a month's time via compensated surrogacy in the USA. It would be much easier if it were legal in Australia, and much less expensive."*

*"It was impossible to do or felt impossible in Australia."*

*"Needing to undertake the process a long way from home, and therefore feeling a bit disconnected from it, particularly during the pregnancies. It would have been awesome to undertake the surrogacy process locally, to feel more connected and part of it."*

*"Overseas surrogacy is an expensive process so it requires significant financial resources - I also feel this makes it prohibitive for many couples that would love a family of their own and would make great parents. Local surrogacy should reduce some of these costs."*

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*"We would have preferred to have done our surrogacy journey in Australia but because of the lack of surrogates and ban on advertising we were not able to find a surrogate in Australia. Our children were born in India and Thailand and unfortunately have no contact with their surrogates or egg donors which has had negative impacts on our eldest child."*

*"Australian government shouldn't create hurdles for children born through surrogacy. We experience it as a stigma. Our children were born through surrogacy in Argentina. It was an affordable option with well intentioned people. However, the bureaucracy and organisation were terrible in that country and we would have wanted to do it locally in Australia, were it more of a viable option here."*

*"We would have preferred to have our children through surrogacy in Australia however finding a surrogate in Australia was near impossible, so the only option for us to start our family was through international surrogacy."*

*"Navigating a challenging and non supportive and expensive system in Australia, where clinics and practices were changed month by month."*

## Question 10: Counselling requirements

Among our community there is a variety of experiences with counselling depending on whether the surrogacy was completed in Australia or overseas. Some people who had their child overseas had no counselling at all.

There are many costs associated with domestic surrogacy and counselling requirements is one of these. Rainbow Families would like to see counselling costs subsidised by the government if it is to remain a requirement of the surrogacy process in Australia.

Counselling should also be flexible and available online to manage the shortage of qualified counsellors across Australia. Counsellors should be specifically trained to work with our families to address our unique needs, which are often very different from those who have commenced surrogacy after a long struggle with fertility. Counsellors must be equipped to support parents navigating stigma within systems and in family environments, including the lack of tailored resources and the mental health impacts that can arise from experiences of stigma and prejudice.

Post-birth relinquishment counselling and assessments are requirements in certain states. We would prefer that there is the *option* of counselling available to the surrogate and/or parents if they need it (and/or it could be a prior agreed step in a surrogacy agreement), but that it is not a pre-requisite for the parentage order. In nearly all cases, the post-birth assessment step feels unnecessary as the child is already living with their parents in a stable and loving environment. Making counselling compulsory at this stage can be costly, add delay, and feel tokenistic or

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paternalistic, more like a 'welfare check' than meaningful support. One parent gave us some insight into this process:

> *"We found the post surrogacy counselling a tick box approach. It was online and some of what the counsellor was required by law to observe, such as whether there is a conflict between the IPs and surrogate is extremely hard to observe in any real way and it was therefore staged and ridiculous – even the counsellor said this. It also felt judgmental, given the process was directed to whether the child's best interests are served by remaining with its parents – of course they are. The post surrogacy also cost $1700 and the report took weeks, making the whole process even more perfunctory and protracted".*

While we recognise that counselling can be of benefit to parties and is required to ensure that there is proper informed consent of all parties, in no circumstances should failure to comply with a technical requirement to obtain a counselling report (pre or post birth) result in the refusal to recognise the parentage of a child. We recommend that if there is an element of post-birth counselling in the legislation, it is similar to the requirement in South Australia to require parents to provide for counselling post-birth for the surrogate at their cost for up to 6 months (see *Surrogacy Act 2019* s15(1)), and that any failure to comply with formal requirements can be dispensed with by the court (see for example *Surrogacy Act 2010* (Qld) s23).

## Question 11 and 12: Professional services in Australia

The surrogacy process is confusing and complex for many parents, and it can be hard to find a surrogate where a family member or friend is not an option. Currently in Australia there is a need for more professional services supporting surrogates and parents on the surrogacy journey. This would take the burden of managing the entire process off parents, contributing to making surrogacy more viable within Australia.

> *"I don't think individuals need to advertise, this should be a job for an agency (this would be easy to regulate and keep high standards for safety etc). Obviously other rules need to be in place here."*

> *"Lack of information. Everything is disjointed - do fertility on your own, find a surrogate privately, lawyer separately etc, Lack of government support. Being gay we face stigma and lack of awareness and support."*

Ideally support services should be widely available in Australia to support the screening and matching of surrogates and intended parents, and helping to coordinate and manage professionals (lawyers, counsellors, clinics, medical providers) involved in the process. Surrogacy service providers should be licenced and subject to regulation by a federal oversight body.

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## Question 13: Advertising for surrogacy

Currently the rules about advertising for surrogacy are confusing and outdated. In some states, it's against the law for someone to say they are open to becoming a surrogate, or for intended parents to say they're looking for a surrogate even if no money is changing hands. Surrogacy and intended parent linking services are also limited by these laws.

The current ban on surrogacy advertising is limiting the number of babies born through surrogacy in Australia and is contributing to the increasing number of parents looking abroad to find surrogates. Advertising can help to increase the number of surrogates in Australia, and help parents match with appropriate surrogates. With proper regulation, registered agencies should be able to advertise and help match surrogates and intended parents.

Families should not be criminalised for trying to find a surrogate, nor should a surrogate be for indicating their willingness to enter a surrogacy arrangement. We understand that laws aren't being enforced, and therefore are not acting as any kind of deterrent currently.

> *"We had been offered early on by my sister once she had finished having her kids. It was straightforward for us but I know for most people it isn't. The advertising restrictions need work."*

> *"There's too many rules to worry about, and without much policing those who are breaking these laws benefit!"*

## Question 14: Medicare rebates and paid parental leave

### Medicare

Until this year most LGBTQ+ people using IVF to create their families could not immediately access Medicare rebates for IVF treatment. This changed earlier this year for single people and same sex couples, however surrogacy was left out of the reforms and is still excluded from Medicare rebates. Failing to include surrogacy for the purposes of Medicare rebates is a type of discrimination against gay men, who have few options other than surrogacy to form their families. All respondents to our community consultation were in strong support of rebates being extended to surrogacy.

> *"Medicare rebates should be available to everyone equally, regardless of whether the treatment is for a surrogacy journey or a traditional pregnancy."*

> *"Rebates should cover item numbers for pregnancy/surrogacy as they would any other pregnancy."*

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### Paid parental leave

Those who responded to our community consultation believe that surrogates and parents should have fair access to paid parental leave. Surrogates having access to paid parental leave will ensure they have time to physically and emotionally recover from the pregnancy and birth.

> *"It was frustrating the way both my sister's work and my work handed out the parental leave. In Essence, my sister could access paid parental for the 6 weeks prior to birth and I could access about 10 weeks after the birth - it was a bit unworkable and probably meant we both went back to work before we had both wanted too."*
>
> *"I believe both surrogates and intended/new parents should have access to paid parental leave."*
>
> *"I am a medical practitioner and surrogacy is not included in our EBA. I had to involve the AMA in order for my employer to approve primary parental leave as a "non birthing parent". The process was discriminatory and showed a lack of empathy and understanding for our situation. The EBAs and laws need to be updated to reflect surrogacy."*

We think that surrogates should have the same period of paid leave as any other people who are recovering from birth – the amount of leave should be much more than the bare minimum required for physical recovery. Parents should not be left worse off because they had their child through surrogacy, or have to jump through invasive administrative hoops to prove that they are having a baby via surrogacy.

## Question 15-17: Reimbursing and compensating surrogates

The current low number of babies born via surrogacy in Australia is directly linked to the fact that surrogates are not compensated for their work in surrogacy arrangements. Everyone else involved in a surrogacy journey is paid - the IVF clinics, lawyers, counsellors etc, but the one person doing the most work is not paid - the surrogate.

Rainbow Families supports a compensated surrogacy model in Australia (as defined in the Issues Paper) as long as it is set up within a carefully regulated framework. This would ensure surrogates receive a fair compensation - an expansion of the current reimbursement for costs model. We do not support a profit-driven commercial surrogacy model. A compensated surrogacy model will increase the number of surrogates in Australia, enabling more Australians to access surrogacy in a more affordable and regulated framework, rather than navigating the risks and challenges of international surrogacy arrangements.

When asked about this topic, all community members strongly supported a form of compensated surrogacy:

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*"If surrogates were compensated this would encourage more people to consider being a surrogate. In the surrogacy journey everyone is paid except for the one person doing the most important job."*

*"I don't understand why this couldn't happen. As long as good frameworks are in place that equally support surrogates and parents."*

*"Why not. Her body her choice."*

*"I feel that not compensating a surrogate is in fact taking advantage of her."*

*"Compensated surrogacy should be legal."*

*"There are still a lot of processes in place to make sure surrogates are doing it for the right reason. Compensated surrogacy will help ensure surrogates don't feel like they are giving even more than they have to by ensuring they are not left out of pocket, and helping to justify the huge sacrifice they are making for their family and body."*

*"I think this would result in more surrogates being available in Australia."*

*"If the system was commercialised it would be more regulated and everyone would know their rights and obligations."*

*"It was this grey zone that led us to go overseas."*

*"Yes they need to change! Surrogates should be paid!"*

*"Why not a surrogate?!? An amazing woman that is giving up the best of an entire year to help create, grow, nurture, and protect a stranger's child."*

*"Not being able to ask and offer compensation to a potential surrogate made it hard."*

*"I believe Australia should look to the Canadian model as a good balance of excellent surrogacy support and legal frameworks, within an altruistic model."*

### What should be reimbursed and compensated?

In our community consultation there was an overwhelming agreement that surrogates should be compensated for all costs and expenses as well as for their time, effort, and loss of wages during the surrogacy process. The responses showed a willingness amongst parents who have been involved in surrogacy to pay more an amount above and beyond the "reasonable expenses" currently permitted:

*"Their time, emotional involvement."*

*"Medical, unpaid leave, any other reasonable expense."*

*"Medical expenses and an agreed amount."*

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*"All medical expenses related to the counselling, screening, transfer, pregnancy, birth, as well as travel expenses, maternity clothing allowance, child care allowance (where needed), cleaning allowance (last trimester or with doc cert), lost wages related to the surrogacy process. Perhaps a monthly stipend to cover anticipated expenses plus some wellness (eg, massages) or delivered meals."*

*"Time and energy - but can't be their primary income."*

*"Their time, impact on their bodies and other out of pockets."*

*"Time (a set salary) and maintenance (appointments/medical costs etc)."*

*"All expenses, including any lost wages. I am also comfortable with surrogates receiving additional payment, particularly to reflect the physical risk they are taking on."*

*"The service they provide, the physical work it requires and the time and effort (plus being a good human deserves a reward!)."*

*"Medical costs, loss of wages, and anything else as agreed upon between the surrogate and intended parents."*

*"Cost of pregnancy, loss of work, travel."*

## Questions 18 and 19: Obtaining legal parentage

There are different circumstances for domestic and international surrogacy currently but no matter where an Australian baby is born their parents should be recognised as the legal parents under Australian law from the time of birth.

A 2020 Rainbow Families survey of parents through surrogacy asked "who is legally recognised as the parent/s of your child/children?" The range of responses indicated that it was common for one or both parents to be not legally recognised, or for parents to be confused or unsure about the legal parentage of their children:

*"Myself and the surrogate."*

*"My partner and the birth mother."*

*"I believe I am as I am on the birth certificate."*

*"We are both listed as parents on the birth certificate."*

*"Our names are on BC and so far we have had no issues."*

*"Don't know to be honest - we have been able to register them at Medicare and apply for a passport although we needed our surrogates permission."*

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This shows that even within parents that have created families through surrogacy there is a lack of understanding around surrogacy and in particular parentage laws in Australia.

The process for being recognised as legal parents for children born through surrogacy varies depending on whether the child was born in Australia or abroad.

### Recognition following domestic surrogacy

The existing process of applying for a parentage order post birth puts additional stress on surrogates and parents during an already stressful time. This process takes too long, adds additional costs to the surrogacy process, and leaves babies born through surrogacy in legal limbo with the surrogate and often their partner inappropriately considered as legal parents. We support alternative pathways pre-birth to recognise the parents from the time of birth, as set out in Equality Australia's submission.

> *"Locally this timeline was appalling. We had ours submitted in a timely manner (the day after we had the original birth certificate) and it took 11 months and 20 days to get the updated parentage order. This was terribly inadequate."*

Our families who had engaged in domestic surrogacy shared various suggestions as to how to streamline the process of recognising them as parents. Comments were focussed on improving the timeliness, automatic recognition from birth, and making it easier to get birth certificates correctly issued:

> *"We were lucky that we moved to the same town as our surrogate and remained there for the whole year it took to update the parentage order. In the back of our minds was always the worry of what if bubs got sick, we needed to be close in case the surrogate had to be called in for any medical decisions etc. The surrogate was on the books at the daycare centre too as "parent", which I really did not like. Especially in Vic with the PRP, pre-birth processes should be able to be worked out so there isn't this lag and questions over legal guardianship etc."*

> *"For local surrogacy, parentage should be agreed to prior to birth and relevant parties applied to the birth certificate so parentage is automatic and further steps are not required unless any changes are required."*

> *"It's not helpful to anyone to list the birth mother on the certificate if she is not going to have anything to do with raising the child and makes it difficult for the parents to look after their child."*

> *"Anyone who can have a child naturally aren't put through the courts to see if living with the parents is in the child's best interests so why should we?"*

> *"Accurately reflecting a child's family structure and identity should be the primary consideration when recording parents on birth certificates."*

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*"A streamlined process to allow the intended parents to be on the birth certificate would be ideal. It should be in law, so an administrator can put the intended parents' names on the birth certificate. Recognition should be automatic. Intended parents whether mothers or fathers should be put on the birth certificate, if there is a surrogacy agreement. The best interests of the child should always form the most important part of the agreement."*

### Recognition following international surrogacy

Applying for a parentage order for international surrogacy births has varied depending on where the parents live. Due to the criminalisation of international commercial surrogacy in Qld, NSW and ACT most parents from these jurisdictions have not applied for parentage orders for fear of prosecution.

The responses from our community indicated that often while people have jumped through all the legal hoops to become legal parents in other jurisdictions, e.g. USA, they were not recognised as parents on return to Australia.

In other jurisdictions some parents do apply for parentage orders, however many don't because they are unable to meet the requirements of the laws. This leaves thousands of children in a legal limbo - being raised by loving parents who are not recognised as their legal parents.

*"In NSW, legally I am not regarded as my children's legal parent, even though I am on the birth certificate in the country where they were born - in NSW I am considered the gamete donor. However, my overseas surrogate is considered the legal parent. In the country where my children were born I am considered the legal parent and the surrogate is not. This is an enormous disparity and is not in the best interest of my children, effectively they are parent-less."*

*"Our children were born through international surrogacy and because we live in NSW we run the risk of prosecution so we can not apply for a parentage order to be recognised as the legal parents of our children."*

*"We are unable to apply for parentage in Australia as commercial surrogacy is not allowed. Therefore, in our home country the surrogate is seen as the legal parent of our child, even though she went into the agreement not wanting any rights over the child and signed them away in her country. But our country across the other side of the world has decided to ignore the law in her country and still require her to sign documents for a child that she has nothing to do with. That to me is just crazy."*

*"NSW laws criminalising parents having children through types of surrogacy and not acknowledging parentage."*

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> *"The 2 boys have just turned 9, so are now at the age where they are starting to question things. I fear that further down the track as they become more aware of things, they will feel that they only have one real "legal" dad and one "fake" dad. The boys know and feel that they are both loved equally by both dads, but the fact that we are both dads to both children should be defined and enshrined in law."*

> *"We went to the family court, but they insisted on the egg donor and surrogate coming in person from India to Australia, which was impossible to action."*

> *"Applying for a parentage order felt too expensive and not enough benefit and challenging due to it being illegal."*

We understand that due to updated regulations from 13 December 2024, under section 69R *Family Law Act 1975* the parentage of children born in many surrogacy destinations is now recognised automatically in Australia, where parents were able to obtain legal recognition in those countries. However, this will not apply to all parents through surrogacy.

Most biological parents are listed on birth certificates in the country of birth which provides some comfort (and from 13 December 2024 may even grant them legal status). However, for two parent families often the non-biological parent is not recorded anywhere as a parent to the child which is concerning for families in this situation and must be remedied as a priority as part of this review.

> *"My husband is not listed anywhere as a parent to our children. He is not on their birth certificates, passport applications, or anywhere. Because of the criminalisation risk in NSW we can not apply for a parentage order. This means that if I were to die it would be very difficult for him to prove he is a parent to our children."*

> *"I am most worried about what will happen to my son should I be incapacitated or pass away, as he has no other relative in Australia, and his other Dad isn't even recognised legally as his dad. Will he become a ward of the state if I pass before his 18th birthday? This is all very concerning and a disgraceful deficiency of our legal system."*

> *"There are a number of concerns, as if something were to happen to my husband, I don't know where that will leave me."*

> *"Travelling overseas with them is a worry as I have no legal rights that I can prove as a father."*

Suggestions for how to improve the process for parents who had children overseas were as follows:

> *"Parenting orders need to be clear and streamlined. It's a mess. I am still not clear on the process despite surrogacy abroad."*

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> *"Australia should recognise parental status of parents through surrogacy overseas for agreements made in countries approved by Australia."*
>
> *"Parentage should be granted on provision of evidence of parentage eg, birth certificate, surrogacy agreement."*
>
> *"Clear legal rights with us. We should be seen legally as parents of the child as soon as the child is born. The birth certificate for each child has parent 1 and parent 2 which only had mine and my husband's names. No surrogate name on birth certificate."*

Families through international surrogacy need an accessible process in Australia to recognise the parents as legal parents, particularly where parentage is already recognised in the country where the child was born. Where parentage could not be resolved overseas (and where section 69R would already lead to recognition of one parent), there also needs to also be a court or administrative process to recognise the other parent. We also consider that rather than prescribing countries for the purposes of section 69R that the section should be amended to apply to all countries.

Ultimately, children should not be deprived of having their parents recognised because of their parent's decision to enter into surrogacy arrangements overseas - this is clearly contrary to their best interests.

## Questions 20 and 21: Obtaining citizenship, passports and visas

The processes for obtaining citizenship, passports and visas for children born through international surrogacy are complex, time consuming and costly. They also vary depending on which country the baby is born in.

> *"Rigid government rules and not enough staff with knowledge and understanding of surrogacy within key institutions such as Services Australia."*
>
> *"The prevailing feeling that the parents have engaged in some kind of illegal activity to have their children, and the ridiculous checks and balances that take place to check for this."*
>
> *"We didn't have problems. But it went through the birth father. Other partner is married legally to him but not on any of the children's paperwork."*

### Obtaining Australian citizenship

Processing times for citizenship applications varies between countries. For babies born overseas citizenship applications should be fast tracked so babies can enter Australia as citizens, rather than on visas.

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*"It took very long and we had to leave the country and come back to stay legally in Australia."*

*"We also have to prove genetic relation in order to obtain Australian citizenship for the baby, even though IVF documentation clearly shows I am the genetic father of the baby. This also all occurs at additional cost to us."*

*"The citizenship process was a very lengthy four month process not helped by staff at the Australian Embassy who seemed to take pleasure in prolonging the process, creating unnecessary delays, losing documents and to a certain extent, questioning me with 'attitude'. They seemed to relish in the bureaucracy of it all."*

*"An Australian passport can take a while and once you start the ball rolling you need to have it before flying back, we flew back on the US passport and a tourist 3 month visa and applied for citizenship by descent once we got back. They did remind us the baby would only be allowed in for 3 months and would need citizenship, but it wasn't a big issue."*

Some embassies require a DNA test to prove a genetic link between the baby and an Australian biological parent. Given the most if not all international surrogacy arrangements involve IVF this DNA test is unnecessary, adds time and cost to the citizenship application process. The IVF documentation should be enough evidence of a genetic link for the citizenship application.

*"IVF documentation could be used to prove relation to the baby, rather than having to provide a postnatal genetic test which is expensive and wastes time."*

At a minimum, there are cheaper and more expedient ways to establish the baby is a genetic relative of a citizen such as Non-Invasive Prenatal Paternity Testing (NIPPT) which could be considered as an alternative to DNA testing.

### Obtaining Australian passport

The passport application process for children born via surrogacy is complex, time consuming and often anxiety-inducing for parents through surrogacy. Children's passports cannot be renewed, and instead a new application is required every 5 years requiring the same documentation for the first two applications. These applications are often escalated to the special cases team in the Passport office which adds additional time to the process. Additional forms requiring the surrogate's approval are included in the application. Often obtaining the surrogate's approval for the passport application is difficult or impossible and then another additional form is required.

*"Our son was born through surrogacy in Canada. Every time we extend his passport we have to face the reality of filling up consent forms from the surrogate carrier. His*

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*Canadian birth certificate clearly states both my name and my partner's name as the parents. Why do we still need to fill up the consent form from the surrogate?"*

*"Extra form for the surrogate to complete the Aus passport is annoying, especially needing it every 5 years."*

*"Passport applications for children born through surrogacy are unnecessarily long and complex. Having to provide all surrogacy agreements and documentation at the first and second passport application is unnecessary. Passport applications are often referred to the complex case team in the passport office which adds additional processing time. Post office staff often do not understand what documentation or forms are required for applications for children born through surrogacy, adding a level of questioning and anxiety for parents."*

*"It was a long process with a lot of paperwork. Had to get "permission" from our surrogate to get an Australian passport despite not being a legal parent in Canada and not being on the birth certificate."*

*"Renewal of passport without surrogate's help may be a problem and fear of prosecution under NSW law against international surrogacy."*

*"The only issue is passport renewal as we need surrogates approval till 18 which is a pain."*

*"Our son was born through surrogacy in Canada. Everytime we extend his passport we have to face the reality of filling up consent forms from the surrogate carrier. His Canadian birth certificate clearly states both my name and my partner's name as the parents. Why do we still need to fill up the consent form from the surrogate?"*

*"Centrelink, Medicare, family benefits and passports - forms do not accommodate our family circumstances with children born from two different homosexual parents and overseas surrogacy."*

Due to the lack of legal recognition of either parent and often no record at all of the non-biological parent in two parented families, parents are left confused as to whether to include both parents on the application form.

*"On our children's passport applications, I apply as a single parent because there is no record of my husband as a parent to our children, and I don't want to delay the process or have any questions with the passport approvals team. Because of this I worry about him travelling abroad with the children without me and so we have not attempted this. For the first two applications 13 and 8 years ago I had to fill out the single mothers form because there was not a single fathers form – at least this has been fixed now."*

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### Domestic delays

For domestic surrogacy there are different complexities with passport applications. Until the parents are granted a parentage order only the surrogate (and their partner) can apply for a passport for the baby leaving families again in legal limbo.

> *"We had to wait for the parentage order (12 month wait) to get a passport. We would have liked this much earlier to travel and see family."*

There were a variety of suggestions from our community about how the process for obtaining documents for children born through surrogacy. Greater awareness of surrogacy and the needs of families through surrogacy, with a particular emphasis on training for frontline staff (including Post Office staff) relevant to their specific role.

> *"Awareness of surrogacy within the appropriate agency, and training of staff."*

> *"Simplify - maybe a fact sheet for surrogacy births and a small cohort of staff trained to specifically deal with these cases."*

For passports specifically there were suggestions to streamline the process so it is the same for all children regardless of how they were born.

> *"A standard passport application process the same for all children regardless of whether they were born through surrogacy or not."*

> *"How does a child born in Australia get their documents? Maybe do it the same way?"*

As part of this review, we would like to see the passport application process streamlined so that whether a child is born through surrogacy or not the process is the same. We also think that information on the new section 69R needs to be published somewhere so it is more readily accessible to the public, perhaps in the form of a fact sheet.

## Question 22: Surrogacy regulation between jurisdictions

Rainbow Families believes a national surrogacy framework with standard laws across Australian jurisdictions is the best path forward. This is reflected in the responses to our community consultation.

> *"It should be standardised across the country."*

> *"The current situation in Australia, including the patchwork laws in different states, actively encourages shady behaviour by IPs and surrogates. The current approach is effectively, 'don't ask, don't tell' and this encourages surrogacy to remain hidden from broader society. Australia should have consistent, transparent, nationally consistent laws to protect all involved and enable surrogates and intended parents*

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*to more easily find each other and have happy, successful and fulfilling surrogacy journeys."*

*"People have to move interstate in order for this to happen legally overseas."*

*"The main impact was when I signed the egg donor agreement I had to leave the state and drove to the border on the advice of my attorney.*

*"I respect that the laws should exist to protect predatory and abusive practices. However the law is not in keeping with other similar jurisdictions such as the UK that do recognize valid surrogacy arrangements in places like the US or Canada."*

*"Make it Legal, regulated and safe for everyone."*

## Question 24: Deterring surrogacy through criminal offences

The law should protect surrogates, children born through surrogacy and parents of children born through surrogacy. The law should protect all parties in a surrogacy arrangement and must ensure that surrogates and parents are not exploited.

*"Abuse of children or women or manipulation / coercion of women should not be allowed. "*

*"Deliberate misleading to get money/benefits needs to be addressed - heard of too many shady "surrodating" scams within Australia and because the IPs know they were gifting when they shouldn't, they didn't report the fraud to the police."*

*"If the surrogate is coerced at all."*

While Rainbow Families recognises the importance of protecting everyone from exploitation, we do not think there is a need for blanket criminal bans on surrogacy. Instead, we believe in regulating and encouraging surrogacy in Australia.

With regard to the criminalisation of international commercial surrogacy, the ever-increasing number of Australian babies born through international surrogacy, and the lack of prosecutions proves these laws are ineffective at discouraging people from creating their families through international commercial surrogacy, and they need to be removed.

*"As NSW residents we risked prosecution for engaging in commercial surrogacy. This meant that we were very anxious throughout the entire process, particularly bringing our children back into Australia."*

*"We had to halt our hopes of having a sibling for our daughter after the law changed in 2010."*

*"NSW laws criminalising parents having children through types of surrogacy and not acknowledging parentage."*

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## Question 25: Education and awareness

Our community members agreed that awareness and understanding of surrogacy should be improved, among the general community but also among doctors, government officials, Post Office staff processing passport applications, service providers and others:

> *"People know nothing about surrogacy generally. They think women gave up their child for us until we explain. It is tiresome. Australia is quite backwards and traditional."*
>
> *"Yes, more education with doctors or clinics working in family building."*
>
> *"Yes!!! Make it legal, create jobs, create families, create communities!"*
>
> *"YES! Surrogacy in Australia is currently (I believe deliberately) kept relatively underground. It is time more light and transparency was shined on the process, policies and practices. This should be a multidimensional approach, including key government departments, health professionals, legal community, school and education providers, and others."*
>
> *"Yes. Health services and all employers should be more aware, as many people having a child through surrogacy face either unintended or overt discrimination when it comes to accessing parental leave."*
>
> *"Rigid government rules and not enough staff with knowledge and understanding of surrogacy within key institutions such as Services Australia."*

Thank you for considering our submission. Having been involved in surrogacy advocacy for ten years I am hopeful that this ALRC review will lead to meaningful law reform that will create a surrogacy system in Australia that compensates surrogates, increases the number of Australian babies born through surrogacy here in Australia and provides a simple process to legally recognise parents as the legal parents of the children they are lovingly raising.

Yours faithfully,

Ashley Scott
Executive Officer
Rainbow Families