Submission to the Australian Law Reform Commission's Inquiry into Surrogacy Laws

I am writing to provide my personal submission to the Australian Law Reform Commission's (ALRC) Inquiry into Surrogacy Laws. My name is [redacted]. I am a mum to five amazing children and have been a surrogate twice — first birthing [redacted] for his gay dads in 2018, this was an interstate surrogacy. Then I birthed [redacted] for his Mum and Dad in 2023. I am also the founder of [redacted], a peer-support network that advocates for equitable and transparent surrogacy laws in QLD/Australia. My experiences as both a surrogate and an advocate have given me a unique perspective on the urgent need for legal reform, particularly for same-sex couples and LGBTQ+ families.

Connection to Surrogacy

I have been directly involved in surrogacy for several years, supporting families on their journey and advocating for policy changes that promote fairness and clarity. My personal experience with surrogacy has highlighted the complexities and inconsistencies within Australia's current legal framework, particularly as it pertains to same-sex couples, LGBTQ+ families, and families formed through international surrogacy arrangements.

Key Challenges for Same-Sex Couples and LGBTQ+ Families

One of the most significant barriers facing same-sex couples and LGBTQ+ families in Australia is the unequal access to surrogacy arrangements. Different state and territory laws mean that same-sex couples often have restricted or no access to local surrogacy services, forcing many to seek overseas surrogacy, which introduces further complications.

Legal parentage is another area of concern. Many same-sex couples face lengthy and stressful delays in having their parentage officially recognised in Australia, leaving them in a state of legal uncertainty. This delay can place additional strain on the family unit, as the intended parents may not be immediately recognised as the child's legal guardians, even after the child's birth.

Furthermore, the financial uncertainty surrounding surrogacy is especially problematic. For same-sex couples, the financial costs can be high, including expenses related to the surrogacy arrangement itself, medical procedures, and legal fees. These costs are compounded by the lack of consistent reimbursement policies for surrogate-related expenses, which can lead to financial strain for intended parents and surrogates alike.

A particularly stark issue is that while surrogates do all the physical, emotional, and mental work, and take on all the medical risk, they are the only party who receives nothing in return beyond reimbursement for out-of-pocket expenses. Surrogates often put their own health, families, and incomes on hold to help others create a family, yet the law prohibits any form of compensation beyond strict reimbursement. This undervalues the enormous contribution of

surrogates and can discourage potential surrogates from coming forward, further limiting access for all families.

International surrogacy adds another layer of complexity. While many same-sex couples turn to overseas surrogacy arrangements, the current laws around international surrogacy are fraught with uncertainty. For example, commercial international surrogacy is criminalised in some states, placing additional legal risks on Australian families who pursue this option. This can create a chilling effect, making it harder for families to make informed and safe decisions about surrogacy abroad.

Additionally, there is a significant gap in Medicare support for surrogacy and egg donation. Currently, intended parents and egg donors cannot access Medicare rebates for essential fertility procedures. This increases the financial burden on families and potential donors or surrogates, further reducing accessibility and fairness.

Connection to ALRC Themes

The challenges faced by same-sex couples and LGBTQ+ families are deeply linked to several ALRC themes, including access, eligibility, parentage, reimbursement, international surrogacy, and human rights.

Access & Eligibility: Unequal access to surrogacy services across Australia creates a disparity for same-sex couples and LGBTQ+ families. The eligibility criteria in many states are overly restrictive, particularly when it comes to single parents and same-sex couples.

Parentage: The delays in legal recognition of parentage for couples creates unnecessary emotional and legal uncertainty, denying families their fundamental right to be recognised as parents from the moment of birth.

Reimbursement and Compensation: The lack of clear, national rules on reimbursement and the prohibition of compensation for surrogates fail to acknowledge the reality of surrogacy work. Surrogates take on all the risk and sacrifice yet receive no meaningful recognition or compensation beyond limited expense reimbursements.

International Surrogacy: The criminalisation of international commercial surrogacy in some jurisdictions forces families to navigate a maze of conflicting laws, potentially leaving them vulnerable to legal and financial risks.

Human Rights: At the core of these issues lies the right to form a family and the right for surrogates to be respected and fairly treated. The current legal framework does not support the diverse ways in which families are created today, nor does it honour the dignity and contributions of surrogates.

Recommendations for Reform

Based on my personal experience and the issues outlined above, I recommend the following reforms to address the current gaps in surrogacy laws:

1. A National Surrogacy Framework for All Family Types: Implement a uniform national framework for surrogacy that recognises diverse family structures and ensures consistent access and legal recognition across Australia.

2. Automatic Legal Parent Recognition at Birth: Intended parents should be recognised as the child's legal parents at birth, eliminating delays and uncertainty.

3. Decriminalisation of International Commercial Surrogacy: Decriminalise international commercial surrogacy and provide a clear legal pathway for families who pursue overseas arrangements.

4. Clear National Rules on Reimbursable and Compensable Expenses: Establish consistent national rules not only clarifying reimbursable expenses but also considering fair and reasonable compensation for surrogates to reflect the work, risk, and sacrifice they undertake.

5. Allow Medicare Rebates for Surrogacy and Egg Donation: Expand Medicare coverage to include fertility treatments for intended parents and egg donors, recognising these as essential healthcare services and reducing the financial barriers to forming a family.

6. A National Donor/Surrogate Registry for Child Access to Identity: Create a national registry to enable children born through surrogacy to access information about their surrogate or donor, supporting their right to know their genetic and birth origins.

7. Professional Training and Public Education: Improve training for legal, medical, and mental health professionals, and launch public education campaigns to destigmatise surrogacy and educate the community on modern family building and surrogate rights.

Conclusion

Surrogacy is an essential path to parenthood for many Australian families, yet the current legal framework creates unnecessary hardship, especially for LGBTQ+ families. Reform is long overdue. The ALRC now has a historic opportunity to create fair, inclusive, and rights-based laws that support intended parents, respect and protect surrogates, and centre the best interests of children.

Thank you for your time and consideration into improving Surrogacy in Australia

Sincerely,

[redacted]