Submission to the Australian Law Reform Commission: *Review of Surrogacy Laws: Issues Paper*

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1. EXECUTIVE SUMMARY

This submission is made in response to the Australian Law Reform Commission's (**ALRC**) 2025 *Review of Surrogacy Laws: Issues Paper*. It offers a first-hand account of how Australia's current legal and policy frameworks governing Assisted Reproductive Technology (**ART**), surrogacy and egg donation (as it relates to surrogacy) actively discriminate against gay male couples and the systemic barriers that intended parents face (whether heterosexual, lesbian or gay) when undertaking domestic surrogacy in Australia. Despite national commitments to equality, our federal and state systems continue to entrench legal, financial, and emotional inequality for intended parents.

Over the past four years, my partner and I have undertaken an emotionally, legally, and financially challenging journey to build our family through surrogacy. As a gay male couple, we have encountered deeply embedded legal and systemic barriers, barriers that illustrate the failure of Australia's current reproductive laws and policies to support and recognise modern families. We have been forced to navigate a fragmented, outdated, and unjust patchwork of surrogacy laws across state and federal jurisdictions. Our experience exposes the extent to which Australia's legislative and regulatory frameworks fall short of reflecting the community's values of fairness, inclusion, and equality and in doing so, actively harm families like ours.

This submission draws upon our personal lived experience with regards to our surrogacy journey, as well as provides for recommendations that are both legal and equitable. It directly responds to the key issues identified in the ALRC Issues Paper, including barriers to domestic surrogacy, legal parentage (both domestic and intentional), citizenship and documentation for children born overseas, access to birth information and the urgent need for national harmonisation.

While we acknowledge the ALRC's efforts and good intentions in undertaking this review, we must also reflect honestly on the pattern of inaction that has followed similar inquiries. Over the past two decades, numerous reviews and expert recommendations have highlighted the urgent need to reform access to reproductive healthcare and surrogacy. Yet no meaningful change has been implemented by the Commonwealth or the States.[1] Without binding enforcement mechanisms or political will, this review risks becoming another well-meaning but ultimately ineffectual effort. This pattern echoes other national inquiries such as the 2015 Royal Commission into Institutional Responses to Child Sexual Abuse, where many key recommendations remain unimplemented years later, contributing to ongoing harm, as seen recently in Melbourne.

This persistent failure to act endures despite clear breaches of section 26 of the *Sex Discrimination Act 1984 (Cth)*. The Australian Human Rights Commission (**AHRC**), while acknowledging these injustices, lacks the authority to compel legislative change, leaving same-sex couples as ours trapped in a cycle of systemic discrimination with no recourse.

Finally, we anticipate that the ALRC will receive submissions from conservative, religious, and right-wing groups who oppose surrogacy on moral, ethical, or so-called "traditional family values" grounds. While these views may be vocal, they do not reflect lived experience. Unless one has walked in the shoes of an intended parent or surrogate, particularly in the context of a same-sex relationship, it is impossible to fully comprehend the toll these discriminatory laws take. Lawmakers, commissioners, and politicians have the privilege of distance. We do not. We live daily with the financial, legal, and emotional burden these laws impose. The

[1] "*Same-Sex: Same Entailments*" – Australian Human Rights Commission, May 2007; House of Representatives Standing Committee on Social Policy and Legal Affairs, 'Report on Inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements' (2016); "*Medicare Benefits Schedule Review Taskforce*, *Taskforce Report on Gynaecology MBS Items*" – MBS Taskforce Review, 2020; and "Ending the postcode lottery: Addressing barriers to sexual, maternity and reproductive healthcare in Australia" - Senate Community Affairs References Committee, May 2023.

views of those who have not faced this discrimination should not be given weight in determining whether our families are entitled to equal rights.

This submission is not a plea. It is a demand for justice long overdue. Australia now has a critical opportunity to fix a system that is not merely failing, but was never built with families like ours in mind. We urge the ALRC to act with courage, compassion, and leadership where others have repeatedly failed.

I would welcome the opportunity to speak further with the ALRC to support its recommendations on this vital issue.

2. INTRODUCTION

We are [redacted] and [redacted], a gay male couple based in Brisbane, Queensland. Together for eight years, we are proud members of our community and both professionally educated, with [redacted] holding a Bachelor of Laws and Business and a Master of Laws and [redacted] holding a Bachelor of Business. [redacted] has also spent the last 4 years advocating and lobbying political groups for change, [redacted]

For the past four years, we have been on an emotionally and financially exhaustive journey to build our family through surrogacy. To date, we have spent over $300,000 in post-tax income in the attempt to conceive a child (without access to any federal or state support, which are readily available to heterosexual or lesbian couples).

In 2021, we began our journey attempting domestic surrogacy in Australia, only to be met with structural barriers, discrimination, and a complete lack of guidance or support from government institutions. After years of stagnation, we turned to international surrogacy. Our initial attempt in Argentina was disrupted following recent changes to that country's legal framework, which created legal uncertainty, regulatory hurdles, and significant financial risk. We have now commenced a new journey in Colombia.

It is critical to understand that ART is not exclusive to women. Same-sex male couples do not have the biological capacity to conceive or carry a child, nor do they have a female partner who can provide eggs or gestate a pregnancy. The only viable path to biological parenthood for gay men is through access to IVF, donor egg programs and surrogacy. This medical and legal reality is not a lifestyle choice, it is a biological necessity.

However, the Australian system continues to marginalise and discriminate against same-sex male couples. Unlike other family types, we are excluded from subsidised access to ART. The financial burden is immense, with an estimated $150,000 or more per child and the time to achieve parenthood via surrogacy often spans 3 to 5 years at a minimum. The process is prohibitively complex, fragmented across jurisdictions, and devoid of the legal and emotional support that all intended parents deserve.

Our lived experience speaks directly to the Terms of Reference for the ALRC's 2025 *Review of Surrogacy Laws*, which seeks to:

- promote the best interests of children born through surrogacy;

- remove unjustified legal barriers to accessing surrogacy;
- provide nationally consistent and accessible surrogacy laws;
- recognise and support the rights of all intended parents, regardless of sexuality; and
- improve access to legal parentage and documentation for children born through surrogacy, including those born overseas.

Despite numerous previous reviews, most notably the 2016 Report by the House of Representatives Social Policy and Legal Affairs Committee[2], little progress has been made. That report merely acknowledged in passing that:

> "*Some Australian jurisdictions prohibit same-sex attracted individuals or couples from engaging in domestic surrogacy. Offshore commercial surrogacy is often the only family formation option available to people affected by this prohibition.*"

That was nearly a decade ago. In the time since, no meaningful legislative or policy reform has addressed the barriers faced by same-sex intended parents. Australia's failure to act has left gay couples like us with no option but to pursue high-risk, high-cost international surrogacy arrangements, often in countries with fewer protections for surrogates, children, and intended parents.

This submission highlights the urgent need for bold and inclusive reform. It is informed not just by data or principle, but by lived reality. We urge the ALRC to deliver recommendations that reflect the values of fairness, equality, and compassion and to push for legal change that finally recognises the legitimacy of families like ours.

3. OUR JOURNEY

3.1. Our embryo journey

In September 2021, we embarked on our journey to start a family and become dads to hopefully two amazing children. However, since then, we have encountered several barriers, and faced discrimination and ostracism at the hands of our state and federal governments. This included being rejected service from two Brisbane IVF clinics, due to those clinics' respective interpretations of the Commonwealth Government's legislation. The Commonwealth Government's laws on this issue are unjust and discriminatory against all gay men, as well as single men, and women who have also lost the ability to carry their own child. This relates to egg retrieval that forms part of a surrogacy journey, as well as who is deemed the patient for those services.

As we embarked on this journey, we had no choice but to turn to a Canadian egg agency, despite trying for years in Australia from both friends and family to source eggs. The Canadian egg agency within 3-4 months of engaging them paired us with our donor who was coincidentally located here in Australia. Despite our donor residing in Australia for the past circa 4 years, she is not an Australian citizen, but here on a study visa.

IVF is costly for most families. A lot of heterosexual couples who turn to IVF and if required, surrogacy, often do so as a last resort, with some comfort the costs are subsidised by Commonwealth Government programs. This, of course, can be a heartbreaking journey and sadly doesn't always result in a baby. For same-sex couples looking to become parents, IVF and surrogacy is where the journey starts, so it begins with a mix of excitement

[2] House of Representatives Standing Committee on Social Policy and Legal Affairs, 'Report on Inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements' (2016).

and trepidation. Surrogacy is fundamental in the family creation of same sex male couples (due to the fact there is no female in our relationship structure).

As a gay male couple, we do not have eggs or a uterus. This inherently places us at an extreme disadvantage, both financially and emotionally when compared to other types of couples. The average cost for eggs in Australia can range from $30,000 - $40,000. Donor eggs are commonly sourced overseas given the restricted and limited access to egg donors here in Australia. The World Egg Bank generally charges between $20,000 to $30,000 for 2-4 eggs, noting that the viability of these eggs is not guaranteed once embryos are created.

Just to highlight the cost comparison, a lesbian couple can obtain good quality sperm for as little as $3,000, with no sperm being lost during the IVF process. Although it's rare, if a gay couple is lucky enough to secure a local Australian egg donor and therefore doesn't need to rely on the World Egg Bank, the Medicare rebate and PBS (if it were to apply) would be at least $6,000-$12,000, partially offsetting a huge cost.

To date, we have spent circa $40,000 to create embryos here in Australia. This includes the legals (for both us and our donor), IVF costs, medications/hormones and all of our donor's travel and accommodation expenses. At least 50% of that cost is attributable to medical costs, and the large balance of that to the lawyers and overseas agency, with very little going to the donor herself.

For background, embryo creation is when the eggs and sperm are mixed and left to develop for 5 days. Five-day embryos are known as blastocyst, and these are the embryos that are eventually transferred into a woman. On average, 60% of eggs are lost during the IVF process for the eggs to become blastocyst (see diagram below).[3] Another reason why eggs are so expensive and hard to come by. It's a numbers game, and you need a lot of them.

The table below breaks down the average costs for different sexes and sexual orientations to create embryos (and does not include the costs related to surrogacy, only embryo creation). These costs have been identified through our research and by engaging with senior representatives at fertility clinics in Queensland. You will see from the table that most of the expenses fall with the female and as such the PBS and Medicare rebates are that way applied. This means that heterosexual and lesbian couples have no to little trouble accessing significant Medicare and PBS rebates. However, as there is no female in a gay relationship, access to Medicare and PBS rebates are denied.

It is also worth noting that as egg donors must go through extensive hormones (12 days of injections) and day surgery (with local anaesthetic) for an egg retrieval to occur, it limits the amount of willing and altruistic egg donors available to donate when compared to that of sperm donors. This is the same for a surrogate, who must go through medical procedures and risk her life to carry a child that is not hers. A sperm donor simply needs to attend a clinic and provide a quick and simple donation. This, therefore, increases the cost and accessibility of eggs and the provision of a surrogate for same-sex male intending parents.

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[3] RMA, 'How many of my embryos will make it to the blastocyst stage?' (Web page) <https://rmanetwork.com/blog/blastocyst-how-many-embryos-stage/>.

Average cost breakdown

Item	Heterosexual	Lesbian couple or single genetic female	Gay couple or single genetic male
Donor Agency Fee (includes selection of Donor)	Generally, not required	$5,000 (includes sperm)	$5,500 (excludes eggs, agency fee only)
Donor Agreement (legal costs)	Generally, not required	Generally, not required as the sperm is sold like a product	$4,500
Hormones for egg retrieval	$390 (if required as part of the IVF process, PBS applied)	$390 (PBS applied)	$2,5000 (no PBS applied as generally, female egg donor is not covered by PBS or Medicare)
Egg Donor's costs associated with donation	Generally, not required	Generally, not required as the sperm is sold like a product	$3,000 (this covers flights, accommodation, food and other associated items. This is a variable cost and can be more or less than this)
Egg Retrieval/ IVF Cycle 1	$4,600 (Medicare applied)	$4,600 (Medicare applied)	$10,000 (no Medicare applied as the patient is deemed to be the female egg donor)
Hospital Costs (IVF Doctor, anaesthetic, hospital admission)	$500 (Generally covered by private health or by Medicare)	$500 (Generally covered by private health or by Medicare)	$3,000 (no Medicare rebate applied, private health does not apply/cover two men for IVF only females)
IVF Transfer	N/A (transfer occurs in IVF Cycle 1)	N/A (transfer occurs in IVF Cycle 1)	$10,000 (no Medicare applied as generally, the patient is deemed to be the female surrogate and exclusion to the Medicare rebate applies when a surrogacy agreement is involved Further embryos have to be quarantined before transfer by law for 3-6 months depending on State, so must occur at a different time)
Total Cost	**$5,880**	**$10,490**	**$38,500**

The cost for a gay male couple to create embryos is circa 7 times that of a heterosexual couple and 4 times higher than that of a lesbian couple. We note that $40,000 is circa the amount we have paid with no Commonwealth Government assistance. This is the starting position for most same-sex male couples. Then, it's the cost and time to find a surrogate.

Even in the early stages of our ART, we faced institutional discrimination. We insisted that we, as intended parents, should be recognised as the "patient" receiving the clinically relevant service, akin to a patient receiving an organ via a donor. But our IVF clinic advised us that Medicare item codes for IVF services must be claimed in the name of a "female" often requiring scripts for hormone treatment to be issued in the donor's name, not ours. At paragraph 5.2.2 "Recommendation 2" of the *2020 Medicare Benefits Schedule Review Taskforce*, *Taskforce Report on Gynaecology MBS Items*, the Taskforce recommended that new Medicare codes be created to be applied against the recipient for altruistic donor cycles if undergoing IVF for the purposes of surrogacy. However, to date, this recommendation has not been adopted. A similar recommendation should be adopted for IVF treatment of a surrogate in favour of the recipient, being the intended parents.

This clearly highlights how the current Commonwealth framework systematically excludes men, and particularly gay men, from fair and equal access to ART. It's not just an oversight; it's a structural inequality embedded in how services are accessed and reimbursed.

This is due to MBS Note TN1.4 that states that 'Medicare benefits are not payable for assisted reproductive services rendered in conjunction with surrogacy arrangements'.[4] Surrogates are therefore excluded from accessing benefits for ART, and the person/s who engage a surrogate cannot claim benefits on their behalf as the patient. It is within this context that a recent study found that Australians are highly unlikely to seek domestic surrogacy options, with just 8% of a recent study choosing to undertake a surrogacy journey in Australia.[5] It was recorded that one of the most common barriers was a belief that the process was too long and complicated.[6]

3.2. Our surrogacy journey

When we first began our surrogacy journey, we had every intention of doing it in Australia (as we had created our embryos here). We believed that building our family here within a system that would reflect our values and protect all involved would be the safest, most ethical path. But very quickly, we discovered how inaccessible and fragmented Australia's surrogacy system truly is. In hindsight, we now wish, prior to spending $40,000 on embryo creation in Australia, we had undertaken the journey overseas in a more same-sex male friendly jurisdiction.

We encountered immediate roadblocks: outdated laws, advertising restrictions, no formal matching services, and completely inconsistent rules across states. There is almost no practical government support for same-sex male couples. Unless you happen to have a female friend or relative willing to carry for you, the path effectively ends before it begins. And we didn't.

After exhausting domestic options, we made the incredibly difficult decision to look overseas. It wasn't a decision made lightly. We were deeply conscious of the ethical implications and did everything we could to engage in a respectful, informed, and transparent way. But with few choices left, we turned to agencies in two

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4 MBS Online, 'Medicare Benefits Schedule – Note TN.1.4: Assisted Reproductive Technology ART Services' <http://www9.health.gov.au/mbs/fullDisplay.cfm?type=note&q=TN.1.4&qt=noteID>.

5 Everingham, Stafford-Bell, Hammarberg (n 8).

6 Ibid.

separate countries, 18 months apart. Same-sex males are limited to which foreign country they can go to. They can undertake their journey in America and pay circa $300,000 plus and risk being imprisoned on their return to Australia due to undertaking commercial surrogacy. Alternatively, they can undertake their journey in Mexico, Columbia or Argentina and pay circa $100,000 but risk the ethical complications of those countries, due to those countries being developing countries that may exploit surrogates located in lower socio-economic regions.

Our journey began with a staggering cost of around $100,000, with at least a 50% upfront payment. That figure doesn't include flights, accommodation, lost income, or the legal costs of securing parentage recognition back in Australia. We were required to travel overseas twice, once to provide sperm, and again to collect our child. Once our child is born, we expect to remain overseas for up to three months due to the lengthy and complex processes involved in securing a birth certificate, citizenship by descent, and an emergency passport.

I've witnessed hundreds of other Australian couples posting on Facebook support groups for help in Argentina and Colombia. Many remain stranded overseas, waiting months for basic paperwork to bring their children home. In 2024, Argentina changed its surrogacy laws overnight, halting the issuing of birth certificates for over four months, which resulted in some intended parents being trapped for up to six months. The Department of Home Affairs did very little for these intended parents.

One mother was turned away from a hospital because her child didn't have a birth certificate and therefore couldn't receive the child's six-week immunisations. Another father was evicted from his Airbnb because he couldn't prove the child was his (due to no birth certificate being issued), he and his husband were forced to feed their newborn sitting on the street, unable to check into a hotel without documentation.

This is the very real result of Australia's failure to support domestic surrogacy and recognise the needs of modern families.

3.3. Our experience with overseas Surrogacy agencies

The agencies selling these overseas surrogacy programs operate with minimal oversight. They enter the Australian market with polished marketing campaigns promising a child within 12–18 months. But the reality is far more exploitative. As repeated embryo transfers fail, older clients are deprioritised in favour of new paying ones because failure increases the agencies medical costs and as such eats into their profit margins (as most contracts are fixed priced. This is similar to when builders where terminating house contracts due to the increased cost of materials, though in this circumstance, it relates to family creation, which has a massive emotional burden on the intended parents that are going through this journey.

Of the $100,000 we paid, our surrogate may see around $20,000. The rest will go to clinics, agencies, lawyers, and facilitators. After 18 months with one agency in Argentina and no result, we were forced to start a second journey in Colombia. Not many Australians have the financial or emotional resources to endure that. We barely have.

These programs take place in developing countries, often lacking legal frameworks to prevent the exploitation of low-income women, but despite this, they offer a better, more flexible and favourable model to same-sex male couples when compared to Australia's legal framework. While Australian laws on modern slavery would protect against exploitation, and while we believe exploitation is less likely to occur in a well-developed country like Australia, we acknowledge that no system is immune. But that's precisely why Australia must

lead by creating a safe, ethical, and fair model, with strong penalties for exploitation and rigorous standards for care.

Ironically, despite the many ethical compromises and financial risks, the legal treatment of intended parents abroad is much better than in Australia. In places like Colombia and Argentina, the surrogate is never treated as the parent of the child and is removed from the birth certificate after a 6-12 month court ordered process, post birth. The child is recognised as ours from birth. There is no presumption of maternal parentage and no requirement for post-birth consent to "transfer" the child (only to remove the surrogates name from the birth certificate).

It is both heartbreaking and enraging that overseas countries provide more legal recognition of our family than our own country does.

4. DISTINGUISHMENT BETWEEN GESTATIONAL AND TRADITIONAL SURROGACY

Before any reform can be successful, it's vital to draw a clear legal distinction between gestational and traditional surrogacy. These terms are often conflated in Australian legislation, but they are fundamentally different in intention, biology, and risk.

In gestational surrogacy, the surrogate carries a child with no genetic connection to her. The embryo is created from the intended parents' or donors' gametes. In traditional surrogacy, the surrogate uses her own egg, making her both the genetic and birth mother. While gestational surrogacy now accounts for the overwhelming majority of arrangements in Australia, our laws continue to reflect the fears and complexities of traditional surrogacy, such as assuming the surrogate is the legal mother and requiring her consent post-birth.

This outdated approach leads to unnecessary legal ambiguity, emotional distress, and delays for everyone involved. Gestational surrogacy requires a separate, more modern legal framework that reflects current medical practices and lived experience. Why the distinction matters:

- **Genetic relationship:** gestational surrogates have no biological link to the child. They have no intention on wanting to be the legal parent of the child, and often are concerned that the intended parents won't take the child at birth. Similarly, the intended parents have he same concern, that the gestational surrogate will not consent or hand the child over at birth.
- **Intent:** gestational surrogates never intend to parent.
- **Emotional complexity:** traditional surrogacy has more emotional and legal risks due to genetic ties. There is a legal and technical argument, that a traditional surrogate can bring a parentage claim for the child, due to her biological connection to the child. This is why many surrogacy journeys are gestational journeys to prevent this risk from occurring.
- **Legal barriers:** current laws presume the surrogate is the legal parent at birth, even when not genetically related to the child.
- **Consent requirements:** post-birth consent laws are misaligned with the reality of gestational arrangements.
- **Clinical reality:** nearly all surrogacy in Australia today is gestational.
- **Risk mitigation:** Fears of "surrogates keeping the baby" are far less relevant in gestational surrogacy.

The legal system has treated us as anomalies instead of recognising us as committed, loving future parents. procedures. We have been legally marginalised by inconsistent, outdated state laws and have been emotionally harmed by repeated institutional invalidation and indifference. We've often felt invisible, emotionally exhausted, financially depleted, and at times unsure whether we could keep going. Each legal barrier reinforced the message that our family didn't count or perhaps, shouldn't exist.

And we are not alone. Hundreds of gay male couples across Australia are forced into similar high-cost, high-risk journeys just to build their families. We are sharing our story because we believe there is a better way. Australia urgently needs a nationally consistent, regulated, and ethical surrogacy framework. One that reflects current medical practice, supports intended parents, and protects surrogates through enforceable safeguards, fair compensation, and transparency. We must ensure no family has to leave the country and risk hardship and exploitation just to be recognised.

No one should be forced to choose between their dream of having a child and the integrity of the system they must rely on to do so.

5. HUMAN RIGHTS AND THE CASE FOR ETHICAL DOMESTIC SURROGACY IN AUSTRALIA

Australia has both a legal and moral obligation to ensure that its surrogacy laws comply with established human rights standards and uphold best practices. The current fragmented and restrictive legal framework across states and territories denies many Australians, particularly gay male couples, access to ethical, supported, and inclusive surrogacy pathways. This not only breaches fundamental human rights principles but also drives many intended parents overseas, where protections for children and surrogates are often inadequate or non-existent.

5.1. Why domestic surrogacy is best practice

Domestic surrogacy enables the government to regulate and monitor conditions to ensure the autonomy, welfare, and informed consent of women acting as surrogates. It provides access to healthcare protections, legal oversight on consent and parentage and psychological and ethical support before, during, and after pregnancy. In contrast, overseas arrangement, particularly in low-regulation jurisdictions, can result in coercion or economic exploitation of surrogates (as was seen in the Greece cases), a lack of independent counselling or legal advice and cultural or economic pressures that compromise true informed consent.

Domestic frameworks allow for oversight of ethical standards and medical protocols, ensuring all parties, surrogates, intended parents, children are treated with dignity and respect. International surrogacy lacks this transparency, often occurring in legal grey zones with limited accountability for clinics, agencies, or brokers.

5.2. How current Australian surrogacy laws breach human rights

Discrimination based on sexual orientation and relationship status
Under international human rights instruments such as:

- *International Covenant on Civil and Political Rights* (**ICCPR**) **(**Articles 2 and 26);
- *International Covenant on Economic, Social and Cultural Rights* (**ICESCR**) **(**Articles 2 and 12); and
- *Convention on the Elimination of All Forms of Discrimination Against Women* (**CEDAW**),

Australia has committed to non-discrimination in access to health, family formation, and equal treatment under the law. Yet, current laws **e**xclude or disadvantage gay male couples from access to ART and surrogacy services, deny Medicare/PBS-funded treatment to male couples who cannot produce eggs or gestate a pregnancy, and result in de facto discrimination by forcing same-sex male couples to seek surrogacy abroad, often at far greater financial, legal, and emotional cost. This is due to the non-biological parent rarely being recognised as the parent, until an expensive and lengthy court process is undertaken in Australia to obtain such parentage.

Denial of reproductive autonomy and family rights

The *Universal Declaration of Human Rights* (**UDHR**) (Article 16) and the ICCPR recognise the right to found a family. Australia's existing framework creates unequal access to family creation services based on sexuality, gender, or geography, fails to respect the reproductive autonomy of all parties, particularly same-sex couples and delegitimises the parental aspirations of gay men by denying them legal and medical support available to others.

With regards to bodily autonomy, the surrogate should maintain full bodily autonomy throughout the pregnancy, except in rare circumstances. The framework must also respect the intended parents' significant interests, particularly where the pregnancy concerns their biological child and compensation has been paid to the surrogate above reasonable costs. This is why a hybrid compensation model, discussed in this submission, is ideal. In cases involving medical conditions affecting the fetus, it is arguable that the intended parents should have a decisive role in determining whether to continue or terminate the pregnancy. This raises complex ethical tensions between the surrogate's right to bodily autonomy and the intended parents' rights and responsibilities toward their future child. A structured and transparent legal framework is essential to navigate these competing interests and ensure that such decisions are approached with clarity, fairness, and respect for all parties involved. These rights are generally covered in a surrogacy agreement between the parties and agreed up front to ensure no dispute occurs during the pregnancy.

Failure to Protect Children's Rights

The *Convention on the Rights of the Child* **(CRC)** obligates Australia to uphold the child's right to identity and legal recognition (Articles 7 & 8) and to ensure the child's best interests are a primary consideration (Article 3). When children are born overseas via surrogacy legal parentage recognition is delayed or contested within Australia, citizenship and documentation can be uncertain or denied (with processing delays due to a poor administrative framework by the Department of Immigration and Foreign Affairs) and access to biological origins or surrogate details may be lost. Australia's refusal to harmonise and modernise surrogacy laws fails to safeguard the rights of these children, especially upon entry to Australia.

5.3. Recommendations

To align with its international human rights obligations, Australia must:

- **Legislate for inclusive, ethical, and nationally harmonised domestic surrogacy** accessible to all family types.
- **Remove discriminatory barriers** based on sex, gender, sexual orientation, and relationship status.
- **Extend Medicare and PBS access** to all intended parents during the ART process, regardless of gender composition.
- **Ensure legal clarity on parentage** at or before birth, for both domestic and overseas arrangements, ensuring the application process is not lengthy, complicated or costly.

- **Support children's right to identity**, including access to donor and surrogacy information through national registers.

The current patchwork of Australian surrogacy laws is not only outdated and discriminatory, it places Australia in breach of its international human rights obligations. [redacted] is currently investigating avenues to bring a United Nations claims on this basis in due course. Therefore, urgent law reform regarding surrogacy in Australia is needed. By failing to provide equitable access to domestic surrogacy, the law pushes citizens into legally precarious and ethically questionable international arrangements. Reform must focus on creating a nationally consistent, human rights-compliant surrogacy system that protects all parties, especially children and surrogates, while upholding the dignity and equality of intended parents.

6. BARRIERS TO DOMESTIC SURROGACY IN AUSTRALIA

Despite growing demand and community acceptance of surrogacy, intended parents in Australia, particularly gay men, single men, and non-traditional families face significant barriers that make domestic surrogacy inaccessible, inconsistent, and legally precarious. These barriers not only discourage domestic arrangements but also actively push Australians into international surrogacy markets, often in jurisdictions with limited ethical and legal safeguards.

Severe shortage of surrogates

80% of domestic surrogacies involve a family member or friend acting as a surrogate. For those without a willing woman in their network, options are limited. The remaining 20% are typically arranged via social media, without formal support, screening, or legal frameworks to facilitate safe matching. This is one benefit of undertaking surrogacy overseas with a well vetted agency, they medically, psychologically and socially screen donors and surrogates before they enter the program. Without government-backed or regulated matching services, intended parents often turn to international providers where surrogates are more readily available, albeit in less regulated and potentially exploitative environments.

Prohibitions on advertising

In multiple jurisdictions (e.g., Victoria, South Australia, WA), it is a criminal offence to advertise to find a surrogate or express interest in becoming one. Intended parents risk police investigation simply for sharing their story in the media or online. These laws suppress public awareness, reduce opportunities for ethical matching, and stigmatise the process of family creation via surrogacy.

Legal Complexity and Lack of National Consistency

Australia's state-based patchwork of surrogacy laws creates confusion, inconsistency, and inequality across jurisdictions. For example, Western Australia still prohibits single men and gay male couples from accessing altruistic surrogacy. Other states require residency or prohibit facilitation by third parties, making interstate arrangements difficult or legally risky. The absence of a national framework results in delays, uncertainty around parentage, and major hurdles in post-birth legal processes. Our health system is national, why isn't our surrogacy framework?

Unclear, costly and burdensome legal parentage processes

Intended parents are not recognised as legal parents at birth, even when they are genetically related to the child. They must pursue time-consuming, costly parentage orders**,** often months after birth and with continued involvement from the surrogate. Many fear that the surrogate, still listed on the birth certificate may "change her mind," despite the lack of legal precedent for this occurring. This legal uncertainty contributes to distrust and anxiety, deterring many from attempting domestic surrogacy. Further, under the Queensland Surrogacy

Act, the surrogate mother is automatically presumed the legal guardian at birth. However, the intended parents must have care and custody of the child for a period of at least 60 days post birth in order for them to make a parentage order. Arguably, if something were to go wrong during this time, the surrogate mother may be held criminally responsible for the actions, or inactions for the care of the child she birthed, despite having no biological connection with the child. These presumptions at law are not reflected in foreign jurisdictions. Further, and specifically in Queensland as part of the parentage order, the intended parents must swear an affidavit that they will clothe, feed and educate the child. These basic necessities are presumed for most heterosexual couples that birth a child and for them, there is no legal requirement to swear under affidavit such matters. However, intended parents, like myself, must be humiliated and swear legally, under affidavit, that we will do the same in a court of law.

Lack of professional matching services

Australia does not offer any government-endorsed or independent third-party matching programs.

Surrogacy Australia, a private organisation, has matched just 13 surrogacy arrangements over six years, less than 0.5% of total arrangements. In contrast, international agencies in the US, Canada, or Colombia offer fast-tracked matching, professional counselling, and end-to-end legal and medical coordination, making them far more appealing despite higher costs.

Financial barriers

ART services, egg donation, and surrogacy-related treatments are not subsidised for male couples or single men under Medicare or PBS. Out-of-pocket costs can exceed $150,000–$200,000 per child in Australia, similar to international surrogacy, but without the same clarity or support. Surrogates can only be reimbursed for reasonable expenses, strictly regulated and often difficult to navigate, while receiving no compensation for their time, emotional labour, or physical risk. Post-birth legal costs for obtaining parentage orders can range from $5,000 to $20,000, creating an additional burden. No other family types must go through the same cost or emotional distress.

Lack of awareness and accurate information

Many Australians believe surrogacy is illegal or only permitted under narrow circumstances.

The new government-run website (surrogacy.gov.au) lacks detailed, accessible information for prospective intended parents and surrogates. In the absence of reliable local resources, intended parents are drawn to international agencies with glossy marketing, donor options, and the allure of guaranteed outcomes.

This creates a market-driven vacuum where commercial international providers fill the gap left by Australia's regulatory silence.

Exclusion and discrimination in certain states

Jurisdictions such as Western Australia explicitly exclude gay male couples and single men from accessing altruistic surrogacy. These discriminatory provisions violate Australia’s human rights obligations and cause interstate inequality, forcing individuals to relocate, engage in legal workaround strategies, or pursue international surrogacy under duress.

6.1. Recommendations

To address these entrenched barriers and create an ethical, inclusive, and effective surrogacy system, the ALRC must recommend the following:

- **establish a nationally consistent legislative framework** for altruistic surrogacy that applies uniformly across all states and territories, removing discriminatory eligibility criteria based on gender, sexuality, or relationship status.
- **decriminalise advertising and third-party facilitation** of altruistic surrogacy, and introduce clear guidelines for ethical promotion, awareness-raising, and matching services, supported by government-regulated oversight.
- **develop a national, government-funded matching and support program**, similar to international best-practice models, that includes independent legal advice, counselling, and education for all parties.
- **ensure Medicare and PBS access is equitable** across all family types for ART-related procedures, including fertility testing, IVF, and egg donation.
- **streamline the legal parentage process**, allowing intended parents to be recognised at birth where pre-conception agreements and genetic links are established, and reduce the cost and complexity of parentage orders.
- **fund public education campaigns** to improve awareness of surrogacy laws, challenge stigma, and promote ethical domestic surrogacy as a safe and supported pathway to parenthood.
- **access to paid parental leave** to provide surrogates with access to paid leave entitlements and government-based support.

By implementing these reforms, Australia can reduce the reliance on overseas surrogacy arrangements, uphold the rights and dignity of all parties, and ensure that the surrogacy framework reflects community values of fairness, equality, and family diversity. The cumulative effect of these barriers, legal, logistical, financial, and cultural is to make domestic surrogacy effectively inaccessible for many Australians. As a result, up to three times as many children are born through international surrogacy each year than through domestic arrangements. Reforming Australia's surrogacy laws to remove these barriers would:

- promote **ethical and transparent domestic surrogacy**;
- reduce reliance on **poorly regulated international arrangements**;
- support the rights and safety of surrogates and children;
- provide greater equity for **LGBTQ+ and non-traditional families**; and
- fulfil Australia's obligations under **international human rights law**.

The ALRC has a vital opportunity to recommend a nationally consistent, inclusive, and best-practice surrogacy framework, one that empowers Australians to form families safely, ethically, and with dignity.

7. ELIGIBILITY FOR SURROGACY IN AUSTRALIA

Surrogacy laws in Australia are governed at the state and territory level, leading to variations in eligibility criteria across jurisdictions. Generally, surrogacy is legal, but only altruistic surrogacy is permitted; commercial surrogacy, where the surrogate is paid beyond reasonable expenses, is illegal in all states and territories. Some of the key eligibility criteria is set out below:

- **Age requirements:** most states require surrogates to be at least 25 years old. For example, in New South Wales, the *Surrogacy Act 2010* stipulates a minimum age of 25 for surrogates.
- **Previous births:** some states mandate that surrogates have previously given birth. For instance, in Victoria, the *Assisted Reproductive Treatment Act 2008* requires surrogates to have had at least one child previously.

- **Medical or social need:** intended parents must demonstrate a medical or social need for surrogacy. This includes being unlikely to become pregnant or carry a pregnancy to term due to medical reasons or other factors.
- **Relationship status and sexuality:** eligibility can vary based on relationship status and sexuality. For example, in Western Australia, surrogacy is not available to single men or same-sex male couples.

The above differing eligibility criteria creates the following barriers:

- **Inconsistent laws:** the lack of uniformity across states creates confusion and inequity. Intended parents may need to relocate or seek surrogacy options overseas due to restrictive local laws.
- **Discriminatory practices:** certain laws discriminate based on gender identity, sexuality, and relationship status, limiting access to surrogacy for some individuals and couples.
- **Medical gatekeeping:** medical practitioners may have varying interpretations of eligibility criteria, leading to inconsistent approvals for surrogacy.

7.1. Recommendations

By addressing these barriers and implementing the recommended reforms listed below, Australia can create a more inclusive and accessible surrogacy framework that respects the rights and needs of all individuals and couples seeking to build their families.

- **Uniform national legislation:** implement consistent surrogacy laws across all states and territories to ensure equitable access and clarity for all parties involved.
- **Non-discriminatory policies:** revise laws to eliminate discrimination based on gender identity, sexuality, and relationship status, ensuring that all individuals and couples have equal access to surrogacy options.
- **Clear medical guidelines:** develop and disseminate clear guidelines for medical practitioners regarding eligibility criteria to standardize assessments and approvals for surrogacy.
- **Public awareness campaigns:** launch educational campaigns to inform the public about surrogacy laws and options, reducing stigma and increasing understanding.

8. RECOGNITION OF INTERNATIONAL SURROGACY ARRANGEMENTS IN AUSTRALIA

As domestic surrogacy options remain limited and inconsistent across Australian states and territories, many intended parents seek international surrogacy arrangements. However, upon returning to Australia, these parents often face significant legal challenges, including the non-recognition of foreign parentage orders, which can result in emotional distress and legal uncertainties. Key risks are listed below:

- **Legal ambiguity**: Australia's legal framework does not uniformly recognize international surrogacy arrangements. This inconsistency can lead to situations where children born overseas are not legally recognized as the children of their intended parents upon their return to Australia.
- **Emotional and practical challenges**: the lack of legal recognition can cause significant emotional distress for parents and children. It can also lead to practical difficulties, such as issues with citizenship, travel documents, and access to healthcare and social services.
- **Human rights considerations**: the current legal approach may not fully align with international human rights standards, particularly concerning the rights of children born through surrogacy arrangements to have their parentage legally recognized and to access information about their origins.

The above risks create the following barriers:

- **Non-recognition of foreign parentage orders**: Australian law does not automatically recognise foreign parentage orders, leading to situations where children are legally considered the children of the surrogate and her partner, rather than the intended parents.
- **Complex citizenship and immigration processes**: intended parents often face complex and lengthy processes to secure Australian citizenship or visas for their children born overseas, which can be further complicated by the lack of legal recognition of parentage. When compared to other countries, the Department of Immigration in foreign jurisdictions can process citizenship claims in under 2 weeks, compare this to the Department of Immigration and Foreign Affairs in Australia, this process takes between 4-6 weeks. This small amount of time might not seem like much, but it means the intended parents are stuck in a foreign country for circa 3 months to collect then child.
- **Ethical concerns**: there are concerns about the ethical implications of international surrogacy arrangements, particularly regarding the potential for exploitation of surrogates in countries with less stringent regulations.

8.1. Recommendations

The current legal framework in Australia creates significant barriers for intended parents who pursue international surrogacy arrangements. By implementing the recommended reforms listed below, Australia can provide clearer legal pathways for these families, ensuring that children born through international surrogacy arrangements have their parentage legally recognized and their rights upheld.

- **Repeal provisions criminalising international commercial surrogacy for intended parents**: laws that criminalise Australian citizens from entering into commercial surrogacy arrangements overseas must be repealed. This would allow intended parents to pursue surrogacy arrangements without fear of legal repercussions.
- **Allow recognition of foreign parentage or guardianship orders under defined ethical and procedural safeguards**: establish clear guidelines and procedures for recognising foreign parentage or guardianship orders, ensuring that such recognition aligns with Australia's commitment to human rights and the best interests of the child.
- **Establish a federal pre-approval registry for international arrangements to facilitate administrative coordination**: create a federal registry where intended parents can register their international surrogacy arrangements prior to conception. This would facilitate coordination between Australian authorities and foreign jurisdictions, ensuring smoother processes for citizenship and parentage recognition.
- **Issue birth certificates in the intended parents' names, following the UK Model**: adopt policies that allow birth certificates to be issued directly in the names of the intended parents at birth, similar to the system in the United Kingdom. This would provide immediate legal recognition of parentage, reduce administrative hurdles, and protect the rights and identities of the child and family from the outset.

9. COMPENSATION OF SURROGATES

Surrogacy in Australia has traditionally been limited to altruistic arrangements, where surrogates receive reimbursement only for prescribed expenses and are not paid for their gestational services. However, this approach often leaves surrogates uncompensated for the significant time, physical demands, and risks involved

in pregnancy and birth. Compensation, when regulated, can coexist with altruism, reduce exploitation, and improve accessibility to surrogacy within Australia. Below I have listed the key points and risks:

- surrogates provide extensive physical and emotional labour throughout pregnancy and childbirth, often risking health and well-being.
- compensation can ethically recognise this labour without being tied to the relinquishment of the child or transfer of parentage.
- the fertility and surrogacy industries involve paid professionals at every stage, yet surrogates often remain the only unpaid party.
- altruism and compensation are not mutually exclusive; many surrogates are motivated by empathy but also deserve fair compensation.
- a regulated compensation framework can safeguard surrogates and intended parents, ensuring fairness and reducing disputes.
- payments should be capped and administered transparently to prevent exploitation and commodification.
- support services such as counselling and legal advice are essential safeguards within a compensated surrogacy system.
- escrow services can facilitate payment management, ensuring compliance with agreements and protecting all parties.

Based on the above considerations, listed below are barriers that prevent this from occurring:

- current Australian laws criminalise commercial surrogacy, creating legal ambiguity and deterring surrogates from seeking fair compensation.
- altruistic surrogacy, while well-intentioned, can exploit surrogates' unpaid labour and lead to disputes over reimbursed expenses.
- financial disagreements may strain relationships between surrogates and intended parents, sometimes jeopardising the child's welfare.
- surrogates often incur out-of-pocket expenses beyond prescribed reimbursements, such as birth support services and partner's expenses, which are inconsistently covered.
- linking compensation to parentage orders can pressure surrogates and intended parents, causing conflicts and risking the stability of the arrangement.
- lack of awareness and understanding about compensation contributes to stigmatisation and resistance to reform.

Without regulation, compensation rates can vary widely, risking surrogates being undervalued or intended parents facing unsustainable costs.

9.1. Recommendations:

Compensated surrogacy, within a robust regulatory framework, offers a fair, ethical, and practical solution that respects surrogates' autonomy, acknowledges their contributions, and supports the wellbeing of all parties involved. It reduces the risks associated with unregulated international surrogacy, improves accessibility in Australia, and protects against exploitation. Reforming laws to allow and regulate surrogate compensation will lead to a more transparent, just, and sustainable surrogacy system. Below is a list of recommendations:

- **Introduce a regulated compensation framework and include compensation within prescribed expenses:** implement laws permitting compensation for surrogates that recognizes the time, effort, and risks of pregnancy and birth, separate from payments tied to child relinquishment or parentage transfer. The payment must be overall compensation (i.e. lump sum) and prevents ambiguity as to "reasonable" or "out of pocket" costs. For example, bespoke reimbursement for food/groceries, massages, time off work, as these can be subject to the interpretation of the parties during pregnancy. In foreign jurisdictions surrogates are compensated by receiving a fixed lump sum over the course of the pregnancy, which prevents any ambiguity as to what the surrogate is entitled to and what the intended parents are required to pay. This model works, as it creates certainty to both parties, and allows both parties to budget fairly throughout the pregnancy. It might be introducing potentially a minimum amount under legislation (which considers all basic pregnancy expenses, plus a fixed amount of compensation), which can be waived with both parties' consent if they wish to provide a lower sum in the circumstances of a family member or friend. Thus, creating a hybrid model between commercial and altruistic surrogacy. By compensating the surrogate for her time, will increase accessibility to intended parents within the domestic framework. However, in noting the above, the compensation framework should not be too prescriptive with an overarching regulatory authority, as this would circumvent the parties' autonomy to reach an agreement as to how their journey should look and cost.
- **Provide access to counselling and legal advice:** guarantee surrogates receive independent counselling and legal support throughout the surrogacy process to protect their rights and well-being.
- **Create independent escrow services:** develop not-for-profit escrow services to manage payments between intended parents and surrogates, ensuring timely, fair, and dispute-free transactions.
- **Ensure payments are not linked to parentage consent:** structure compensation so it cannot be withheld or conditioned on a surrogate's agreement to parentage orders, protecting the child's best interests and ensuring the true biological parents of the child (namely, the intended parents) have true parentage to their child.

10. LEGAL PARENTAGE: CLARITY, DIGNITY AND BEST INTERESTS OF THE CHILD

The current legal parentage framework for surrogacy in Australia is inconsistent, outdated, and undermines the dignity, safety, and autonomy of all parties, particularly the child. Surrogacy arrangements operate in a legal vacuum post-birth, where intended parents are not recognised as legal parents until months (or longer) after birth, and the surrogate is erroneously treated as the legal mother of a child she never intended to raise. This system creates significant risks and distress for families, hospitals, and legal professionals alike. Below is a high level list of by the current framework fails:

- **Hospitals** frequently default to recognising only the surrogate as the legal parent, denying intended parents access to their newborn or hospital facilities, despite the surrogate having no biological connection to the child in gestational cases.
- **Birth certificates** initially list the surrogate (and often her partner) as legal parents, misrepresenting the child's parentage and creating lifelong documentation inaccuracies. Imagine to constantly having to explain to strangers at schools and day cares when you enrol your child the intimate details of how your child was born. No other parent has to go through this.
- **Succession and legal risk.** The surrogate's estate could be claimed by a child not raised by her, in the absence of a parentage order.
- **Access to Medicare and essential services** is often delayed or denied, affecting newborn healthcare.

- **Parentage orders** are retrospective, complex, expensive, and vary widely by jurisdiction, causing inequity and legal confusion. Filing fees are circa $1,000 and lawyers charge in the range of $5,000 to $10,000 to make this application. No other parent type must make a parentage order at the birth of their child, adding to additional expense and time for couples who undergo surrogacy.
- **Post-birth counselling requirements** are burdensome and unnecessary when pre-surrogacy safeguards have been met.
- **Legal presumptions** often require the surrogate's partner to be named on the birth certificate, despite having no biological or social connection to the child.
- **International surrogacy** is increasing in part due to these systemic legal delays and uncertainties.

Australia should adopt a national, streamlined, and regulated system that recognises the intended parents as the legal parents from birth, through pre-birth parentage orders or automatically recognising them on the birth certificate as the child's parents if certain criteria under legislation or regulation is met. The latter would prevent further burdening our court system (as well as additional cost and time to the intended parents), and instantly recognise the intended parents as the child's parents (just like any other couple type that doesn't undergo surrogacy). This approach is consistent with international best practice (e.g. where Canada practices pre-birth orders, and Argentina and Columbia place the biological father and surrogate mother on the birth certificate, where later the biological father can apply to the court to remove the surrogate mother's name and place his partner's name on the birth certificate) and prioritises the rights and welfare of the child. However, in noting best practice, the ultimate position would be to have both intended parents' names on the child's birth certificate at birth without the need for further bureaucracy and red tape and cost to the intended parents to make further court applications, provided key criteria are met (i.e surrogacy agreement, a legal and counselling certificate has been provided).

Under this model, the surrogate remains autonomous and fully supported throughout the pregnancy, with her legal obligations ending at birth. Pre-conditions such as legal advice, counselling, and medical screening must be met and documented pre-conception. A centralised, cost-effective process should be managed through the Federal Circuit and Family Court of Australia (**FCFCOA**) or the Department of Birth, Deaths and Marriages in each state.

10.1. Recommendations

Where overseas surrogacy arrangements are completed under a regulated and ethical framework, Australian law should automatically recognise legal parentage to avoid redundant court applications. This would include issuing birth certificates in the name of the intended parents if the child was born overseas and hopefully, domestically in Australia.

Parentage should not be retrospective, bureaucratic, or dependent on legal technicalities. The current model fails to protect the dignity, clarity, and well-being of families and different family types like same-sex male couples. For a gay man, there are two people in my relationship, myself and my husband. We should not be required by law to essentially have a third person introduced to our relationship to legitimise the birth and parentage of our child. Reform must place the child's best interests, surrogate's autonomy, and intended parents' rights at its core, through a clear, fair, and nationally consistent framework that allows for either a pre-birth recognition of parentage and proper birth registration from the outset or a birth certificate issued in the intended parents' names if certain criteria are met. Below is a list of key recommendations:

- **Introduce pre-birth parentage orders <u>or</u> issuance of birth certificates in the intended parents' names**: a regulated system of pre-birth parentage orders should be established for domestic surrogacy or permit

the relevant state department of Birth, Deaths and Marriage to issue a birth certificate in the intended parents' names if certain criteria are met. These orders or issuance of birth certificates should be simple, affordable, and administered by the FCFCOA (or the Department of Birth, Deaths and Marriages) without burdensome court procedures or excessive lawyer involvement. This will reduce time, cost and parentage ambiguity to those involved. If the ALRC where to recommend pre-birth orders, these would take effect at birth and not before, preserving the surrogate's autonomy during pregnancy.

- **Issue birth certificates in intended parents' names at birth:** regardless whether a pre-birth order is required or not, amend state and territory birth registration legislation so that, the child's original birth certificate lists the intended parents from the outset. The surrogacy arrangement and the surrogate's name (if she consents) can be noted in a separate, confidential register accessible to the child in future.
- **Standardise and remove unnecessary evidentiary requirements:** affidavits from legal and medical professionals should be replaced by standardised certificates issued at the time of pre-surrogacy legal advice or medical approval. As noted earlier in this submission, it is humiliating and dehumanising to make an intended parent swear under oath that they will provide basic needs to a child, when no other parent type has to do this, if they do not undertake surrogacy. Lawyers should not profit from unnecessary bureaucracy or red tape.
- **Repeal post-birth counselling as a prerequisite:** counselling after the birth should be available and funded, not required for the parentage order. Mandating it as a legal requirement undermines the parties' informed consent given before conception and adds cost and delay.
- **Allow courts to dispense with consent where justified:** courts must be empowered to make a parentage order in the best interests of the child, even if one party (such as the surrogate) refuses consent post-birth without reasonable cause. This element will fall away if the first recommendation is adopted. It is strongly recommended that post-birth orders are dispensed with.
- **Create best practice hospital and Medicare guidelines:** national guidelines should support hospitals and Medicare staff in understanding surrogacy arrangements. Intended parents should be granted full parental responsibility from birth under pre-birth orders, ensuring access to care and Medicare enrolment. This should also extend to children born via surrogacy overseas, many Government departments, such as hospitals, Centrelink, and Medicare do not understand the complexities of surrogacy and will refuse access to governmental assistance, only to later be appealed and approved by the same organisation.

11. CITIZENSHIP, PASSPORTS & VISAS: ENSURING EQUAL RECOGNITION FOR CHILDREN BORN VIA SURROGACY

Children born through surrogacy arrangements, particularly international surrogacy, often face significant, unjust, and avoidable barriers to citizenship, passports, and entry visas in Australia. These delays and complications create serious risks for children and families, delay essential care, and result in trauma for intended parents and surrogates alike. Despite being Australian citizens by descent, many of these children are treated as legal uncertainties rather than full citizens with immediate entitlements to return to Australia with their parents. Other countries process their citizen's citizenship applications in under two weeks, however, the Department of Immigration and Foreign Affairs on average takes 4-6 weeks (and requires a cumbersome amount of red tape and paperwork, such as DNA tests etc). Thus, causing unnecessary delay and cost to the intended parents who become trapped in a foreign country waiting to return home for periods of up to 3-4 months.

Listed below are current barriers experienced during entry back to Australia:

- **Citizenship by descent** is not granted automatically, even where the child is genetically related to an Australian parent.
- **Processing delays** in citizenship and passport applications leave families stranded overseas for months—sometimes over a year.
- **Lack of priority pathways** for urgent situations, including where a surrogate is medically unwell, or where parents need to return to work.
- **Rigid DNA testing requirements**, even when parentage has already been legally established in the birth country, creating unnecessary costs, time delays, and trauma.
- **Passport refusals** due to uncertainty around legal parentage or naming conventions, despite the parents' legal status overseas.
- **Visas for the child** to enter Australia while awaiting citizenship or passport approval are difficult to obtain or entirely inaccessible.
- **Humanitarian considerations** such as hospital discharge timelines, neonatal care, or unstable regions are not factored into Department of Immigration and Home Affairs decisions.
- **Discrimination** is inherent in the system, where children born via surrogacy are subjected to scrutiny, cost, and delay that children born through other means are not. This process fails to recognise that the child is the rights-holder, not merely the subject of an administrative process. All children born to Australian citizens should be treated equally under the law, regardless of the circumstances of their birth.

11.1. Recommendations

Children born through surrogacy to Australian citizens are no less entitled to recognition, protection, and citizenship than any other child. Current policies cause trauma, separation, delay in medical care, and force families into legal limbo through no fault of their own. Australia must act urgently to bring its citizenship and passport processes in line with basic child rights principles, international best practices, and the values of fairness, equality, and family unity. Listed below are key recommendations:

- **Automatic citizenship by descent for children born via surrogacy:** children born to an Australian citizen via a lawful surrogacy arrangement, domestic or international, should automatically acquire Australian citizenship by descent, without requiring additional applications or proof of DNA. The burden of proof for parentage should be reduced where legal recognition has been granted in the country of birth or under an Australian pre-birth parentage order. Provide a streamlined mechanism for issuing passports to children born through surrogacy that does not rely on the consent or availability of the surrogate, where parentage is clearly established.
- **Priority processing pathways for surrogacy-related applications:** establish a dedicated, expedited processing channel for surrogacy-related applications for citizenship, passports, and visas. Include emergency response capability in cases involving neonatal intensive care, hospital discharge pressures, or safety/security concerns in the birth country. The Department of Immigration and Home Affairs and the Australian Passport Office should publish clear, accessible, and consistent surrogacy-specific guidance for Australian citizens applying for citizenship and passports for their children born via overseas surrogacy.
- **Issue emergency or temporary passports/visa pathways:** where citizenship processing is delayed, the Department of Immigration Home Affairs should be empowered to issue emergency travel documents or surrogacy-specific temporary visas for the child, to allow families to return to Australia promptly and safely. This ensures a child's right to enter and reside in their parent's country is upheld.
- **Remove or reduce DNA testing requirements:** DNA testing should only be required where there are legitimate concerns about the surrogacy arrangement or potential fraud. Where legal documents from the birth country establish parentage, or where a surrogacy agreement and pre-birth order exist, DNA testing

should not be required as a matter of routine. Likewise, the surrogate's consent should not be required to as a requirement in order for the child to obtain citizenship in the intended parents home country.

- **Ensure non-discriminatory practices:** surrogacy should not be treated with greater suspicion than other forms of assisted reproduction. Citizenship and passport policies must uphold the **b**est interests of the child as the paramount principle and eliminate systemic bias against families formed through surrogacy.
- **Establish a dedicated surrogacy support unit within home affairs:** a specialised team should handle all surrogacy-related citizenship and passport applications, trained to understand the legal, medical, and emotional complexities involved. This team should liaise directly with intended parents and legal representatives, offering transparent timelines and support during the process.
- **Access to Medicare and parental support:** allow immediate access to Medicare, Paid Parental Leave, and the Child Care Subsidy on the basis of verified surrogacy documentation and intention to parent, regardless of parentage order status.
- **Training and accountability:** provide comprehensive training for Home Affairs and Passport Office staff on surrogacy law, parentage, and the family law system in Australia. Establish an internal oversight mechanism to monitor discriminatory practices, especially in cases involving same-sex or single intended parents.

12. HARMONISATION OF SURROGACY LAWS AND NATIONAL REGULATION

Australia's surrogacy laws are fragmented, with each state and territory applying its own legislation, eligibility criteria, residency requirements, court processes, and recognition rules. This patchwork system creates confusion, inequity, and legal uncertainty for intended parents, surrogates, and most importantly, the children born through surrogacy.

Currently, parentage orders are made by state and territory courts, often without specialist knowledge in family or children's law. Meanwhile, broader parenting matters (e.g. living arrangements, parental responsibility) are dealt with in the federal family law system. This dual structure lacks coherence and risks undermining the rights of children born through surrogacy.

These inconsistencies lead to legal and medical tourism within Australia, delays in parentage recognition, and additional costs. In some cases, families are unable to obtain parentage orders or birth certificates due to rigid or incompatible interstate laws. There is also no consistent recognition of parentage orders across state borders with Victoria, for example, requires additional legal steps to recognise orders from other states.

Australia stands in contrast to countries like the United Kingdom and Canada (and even America), where specialist family law courts manage all surrogacy matters. A harmonised and nationally consistent framework is long overdue. Listed below are key issues that undermine the integrity and legitimacy of the surrogacy framework in Australia:

- inconsistent legislation and eligibility requirements across jurisdictions;
- lack of mutual recognition of parentage orders and surrogacy arrangements;
- jurisdictional confusion over court processes and treatment location;
- surrogacy matters handled by non-specialist judges in state courts;
- residency, treatment, and procedural requirements vary significantly;
- discrimination against non-citizens, NZ residents, and interstate families;
- absurd treatment-based restrictions (e.g. at-home insemination laws in Victoria); and

- lack of national oversight, public data, and ethical guidance.

12.1. Recommendations

Australia's current state-by-state regulation of surrogacy creates unnecessary complexity, discrimination, and legal uncertainty for families. Children born through surrogacy deserve equal recognition and protection under the law, regardless of where in Australia they are born, where treatment occurs, or the composition of their family. Harmonising surrogacy laws through a national framework is not only possible, it is essential. A consistent, inclusive, and child-focused legal system will reduce risks, improve access to justice, and reflect the lived realities of Australian families today.

Referral of powers to the Commonwealth and the creation of a unified surrogacy system would bring surrogacy into alignment with broader family law and ensure that all children are treated equally, no matter how they are conceived. National oversight, judicial expertise, and policy consistency will help restore confidence in the system and uphold the rights of children, surrogates, and intended parents alike. Listed below are key recommendations:

- **Refer powers from states and territories to the Commonwealth** to allow for a single, nationally consistent surrogacy law framework. This would align surrogacy with all other parenting matters handled under the *Family Law Act 1975 (Cth)*.
- **Legislate all surrogacy matters under federal law**, to be heard within the Federal Circuit and Family Court of Australia by specialist judges and court staff with family law expertise.
- **Ensure judicial officers and court staff undergo specialised training** on surrogacy, parentage transfer, and related ethical considerations.
- **Introduce consistent national criteria for residency, eligibility, and treatment location**, removing arbitrary barriers for Australian citizens, permanent residents, and trans-Tasman families.
- **Create a national surrogacy authority** to oversee all domestic and international surrogacy arrangements, provide independent information, and support surrogates and intended parents.
- **Establish a national register of surrogacy arrangements and parentage orders** to improve transparency, enable data collection, and support policy development.
- **Remove discriminatory or outdated legal requirements**, including criminal record checks, restrictive treatment-location rules, and surrogate partner consent for parentage transfers.

13.REGULATION OF SERVICE PROVIDERS AND PUBLIC EDUCATION

The unregulated operation of surrogacy service providers in Australia, particularly those promoting international commercial arrangements, presents a significant ethical and legal risk to intended parents, surrogates, and children. While some Australian states criminalise commercial surrogacy, profit-driven providers continue to advertise and facilitate such arrangements with little oversight. These entities often misrepresent themselves as educational or advisory services while encouraging engagement in high-risk international jurisdictions. Compounding this is a serious lack of accessible, independent, government-backed information about domestic and international surrogacy options, leaving intended parents vulnerable to misinformation and exploitation. However, in noting this, intended parents have no choice but to look overseas to undertake their surrogacy journey due to the legal framework and barriers here in Australia.

Listed below are key issues in this area:

- **Lack of regulation for service providers**: for-profit intermediaries operate freely across Australia, including in states where commercial surrogacy is illegal, promoting risky overseas arrangements without accountability.
- **No licensing or oversight**: surrogacy agencies and consultants face no requirements to be licensed or adhere to ethical standards. There are no penalties for misrepresentation or conflicts of interest. Contracts are normally governed in foreign, unfriendly jurisdictions like Panama, which makes any dispute with the provider or agency impossible. Some agencies, when foreign law becomes frustrated or profit margins are no longer profitable will disappear and leave their clients high and dry (like in Greece and Argentina in 2024).
- **Exploitation in overseas jurisdictions**: Australians have been directed to engage in surrogacy in countries with inadequate or collapsing legal frameworks, including Ukraine, India, Thailand, and Greece and most recently in 2024 Argentina.
- **Conflicts of interest and misinformation**: providers often conceal financial relationships and provide biased advice that may not be in the best interests of the intended parents or children.
- **Lack of public education**: without clear, government-sourced information, intended parents rely on commercial trade shows and private actors for guidance, many of whom downplay legal and ethical risks.
- **Need for a "Smartraveller for Surrogacy"**: there is no official channel providing comprehensive, regularly updated, and jurisdiction-specific guidance to Australians considering international surrogacy.

13.1. Recommendations

Australia's current laissez-faire approach to surrogacy service providers places vulnerable families at risk and extreme cost when things go wrong, while allowing commercial actors to significantly profit without oversight. This regulatory vacuum has enabled misinformation, encouraged engagement in unsafe overseas arrangements, and undermined the ethical standards that should govern assisted reproduction. A clear and enforceable regulatory framework, combined with trustworthy public education, would better protect intended parents and children, discourage exploitative international practices, and support ethical surrogacy pathways at home and abroad. Listed below are my recommendations:

- **Regulate and license service providers**: implement a national licensing framework for any organisation offering surrogacy services or advice, with mandatory disclosure of financial interests and adherence to ethical standards.
- **Enforce consumer protection laws**: apply existing consumer law protections to surrogacy-related services, ensuring transparency and accountability in service delivery and advertising, noting the relevant departments of trade and commerce in each state or territory have the jurisdiction to investigate and enforce international providers.
- **Restrict unregulated overseas promotion**: limit the ability of overseas commercial surrogacy providers to advertise in Australia without meeting ethical and legal standards set by a national authority.
- **Create a national surrogacy information portal**: expand and enhance government resources (e.g. Surrogacy.gov.au, Smartraveller) to include up-to-date, jurisdiction-specific information on risks, rights, and regulations related to both domestic and international surrogacy.
- **Fund public awareness campaigns**: launch campaigns promoting safe, ethical surrogacy practices within Australia and raising awareness about the risks of unregulated arrangements overseas.

14.CONCLUSION

Surrogacy in Australia is currently governed by an inconsistent and outdated patchwork of laws and processes that fail to serve the best interests of children, intended parents, and surrogates. From fragmented state-based parentage orders to opaque passport and citizenship pathways, Australians engaging in surrogacy, either domestically or overseas, face legal uncertainty, delays, and emotional distress. The lack of harmonised laws, poor regulatory oversight of service providers, and insufficient public education have contributed to a system that too often pushes intended parents into high-risk international arrangements with little protection or support.

This inquiry presents a rare and vital opportunity to reimagine Australia's surrogacy landscape. A nationally consistent, child-focused, and ethically grounded surrogacy framework would ensure that all families, regardless of geography or family structure, are treated with fairness, dignity, and respect. Stronger legal clarity, federal oversight, proper regulation of service providers, and accessible, independent public information would support safe, ethical, and inclusive pathways to parenthood. However, it is important to note that any recommendation adopted must not create further red tape, bureaucracy, cost and emotional distress to the parties involved like the current system.

On a personal level, as a future intended parent alongside my husband, I hope that when it comes time to bring our child home from overseas, the laws will be more inclusive of our family, recognising and protecting all of us equally, without unnecessary barriers or discrimination.

I urge the ALRC to be visionary and bold in its recommendations and to lead Australia toward a future where all children born through surrogacy are afforded equal legal recognition and protection, and where intended parents and surrogates can navigate this journey with confidence and support together.

[redacted] - s*olicitor and future intended parent/dad*