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16th June 2025

The Commissioner
Australian Law Reform Commission
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SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION – REVIEW OF AUSTRALIA'S SURROGACY LAWS

Dear Commissioner,

We are a married gay couple from Queensland, currently in the early stages of our surrogacy journey. We are making this submission to contribute to the Australian Law Reform Commission's review of surrogacy laws in Australia, based on our lived experience and ongoing attempts to build our family.

We would like our submission to be published but de-identified.

Question 1: Personal Experience

My husband and I are a married gay couple living in Queensland, currently in the early stages of pursuing international surrogacy to build our family. We have found domestic surrogacy to be virtually inaccessible. Legal, logistical and cultural barriers—particularly the prohibition on compensated surrogacy—have pushed us to explore international options. We have engaged with organisations such as Growing Families and are currently considering signing with a surrogacy agency in Mexico. While we have not yet commenced treatment, we have been undertaking extensive research, consulting with agencies, and speaking with other Australian families who have undertaken surrogacy overseas, particularly in Mexico.

Positive experiences so far:

- The support of communities like *Growing Families* and access to webinars and peer networks have been invaluable in helping us understand the complex landscape of surrogacy.
- The warmth and openness of other parents sharing their journeys has inspired us and helped us feel less isolated.

Negative experiences and barriers:

- Domestic surrogacy in Australia feels prohibitively difficult due to complex and inconsistent laws across jurisdictions, long wait times, and a complete lack of legally available compensated surrogacy options.
- As a same-sex male couple, we face additional hurdles. For example, surrogacy remains inaccessible to male couples and single men in Western Australia, and although legal in Queensland, pathways are unclear and not well supported.
- There is widespread misinformation and poor public awareness that surrogacy is even legal in Australia.
- We've encountered significant confusion from healthcare professionals when seeking medical clearance for surrogacy—there's no standardised process or clear referral pathway.
- Advertising for a surrogate is prohibited in many states, and surrogacy agencies are not allowed to operate, making it very difficult to identify a willing surrogate domestically.
- These barriers make international surrogacy seem like the only feasible option, despite it being costly and logistically challenging.

What could be improved:

- A nationally consistent and inclusive legal framework that enables all intended parents—regardless of gender, relationship status or location—to access domestic surrogacy with support.
- Legalised and regulated compensated surrogacy that recognises the legitimate contributions of surrogates.
- Greater education and awareness for health professionals and the public to ensure people can safely and confidently explore surrogacy in Australia.
- Centralised oversight or a register to help match intended parents with surrogates legally and ethically.

Question 2: Reform Principles

We believe the following principles should guide reform:

- **Equity and inclusion** – ensuring all people, regardless of gender, sexuality, relationship status or geography, have access to ethical surrogacy pathways.
- **Child welfare** – always prioritising the best interests of the child, including legal parentage, identity rights and a secure family environment.
- **Clarity and consistency** – harmonising state and federal laws to create a clear, nationally unified framework.
- **Respect and dignity** – recognising the contribution and autonomy of surrogates through ethical, well-supported, and potentially compensated arrangements.
- **Transparency and education** – ensuring information, processes, and expectations are clear to all parties, and that healthcare and legal professionals are adequately trained.

Question 3: Human Rights

Surrogacy raises significant human rights considerations. Key among these are:

- **The right to family life** – All people, including LGBTIQA+ individuals and people with infertility, should have access to family-building options like surrogacy.
- **Children's rights** – Children born through surrogacy should have the right to legal recognition of their parents, access to information about their origins, and a secure family environment.
- **Surrogates' rights** – Surrogates deserve autonomy, informed consent, access to healthcare, and financial protection, including compensation for time and risk.
- **Equality** – Discrimination based on marital status, gender, or sexual orientation should not be a barrier to surrogacy access.
  These rights can be supported through inclusive legislation, improved education, and removing criminal sanctions from international surrogacy pathways.

Question 4: Child's Right to Information

Children born through surrogacy should have access to:

- Information about their birth circumstances;
- Non-identifying and, where appropriate, identifying information about their surrogate and egg/sperm donors;
- Access to counselling or other supports to help navigate their understanding of their origins.

This should be facilitated through secure, centralised registries that record and preserve this information long-term, and support from trained professionals when a child seeks access. Parents should be supported and encouraged to share this information with their children in age-appropriate ways.

Question 5: Barriers to domestic surrogacy

There are multiple barriers to domestic surrogacy in Australia, especially for couples like us:

- **Legal inconsistency**: Surrogacy laws vary significantly by state, making the process confusing and inequitable. For example, gay couples and single men are still excluded in Western Australia.
- **Prohibition on advertising**: In many states, it is illegal for intended parents or surrogates to advertise. This creates a chilling effect and hinders connection, even though 21% of surrogacy arrangements are now made via social media.
- **No compensation**: Surrogacy must be altruistic under Australian law, which often deters potential surrogates. The financial and time burdens on surrogates are considerable, and the lack of regulated compensation fails to acknowledge their contribution or protect them adequately.
- **Medical clearance issues**: Intended parents must be deemed medically infertile or unable to carry a pregnancy, yet there are no national guidelines. As a same-sex male couple, this puts us in a frustrating and exclusionary position where we technically qualify but may still be denied a referral or encounter professionals unfamiliar with the process.
- **Awareness and stigma**: Many people (including medical professionals) are unaware that surrogacy is legal in Australia. Others still perceive it as morally questionable, which can lead to stigma or hesitancy when seeking help.
- **Access to surrogates**: With no national matching system and legal restrictions on advertising, it is incredibly difficult to find a surrogate. 79% of Australian surrogacy arrangements are between friends or family—options that many people simply don't have.
- **Cost and complexity**: Although domestic surrogacy is often less expensive than overseas programs, the lack of coordination, delays, and emotional toll of the process make international options appear more straightforward—despite being more expensive.

Question 6 & 7 – Eligibility requirements for surrogacy

Yes, eligibility requirements are important to ensure that surrogacy arrangements are safe, ethical, and undertaken with informed intent. However, current requirements are often overly restrictive, inconsistently applied between states, and can be discriminatory—especially toward same-sex couples, single men, and those without a clinical diagnosis of infertility.

We believe eligibility requirements should be consistent across Australia and grounded in principles of safety, consent, and non-discrimination. Specifically:

- **Intended Parents (IPs)** should:
  - Be adults (18+)
  - Be capable of providing a safe, nurturing environment for a child
  - Have undertaken counselling and independent legal advice
  - Have medical or social reasons for pursuing surrogacy (e.g. same-sex male couples, infertility, medical risk of pregnancy)
  - Not be excluded based on sexual orientation, gender, marital status, or geography
- **Surrogates** should:
  - Be adults (21+)
  - Have previously given birth to a live child (to understand the physical and emotional impact of pregnancy and birth)
  - Undergo psychological and medical screening
  - Give fully informed, voluntary consent
  - Have access to independent legal advice and counselling
  - Be allowed to receive regulated compensation (if desired) under a national framework

Importantly, we support broadening eligibility to include same-sex couples and single people in all states and removing outdated "medical infertility" requirements that don't account for social or practical infertility (e.g. gay male couples).

We recommend the following changes:

To be removed or revised:

- **Medical infertility requirement**: This requirement can be discriminatory, especially to same-sex couples and single men. We support eligibility based on either *medical* or *social* need, assessed in a non-discriminatory manner.
- **Prohibitions based on relationship status**: Some jurisdictions require intended parents to be in a heterosexual relationship or married. These requirements are outdated and exclude LGBTIQA+ Australians unfairly.
- **Geographic restrictions**: Some state laws impose additional requirements or restrictions based on residence or where the birth occurs. This adds unnecessary complexity.
- **Restrictions on advertising or recruitment**: These hinder the ability to connect with potential surrogates in a safe, transparent way.

To be introduced or strengthened:

- **National eligibility framework**: A single, unified standard across all states and territories to ensure consistency and clarity.
- **Education requirements**: Intended parents and surrogates should complete pre-surrogacy education and counselling to ensure informed decision-making.

- **Screening of all parties**: Including psychological, medical, and legal suitability checks for intended parents and surrogates.
- **Cultural competency and inclusivity standards**: Ensure eligibility criteria and access pathways are inclusive of all family types, including same-sex couples, single individuals, and culturally and linguistically diverse families.

In summary, eligibility should protect all parties without being paternalistic, exclusionary, or discriminatory. A modern, inclusive surrogacy framework must reflect Australia's diversity.

Question 8 & 9: Surrogacy Agreements

Surrogacy agreements are a vital part of protecting all parties—surrogates, intended parents, and ultimately the child—but the current legal framework in Australia is inconsistent and overly restrictive. We believe reform is necessary to create a nationally consistent, ethical, and practical system that reflects modern realities.

What should change:

- **National consistency:** Requirements for a valid surrogacy agreement should be unified across states and territories to avoid confusion and ensure equal access regardless of geography.
- **Legal clarity without criminalisation:** Many jurisdictions still prohibit advertising or facilitating surrogacy arrangements, even altruistic ones. These prohibitions limit safe, transparent pathways for intended parents and surrogates to connect and should be removed.
- **Simplified procedural requirements:** While we support requirements for counselling and independent legal advice, overly rigid or bureaucratic processes (e.g. precise timing of approvals or complex documentation rules) should be streamlined to reduce delays and stress.
- **Post-birth expectations:** Surrogacy agreements should allow (but not require) optional provisions for post-birth expectations, such as communication between the surrogate and family. These clauses can guide relationships but should not be legally enforceable.
- **Dispute resolution pathways:** Agreements should include clear mechanisms for resolving disputes, such as mediation or tribunal referral, to support all parties without immediate court involvement.

Enforceability: A balanced approach

We support *partial enforceability* of surrogacy agreements. Not every clause can or should be enforced—particularly those related to personal decisions during pregnancy or the surrogate's obligation to relinquish the child, which must remain unenforceable to protect bodily autonomy.

However, we believe that certain parts of the agreement should be enforceable, including:

- Reimbursement of agreed pregnancy-related expenses
- Participation in agreed counselling or medical appointments
- Procedural steps such as registering the birth or cooperating with legal parentage transfers

Both **surrogates and intended parents** should have the right to enforce these specific obligations, ideally through a specialist tribunal or family law framework informed by surrogacy expertise. Agreements should also include structured avenues for mediation and support in case of conflict.

In summary, surrogacy agreements should be treated as ethical safeguards, not binding commercial contracts. They should include enforceable elements around logistics and finances, while preserving the surrogate's full autonomy throughout pregnancy. Reforms should aim for a system that is consistent, compassionate, and fit for modern Australian families.

Question 10: Process requirements for surrogacy

Surrogacy arrangements involve deeply personal, emotional, and legal dimensions. Thoughtful process requirements help protect all parties and safeguard the best interests of the child. However, these processes must be trauma-informed, culturally sensitive, and not so rigid that they create unnecessary barriers for well-intentioned participants.

a. Counselling should be available both before and after the birth

Yes—while pre-birth counselling is essential, access to post-birth counselling should also be embedded into the process. The birth of a child through surrogacy can bring unexpected emotional experiences for surrogates, intended parents, and their families. Providing optional, confidential post-birth counselling supports emotional wellbeing, promotes healthy ongoing relationships, and may help surrogates in particular process the transition after birth. This service should be free or low-cost and available to all participants for at least six months post-birth.

b. If legal advice or counselling are missed, courts should still have discretion

Legal advice and counselling are vital for informed consent and ethical protection, but occasionally, well-meaning parties may enter informal arrangements without fully meeting procedural requirements. Rather than invalidate the arrangement or penalise the parties, courts should have **discretion** to recognise parentage in the child's best interests—particularly if the parties acted in good faith and the child is clearly being raised by the intended parents.

In these situations, the court could require retrospective legal advice or counselling as a condition of recognising the arrangement. This balances procedural rigour with compassionate pragmatism.

c. Parentage applications should require proof of legal advice and counselling

Yes—but with flexibility. Proof of pre-birth counselling and legal advice should be **strongly encouraged** and required in most cases, as these processes help ensure all parties understand their rights, obligations, and possible outcomes.

However, courts should retain discretion to waive or remedy missing documentation in exceptional circumstances, provided there is no evidence of coercion or exploitation, and the child's welfare is prioritised.

In summary, process requirements—particularly counselling and legal advice—are essential but should not become inflexible barriers to recognising lawful, loving families. Post-birth counselling should be standard, and parentage applications should typically require proof of legal support, but courts must have scope to ensure compassionate outcomes where procedural boxes were missed.

Question 11 & 12: Professional services, including legal and counselling services

Surrogacy in Australia is currently hampered by a lack of coordinated, accessible, and consistent professional support services. Many intended parents and surrogates feel isolated and poorly informed—especially those not already embedded in surrogacy networks or who don't know where to begin. The absence of regulated support creates risks of misunderstanding, unequal relationships, and delays in achieving legal parentage.

We strongly support the development of dedicated professional services that reflect best practices, centre the rights and wellbeing of all parties, and recognise the diversity of those pursuing surrogacy in Australia.

Key Gaps in Professional Services:

- **Lack of surrogacy-specific expertise**: Many lawyers, counsellors, and fertility specialists are unfamiliar with the unique legal, emotional, and logistical challenges of surrogacy. This can leave parties underinformed or relying on social media groups for guidance.
- **Prohibition of professional surrogacy agencies**: Most Australian jurisdictions prohibit surrogacy agencies from operating domestically. This forces many people to rely on informal arrangements or look overseas—where regulated agencies offer structured matching, case coordination, counselling referrals, and emotional support. There is a clear need to legalise and regulate professional surrogacy services in Australia, while maintaining strong ethical and consumer protections.
- **Inconsistent access to legal and psychological support**: Access to qualified professionals varies widely by location and socio-economic background. In some states, it is difficult to find legal or counselling professionals with relevant experience.
- **Lack of cultural and identity inclusion**: Services must be improved to reflect the needs of LGBTQ+ families, single parents, First Nations Australians, people from culturally and linguistically diverse backgrounds, and people living in rural or remote communities.

How Should Services Operate?

- **Establish and regulate professional surrogacy agencies in Australia**: These agencies should not act as intermediaries for profit in matching donors or surrogates, but instead provide structured, ethical, and trauma-informed support. Their roles could include education, screening, administrative support, conflict resolution, and referrals for legal, medical, and psychological services.
- **Not-for-profit or hybrid models preferred**: We believe core surrogacy services should be operated on a not-for-profit basis or with capped fee structures. This model prioritises wellbeing over profit while still allowing sustainable, high-quality service delivery.
- **Integrated but transparent service models**: Legal, counselling, and fertility support services can work in partnership, but independence and transparency must be maintained—especially for counselling. Surrogates and intended parents should have access to counselling not controlled by other parties in the arrangement, to safeguard impartiality.
- **Accessible funding**: Government subsidies or Medicare access for mandatory counselling and legal advice could reduce financial barriers and promote more equitable access. Similarly, a centralised information service or registry of qualified professionals could help people identify experienced providers.
- **Tailored to diverse needs**: Services must be flexible and inclusive, recognising the broad range of family structures, health backgrounds, cultural considerations, and accessibility needs among those engaging in surrogacy.

In summary, a well-regulated, ethically grounded professional service model is essential to making altruistic surrogacy in Australia safer, more accessible, and more equitable. Legalising surrogacy support services and investing in culturally competent, multidisciplinary care will ensure that Australian families are supported every step of the way—without needing to look overseas for help.

Question 13: Advertising

Current laws prohibiting or restricting advertising for altruistic surrogacy are outdated and counterproductive. In an environment where compensated surrogacy is illegal and altruistic surrogacy is legally permitted—but under-regulated—bans on advertising make it unnecessarily difficult for intended parents and potential surrogates to find one another. These restrictions create confusion, push people to operate in informal or hidden online spaces, and further disadvantage those without existing networks.

We believe **responsible advertising for altruistic surrogacy should be legalised and appropriately regulated across all Australian jurisdictions.**

a. Should advertising be allowed?

Yes. Intended parents and potential surrogates should be allowed to advertise in a safe, transparent, and ethical manner. Restrictions on altruistic surrogacy advertising do not prevent people from seeking arrangements—they just make it harder to do so openly and safely.

Legalising and regulating advertising would bring these conversations out of the shadows, promote informed decision-making, and enable better safeguarding for all parties.

b. Who should be allowed to advertise?

- **Intended parents and surrogates** directly involved in altruistic surrogacy should be permitted to share advertisements to seek a match.
- **Accredited professionals**, such as registered surrogacy agencies, clinics, and legal/counselling providers, should also be permitted to advertise their services and facilitate connections.
- To avoid exploitation, advertising should not be permitted by unlicensed intermediaries or individuals acting as brokers for compensation.

c. What advertising content should be allowed?

Advertising should:

- Clearly state that the arrangement is altruistic and not for commercial gain.
- Avoid coercive, emotional, or misleading language.
- Promote informed consent and reference the importance of legal and psychological support.
- Be respectful, inclusive, and free from discrimination.

Jurisdictions could consider developing **template language or guidelines** to help individuals create appropriate and non-exploitative advertisements.

d. Where should advertising be allowed?

- **Social media**: Platforms like Facebook are already widely used informally for surrogacy networking. Regulated use would reduce reliance on secret groups or word-of-mouth.
- **Dedicated online registries**: A national, government-supported registry could connect intended parents and potential surrogates in a transparent and monitored way.
- **Fertility clinics or professional organisations**: Clinics and legal services could maintain bulletin boards or notice systems for registered clients.

- **Traditional media**: Advertising in newspapers or print media could also be permitted, particularly to ensure access in regional and remote areas.

In summary, allowing responsible advertising is a critical step in making altruistic surrogacy more accessible, equitable, and safe. With strong regulation and ethical guidance, advertising can promote transparency, reduce isolation, and empower people to make informed decisions in building their families.

Question 14: Entitlements

To make altruistic surrogacy more accessible, equitable, and sustainable in Australia, appropriate entitlements for both surrogates and intended parents should be introduced or expanded.

a. Medicare rebates for fertility treatments
Intended parents should have access to **Medicare rebates for IVF and related fertility treatments**, even where the procedure is undertaken for surrogacy purposes. Many intended parents require egg donors, embryo creation, and storage prior to a surrogacy journey—these are often excluded from public funding if not linked to a medical diagnosis of infertility. Equal access to Medicare-funded fertility care would reduce financial barriers and improve domestic options for surrogacy.

b. Paid or unpaid parental leave for surrogates
Surrogates should be entitled to **the same parental leave entitlements** as any birthing parent under Australian employment law, including unpaid parental leave and the ability to negotiate paid leave via enterprise agreements. This recognises their physical recovery and caregiving role during pregnancy and ensures they are not financially disadvantaged by their altruism.

Intended parents should also be eligible for **paid parental leave** and other entitlements (e.g., unpaid parental leave, partner leave) once a child is born through surrogacy, regardless of the state-based legal process for parentage orders.

c. Making surrogacy more affordable
Domestic altruistic surrogacy remains financially burdensome despite being legally permitted. Government support could include:

- Subsidised legal, counselling, and fertility services;
- Tax relief on surrogacy-related expenses;
- Grants or low-interest loans for intended parents;
- Medicare funding for donor screening and embryo transfer;
- Financial incentives for surrogacy agencies to operate in Australia on a not-for-profit basis.

Summary:
Fair access to leave, Medicare, and financial support would acknowledge the contribution of surrogates, ease the burden on intended parents, and reduce the reliance on international surrogacy programs.

Question 15–17: Reimbursement and Compensation

We **strongly support the legalisation of compensated surrogacy** in Australia. The current reimbursement-only model is restrictive, inconsistent, and does not adequately recognise the significant physical, emotional, and time commitment made by surrogates. Fair and regulated compensation would not only better respect and value surrogates, but could also increase the availability of altruistic domestic surrogacy and reduce reliance on overseas programs.

Reasonable Expenses & Reimbursement (Q15):

The process of reimbursing surrogates for reasonable expenses needs greater clarity, national consistency, and structure.

a. Reimbursable expenses should include:

- Medical, legal, and psychological services
- Travel, accommodation, and childcare
- Lost income or superannuation
- Maternity clothing and supplements
- Insurance premiums or co-payments
- Postpartum recovery support

b–d. Reimbursement processes
We recommend establishing **pre-approved categories of reimbursable expenses**, set out in the surrogacy agreement.

- Payments should be managed through a **trust account** overseen by a qualified third party (e.g. a lawyer or surrogacy coordinator).
- **Receipts or documented estimates** should be submitted, and payment schedules agreed in advance.
- This prevents financial burden falling on the surrogate and increases transparency for all parties.

e. International comparison
Canada provides a strong model where altruistic surrogacy is legal, but regulated reimbursement is allowed and documented. Australian systems could adopt similar structures with tailored local oversight.

Compensated & Commercial Surrogacy (Q16):

We **support compensated surrogacy** and believe that calling all forms of payment "commercial" is misleading. Surrogates should be able to receive **reasonable compensation for pain, risk, and time**, similar to other professions involving physical and emotional labour (e.g. foster carers, clinical trial participants).

We **do not support exploitative commercial surrogacy**, particularly when profit motives undermine the wellbeing of the surrogate or child. However, allowing **regulated compensation** within a framework of informed consent, independent legal and psychological support, and ethical oversight is both just and feasible.

How to Implement Compensated Surrogacy (Q17):

a–c. Calculating compensation

- Compensation should reflect medical risk, loss of earnings, time commitment, and recovery period.
- A **base rate with scope for adjustment** (e.g. higher compensation for multiples or complications) could be set nationally.
- Guidelines could be developed by an independent regulatory body in consultation with surrogates, IPs, legal experts, and healthcare professionals.

d. Payment process

- All payments should be made via **regulated trust accounts**, with instalments made at agreed milestones.
- Final payments should not be conditional on relinquishment of the child, to avoid coercive dynamics.
- Clear, documented agreements help ensure mutual understanding and legal clarity.

e. International models
Countries like the US (e.g. California) and parts of Mexico have established frameworks for compensated surrogacy, using legal contracts, psychological assessments, trust accounts, and court supervision. Australia can adapt similar structures with a focus on ethics, transparency, and surrogate autonomy.

Summary:
Compensated surrogacy should be introduced in Australia to appropriately recognise the contribution of surrogates and make domestic arrangements more viable. With safeguards such as trust accounts, transparent agreements, and independent oversight, compensation can be implemented ethically and responsibly.

Question 18–21: Parentage, Citizenship, and Travel Documents

Our greatest fear in pursuing international surrogacy is being delayed in bringing our child home or not being immediately recognised as their legal parents. The current legal parentage process is inconsistent, stressful, and in some cases traumatic for families.

Legal Parentage (Questions 18–19):

The **current system for establishing parentage is outdated, fragmented between jurisdictions, and burdensome**, particularly for intended parents who are not genetically related to the child or who are same-sex couples. It often requires court applications, is expensive, and leaves intended parents in legal limbo after birth. The delay in recognising legal parentage can also leave the surrogate in an unfair and uncomfortable legal position.

We support a move to **automatic legal recognition of intended parents** (post-birth), contingent on documented consent from all parties and appropriate oversight of the surrogacy process. This would better reflect the intention-based model of surrogacy and ensure the child's best interests are protected from the outset.

Key improvements could include:

- **Parentage Orders replaced by administrative recognition** following confirmation of eligibility, legal advice, counselling, and surrogate consent.
- Recognition of **both intended parents** regardless of biological connection or gender.
- Consistent national laws that treat domestic and international surrogacy equitably.
- Provisions for pre-birth legal processes where appropriate, so legal parentage is confirmed immediately after birth.
- Recognition of legal parentage from international surrogacy arrangements that meet equivalent ethical and legal standards, even if undertaken abroad.

We believe that **compliance with pre-agreed ethical and procedural safeguards** should be the basis for recognition, rather than rigid formalities or judicial discretion. This would promote certainty and reduce the current inequity and stress experienced by many IPs, particularly same-sex male couples.

Citizenship, Passports, and Visas (Questions 20–21):

For international arrangements, especially those in countries like Mexico, the process of obtaining **citizenship, passports, and visas is complex, opaque, and inconsistently applied**. Requirements often differ depending on where the child is born, the relationship of the intended parents to the child, and the timing of documentation.

Our personal experience and the stories of others in our situation show that **delays and lack of clarity in the immigration and citizenship process** can be one of the most distressing aspects of the journey. Some families are forced to remain overseas for extended periods while paperwork is processed or face pressure to leave without legal clarity.

Suggested improvements:

- **Dedicated support services** for intended parents navigating immigration and documentation, particularly for international surrogacy.

- A **centralised federal process** for recognising legal parentage for citizenship purposes.
- Clear **publicly available guidance** tailored for surrogacy situations.
- Consideration of a **pre-approval pathway**, where the Australian government can review the proposed surrogacy arrangement and documentation requirements in advance, to allow faster recognition after the birth.

Summary:
We advocate for a streamlined, transparent, and compassionate system that recognises the reality of intended parenthood and prioritises the best interests of the child. Legal parentage and citizenship documentation processes should support—not obstruct—the formation of secure and loving families.

Question 22–23: Harmonisation and Oversight

A consistent, national approach to surrogacy is long overdue. The current system—with different rules and processes in each state and territory—creates legal uncertainty, inequity, and unnecessary stress for all parties involved.

Inconsistencies and Fragmentation (Question 22):

We believe the **fragmentation of surrogacy laws across jurisdictions is one of the most significant barriers** to ethical, accessible, and effective surrogacy in Australia. Every jurisdiction has different eligibility criteria, advertising restrictions, parentage processes, and rules on reimbursement or compensation. In some states (e.g. WA), gay couples and single men are still excluded from surrogacy altogether, which is discriminatory and out of step with community values.

These inconsistencies lead many Australians—particularly those excluded by their home state laws—to pursue international arrangements. As a result, children may be born overseas into legal uncertainty and families are burdened with complex, drawn-out processes to secure legal parentage and citizenship.

We strongly support **harmonisation of surrogacy laws across all states and territories**, ideally via a **federal legislative framework** that replaces the current patchwork. If full federal regulation is not feasible, then states should adopt **uniform or substantively aligned legislation**, with clear minimum standards around eligibility, agreements, parentage, and surrogate protections.

The current situation is also complicated by inconsistencies between **state surrogacy law and federal regimes**, such as immigration and family law. A national approach would reduce these jurisdictional clashes and promote a more seamless experience for intended parents and surrogates alike.

Oversight (Question 23):

Yes, surrogacy arrangements should be subject to appropriate oversight—but **not within a criminal justice framework**. The best oversight model would be a **national, independent administrative body**, such as a **Surrogacy Commission or Authority**, which could:

- Set national standards for ethical surrogacy arrangements.
- Register and monitor surrogacy agreements.
- Provide pre- and post-surrogacy counselling and education resources.
- Ensure appropriate legal advice is obtained.
- Oversee complaints, reporting, and program evaluation.
- Support safe, equitable access to surrogacy across diverse family types.

Oversight should be designed to **protect all parties**, particularly surrogates and children, without imposing unnecessary bureaucracy. It should also support best-practice standards for fertility clinics, legal and psychological professionals, and any future surrogacy agencies or facilitators operating within Australia.

In summary, we advocate for a **nationally consistent and compassionately governed surrogacy framework**, grounded in transparency, ethical safeguards, and human rights—not criminalisation.

Question 24: The role of the criminal law

We do **not support the criminalisation of intended parents who engage in international surrogacy arrangements**, even in commercial contexts. Criminal law is a blunt and often harmful tool that fails to address the complexity and deeply personal motivations behind these decisions.

Currently, residents of **NSW, Queensland, and the ACT** can face criminal charges for entering into compensated or commercial surrogacy overseas. Yet there is **no evidence that these laws deter intended parents**. Rather, they force families into secrecy, discourage transparency with Australian authorities, and undermine trust in healthcare, legal, and immigration systems. They also expose children born through these arrangements to potential stigma or uncertainty about their legal status.

Instead of criminalising parents, the law should focus on **promoting ethical, safe, and transparent pathways to surrogacy**, both domestically and internationally. This could include:

- **Education and guidance** for intended parents about ethical considerations and reputable overseas programs.
- **Streamlined legal recognition processes** for children born through international surrogacy.
- **Better access to domestic surrogacy**, including through reform of eligibility rules, legal parentage processes, and surrogate compensation, to reduce the need to go overseas in the first place.

If regulation is necessary, it should focus on **facilitators and agencies**, ensuring they uphold high standards and protect all parties—especially surrogates and children—not on punishing families trying to build a life together.

In short, criminalisation causes harm without solving the underlying issues. Australia needs a **supportive, regulatory approach**, grounded in human rights, safety, and the best interests of children—not punishment.

Question 25: Lack of awareness and education

Awareness and understanding of surrogacy laws in Australia is significantly lacking, not just among the general public but also across key professional groups. This leads to confusion, misinformation, and missed opportunities for safe, ethical, and informed surrogacy arrangements.

Many people—especially same-sex couples, single men, and those with complex medical histories—don't even realise that **surrogacy is legal in Australia**. Others are unaware of eligibility requirements or the restrictions in their own state, or mistakenly believe they have no option but to go overseas.

There are several groups who would benefit from improved education:

- **Healthcare professionals**, particularly GPs, fertility specialists, obstetricians, and mental health providers, who are often the first point of contact for people considering surrogacy. Many are unaware of the legal frameworks, emotional complexities, or ethical considerations involved.
- **Legal professionals**, including family lawyers, migration agents, and judges, who may not be familiar with the nuances of domestic and international surrogacy.
- **Intended parents and surrogates**, who often turn to social media for information due to a lack of clear, consistent, and accessible public guidance.
- **Hospital and administrative staff**, particularly those responsible for birth registrations and access to Medicare and Centrelink, who may not know how to process cases involving intended parents.

We strongly support the development of a **national public education campaign**, as well as **professional training modules** for clinicians, legal practitioners, and administrative agencies. A centralised, government-endorsed **online portal** with accurate, up-to-date information about the law, processes, and support services in each jurisdiction would also be hugely valuable.

Ultimately, better awareness promotes **ethical, informed decision-making**, reduces reliance on unregulated or overseas options, and ensures that all parties—especially surrogates and children—are better protected.

Question 26–27: Scope of the Review and Other Insights

We urge the Commission to broaden the scope of the review to include **international surrogacy arrangements**, particularly given how many Australians currently rely on these pathways due to domestic legal, logistical, or medical limitations. While we understand the complexity of extraterritorial regulation, completely excluding international surrogacy from meaningful consideration risks ignoring the lived experiences of hundreds of Australian families.

In our case—as a married same-sex couple—we are likely to pursue surrogacy overseas due to restrictive domestic laws, lack of access to surrogates, and uncertainty around legal parentage. This is not uncommon. Future legislation must be **inclusive**, **future-facing**, and grounded in the principles of **equality**, **dignity**, and **child-focused protections**—regardless of where the child is born.

Key additional reform ideas include:

- A **federal legal parentage framework** that recognises intended parents in international arrangements where safeguards are met.
- **Government support for ethical international pathways**, including education, streamlined legal processes, and visa/citizenship support.
- Recognition that the **current exclusion of single men and gay couples** in certain states (e.g. WA) is discriminatory and must be addressed at a national level.

We strongly support efforts to harmonise and modernise surrogacy regulation—but doing so without acknowledging the global context in which Australians build their families would be a missed opportunity.

Conclusion

Thank you for the opportunity to share our perspective. Like so many others, we dream of becoming parents. We hope to do so with the same opportunities as any loving couple—supported by laws that offer safety, clarity, and dignity for all involved. We believe that with thoughtful reform, Australia can lead with compassion and fairness in how it supports and regulates surrogacy.

Yours faithfully,
[redacted]