Exploitation

Dear members of the ALRC,

We are grateful for the opportunity to provide input into the ALRC review into surrogacy laws. Our submission is entitled *Exploitation* and will initially describe our experiences so far as a same-sex male couple seeking to become a family through surrogacy. Our experience has been written through the lens of my memory, and my partner has provided input and reviewed and agrees with my reflections on our experience. The submission will then briefly offer my views on each of the questions posed by the ALRC in the Issues Paper.

Our submission argues throughout that the ban on commercial and compensated surrogacy, aimed at eliminating exploitation, has unintended consequences incompatible with its objectives, leading intended parents to be vulnerable to financial exploitation, especially by overseas companies, with little recourse available.

We acknowledge upfront that there is a vast difference between financial exploitation and the type of exploitation that can be associated with commercial surrogacy. To be clear, exploitation of surrogates, including forcing or coercing women into being surrogates, human trafficking, the sale of children, and other such things are unacceptable and are a level of exploitation and evil that far exceeds a couple losing a few thousand dollars. These evils should be prohibited. Our argument is not to equate these things, instead it is to point out that exploitation comes in many forms, harm comes in many forms, and that laws aimed at eliminating one kind of exploitation (but are woefully ineffective at preventing Australian's engaging commercial surrogates overseas), create vulnerabilities for other kinds of exploitation. Laws must focus on minimising harm.

We need uniform national laws that empower surrogates and intended parents, ensure appropriate guardrails and supports, and reduce exploitation.

My partner and I greatly appreciate you taking the time to read our submission and for conducting this review. We are hoping that this review will result in genuine and meaningful reform.

I believe every part of this submission is a true and accurate reflection of the events, however I and we acknowledge that the passage of time can impact the precision of memory, so it is possible that some of the finer details may include some minor inaccuracies. The opinions in this submission are mine and mine alone and are not representative of the views of any other person.

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Part 1: Our experience

We are a same-sex male couple living in Queensland. Our experience with surrogacy so far, the ups and the downs, is described below. While this submission does focus on some of the more negative experiences, we fully acknowledge that our story is far from the worst experience people have had with surrogacy.

We appreciate the relentless support of our friends, family, and colleagues as we have explored and researched surrogacy, shared good news and bad, vented at times, and more recently, repeatedly talked about this review, our submission, and the potential for reforms.

We are grateful for our journey so far and are looking forward to when we finally can start our family.

Investigating Australian surrogacy

In 2021, we began looking into surrogacy to create our family. We attended the Growing Families conference in Brisbane and heard a lot about the experiences of people who were involved in surrogacy. We then investigated options locally and overseas.

We signed up with a program with an Australian organisation,[1] which says it is aimed at assisting intended parents (IPs) and surrogates in their initial meetings, navigating the early stages, and, for further fees, can help both parties navigate the surrogacy journey itself. We paid a fee of approximately $1,000. This service also included mentoring from parents through surrogacy to assist with beginning the process.

I think if we had our time again, we wouldn't sign up with this organisation. The fee is quite high for the service that is provided. We found the mentoring sessions a little helpful, but also, we feel that a lot of the information we obtained through that is also available through other resources for free. Since the initial mentoring session, we haven't heard anything from this organisation beyond newsletters and webinars. We acknowledge that we also were not very active in engaging with our mentor or the organisation. On reflection, the fee to sign up with this organisation did not give us much value, and that is partly our fault for not being particularly engaged, but also for signing up and paying the fee without doing our due diligence and understanding what we wanted. We were seeking information and support in any format, and we felt that this program would be more beneficial than it ended up being, unfortunately.

As a general observation, these kinds of support organisations can be exceptionally beneficial, but they also exist in a largely unregulated space with almost no accountability. Intended Parents are often desperate for support and resources, are vulnerable to exploitation, and organisations such as this can take advantage of that. There is little in the way of accountability about what the fee pays for, and there is no obligation to provide any kind of service. My submission is not that this is

[1] It is not my intention to name them in this submission, though I acknowledge there are few such organisations that provide this service. I want to stress that my observations and concerns in this section are general, and I do not hold any ill will towards this organisaition.

what this organisation is doing, or at least is not intentionally doing, but that there is a very real risk that intended parents can be exploited.

Overseas options

We concluded that, as is reported by others, surrogacy in Australia is difficult, and finding a surrogate other than through existing networks is extremely difficult. From what we were able to work out, finding a match ourselves requires a lot of time engaged on social media. We decided to explore overseas options.

Commercial

We explored options for commercial surrogacy through regulated and unregulated countries. Our biggest concerns with unregulated countries were the experience reported by others in the media (and almost certainly in other submissions to this review) such as Thailand, Ukraine, Greece, and more recently Argentina (as reported in the media).

A secondary concern, which is shared with some of the better regulated countries, is the birth certificate. We feel it is important for us both to be listed on the birth certificate, alone, as this will give us the freedom to make decisions and execute our parental responsibilities without external influence. The idea that the surrogate who birthed our child would have to agree to decisions we make throughout their childhood seemed unacceptable and, frankly, offensive. We determined that commercial surrogacy would likely only be an option for us in the USA or Mexico. Noting the Queensland laws, and the cost of entering a commercial agreement in these countries, we decided that we would explore altruistic options.

We also found that there were varying restrictions in some countries which discriminated against us as a same-sex couple.

Canada

Our research led us to look closely at Canadian surrogacy. The laws in Canada (in most provinces) align closely with the Australian and Queensland laws (such that the arrangement cannot be commercial). Further, most provinces allow for full and exclusive parental recognition for the intended parents with relative ease.

Canada has a similar altruistic surrogacy model to Australia. One important difference, when compared to the laws in Queensland, New South Wales, and the Australian Capital Territory is, while they all ban commercial surrogacy within the jurisdiction, Canada does not prohibit (or **criminalise**) their citizens from engaging in commercial surrogacy internationally. Intended parents in Canada can (and many do) begin the process locally, with a surrogate either in the USA or Mexico, instead of relying entirely on local surrogates. This, along with the longer duration that

Surrogacy has been legal in Canada, means they have a more well established 'industry'[2] for surrogacy.

Beginning the process

We began meaningfully looking into surrogacy in Canada in late 2021. We looked over the notes we took, and the information provided from the Growing Families conference, as well as some information from online resources.

We contacted a Canadian consulting agency which assists international Intended Parents with navigating surrogacy in Canada. The agency presented a positive view of surrogacy in Canada, suggesting the process would take two years (on average) and that, while it wasn't as simple or as easy as going commercial, it wasn't a particularly difficult process. They referred us to and presented options for programs with a specific IVF clinic, claiming that they were among the best in Canada and that they regularly refer clients to them. The IVF clinic packages included various 'guarantee' packages. I cannot recall knowing at the time if they were directly aligned with any IVF clinics, egg donor agencies, or surrogacy agencies in Canada, and their agreement notes that they do have a business relationship with the specific IVF clinic, but that they can refer to other clinics as well.

The consulting agency provided us with some initial information and some options for us to engage them to support us. We agreed to pay their (non-refundable fee of approximately $7,000[3] and noted that if we select a two-child package with the clinic, a further $5,000 is payable on commencing the second surrogacy journey.

In early 2022 we investigated IVF clinics, but with limited local knowledge and being half the planet away, ended up selecting the clinic preferred by the agency. We selected the guarantee package that enables us to have one biological child each. This package requires a staged payment approximately $60,000 (non-refundable other than as described below), with the full amount due before the egg retrieval takes place. Their fee includes all medical fees associated with the surrogacy, including egg donation cycles, embryo creation and testing, embryo storage (for the first year), medical screening for both the egg donor and surrogate, embryo transfer fees, and medical monitoring for the first trimester. There are additional fees for medications and ancillary services. The fee does not include finding an egg donor or a surrogate, any medical monitoring or expenses after the first trimester, or any expenses relating to the birth. The 'guarantee' element comprises of various refund provisions and an additional egg retrieval cycle at no cost to us if a transfer or pregnancy fails, or if a child born of the surrogacy does not survive their first month of life.

Reflecting on signing up to the agency and the clinic, I would again say in hindsight that we felt like we were sold a particularly rosy view of the process with them, and likely would consider our options more if we were starting now with the knowledge we have now. Both the agency and the clinic have been positive and supportive and have been helpful in our journey so far. The clinic has a

[2] Not my preferred term but it is the most accurate.
[3] All currency is Australian Dollars.

very good reputation and appears to have a high IVF success rate. They also have high medical standards for the surrogates they accept. I do feel as though since we are in the guarantee package, we are unable to explore other options without losing our money or having to spend a substantial amount of money commencing a new agreement with another clinic (which for one child we have been quoted by a different clinic for $50,000). We feel that this restricts our flexibility and, as will become apparent further in this submission, could contribute to delays or roadblocks. Having said that, I doubt our experience would be different with any other clinic or support service. Later in this section I will describe that we investigated moving to another agency in 2025; the other clinic has a similar package for international intended parents, requiring substantial upfront payments with even fewer avenues for any refunds. It appears most clinics that provide this service for international intended parents operate similarly (I cannot comment on whether they offer the same packages or pricing to domestic intended parents).

I am conscious of the risks that a clinic which operates largely on upfront payments could experience financial difficulties in the future if they are unable to enrol new intended parents at a pace to keep up with their expenses (i.e. we do not need to pay any more money to them, even if we find a surrogate in five years' time, so they need to keep churning intended parents through).

I am also aware that a bad actor in this space could accept money from intended parents and then decline to medically accept the majority of surrogates (the reasons for which are, appropriately and necessarily, private between the doctor and the surrogate), leading us to never be able to have a child with that clinic (they may enrol 100 intended parents but only actually complete 10 surrogacies for example). While I do not believe this is what this clinic is doing, Australian intended parents are vulnerable to this type of exploitation when looking at international surrogacy, commercial or altruistic. It is difficult to properly assess the reputation of agencies and clinics when they are on the other side of the country, even if we share a language. This risk would be multiplied for countries where English is uncommon.

Of course, there is an element of buyer beware; we are responsible for our own choices. I don't regret choosing this clinic or agency; but part of me cannot ignore the possibility that we've been exploited for a quick dollar. On balance we are comfortable with our decisions. We are aware however that our emotional attachment to creating our family (shared with many, if not all, intended parents), and the barriers to surrogacy in Australia and Queensland, has led us to make some probably naïve decisions that have exposed us to greater risks of exploitation.

Creating our embryos

Once we had signed up with the clinic and undergone various medical testing (thankfully able to be completed locally and at little or no cost), we were able to begin the process of selecting an egg donor agency to then select an egg donor.

Instead of travelling to Canada, we elected to ship our genetic material instead; this was a much cheaper option, costing $5,000. The clinic shipped us two packages in the kit; we had to send blood samples and sperm. It was not a very smooth process due to errors by third parties. First, our local

pathology (who, to their credit, never sought to charge us despite being unable to access medicare benefits) mixed up a label on one of the 10 vials (each) and was unable to identify the mistake. The vials that the clinic sent were a larger type than our pathology had available, so our clinic sent us another blood kit (thankfully they did not charge us for this). The next kit arrived, and we went to the pathology individually, both due to work commitments and to mitigate the risk of any mix-ups. The blood was taken and appropriately labelled, and we arranged for the clinic's courier to collect it. Unfortunately, the courier company delivered the parcel too late, beyond the date which the samples were kept cool in the pack. The clinic sent us another kit (again at no cost to us) and this time it did get back to them in time. Shipping the sperm was easy, it was a kit we managed ourselves at home, and the samples were placed in a liquid nitrogen carrier and were shipped and arrived on-time at the clinic. All up, the shipping process took approximately six weeks due to the mix-ups and delays, though thankfully we only had to pay for the initial kit.

Once the clinic had our samples, we approached three egg donor agencies, all of which appeared to operate similarly with similar fees payable on selecting a donor. We selected an agency that was also part of a surrogacy agency (though I cannot recall if we knew this directly at the time, or if this formed part of our decision to select them). We paid the $4,000 agency fee to secure the donor, then proceeded to have the egg donation cycle completed in mid-late 2022. We also, necessarily, had to pay for legal costs for us and the donor ($2,500 total) and expenses, medical costs, and reimbursements for the donor (approx. $15,000).

Our egg donor (with whom we remain in contact) completed her first donation cycle for us (and has gone on to donate to two other families). The process went smoothly, and in late 2022 we had our embryos created and in storage. We could now begin the process of selecting a surrogate.

The egg donation and embryo creation process was relatively simple; we again probably could have done more research into agencies and shipping, but the likely differences would not have been substantial. Despite the setbacks with shipping, given the differences in cost and time for shipping vs travel, we still feel that was the better option. It may be different if the clinic charged us for the transportation of the additional two blood kits, but it still likely would have been at least easier to use shipping. I would say that this part of the process feels the least open to exploitation, but it does depend on the agencies that are involved; again, being on the other side of the planet adds complexity in conducting research, contacting vendors, and working with existing service providers.

Working with a Surrogacy agency

To be matched with a surrogate, while there are of course avenues to meet without using the assistance of an agency, these avenues felt as or more limited than surrogacy in Australia. We resolved that we would need to work with a surrogacy agency.

In selecting a surrogacy agency, we contacted several providers to compare pricing and waitlists. Some agencies simply did not respond to our enquiry. All but one that did reply indicated that they had full waitlists and were unable to enrol us at the time. Many offered us to follow up in 3-6 months to check again. We met with representatives of the only agency accepting intended parents, which

happened to be the agency linked with the egg donor agency we used. I can't recall if we knew they were linked at the time. Noting no other agencies were responsive or had room in their waitlists, we signed up with this agency.

The terms of their agreement and fees appeared to be similar to what we had been told by our consulting agency, and not dissimilar from most other agencies. We had to pay the agency $11,000 upfront (non-refundable) and then the remainder of the agency fee, another $11,000, when we were matched with, and decided to proceed with, a surrogate, regardless of whether she was accepted by our clinic. We paid our deposit and provided profile information and photographs and joined their waitlist in mid-2023. The agency checked in with us every month or two until early 2024. We didn't really notice at the time that the check-in emails stopped after early 2024. We weren't particularly concerned about this, we understood it will take time, and we sought updates from the agency occasionally. We also reviewed our profile a few times throughout and updated it with new information such as travel and new hobbies.

In early 2024 we approached other surrogacy agencies with the intention of being registered with a second agency, to increase our changes of being matched; and, as we were planning for a two-child family, eventually we may need to be matched with a second surrogate. We were upfront with the existing agency and the agencies we contacted about this. We were able to sign up with a new agency, and this agency worked a little bit differently; they do not ask for any money until we are matched with a surrogate. This was a welcome change from the approach of most other service providers we've engaged with, almost all of which focussed on upfront payments. We signed up with this agency in early-mid 2024, an after a call with one of their representatives, resolved that if we weren't matched with them or the other agency within 3-6 months (after being on a waitlist for approx. 12 months already), we would work with them to look into other options such as a hybrid commercial journey with a Canadian clinic and a surrogate based in the USA or Mexico. We have not engaged with them to pursue this avenue yet. We have not had much communication from this second agency, however since they require no upfront payment, we don't expect them to be as closely engaged with us as we might expect from agencies that did.

Waiting to be matched

We found through discussions with both agencies that the high medical standards that our clinic has for surrogates they would accept means that our 'pool' of potential surrogates is some 5-10% of all available surrogates. We didn't fully understand this at the time of signing up with the clinic. There are obvious pros and cons to this; high medical standards almost certainly result in better IVF success rates, but limiting our available surrogates in an already limited space could add significant time to the process. As we were already with the clinic, there wasn't much we could do with this information; it explained some of the difficulties in being matched with a surrogate, but we had to accept it and keep waiting.

In early 2025, after 18 months with the first agency, we received some concerning information about them. At that time, and in the weeks after, we became aware of people who had engaged with this agency who were not being reimbursed or refunded, either in a timely manner or at all,

including surrogates, former surrogated, egg donors (through their other agency), and intended parents. People reported difficulty in getting information from the agency, a lack of responses, and when they did get a response there were often similar and repetitive excuses provided to multiple people (e.g. illness, bank issues, travel). People suggested that the owner of the agency was stealing funds and using them for personal expenses. There were reports that most of their long-term staff (the agency has been operating for more than a decade) had left due to the actions of the management. Perhaps of most concern, some people reported that the manager of the agency had falsified documents such as bank statements and transfer documents, only to then claim the bank had made an error. While most of this was found on social media, there was an overwhelming number of reports of similar behaviour from multiple people about this agency. We were obviously concerned by this development, but since we had registered with a second agency, and because we know that not everything on social media is based on truth (I trust I don't need to tell the ALRC that!), we felt that there was little we could do anyway. At the time we had only paid them our agency fee deposit, so if they ceased operations then all we had lost was time and a non-refundable deposit.

Shortly after we became aware of this, we received an email from the manager of the agency. They dismissed the stories as malicious rumours and explained some of the recent changes to their business. They also asked enrolled intended parents if they were still pursuing surrogacy with the agency. We didn't feel that this filled us with confidence, but again we felt like we had little to lose by remaining actively enrolled with them.

Matched with a surrogate

A few weeks later we awoke to a very surprising email from this agency: a surrogate had selected our profile and wanted to meet us! We were obviously thrilled! We were, however, also very aware of the potential for fraud. We agreed to meet with the surrogate. We got along very well, share similar interests, and enjoyed spending time with each other on our video call. This meeting made us feel more comfortable about the legitimacy of the connection. We were advised by the agency that she had been 'pre-approved' by the clinic.

We were advised by the agency that if we wanted to proceed, we needed to pay the balance of the agency fee ($11,000) and a deposit for expenses ($22,000), which would be drawn down from before and during the pregnancy, before an additional expense payment was required (a further $22,000 – some of which would be refunded after all expenses were claimed). We were advised that we would be sent a statement 'after a few months' before the second expense payment was due. The agency advised us that if the surrogacy does not proceed (either for medical or other reasons) we would be able to remain with them for a re-match with a new surrogate, and we would be able to have our expense deposit refunded (but not the agency fee). We obviously held great concern about the financials – the lack of transparency about the expense reimbursement, the amount of money required (again upfront), the general concern's we'd read about, and the timing being 2 weeks after a lot of this public criticism all felt a bit off. We spoke with the potential surrogate again and asked

her if she'd been on previous surrogacies with this agency (she had) and if she'd ever had any issues with reimbursement (she hadn't).

In discussion with her we found that she had first completed her family and had also assisted several families through surrogacy, including some which were twins. Our clinic has a policy for a maximum number of births and determines that any above that number is too high-risk. We initially misunderstood the information provided by our surrogate and believed that her number of births exceeded the clinic's limit. We emailed the clinic to check in on this, concerned about whether the agency had misrepresented the pre-approval to us, or misrepresented the surrogate's information to the clinic. We were most concerned about the idea of paying the money and then finding out that the clinic had not pre-approved her.

The clinic conferred with the agency about the surrogate and then confirmed to us that the number of her pregnancies, while at the upper limit of what they would accept, was acceptable. As it was a discussion about her medical history, the exact nature of what was discussed and what information was provided was, necessarily and appropriately, private and kept from us. We were satisfied that with the additional review by the clinic, we were less likely to have her rejected by the clinic for medical reasons (of course, they still had to conduct their full medical screening, and there are numerous other reasons that a journey would fall through, we knew this wasn't a total guarantee of proceeding).

We took some time to discuss this as a couple and weigh up our options. We determined our options were two:

1) We pay the money to the agency, with an active but somewhat mitigated risk that the arrangement would not proceed, and if so, an expectation that we would lose our money.
2) We don't pay the money, and we essentially start our journey again with a new agency. We felt that if we couldn't trust them for this potential surrogate, we would not be able to trust them for any.

We resolved that taking the risk and proceeding was our best course of action; we might lose $33,000 (plus the $11,000 we've already paid the agency), but we might instead have our first child and start our family. We did not have full confidence that either outcome was more likely. If anything, it felt more likely that we would lose our money, however, we felt that it was a risk worth taking. We can't have a child alone, and we can't do it without trusting people at some point, so we had to take the risk.

We contacted our surrogate confirming that we were ready to proceed and emailed the agency with the same. The agency sent us the account details to send our funds, and they arrived with them 24 hours later. The agency then sent paperwork to our clinic to begin the medical screening process.

Our surrogate was able to get an appointment to see the doctor a few weeks later. The next morning, we awoke to the news that our clinic would not accept her. It turns out that the clinic, while aware of the number of *pregnancies* she had had, was not aware that some of those were twins, so were not aware of the number of *children* she had delivered. We were aware of this. The

agency was aware of this. We presumed, without direct knowledge because of the private nature of medical information, that the agency had fully disclosed this to the clinic. If we made one critical error in this case, it was not being precise about this with the clinic. We do feel however that since we had initially misunderstood the information provided by her, we might not have the full picture that the agency and the clinic would have. We expected the agency to provide this information to the clinic when they discussed it, but it is apparent that this did not happen. We do not know exactly what information was requested or provided.

Back to square one

While we were waiting for the medical screening to occur, there was one further development we saw on social media which was cause for some concern. One intended parent, who had been quite vocal in a Facebook group about being owed money by this agency, reported that they had received their refund in full in the days after our funds were sent to the agency. This concerned me because it appeared to me that they were churning funds through – potentially using our expense deposit to pay their debts. Of course, there was nothing we could do about this. We don't know how much they were refunded, so it was possible that the balance of our agency fee (the fee for services which is non-refundable) was more than enough to cover the refund to this other intended parent.

When our surrogate was rejected by our clinic, we took some time to consider our options again. We spoke with our surrogate about potentially working with a different clinic, one that she had worked with before. She was happy to proceed with us to another clinic. We met with our consulting agency, and they were able to discuss the matter with the new clinic on our behalf in the first instance. We then had an appointment with the doctor at the new clinic. He appeared surprised that our first clinic would reject our surrogate. They provided us with their pricing structure and advised us that we could transfer our embryos to them which would reduce the cost.

Since our embryos were with our first clinic, and we had a non-refundable guarantee package in place with them, we determined that we were unable to practically transfer our embryos, even if technically and legally we were able to. We also reviewed the pricing structure of the new clinic and determined we would be unable to proceed with a new clinic. We would have had to complete a new round of egg donation and then complete the entire process from the start again. We simply could not afford the doubled costs.

This left us unable to proceed with our matched surrogate. We discussed this with her and while we all feel sad that we couldn't proceed, we have remained in contact since.

We contacted the agency and advised we would like to go back in the queue for a rematch with a new surrogate. We also asked for our deposit to be refunded. The agency advised that we would likely be rematched 'quickly' and that it may be simpler for them to keep the funds there, but we sought to have the deposit returned to us anyway. They agreed and advised us that they had processed the refund, and it would be back in our account within 28 days. Noting our funds arrived with them within 24 hours, this timeline seemed odd.

We waited a month, but no money had arrived. We contacted the agency but found it difficult to get a response. We sent them emails regularly over two weeks before finally getting a response, being advised that they will look into the issue and explained that the delay in response was due to medical issues. They advised we would have an explanation later that week. None was forthcoming. We followed up again, with another five emails going ignored until finally one more response from one of the staff members, saying that they don't know the cause and are following up with management.

This is where we are now. No refund, no surrogate, no rematch. No progress.

Where to from here

We doubt we'll see the deposit again. We also doubt that the agency is ever going to be able to match us with a surrogate again, and even if they do, we don't know if we can trust them again. We are feeling as though we're back at the start. Unfortunately, the wait lists haven't reduced. The agency fees have also increased due to inflation. We contacted several agencies recently, but none are able to enrol us at the moment. One agency specifically said that they are unable to accept same-sex male couples at the moment as they have too many enrolled already.

Many agencies offered us 'hybrid' programs, using our Canadian clinic but a compensated surrogate based in the USA or Mexico. Being based in Queensland, we would be committing a criminal offense if we proceeded with a commercial surrogate.

We are left in a position where we've got no real direction moving forward. We have spent $140,000 so far (of which we *might* be refunded $22,000). But no progress. Of course, the largest component of this expenditure is with the clinic, and they will still provide the service when we are matched with a surrogate. Regardless, $140,000 for no progress in nearly three years is not a comfortable feeling. It is also worth reiterating that this is money that is not spent within Australia.

We're waiting to be matched with a surrogate through the second agency. As above I am not sure if we'd trust being matched with the first agency.

Compensated surrogacy

As Queensland residents, we are unable to work with a commercial surrogate, even if they are overseas. We would be committing a criminal offense if we did, and would be exposing ourselves to possible prosecution, fines, and imprisonment. This applies if we are 'ordinarily resident' in Queensland (or New South Wales or the Australian Capital Territory). If we are unable to access altruistic surrogacy, we are considering the potential of upending our lives and moving permanently interstate to one of the other states, away from family, to create our family. We would be left with no support networks, would have to find new jobs, rent a house interstate. We would be left in a worse financial position, and weighing this up it is possible then that even after doing that, we might not be able to afford to create our family.

To emphasise this point: At least in substantial part because of a Queensland law, we may be forced to move interstate or be unable to have a family.

Reflections on the surrogacy agency process

Putting all of this in writing above, it is difficult to argue that there is no risk of exploitation. Our future family was essentially held for ransom unless and until we paid a substantial sum of money to an unaccountable overseas business. Perhaps this is an emotionally loaded statement, but if an Australian infant was kidnapped by a foreign actor, who would only return the child for a ransom, it would be international news. But here, because surrogacy is so difficult in Australia, it's just part of the process.

We have been exploited. Our drive to have our family has been exploited for financial gain. We are left with little recourse. As I said earlier, part of it is 'buyer beware', and I am sure there are views that we've been naïve, but view this ignores that we were backed into several corners and left with little options, if we want a family. We couldn't reasonably access surrogacy domestically (it didn't seem possible), we were forced to use countries that have altruistic models which essentially left us with only Canada as a practical option, and we were forced to pay significant amounts of non-refundable money to companies upfront. The service providers, most of which I am sure operate ethically, are the beneficiaries of a substantial power imbalance and can very easily exploit Australian (and other) intended parents for financial gain.

I am very conscious that our experience is not a particularly negative one. We have had ups and downs, but overall, we will eventually have our family. I write this experience not as a letter of complaint, rather to point out where our laws have the unintended consequence of exposing intended parents (a substantial number of whom are LGBTQ+ couples) to exploitation.

If our laws are aimed at reducing exploitation, why then do they appear to expose my husband and I to great risk of exploitation, simply because we wish to have a family. I acknowledge we cannot do this alone; we need to rely on and trust other people and businesses to help us. But forcing us to do so overseas exposes us to a greater risk of financial exploitation than we would experience if we were more able to pursue surrogacy locally within a well-regulated framework of laws.

A well-regulated model of surrogacy in Australia, with criminal offenses removed or more appropriately targeted (at service providers, not parents or intended parents), which should include compensated surrogacy, is a true way of minimising exploitation.

Thank you for taking the time to read this part of our submission. It ended up being longer than I initially planned, but I feel that it is important to describe all the steps of the process we've been through so far, and where we feel that there are risks of exploitation.

The remainder of my submission will briefly discuss the questions from the issues paper.

Part 2: Questions

Below I provide my opinion on each of the questions posed in the issues paper. The opinions in this section are my own.

Question 2: What reform principles should guide this inquiry?

Human rights (of all people involved – the surrogate, intended parents, and any children born of the surrogacy) should be at the forefront of the inquiry. Harm minimisation is also critical – not achieved by banning actions, but by regulating outcomes. For example, a commercial surrogacy arrangement could be exploiting the surrogate, but it is not necessarily so; we must regulate the harm, not the action. Empowerment is another principle that I believe should guide this inquiry: empowering intended parents to become parents, and empowering women to exercise their bodily autonomy free of government interference and be a surrogate, if they wish to, on their terms (with appropriate guardrails).

Question 3: Human rights

As noted in the issues paper, the rights of the child are paramount, as with all family law. The best interests of the child must be at the forefront of all decision making. For example, if a child is born to Queensland parents through an overseas commercial surrogacy arrangement, is it in the best interests of the child for the court to decline to issue a parentage order, and for the parents to instead be subject to potential prosecution or criminal sanctions?

The right to be free from discrimination (for the children born of surrogacy and for intended parents) must also be considered. Barriers to surrogacy, especially those based on personal characteristics such as in Western Australia which prevents same-sex male couples from accessing surrogacy, are discriminatory. Other barriers may be somewhat discriminatory, including the inability to access medicare funding or other supports to assist with IVF fees – it's supported for heterosexual couples undergoing IVF, but not for gay couples.

The right to bodily autonomy is also critical. The government is telling women what they can and cannot do with their bodies – by banning them from being a commercial surrogate. The laws should step out of the way and let people make their own decisions, with appropriate and well-balanced guardrails which are targeted at preventing harm, rather than preventing conduct.

Question 4: Information about birth circumstances

We plan on being fully upfront with our children about the circumstances of how they were born. We hope to have our egg donor and surrogate in our lives at the time so that they can remain connected with the child, and the child can remain connected with them. While I appreciate not everyone would be as upfront, we cannot entertain the idea of not telling them and then having them find out through some other means.

Having said that, while IVF clinics must keep records, and courts will keep records, the decisions about what to tell a child about the circumstances of their birth can only be a decision for the

parents. The information must be available through government for a child to access, if they wish, at an appropriate time. I understand this is already the case when it comes to donor assisted fertility in Queensland and should be in other states. I am unsure about how this would be best achieved for children born of overseas surrogacy.

Question 5: Barriers

We found many domestic barriers when we began our journey. Firstly, the awareness of the lawful surrogacy options is very poor in many parts of the community. When we announced to friends and family that we were going to pursue having a family through surrogacy, many of the people we spoke to were unaware that surrogacy was legal in Australia. We found this quite shocking. Clearly there is a lack of information about surrogacy.

Another barrier domestically is that there are not many service providers such as agencies etc which can assist intended parents. There are a few small outfits which do, but they also do not have the reach to be very effective.

Finally, the laws which prohibit commercial surrogacy, even extra-territorially, act as barriers to domestic surrogacy, including altruistic surrogacy. Laws that prohibit conduct, combined with a general lack of awareness, lead many to believe that all surrogacy is commercial, and that all surrogacy is therefore unlawful.

Thankfully, we do not live in Western Australia which has perhaps the biggest barrier which would prevent us from having a family through surrogacy: preventing people from accessing surrogacy based on their gender is almost beyond belief in a modern western country such as Australia in 2025. If this inquiry makes only one recommendation, I urge that it is to remove this kind of discriminatory barrier. There should be no room in any laws of the commonwealth or any state or territory for such discrimination based on personal characteristics.

Question 6 and 7: Eligibility requirements

Eligibility to be parents

There should be eligibility requirements for accessing surrogacy, but they should be few. One reason that should be unacceptable is surrogacy for convenience. Surrogacy should be used only where it is medically necessary or where carrying a child would present an unacceptable risk to a woman's life, or of course for people that are unable to reproduce naturally.

I note in Victoria surrogacy arrangements must be assessed by a 'patient review panel' before being eligible to enter into a surrogacy arrangement. As a non-Victorian, I acknowledge my information on this body is likely insufficient, however I understand that this kind of review can cause intended-intended parents and potential surrogates' anxiety about whether they will be approved or not. Any such body, if they are to continue to exist, must be reformed to assess only the necessary information, such as all parties have complied with the necessary form etc of the agreement, have undergone counselling, and complied with any other legal requirements. Such bodies must not be empowered to decide about whether a person can or cannot have a child through surrogacy, or

whether a woman can or cannot be a surrogate (other than, for both, that they comply with all legal requirements). A government panel cannot be empowered to decide if a person can be a parent or not.

As an aside, when we first began our journey, we were advised about the existing eligibility requirements. We also had to select our reason on various forms. The term many used was 'socially infertile'. I found this term to be uncomfortable, and it made it seem like we were engaging in surrogacy for social reasons, rather than being unable to reproduce naturally due to sexual orientation. It makes it sound like sexual orientation is sexual 'preference' and a choice. The term should be reconsidered, though I acknowledge this is not the focus of this inquiry.

Eligibility to become a surrogate, such as to have completed their family first or be of a certain age and have had a child, should be based on medical risk and medical advice. If a woman wished to be a surrogate, but did not wish to have her own children, why should she be prevented from doing so? She should be provided with information about the risks of pregnancy, and the potential for her life or fertility to be put at risk. If she willingly wishes to accept those risks, the law has no place telling her what she can or cannot do. Any restrictions must be based on medical necessity only.

Question 8 and 9: Surrogacy agreements

Form of agreements

While agreements should be in writing, an arrangement in progress (i.e. a pregnancy or after the birth) should not be in any way invalid simply because requirements have not been followed.

Enforceability and dispute resolution

Whether agreements should be enforceable is a difficult topic. While the requirement to pay reimbursements (and if the laws are reformed, compensation) must be enforced, through tribunals e.g. QCAT such as with tenancy agreements. Any jurisdictional limits such as damages or dispute caps should be extended/exempted for these arrangements. Going through a full court would likely cost all parties a lot of money and would take time and add to the already large court workloads.

In the unlikely (and as far as I am aware in Australia, unheard of) possibility that a surrogate decided to keep the child, or (equally unheard of in Australia) if the intended parents declined to take the child (though this has happened overseas), a court should not simply determine the matter based on the surrogacy agreement. It should be persuasive but not determinative; the best interests of the child are paramount as in any family court dispute. While the chance of either of these situations are extremely remote, they are not 'nil' and so the legal framework must make provision for the unlikely. Laws must be aimed at harm minimisation and focussed on the best interests of the child. Any such disputes would be traumatic for all involved and would only be more traumatic if the relevant laws were silent as to resolving the dispute.

Question 10: Process requirements

Counselling and medical checks are vital for ensuring all involved are safe and aware of the relevant risks, in both the physical health sense and the mental health sense. Obtaining independent legal advice is critical for all parties.

Counselling must be available, but not mandatory, for all parties after the birth of the child. All parties would benefit from this, but it should not be a legal requirement.

If process not followed

Parentage orders must not be withheld based on a technicality. This punishes the child for the actions of other related or unrelated adults. A failure to undergo counselling, medical reviews, or obtain legal advice must not be used by a court to decline to issue a parentage order. It only harms the child and may lead to issues and discrimination as they grow up.

Question 11: Service providers

The lack of surrogacy agencies in Australia is a direct barrier to domestic surrogacy. Agencies should be permitted to operate, but as our experience overseas demonstrates, must be well-regulated. There was an agency in Canada (not ours) that recently closed down suddenly, leaving many intended parents and surrogates out of pocket, including for pregnancies in progress.[4] This is one of the agencies that we reached out to early in our journey, but thankfully, in hindsight, they were unable to enrol us.

News of the sudden closure of that agency, when considered alongside our experience with our own agency leads to an important conclusion: Funds held by these agencies must be held in trust and should be insured if possible. It is unacceptable that intended parents would send significant amounts of money to these companies to be held without any accountability. If unregulated, this space would attract many bad-faith actors who could cause considerable financial harm to intended parents and surrogates. They can be exploitative and must be well-regulated.

Requiring trusts accounts to be used (such as is the case for real-estate transactions which often deal with similar large amounts) is the minimum that laws should provide. It should also be considered whether some kind of insurance is possible to at least limit the damage if an agency ceases operating suddenly with outstanding creditors, even where they have been managing appropriately.

With the benefit of being able to make laws, our legislators must do everything they can to minimise harm, including financial harm. Scrupulous agency operators cannot be enabled to steal money from vulnerable and desperate people.

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[4] *Alberta surrogacy agency's sudden closure devastates hopeful parents around the world*, Stephanie Thomas (CTV News) 25 June 2025, < https://www.ctvnews.ca/calgary/article/alberta-surrogacy-agencys-sudden-closure-devastates-hopeful-parents-around-the-world/>

Question 12: Professional services

In my view, there is no place for government to determine whether a business can operate for profit or not. The 'market' must determine this. There would be benefits for intended parents and surrogates to engage either type of professional service. Limiting professional services to not-for-profit would substantially limit the number of providers that might be established.

There must be separation between counselling, legal services, and medical care/IVF services. Similarly to the conflict of interest found in the banking royal commission where financial advisors were in-fact salespeople, having counselling or legal services provided in-house gives rise to unavoidable conflicts of interest, and could impact patients (and their children). Service providers must also be required to be fully independent and must be obligated to disclose any relationships (past, current, or future) with any of the other service providers, before the client is obligated to pay. There is considerable room for harm to be done if these services are provided in-house.

Question 13: Advertising

I cannot understand why advertising is not permitted. I do not believe people should be restricted from advertising, but I could understand some regulation on who, how, and when advertising occurs.
At the very least, the terms must be more precisely defined, so that intended parents and surrogates are not anxious about breaking the law by doing things such as posting on social media or similar.

Question 14: rebates and entitlements

a) Medicare rebates for fertility treatments must not discriminate on the basis of the type of treatment. Heterosexual couples undergoing IVF are eligible for Medicare rebated, but a homosexual couple working with a surrogate is not. This kind of discrimination must be removed.
b) Access by surrogates to paid or unpaid parental leave: this should be accessible. I am not sure if the employer should bear the obligation through employment terms, or if it should be on the same terms as if it was their own child. They should be entitled to as much leave as is necessary for recovery, but my (admittedly uneducated and male) thoughts are that much of parental leave is for the care of the newborn, an obligation that the surrogate mother does not (in most circumstances) have.

c) There is a need to make surrogacy more affordable. There is also a need to make it more accessible. These goals may be at odds in some ways (e.g. permitting compensated or commercial surrogacy would improve availability but might increase costs for some domestic surrogacy arrangements). Realistically, if people are unable to access surrogacy locally, they are often going overseas (as we are) and, consequently, part with far more of their money than they would if they were engaging in surrogacy domestically (be it altruistic, commercial, or compensated). There are additional costs associated with going overseas

for surrogacy which are not present with domestic surrogacy, such as overseas travel for the birth (and staying in the birth country for several weeks to months), shipping genetic material (or more travel), newborn insurance (e.g. in Canada where this is likely $20,000 to $40,000), and other costs such as taking time off work for the travel (of course this may be parental leave so it might not be a big difference depending on the time it takes to return to Australia after the birth).

If surrogacy was more available and well understood (and well-regulated) in Australia, it would reduce costs overall. There is an obvious, if unstated, point – not everyone can afford to engage a surrogate, and we are very grateful to be able to be able to go down this road. Surrogacy cannot be free of charge; this is well understood. As an idealistic statement, a person's ability to have children, via surrogacy or otherwise, shouldn't be determined by their financial resources.

Ensuring appropriate parental leave arrangements are in place, enabling commercial and compensated surrogacy, removing criminal sanctions on pursuing overseas commercial surrogacy (and instead perhaps prohibiting using specific unregulated countries where there is evidence of exploitative surrogacy practises) and enabling access to medicare rebates for **all** fertility treatments will all help to reduce costs overall.

Question 15: Reimbursement

As with my answer to question 11, the money must be held in trust if held by a company or third party. For private arrangements, there should be some kind of regulatory approach that reduces the likelihood of financial disputes and the very real chance that a surrogate is left out of pocket.

All expenses should be reimbursable, including less obvious expenses such as massages and other self-care for the surrogate mother, and things such as occasional housekeeping and meals, household assistance, and other such things. It is vital that neither the surrogate or the intended parents are or feel like they are being exploited. It is a difficult area and as I am anecdotally aware, has been the subject of many disputes and the cause of the breakdown of many surrogacy team relationships.

Question 16: Commercial or compensated surrogacy

I believe that commercial surrogacy *can be* exploitative. I believe many things can be exploitative, but we do not ban them. We do, however, ban commercial surrogacy and compensated surrogacy.

I firmly believe that both should be permitted. I can understand that it may be 'too far' to enable full commercial surrogacy though, so at the very least we should permit some kind of compensated surrogacy.

In a surrogacy arrangement, there are a lot of people that make (in some cases, a lot of) money, including (at least):

- IVF clinic
- Lawyers
- Travel and migration agents (for overseas surrogacy)
- Surrogacy agencies (overseas)
- Consulting and support agencies
- Mental health practitioners

There is one person (unless some of the above work *pro-bono*!) that makes no money and is, frequently (if not always), left out of pocket in some way

- The woman who has put her life on the line to carry the child for the intended parents.

She is also the only person through the entire process that has put herself at risk of illness, injury, or death. She has risked her body, her life, her livelihood, in most cases the livelihood of her family, but is the only person that hasn't made any money.

She should be entitled to some form of compensation. As an intended parent I am uncomfortable with the idea that a woman would be out of pocket for carrying our child.

This does not mean that compensation should be mandatory. It should be optional. Women should be free to exercise their bodily autonomy and determine if she wishes to be a surrogate, and on what terms she wishes to do so. The government should have no role in telling a woman what she can and cannot do with her body.

Question 17: How to implement

I am not of the view that the law has a role in determining what level of compensation should be paid, or how it should be calculated. I believe that most women who become surrogates, even where commercial surrogacy is permitted, do so not to make money but to help others. Being compensated is a benefit but it is not the main driver, in all but some limited cases.

If the view is to go to a 'compensated' model rather than a 'commercial' model, there obviously would need to be some kind of limit placed. I cannot recommend a number for what the limit should be – but whatever it is it must be indexed e.g. to wages or CPI so that it does not stagnate over time.

The process, whatever it is, must be an accountable one. If it is an arrangement through an agency, trust accounts must be used. For private arrangements, I don't believe the law has a role in requiring a certain process. The law does have a role in enforcement if agreed compensation is not paid.

Question 18 and 19: legal parentage

The process for obtaining legal parentage domestically, if all legal requirements are fulfilled, seems reasonably effective. There should, however, not be any ability for a court to decline an order if a technical requirement hasn't been followed, such as counselling pre-conception.

For international arrangements, the Australian courts should provide a mechanism for Australian intended parents to **both** obtain legal parentage for the child. Currently, there are few such mechanisms available, and parents can be denied this and referred for prosecution by the relevant state authorities if they have engaged in commercial surrogacy (in QLD, NSW, and ACT).[5] To my knowledge, there have been no such prosecutions (and QLD police recently noted they would not prosecute a couple), thankfully, but this does not remove the barrier or anxiety. The ban on using commercial surrogacy overseas has not and does not prevent QLD, NSW, or ACT parents from engaging in commercial surrogacy overseas, instead, they are left in legal limbo; unable to necessarily obtain full legal parentage, with the risk of fines or imprisonment hanging over them.

Whatever rules are in place, there must be a mechanism for legal parentage to be confirmed even if laws haven't been complied with. There are other mechanisms for dealing with breaches of the law (such as fines or other penalties) which do not affect the legal status of a familial relationship. The best interests of the child must be paramount, and their best interests are not served if their parents are not recognised as their legal and true parents by Australian law or Australian courts.

Question 20 and 21: travel documents for international born children

In researching surrogacy in Canada, we became aware that the process of returning to Australia can present challenges. The process of obtaining citizenship and then a passport can take an unreasonably long time, causing the new family to be stuck in the foreign country until the government department issues the documents. As I understand it, in some countries (such as Canada) the child is entitled to citizenship by birth and therefore could obtain a foreign passport and travel to Australia on a visa, but the options for a relevant and suitable visa class are few and would not necessarily be faster than the alternative. Travelling home with a baby without Australian citizenship would also present problems accessing medicare once home.

This problem is not unique to surrogacy; many children of Australian parents would be born overseas for many reasons. The process for obtaining travel documents for Australian children born overseas (to a surrogate or otherwise) must be simplified and delays reduced.

I also understand that a passport application requires the consent of the surrogate. This must be changed – they are not the parent of the child. They have no role, and should have no role, in determining whether the child should be permitted to travel. In some countries, the surrogate may not speak English and may not be available to consent. If a team relationship broke down, or for some other reason, she may not want to provide consent. A child could be denied the ability to return home. This consent requirement must be removed or reformed.

[5] *Lloyd & Compton* [2025] FedCFamC 1F 28.

Question 22: inconsistency in regulation

Inconsistent laws are bad laws. There are vast differences, many noted in the issues paper, between different state laws and with commonwealth laws.

It is critical that this inquiry recommend, and that all Australian governments accept and implement, consistent laws that regulate surrogacy the same way across Australia. This is especially important for interstate surrogacy arrangements, where the intended parents are in one state but the surrogate lives (and gives birth in) another. The laws must be harmonised. Even if the reform is imperfect, the laws must be consistent. A person shouldn't have to consider (as we have considered) upending their lives, changing their job, losing and leaving their support networks and family to have a child because the laws of their state are more prohibitive than those in another state.

Whether this is achieved by the States referring power to the Commonwealth, or simply by the States agreeing to and implementing consistent (or at least: more consistent) laws, I am not sure.

Question 23: Arrangement oversight

There should be some level of oversight. Service providers, professionals, and third parties such as agencies should be subject to some kind of oversight to ensure they are behaving ethically and free of conflicts of interest. This is especially important for service providers such as surrogacy agencies. Professionals such as lawyers, IVF clinics, and counsellors are already subject to regulatory oversight, so it may not be necessary to add to the regulatory burden for them. Our experience overseas has demonstrated that allowing agencies to operate with little or no oversight can lead to exploitation and negative outcomes.

Question 24: Prohibiting certain forms of surrogacy

I have answered this through my responses to other questions. I will reiterate that the criminalisation of engaging in commercial surrogacy by QLD, NSW and ACT must be removed. It does not achieve its objectives. Instead, the law should prohibit the actual outcomes such as exploitation of women and human trafficking. It is uncontroversial that these are very bad things and that Australians should not engage in conduct that contributes to those outcomes. But this is what we must target, not commercial surrogacy generally. Perhaps there is room for laws that permit the prohibition of commercial surrogacy (or any surrogacy) in specific destination countries, at a commonwealth level, by ministerial regulation. This would likely allow the actual objectives of the laws (reducing harm, preventing exploitation and human trafficking), but would not be a blunt-instrument approach which prevents ethical surrogacy that happens to be commercial or compensated.

Question 25: Surrogacy awareness

There is an immense need to improve awareness of surrogacy in Australia. Many people I have spoken with believed it to be entirely unlawful (not just commercial). If there were better awareness of surrogacy, I believe it is likely that more women would be able to decide to offer to assist couples

by carrying a child for them. I believe some women who might feel like offering to be a surrogate, feel that their decision might not be accepted or understood by their friends, family, employer, parents, or partner. They might decide it is easier to just not do it, than to educate people and explain. I believe this is a barrier for some women becoming surrogates. If there was greater awareness of surrogacy (and not just the bad news stories we see when things go wrong overseas), there would be more surrogates. Fewer Australians would use overseas surrogacy.

Question 26 and 27: Out of scope / other issues

As noted in the issues paper, there is a shortage of donated genetic material such as eggs and sperm, with eggs in constant significant shortage as I understand the IVF success rates are higher with fresh eggs rather than frozen (but this is not the case for frozen sperm and embryos). There are arguments that donations should be eligible for compensation (but, similarly to my views on compensated surrogacy, not mandated), and that this might improve access to donated material.

There are also constantly shortages of blood donations. It is likely that supplies might also improve if compensation was available. There are of course risks with such an approach, as well as potentially the devaluation of the 'good feeling' of volunteering and replacing that with a financial benefit. This issue should be assessed in-depth in a future inquiry.

Thank you to the ALRC commissioners, staff, and all people involved in this inquiry. I hope that my submission has at least provided some insight into our story so far. I wish the ALRC all the best with striking an appropriate balance in its recommendations and I look forward to reviewing the Discussion Paper later this year.