[redacted]

11th July 2025

The Commissioner
Australian Law Reform Commission
PO Box 209
Flinders Lane
Victoria 8009
Email: surrogacy@alrc.gov.au

Dear Commissioner,

SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION – REVIEW OF AUSTRALIA'S SURROGACY LAWS

I am making this submission to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws.

We are a married heterosexual couple who due to a medical procedure complication (first D&C for a miscarriage) had adhesions and scarring rendering my uterus unable to sustain a pregnancy, however we are both fertile and capable of creating grade 1 embryos. We have lost 6 pregnancies, have undergone hysteroscopy surgery, invasive tests, at least 30 blood draws and consulted Melbourne IVF in attempts to have a child, spanning years. Infertility from a D&C is apparently a low risk (stated at 1%) however I had covid prior to my miscarriage and D&C and elevated inflammation per blood tests in the body, my OB chose to proceed with the D&C and I felt rushed and emotional at the time trusting the medical team. I had post-operative pneumonia (and likely post-covid pneumonia) afterwards elevating inflammation and likely the cause of this scarring. I wasn't offered antibiotics after my D&C and the antibiotics I was put on from the GP were insufficient so by the time I had strong and effective antibiotics my body had already healed badly from the D&C scarring my uterus.

I have been diagnosed with a chronic mental illness resulting from my inability to sustain a pregnancy and this has had a significant impact on my livelihood and wellbeing. After all of the time invested in trying to defy odds and have me able to carry rendering ineffective and all medical avenues exhausted (Melbourne IVF surgeon determining my uterus as inoperable due to dispersed damage), my husband and I turned to surrogacy.

I first learned Australian surrogates need to be altruistic and none of my family and friends offered to surrogate. Secondly, some that had interest have not birthed a child before which seems a hurdle in Victoria, others are unsure if they have completed their family yet another hurdle in Victoria. Without a volunteer, and no option to advertise (this is illegal) for a volunteer that is not a family or friend, I looked to overseas arrangements.

I learned that overseas arrangements seem unobtainable. My research concluded 6 countries are legally recognized with a framework for Australians and I did not want to risk any country that was not legally recognized. I learned that Turkey is in the midst of a legal reform and no longer recommended to Australians (i.e.. If they pass the law change making it illegal to foreigners whilst a surrogate is pregnant, then I am not sure what happens to our child). I then learned that Greece and Argentina have already recently changed laws that surrogacy is illegal to foreigners. Finally Ukraine, is now at war, and not recommended to Australians. That left Canada – which I discovered was altruistic as well and if I can't find a volunteer in Australia how could I manage Canda – and then the US. Since I am not on the medical system in US and the US/Australian dollar, it appeared to pay for surrogacy in the US meant for Australians it will cost more than double for Americans. Really out of reach financially, with estimates $150,000 to $250,000 AUD. My husband and I would do anything for a child, but this type of money requires us to sell our home and use all of our money and rent setting us back financially decades. No price is too high for us for a child but this is a significant financial and not easily achievable or even realistic price to pay for being an Australian who is unable to medically have a uterus that can carry a child but otherwise is fertile in a loving heterosexual marriage.

I then subscribed to four online forums. I know that almost 80% of surrogates born in Australia per year (which are only a fraction of the births born per year compared to overseas) are to family and friends volunteering. This leaves a small fraction of those offering to strangers. If it was 100 births in a year in Australia, that is 400+ overseas and 20 people offering to 'strangers' in Australia. These online forums had 2000 to 20,000 members. I felt completely distressed that how am I going to be able to network and get lucky finding someone in Australia.

For the last two months I have spent 1.5 hours per night invested in the surrogacy communities online. I spent hours constructing our story to get attention of the community and build relationships. I have been talking to two women, one in NSW and one in WA in particular that are open minded about offering surrogacy to a stranger but this takes a long time and trust building before we are at that stage where they may offer to us. This gives me some hope. However if they did offer, or someone at some point in the online communities, I know I have to navigate laws across states and have a process ahead.

I have read the Issues Paper and have responded to the questions posed in the paper below that can make this journey easier for intended parents like myself and [redacted] to navigate and open options up to us in Australia as based on changes overseas in the last few years, I truly believe unless you can pay $150k-$250k in US or otherwise risk exploitation and humanitarian issues, Australia is the only option for couples in our circumstance.

I seek that my submission be de-identified.

PART 1 – Insights from personal experience

1. If you or someone close to you has had personal experience of surrogacy, please describe:

    - What parts of your experience were positive?

    - Surrogacy gave hope of a new path to start when my husband and I came to the end of the road of trying everything medically possible in my own womb to carry. The existence of a legal framework, albeit complex, provided legitimacy and some reassurance in what could otherwise be an uncertain journey.

    - I like the board review approach, however cumbersome in process steps (perhaps this can be more streamlined) to protect vulnerable parties, ensure safety of parties and promote informed and willing participation.

    - My partner and I found that the surrogacy steps prompted deep discussions around values, parenting, and how we would logistically make this work with another person outside of the two of us to bring a baby into the world

    - Willingness of women to carry altruistically. The generosity and openness of Australian women who consider becoming surrogates speaks volumes about the community-minded spirit.

    - What parts of your experience were negative?

    - Financial costs involved were stressful, even in Australia cost of an agency ~$5k, cost of legal X2 representation, reasonable expenses, the IVF itself and medical costs are still a sizable portion to budget for
    - The stress of knowing we likely have no feasible route overseas due to the wars, global legislation changes and US dollar and medical expenses creating hurdles. Knowing that 3+ years ago Australians could

go to Argentia or Ukraine or Turkey or Greece with $30K to organize a surrogate compensation versus the $150-$250k AUD needed for US (and Canada feels difficult given altruistic and know one there). Other countries do not have legally supported frameworks in Australia and therefore I would not risk this for all involved (baby, surrogate and IPs)

- The requirement to be altruistic is limiting to my family and friend group they see pregnancy as a huge inconvenience on their body, abilities and family a compensated amount to cover the selfless sacrifice may open more doors to Australians offering to support IPs who want a family but can't otherwise carry
- Requirements that vary between states are concerning and confusing. For Victoria, someone that has never birthed a child is unlikely to be approved which again limits potential surrogates offering and also those that have not completed their family which is the majority of my friendship circle. This feels unnecessarily limiting given there are medical and psychological steps to ensure best interests of the surrogate.
- Seems to be way too many intended parents vs. surrogates in Australia and really overwhelming creating a sense of desperation. This makes IPs jump to look overseas and as a result get financially stressed when they see it's too expensive in US and then perhaps that desperation exposes them to risks in other less legally governed countries creating elevated risk of exploitation of both IPs and Surrogates inclusive of human trafficking.

- What could be improved and how?

- Harmonise the laws across the states.
- I like the idea of a board review panel like done in VIC but streamline this and make it available across all states as part of harmonization. Want to ensure every party is still protected
- With the board review panel option, can introduce a commercial element to surrogacy (even if optional to be negotiated between surrogate and IPs) to expand the surrogate options available to Australian IPs in their networks or outside of their networks. Use this board review panel to ensure there is no exploitation possible.
- Make it legal to advertise for a surrogate so that we have an avenue to reach out to other Australians when no one in our network offers rather than default to risky overseas options because we feel there is no easy path
- Make the process less admin and quicker for IPs and Surrogates, still ensure necessary steps to protect interests of all parties.
- Legal parentage seems stressful to navigate post birth when IPs want to be moving on with their lives and enjoying their newborn and caring for

their newborn and not navigating going to court, Medicare, centrelink without a parentage order in place. Can the parentage order be approved before the birth so that at birth the IPs are on the birth certificate

PART 2 – Reform Principles

2. What reform principles should guide this Inquiry?

- That intended parents like us, that unexpectantly and tragically had a medical procedure complication take away our ability to sustain a pregnancy in my womb should be offered a pathway that is achievable in Australia and not feel like Australians do not have adequate support to begin a family.
- Australia is structured enough with robust legal and medical systems to govern a fair and safe surrogate journey even if commercial payment is introduced as an option to attract more surrogates in Australia.
- A surrogate in Australia, is most likely offering for altruistic reasons irrespective of commercial payment, this is a lever to recognize and compensate for the sacrifice they are making and it feels like a paid service rather than unpaid in fairness to the surrogates time, energy, reduced abilities, pain that is required to deliver a baby for someone else.
- Any outcome ensures a reasonability test for the safety of baby, surrogate and Intended parent. There should still be in this reasonability test the opportunity for surrogate and Intended parents to make decisions on risk profile of pregnancy and birth
- This reform is necessary to respond to overseas changes in surrogacy law in the last few years (Turkey, Greece and Argentina either passing or in the process of passing surrogacy to be illegal to foreigners) and the unstable climate of the world (e.g. Ukraine) and the human trafficking and exploitation cases. We can't have Australians seeing overseas as the easiest option or having to spend a lot more money than Americans to surrogate in the US and navigate the anxiety of the distance and foreign medical system to birth their child. This reform must make Australians feel protected to explore surrogacy in their own country and it be easier to access surrogates to support the pregnancy journey and the medical and legal framework enabling the compassion and support needed in a surrogate process
- Creating a family is part of what it means to be human, where this is medically not possible, how can our society help return this human right to intended parents?

- There are significant mental health consequences to intended parents who want a child and are unable to achieve this. Keep the safety of these parents in mind and the protections Australian medical system and legal framework might be able to afford these vulnerable and suffering Australian citizens.
- Keep up with the times – laws and landscape is changing overseas, at least offer similar opportunities to Australians that other western countries are affording their citizens.

3. What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements and how should these be addressed?

Surrogacy arrangements both domestic and international raise several human rights concerns that must be addressed to ensure the dignity, safety, and fairness for all parties involved: the surrogate, the intended parents (IPs), and the child.

Equity of Access and Financial Burden

One of the most pressing issues is the financial inaccessibility of surrogacy Internationally, creating a need for Australians to be better supported in their own country. The cost of surrogacy in countries like the United States can exceed AUD $150,000–$250,000, making it unattainable for many Australians. This inequity forces IPs to consider less regulated overseas options, which can expose all parties to exploitation and legal uncertainty. Domestically, even altruistic surrogacy involves significant costs legal representation, IVF, agency fees, and medical expenses which can be financially and emotionally stressful.

Addressing this: Introduce optional, regulated commercial surrogacy within Australia to expand access and reduce reliance on risky international arrangements. A board review panel could oversee these arrangements to ensure ethical standards and prevent exploitation.

Legal Clarity and Protection

The lack of harmonised laws across Australian states creates confusion and limits access. For example, in Victoria, surrogates must have birthed a child before, which excludes potentially willing candidates. The post-birth legal parentage process is also burdensome, delaying access to essential services and recognition for IPs.

Addressing this: Harmonise surrogacy laws nationally and allow pre-birth parentage orders to streamline legal recognition and reduce stress for IPs and surrogates.

Autonomy and Informed Consent
Surrogacy arrangements must protect the autonomy of surrogates and IPs. The current altruistic-only model may limit participation, as many women view pregnancy as a significant physical and emotional sacrifice. Without compensation, their ability to freely choose surrogacy may be constrained by financial or social pressures.
Addressing this: Introduce a regulated compensation model that is optional and negotiated between IP and surrogate (with limits/range prescribed) and respects the surrogate's autonomy and acknowledges the physical and emotional labour involved. Ensure all parties undergo thorough medical and psychological assessments to support informed and voluntary participation.

Risk of Exploitation and Human Trafficking
Desperation among IPs due to limited domestic options can lead them to pursue surrogacy in countries with weak legal protections, increasing the risk of exploitation and trafficking. The global instability and changing laws in countries like Ukraine, Turkey, Greece, and Argentina further complicate this landscape.
Addressing this: Strengthen domestic surrogacy frameworks to make Australia a safe, accessible, and ethical option. Legalise surrogate advertising to help Ips connect with willing surrogates locally, reducing the need to seek arrangements abroad.

4. What information about the circumstances of their birth do you think children born through surrogacy should have access to? How should this be provided / facilitated?

   No comment

5. What do you think are the main barriers that prevent people from entering into surrogacy arrangements in Australia, and how could these be overcome?

   There are several significant barriers that prevent people from entering into surrogacy arrangements in Australia, many of which stem from legal, financial, and social constraints. These barriers not only limit access but also create emotional and logistical stress for intended parents (IPs) and surrogates alike.
   Financial Stress and Limited Affordability
   Even within Australia's altruistic framework, surrogacy involves substantial

costs, agency fees, dual legal representation, IVF procedures, and medical expenses. These financial pressures can be overwhelming and deter many from pursuing surrogacy domestically. International options, while previously more affordable, have become increasingly inaccessible due to geopolitical instability and rising costs, particularly in the United States.

Suggested reform: Introduce a regulated commercial surrogacy option to allow for negotiated compensation. This would recognise the surrogate's sacrifice and expand the pool of willing participants, while maintaining ethical oversight through a board review panel.

Legal Complexity and Inconsistency Across States

The variation in surrogacy laws between states creates confusion and restricts access. For example, in Victoria, surrogates must have previously given birth, which excludes many willing candidates. Additionally, the post-birth legal parentage process is cumbersome, delaying access to essential services and recognition for IPs.

Suggested reform: Harmonise surrogacy laws nationally and allow pre-birth parentage orders to simplify legal transitions and reduce stress for IPs and surrogates.

Limited Surrogate Availability and Advertising Restrictions

There is a significant imbalance between the number of IPs and available surrogates in Australia. The inability to legally advertise for surrogates means that IPs are often limited to their personal networks, which may not include willing or eligible candidates. This scarcity can lead to desperation and increased risk-taking, including pursuing surrogacy in countries with weaker legal protections.

Suggested reform: Legalise surrogate advertising to enable broader outreach and reduce reliance on international arrangements. This would help IPs connect with altruistic surrogates outside their immediate circles.

Social and Cultural Perceptions of Pregnancy

Many women view pregnancy as a major physical and emotional undertaking, and without compensation, it may be seen as an unreasonable expectation. The altruistic-only model limits participation, especially among those who have not completed their own families or who have never given birth.

Suggested reform: Provide the option for regulated compensation to acknowledge the surrogate's contribution and attract more participants. Ensure all surrogates undergo thorough medical and psychological assessments to safeguard their wellbeing.

Administrative Burden and Process Delays

The current surrogacy process is administratively heavy and slow-moving, which can discourage participation and create emotional strain during an already sensitive journey.

Suggested reform: Streamline the board review process and make it available nationally. Maintain rigorous safeguards while reducing unnecessary delays and paperwork.

6. Should there be eligibility criteria for surrogacy? If so, what should those requirements be?

   No eligibility criteria is necessary, with the counselling services, legal support and OB medical assessment there is no need for eligibility as these steps ensure the surrogate is informed and safe and understands their decision.

7. Are there any current requirements which should be changed or removed?

   Yes, remove requirement to have birthed a child (if deemed medically fit then that is fine) and remove the requirement to have completed their family (there is counselling to support the surrogate making an informed choice).

   Remove the requirement for it to be altruistic and enable the possibility should surrogate and IP choose, for compensation of pregnancy and labour selfless sacrifice offered.

8. Are there any requirements for a valid surrogacy agreement you think should be added, removed or changed?

   No comment

9. Should surrogacy agreements be enforceable?

   No Comment

10. What process requirements should be in place for surrogacy arrangements?

    No Comment

11. What are the gaps in professional services for surrogacy in Australia?

    No comment

12. What is the best way for professional services for surrogacy to operate?

    No comment

13. How should surrogacy advertising be regulated?

    It should be legally possible for IPs to advertise for a surrogate and their should be governing bodies that support connecting surrogates and IPs. IPs can fund the additional support potentially as that is still cheaper than risky and expensive overseas options.

14. What entitlements, if any, should be available to surrogates and intended parents?

Surrogacy is a deeply personal and complex journey, and both surrogates and intended parents (IPs) face significant emotional, financial, and logistical challenges. To support ethical, safe, and accessible surrogacy arrangements in Australia, a set of entitlements should be introduced that reflect the realities of this process and uphold the dignity of all parties involved.

Entitlements for Surrogates

Optional Regulated Compensation

Surrogates should have access to a regulated compensation framework that recognises the physical, emotional, and lifestyle impact of pregnancy. While many surrogates act altruistically, offering a fair and transparent option for compensation could broaden participation and reduce reliance on overseas arrangements.

Legal and Psychological Support
Surrogates should be entitled to independent legal representation and psychological counselling throughout the process. These services ensure informed consent, protect autonomy, and support wellbeing before, during, and after the pregnancy.

Medical Coverage and Leave Protections
All medical expenses related to the surrogacy should be covered, and surrogates should be entitled to maternity leave and workplace protections equivalent to those of birth parents. This acknowledges the physical demands of pregnancy and ensures surrogates are not disadvantaged professionally or financially.

Pre-Birth Legal Clarity
Surrogates should be supported by a legal framework that allows for pre-birth parentage orders, so that the transition of legal responsibility is clear and immediate at birth. This reduces stress and ambiguity for both parties.

Entitlements for Intended Parents

Access to Streamlined Legal Processes
IPs should be entitled to a simplified and harmonised legal process across all states, including pre-birth parentage orders and reduced administrative burden. This would allow IPs to focus on preparing for parenthood rather than navigating complex legal systems.

Financial Support Options
Given the high costs involved, even in altruistic arrangements, IPs should have access to financial support mechanisms, such as tax offsets or grants, particularly where surrogacy is medically necessary. This would help reduce the inequity that currently exists between those who can afford surrogacy and those who cannot.

Legal Right to Advertise for Surrogates
IPs should be entitled to legally advertise for surrogates within Australia. This would expand their ability to connect with willing participants beyond their immediate networks and reduce the pressure to seek arrangements overseas, which may carry higher risks.

Access to Counselling and Support Services
IPs should be offered counselling and support services to help navigate the

emotional complexities of surrogacy, including grief, hope, and the challenges of involving a third party in the creation of their family.

These entitlements would help ensure that surrogacy in Australia is safe, ethical, and accessible, while reducing the need for Australians to pursue arrangements in countries with less legal protection and higher risks of exploitation. They also reflect the compassion, generosity, and community-minded spirit that already exists among Australian surrogates and IPs and provide a framework that supports and protects everyone involved.

15. How could the process for reimbursing surrogates for reasonable expenses be improved?

No comment

16. Do you support a) *compensated* surrogacy and/or b) '*commercial*' surrogacy? You might want to consider whether you agree with how we have described compensated and 'commercial' surrogacy?

I support compensated surrogacy from the lens of reasonable expenses covered AND there is the option for additional payment to recognise the time, impact, physical burden, pain, limitations input on the surrogate for their sacrifice to help someone. Surrogates deserve to be compensated and also deserve to refuse to be (but keep the option there).

17. If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented?

Introducing compensated or commercial surrogacy in Australia would require a carefully regulated framework that protects all parties involved, surrogates, intended parents (IPs), and the child, while expanding access and reducing reliance on overseas arrangements. Based on lived experience and current challenges, the following implementation approach is recommended:

Establish a National Legal Framework

Australia's current surrogacy laws vary significantly between states, creating confusion and limiting access. A harmonised national framework would ensure consistency, fairness, and clarity for all participants.

- Define clear eligibility criteria for surrogates and IPs.
- Standardise medical and psychological screening requirements.
- Ensure legal parentage can be transferred pre-birth to reduce postnatal stress and administrative burden.

Introduce a Board Review Panel (can apply framework from VIC legislation but make it streamlined, more regular, faster, easier)

A centralised board review panel, similar to the model used in Victoria, should be implemented nationally to oversee all surrogacy arrangements, including those involving compensation.

- The panel would assess each arrangement to ensure informed consent, ethical standards, and protection against exploitation.
- It would serve as a safeguard to evaluate the reasonableness of compensation and the wellbeing of all parties.

Allow Optional Compensation

Compensation should be permitted as an optional element, negotiated between the surrogate and IPs, and reviewed by the board panel.

- This recognises the surrogate's physical and emotional labour and may encourage broader participation, especially among those who cannot afford to take on pregnancy without financial support.
- Compensation should be capped or guided by a reasonability test to prevent commercialisation and ensure fairness.

Legalise Surrogate Advertising

To address the shortage of surrogates in Australia, IPs should be legally allowed to advertise for surrogates.

- This would enable outreach beyond personal networks and reduce the desperation that drives people to pursue risky international options.
- Advertising should be regulated to prevent coercion and ensure transparency.

Streamline Administrative Processes

The current surrogacy process is often slow and burdensome. A commercial model should be accompanied by streamlined procedures that maintain safeguards without unnecessary delays.

- Digitise and simplify documentation.

- Provide clear timelines and support services for both surrogates and IPs.

Ensure Access to Support Services

Both surrogates and IPs should have access to legal, psychological, and medical support throughout the process.

- Counselling should be mandatory and ongoing.
- Legal representation should be independent and funded as part of the surrogacy arrangement.

This model would allow Australia to offer a safe, ethical, and accessible surrogacy pathway that reflects the compassion and generosity already present in the community, while responding to the growing demand and international challenges. It would also reduce the risk of exploitation and human trafficking associated with unregulated overseas arrangements, and ensure that Australians can build families with dignity and support.

18. What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

It's done after the birth, from the earliest 4 weeks after baby born. IPs and surrogates have a lot more important things to get focused on at that point then going to court and applying for a parentage order. That level of anxiety is cruel to put on an IP after everything they have been through.

19. How could the process for intended parents to become the legal parents of children born through surrogacy be improved?

Do a parentage order that the surrogate completes and IPs complete before the birth and list the baby at time of birth on the birth certificate OR issue a new birth certificate shortly after with the pre-paperwork already lodged.

20. What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy:

a. Australian citizenship;
b. an Australian passport; or
c. an Australian visa.

No comment

21. How could the process for obtaining these documents be improved?

No comment

22. What is the best way to approach differences in surrogacy regulation between or within jurisdictions?

No comment

23. Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach?

No comment

24. Should the law have a role in discouraging or prohibiting certain forms of surrogacy?

The law should prevent exploitation of women as a commodity and should prevent international opportunities from accessing Australian surrogacy support channels as this is more difficult to regulate and can expose us to exploitation. Finally the law should have the reasonable steps and process to ensure surrogates are safe, willing and able to carry and that the IPs experience is treated with care and the baby is provided every opportunity to be born safety and healthy into a happy loving family.

To iterate, this should only be a legal framework for Australians and only Australians should be supported to participate given otherwise it is more challenging to ensure exploitation is prevented.

25. Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices?

Yes, it is not taboo. We are a loving couple, of average income, that had a terrible consequence that was preventable and foreseeable in a D&C miscarriage surgery and we deserve to be parents.

Hospitals, Medicare, parental leave, centrelink should all recognise surrogates and IPs involved in the birth process and afterwards and given support and treated compassionately and with equal rights to birth parents.

This shouldn't be a scary black hole for intended parents where it feels all to hard.

26. Do you have any views about the issues we consider to be in or out of scope?

No comment

27. Are there any important issues with regulating surrogacy that we have not identified in the Issues Paper? Do you have any other ideas for reforming how surrogacy is regulated?

No comment

Thank you for considering my submission.

Yours Faithfully,

[redacted]