[redacted]

11 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.

I am a [redacted]-year-old intended parent involved in surrogacy with our surrogate who's currently 23 weeks pregnant with our first child using a donated egg facilitated by two fertility clinics located in Victoria, following Victorian laws, including a surrogacy agreement locally.

I have read the Issues Paper and have responded to the questions posed in the paper below.

I seek that my submission be de-identified.

Firstly, before providing feedback on the Issue Paper to review surrogacy laws, which is well needed, I wish to share my seven story that has led to currently being 23 weeks pregnant via altruistic gestational surrogacy in Victoria:

1.0 Personal background

- I had a lovely childhood growing up in [redacted], Victoria with my parents and younger brother.
- I always had a love of being connected with family, friends, pets and nature in a loving, comfortable and supportive environment so I could be my best in life.

- I attended a private girl's school in [redacted] and was always confident in being myself including becoming the first female engineering in family (four generations of male engineers), playing sport (including as a pioneer in women's cricket), loving fashion and make-up, gardening and designing and building my first house by myself in my 20s including being on the tools every weekend. Surrogacy I found was another of those unique paths in life where I had the vision of becoming a parent which I'd achieve at all cost and effort.
- I'm charted professional engineer with an MBA, and over [redacted] years of service as a public servant in the Victorian State Government. I work in Government as I enjoy ensuring the best value from taxpayers' money and delivering services so that the community can enjoy their built and natural environment they live in to a high standard.
- As an engineer I care about the community and want the best value through being practical, timely and challenging the status quo though a culture of continuous improvement with a quality management system, overseen by good governance where customer needs and requirements (such as legislation & regulations) remain aligned and current. Community value is then achieved through balancing risk, costs and performance in an organisation using the right controls. Fundamental to success!

2.0 IVF journey

- With my husband at the time having a low sperm count we found ourselves attending a seminar on IVF facilitated by [redacted].
- With my ex-husband at the same time being part of a men's behavior program and then deciding after we just started IVF treatment that he did not want children due to his controlling behavior and depression. I was left with the counsellors at Monah IVF in tears with my dreams over.
- I then took control of my life around the age of 38 so I could be happy again and not be controlled anymore by choosing to freeze 28 mature eggs over four cycles for the future.
- When I explored with Monash IVF the option of using a sperm donor to start my family by myself, I wasn't allowed as I was in the process of a divorce. This was my first barrier to IVF services. I was thinking why can others not married or those broken up from a de facto relationship still access IVF services to create an embryo? Why can't I make my own decision? Why does the government and clinic have to make the decision for me?

- A couple of years later, after being officially divorced and finding the most amazing family orientated partner who is an IT consultant, never married and who's father was [redacted] and mother an [redacted], we started the journey of creating embryos following a letter received from my Doctor that they had moved from Monash IVF to a new clinic he had started with other doctors, called Newlife IVF.
- Newlife IVF was more patient outcome focused, more affordable, closer to home, new laboratory equipment, easier to get appointments, and willingness to give new techniques a go.
- Including the four cycles at Monash IVF, in total we spent approximately $180,000 out of pocket to undertake 30 egg retrievals over a seven-year period, resulting in 263 eggs to create six PGT normal, three mosaic, and 17 abnormal embryos. We thought for our ages this was amazing and believed in science, knowing that to create two children, given the chance of live birth quoted by clinics and science studies we had 95% chance of live birth transferring up to three PGT normal embryos.
- After five failed transfers using five PGT normal embryos (the third resulting in a miscarry at 9 weeks and a dilatation and curettage, our positivity and hope was coming to an end. We didn't see the sense in transferring our remaining four embryos. We had tried every type of cycle plan possible, including natural, various medicated with drugs and the latest PRP into the uterus.

3.0 Surrogacy journey

- In the back of our mind, we knew a family who completed their family using a surrogate. My partner went to high school from prep to year 12 with a close friend who married in their early twenties and now live near us. They are from an extremely wealthy family and went through hell (including the wife not being able to continue her career for an ASX top 100 company and losing many close friends given their age at the time, due to a lack of understanding to support). They undertook countless IVF cycles in Australia. This was at a time before PGT testing. As a last resort they tried surrogacy in the US, using what they call a "tummy mummy" to create the two beautiful daughters they have today. Talking with them well over a decade later, it still affects them thinking of their surrogacy journey and the lack of support in Australia they had. After the birth coming back to Australia one mid-wife thought they were doing something illegal by having a child via surrogacy and they had to find a private mid-wife who they trusted, at their cost to help support being new parents. They have also had to manage being different in mothers' group

and having to navigate life with kids and parents in the school yard not understanding surrogacy.

4.0 Surrogacy research

- Our surrogacy journey started by researching websites about surrogacy.
- Quite early on I concluded that surrogacy in Australia was too hard if you don't have a relative or close girlfriend under 40 who has completed their family and offering to be our surrogate. The only option was overseas.
- Given my unknown fertility issues, age and the fact that we were starting to run out of embryos, we communicated our intention of exploring surrogacy with our fertility specialist to consider the options and understand the process.
- Our specialist and clinic post the clinic's internal medical review panel, agreed to explore the option of using a surrogate and we were given the contact details of their donor coordinator who presented us with guideline one-pager of where we can find more information externally and then come back to them if we find someone.
- I listened to various Australian podcasts exploring surrogacy in Georgia and Sarah Jefford interviews with various clients and advisors from the industry sharing their autistic surrogacy stories in Australia. I also purchased Sarah Jefford's book "More than just a baby", explored her detailed website and found a great process map by Surrogacy Australia.
- Wow, what complex world had we just entered, and Victoria was on another bureaucratic level.
- We found that in n Victoria, we were prohibited to advertising any publication, statement, advertisement, notice or document with the intention to find or become a surrogate, including via newspaper, television, radio or the internet. As an Intended parents who would have thought it was illegal, and we could be charged.

5.0 Finding our surrogate

- I joined Facebook surrogacy groups in Victoria and Australia in the hope of meeting others to hear about their stories as intended parents or as a surrogate and find out whether there was a chance to have a surrogacy birth in Australia or that we were best to go overseas.
- After joining the Facebook groups, I got out of my comfort zone (being a typical introvert engineer when it came to social media) and posted a

message to introduce ourselves with a few lovely photos of us [redacted].

- After posting we reached lots of great support from the community and not long after was asked by the administer to look in my personal messages.
- On [redacted] May 2023 [redacted], from the Victorian Surrogacy Facebook Group reached out to me via Facebook messenger to say hi and request whether I'd be interested in catching-up for a coffee. Being out of my comfort zone again with the unknown, I thought we'll I have nothing to lose just like dating or a coffee catch-up at work.
- [redacted] and I caught-up for coffee and we just clicked straight away with similar connections including our partners working in IT, growing up near each other, being born at the same hospital and [redacted] living near the area where I went to high school. [redacted] was 36 and had two lovely daughters with a great supportive family nearby. [redacted] was also smart (being trained as an embryologist) and hardworking, travelling nationally five days a week as a marketing manager for [redacted]. Knowing [redacted] was in the industry and understood IVF had me at ease in relation to starting to build trust and connection. [redacted] explained that her sister had been a surrogate, and she wanted to do the same for a family who couldn't have a family on their own.
- Soon after our meeting and being introduced to [redacted] family, [redacted] offered to be our surrogate which made me feel in shock but also overjoyed that we had found a local surrogate in Victoria which was about a 21% chance.

6.0 Surrogacy agreement application process

- using my clinic we commenced the eight-month process for us to present (noting without our clinic) our case to the Victorian Patient Review Panel (PRP) to obtain a surrogacy agreement to commence treatment.
- As a team, with busy lives we attended numerous medical scans and appointments to firstly justify medically whether we needed a surrogate and determine whether [redacted] was a suitable candidate to be our surrogate. After passing the medical stage, we then had to attend five counselling sessions, three psychological sessions, and a couple of legal sessions, at a total cost of approximately $12,000, we submitted our application to PRP on 7 December 2023.
- Our panel hearing was on 27 February 2024 including [redacted] and [redacted] as the surrogate / partner, [redacted] and I as the intended parents, and at least

ten members on the panel via Teams online. We were questioned for nearly an hour answering all their questions that we had prepared for that aligned with VARTA guidelines for surrogacy in Victoria. To our surprise after the meeting, the chair called me personally to advise that we had been approved with documentation to follow.

7.0 IVF treatment commenced using a surrogate

- We were back in a world I felt comfortable with, and [redacted] commenced IVF treatment involving the transfer of our last remaining normal PGT embryo, early March 2024.
- Costs in IVF using a surrogate we also learnt were significantly higher than when I was a patient, including no Medicare rebate, a surrogacy management fee of $1,137 and the full cost of an embryo transfer of $3,954 by the clinic. My usual transfer costs were usually $2,945 (given I had private hospital cover) with approximately $1,600 Medicare rebate.
- After the two week wait, we found out we were not pregnant.
- With three remaining mosaic PGT embryos, as a team we all undertook counselling to explore the risks of usings these embryos. The two low level embryos were approved by out clinic to transfer with the remaining high level +21 PGT embryo remaining in storage.
- In April and June 2024, two embryos were transferred, resulting in a negative pregnancy.

8.0 Egg donor and contingency planning

- While waiting for PRP approval over the 2024 summer break, like nay good project manager I was working on a back-up plan. What happens if our last remaining own embryos are not successful?
- Exploring more websites and Facebook groups, this time on seeking donor eggs, I learnt that given our surrogate and we are in Victoria, treatment using donor eggs must occur in Victoria. I also found out we couldn't just import eggs into Victoria from overseas egg banks, like you see on T.V. shows, and we could find a clinic recruited egg donor.
- Wow, another impossible moment in life, how do I find a known or anonymous donor in Victoria. All our friends and family are mostly over 40. One sister-in law offered, however was my age.
- Following Victorian laws, on 19 January 2024 we sought approval from the Minister for Health, aligned to VARTA's website, to advertise for an egg donor on social media forums. On 26 October 2024 approval was granted, approximately 9 months turnaround.

- While waiting for the Minister for Health's approval, I spoke with my clinic and also [redacted] clinic where she worked about the possibly of a clinic recruited egg donor. My clinic, who we invested a large amount of money, didn't have any donors currently but said if they did, I would be on the top of their waiting list. They didn't focus their business on donor programs either. [redacted] clinic was a better chance, as having a national donor program with good process. Usually there was a 2-year wait, however when they find someone, we had no control of selecting the donor based on looks or background.
- In that time waiting for the Minister's approval and waiting for a clinic recruited donor we found a lovely [redacted] in Tassie who our sister-in-law worked with offered to be our donor. The [redacted] was young, 33 years old and not wanting to have children, with a passion for wanting to help others create a family.
- Given City Fertility understood the management of donors more than Newlife IVF and we were already in their system, as exploring clinic recruited donors we commenced counselling from 1 May 2024 to create embryos using donor eggs.
- On 15 August 2024, we flew our egg donor and her partner to Victoria at our cost for treatment, and successfully collected 22 eggs to create three untested high grade embryos to froze.

9.0 IVF treatment commenced again using embryos created by donor eggs

- Given [redacted] worked at City Fertility, we moved our new embryos back to Newlife IVF.
- Prior to starting treatment again, we had to undertake two months of more counselling, including the donor and her partner with our surrogate and partner. We also had to engage our two lawyers again to update legals.
- A PRP amendment application was submitted by me on [redacted] 2024. Given we understand business processes we asked the Chair of PRP whether we could not have to wait for the following year to attend a PRP hearing (that may be also ceasing to exist) and whether they would undertake a page turn as a committee at the next PRP, given a surrogacy agreement had already been issued, with this being an amendment. The Chair kindly agreed, and the surrogacy agreement amendment was issued on [redacted] 2024
- With our clinic closed over the summer break, [redacted] received the first embryo created using an egg donor on [redacted] February 2025.
- On the [redacted] March 2025, we were all advised that we were pregnant! The date being the [redacted] November 2025.

- As a team we have been attending scans, doctor and mid-wife appointments. To date we have all been treated fairly and accommodated.
- We're having a boy, who has met all his milestones.
- [redacted] is healthy and managing the pregnancy well. The bad news is that she recently lost her high paying job, where her contract had been extended for another 12 months, however two months into the contract was told that they made a mistake financially and she was now to become unemployed. We felt so bad as she was also concerned how to get a job while pregnant. How do we support her financially as she would have had unpaid leave around the birthing time where we would reimburse costs.
- [redacted] has recently asked for help from a cleaner and gardener which we are reimbursing her for to reduce the risk of being around chemicals and for her to focus on her pregnancy.

10.0 Hospital care & the birth

- Our current challenge is planning for the birth currently with Monash Health in [redacted] According to [redacted], this hospital is one of the worst hospitals in Australia for facilitating a surrogacy arrangement [redacted]
- **Why we choose Monash Health** - [redacted] & [redacted] had a great experience previously to help deliver their two lovely girls. The hospital is also close to their home and there are great maternal health facilities.
- **What we want before the birth:**
    - Not to meet with the Monash Health's Lawyer as proposed by our mid-wife on [redacted] May 2025, without having a lawyer present. This feels quite threatening with [redacted] being a patient of the hospital. Is this usual practice for all patients? On the 4 July it was agreed that our lawyer is welcome to engage if required.
    - We would love a positive, collaborative & professional experience with Monash Health, so we all work together as a team – this is in the best interest for all patients.
    - Fair application of surrogacy – aligned to best practice & law.
    - On the [redacted] 2025 Monash Health, [redacted] recognizes a Parenting Plan, signed by the surrogate, surrogate partner and intended parents. This is a formal agreement between all parties which

recognise [redacted] and [redacted] 'relinquish' of the baby to [redacted] and [redacted] Hopefully this assists the hospital to accept that the baby is to be fully cared for by the intended parents.

- They don't agree to a separate room for the birthing and intended parents.
- On the [redacted] 2025, the mid-wife said that [redacted] as the patient must be released with the baby, even if the baby needed to stay in their longer. [redacted] wants to leave as soon as she can walk out of the hospital and 'relinquish' care to us.
- The only way Monash Health will agree to this is if the intended parents arrange at their cost their own private mid-wife, which we have agreed to.
- At our meeting on the [redacted] 2025 the first mid-wife advised that after being discharged a mid-wife would attend both properties where the birth parent would be recovering and the baby with the intended parents. This was changed on [redacted] 2025 where it was stated that only one property would be visited.
- On the [redacted] 2025 parent classes with the hospital was offered to the intended parent. In the first appointment on the [redacted] 2025 it was advised that the intended parents would need to find parent classes at their cost.

- **Currently we're concerned about Monash Health's outdated application of surrogacy law:**
  - The Monash Health surrogacy guideline was only updated recently.
  - We find it concerning that it uses the terminology "commissioning parents" - In Victoria we've gained a great understanding of the laws having gone through the right process and approval from State Government's Patient Review Panela and use the terminology "intended parents". The Australian Government simplifies Terminology | Surrogacy in Australia. "Commissioning Parents" is usually referred to in commercial surrogacy which is illegal in Victoria. However, we recognise it's referred to under the Status of Children Act 1974 (Vic) for the Parenting Order. We have an altruistic surrogacy arrangement, hence "intended parents". Monash Health is known in the legal industry as the worst hospital in Australia to have a surrogacy birth – this worries us.
  - Monash Health's Guideline is not consistent with our experience of surrogacy, or [redacted] intentions for the pregnancy or birth.

- Monash Health's Guideline states that the surrogate retains her autonomy – we expect that that extends to [redacted] being able to make the decision not to care for the child she birthed.
- Part of continuous improvement (as we saw on their hospital notice board) to ask the question (which we did on [redacted] 2025 at our 22-week appointment with the mid-wife) whether there was an opportunity to improve their Guideline to ensure everyone has a consistent experience across Victoria and Australia? Part of continuous improvement. A response is pending.
- We are having some doubts with Monash Health's practice when managing surrogacy as we have heard both negative & also positive stories, plus dated practice:
- Negative story - during COVID lockdowns, they absolutely refused to budge on their policy and were generally obstructive and awful to everyone. In the end, the surrogate delivered next door at the [redacted] hospital because [redacted] Hospital staff were so unhelpful. Even approaches to their lawyers fell on deaf ears.
- Positive story – a surrogate birthed at [redacted] Hospital in the last 3 months and reported a positive experience.

- **What we want for the birth**
  - [redacted] **right to autonomy, including the right not to care for the baby and to relinquish the baby to the intended parents** (as agreed under a surrogacy agreement approved by the Victorian Government)
  - **The child's right to be cared for by it's intended parents, from birth**
  - **It is proposed that [redacted] & [redacted] (the intended parents), care for the child post birth with consent given by [redacted]** for her not to care for the child.
  - [redacted] **is proposing to breast feed the child post birth and is proposing to produce milk from mid-September before the birth by implementing an inducted lactation** plan developed by a lactation consultant in partnership with her gynecologist / fertility specialist. This enables the child to build an early, natural bond with the child and is in the best interest of the child.
  - **Refer to attachment A – outlining the difference between Monash Health's surrogacy guidance and Sarah Jefford's best practice guidance for medical providers.**

11.0 Response to the Issues Paper 52, Review of Surrogacy Laws, June 2025

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1. **If you or someone close to you has had personal experience of surrogacy, please describe:**
    - **What parts of your experience were positive?**

- **Finding an amazing and kind surrogate and egg donor**, against the odds, with treatment in our hometown of Victoria.
- **Legally** – having amazing surrogate lawyers in the industry who are kind, past surrogates or intended parents themselves (lived experience) who act with integrity, are practical and leading the way to make a real difference to help intended parents become a parent and surrogates to achieve their goals too, while ensuring an ethical and fair arrangement between all parties. I wish lawyers in other industries (especially commercial and family law) were more practical and solution focused like surrogate lawyers practice. The world would be a more efficient and better place with knowledge more accessible for people to make informed decisions. Our lawyers are Sarah Jeffords and Nicole Russell in Victoria, both exception people and professionals.
- **Having a successful pregnancy via surrogacy after 7 years**.
- **Having the birth in Victoria,** Australia, 30 minutes from home and 5 mins from our surrogate's house.
- **Knowing we have a great story to tell our future son** about how loved they are and the effort it tool to create them with the help of two kind strangers (now known by us and can be known by the child when they are 18-year-old).
- **Having a Victorian surrogacy agreement** - to pass onto Medicare and the Federal Court to seek a Medicare card for our child and parenting order. Time will tell if as successful and smooth process.
- **Being altruistic** – amazing to create a respectful relationship with our surrogate and get to know her family. Hopefully will be part of our family for a long time. Better value for us as the intended parents knowing that big companies or individuals aren't profiting commercially.
- **VPS agreement** - In Victoria working for State Government – great to seeing surrogacy recognised in the new VPS agreement for the surrogate and intended parents (as primary carer). Wording including using the terminology 'surrogate', and 'surrogacy parent' and application could be further refined. I can provide feedback via my union Professional Australia – who represents professional engineers. Consistency in paid leave could also be reviewed to align with Part 4

of the Assisted Reproductive Treatment Act 2008 (Vic). As an intended parent we can pay up to 2-month salary. Reference: Surrogacy Leave.pdf

- **Federal government parental leave** – great surrogacy is recognised where the surrogate and intended parents receive leave. 24 weeks – post meeting a criteria.

- **What parts of your experience were negative?**

- **Lack of accessible information** – must join closed Facebook groups, numerous clinics lack knowledge, some information may not be validated when people are not professionally trained in business or legally or medically guiding others from their live experiences in various States and Territories of Australia.
- **Agreements legally not binding** – surprised by the lack of legislation and regulations in Australia where in Victoria a surrogacy agreement is not legally binding and enforceable as in contract law.
- **Years of extensive counselling** when we all knew what we wanted, we were all well-educated / clinical in our approach to keep finding solutions and moving forward in life - we all felt that the counselling was too many sessions to what benefit we got out of the sessions. Some partners (surrogate and egg donor) had strong partners who wanted to be a surrogate and egg donor and didn't understand why their partners needed to be involved in the process as it was their own body. I guess legally they have a role but could have a choice.
- **A lack of project management and time management by the clinics** to manage our surrogacy and egg donor journeys. Their processes were not clear, and they cared more about feelings than scheduling dates and achieving paperwork / reports in a timely manner to present to the patient review panel and achieving our happy outcome. We had to manage and drive the clinic like a contractor in a project and escalate issues the clinical Director / specialist if we were given misinformation (e.g. a surrogate can't use mosaic embryos, when they can post counselling, not understanding the PRP process, not assisting in donor egg process), not responding to our questions, not booking in appointments etc.
- **Lack of knowledge on surrogacy and egg donor process by clinics** – some clinics only care about undertaken IVF cycles, not what's the best solution to achieve the best outcome for the best value for patients.
- **The full fees charged by IVF clinics, plus surrogacy management fee** when it's for a surrogacy with no Medicare rebate.
- **The significant time it takes to find a surrogate and egg donor** in Australia and the luck involved.

- **The in-consistent application of surrogacy laws** by health care providers and services Australia by not following their own policies or having dated policies
- **Waiting 9 months for the Minister of Health in Victoria to approve** a social media ad for us to seek an egg donor
- **Knowing our surrogacy agreement isn't legal binding** – our surrogate could keep our baby or we as the intended parent may not accept the baby post birth
- **The number of personnel on the patient review patient review panel in Victoria –** value of tax payers money? – 3 chairs, child protection officers etc. Everyone was lovely and kind on the panel. We come from a business background and understand panels / boards – how do others patients feel. Could be quite intimidating & lack of support from clinics.
- **We have remaining embryos as an intended parent –** it's confusing how do we create a sibling for our son? Our current surrogate is now nearly 40, given the long process to get to where we are now, starting when she was 36. Do we find another surrogate? Such a long process in Victoria. How do we transfer the embryos overseas? Do I get a second opinion to potentially transfer to myself - can another doctor find the underlining issue why good embryos couldn't work – endometriosis, heart shape uterus? fibroids? killer cells? just bad luck? Best chance is a surrogate with a heathy, tested uterus.

- **What could be improved and how?**

- **The health system**, in relation to surrogacy services is Australia is not meeting my needs as an intended parent. It's a high risk broken system that is need by many intended parents to grow their family.
- **Better processes** to achieve the outcome of having a child via surrogacy by having the right controls and oversight to implement safe surrogacy practice in Australia that is practical, timely and as a risk-based approach is no different to other good business practice.
- As an intended parent, improving the surrogacy experience as an intended parent in Australia when dealing with the Government and service providers in the health industry who all appear well out of touch
    - **More support and services from clinics** around navigating surrogacy and egg donation
    - **Decision making** should be more with the intended parent and surrogate, particularly in IVF.
    - **Minister for Health in Victoria should not have delegated authority to approve an ad for us as intended parents to find an egg donor** – waste of the Minister's time, our time and the value it brings

- **We should be able to advertise freely to find an egg donor and / or surrogate –** agree in both cases the surrogate and egg donor should state they wish to donate / be a surrogate for the intended parents as their own body, but they need to know that's the case / rules of engagement
- **More awareness campaigns by Government on the benefits of being a surrogate or donor.** Most people come from the health industry as in the case of our surrogate and egg donor. As intended parent we have to educate our family, friends, medical providers (on occasion) and work colleagues.
- **Medicare Rebate for all IVF treatment –** If using a surrogate – why can't the IVF treatment be the same cost as a female patient transferring to her own uterus. Now there is gay marriage – everyone is entitled to become a parent. A male must find a donor egg and surrogate. Massive cost (no Medicare rebate) and challenge. A female may also need to find a sperm donor. The need will just increase overtime, knowing it's possible. Great for population growth.
- **We should be able to import embryo, eggs and sperm from overseas banks as intended parents into the State of Victoria freely –** as long as the donation banks has undertaken due diligence – e.g. counselling and legal agreements of them to hand over what is donated and can't pull out of it / change mind.
- **We should be able to transport our embryos / eggs / sperm freely overseas** to transfer into a surrogate (under a commercial or altruistic agreement).
- **Consistent laws across the whole of Australia –** including the same common definitions and terminology in all relevant legislation (e.g. commissioning parents or intended parents – related to commercial or altruistic surrogacy arrangements?)
- **Better laws to recognise the role of the intended parents** so that the birth parent doesn't have all of the legal rights / decision making. Why can't the intended parent be recognised legally e.g. pre birth paperwork.
- **Clearer laws / regulations on what the surrogate can claim –** do they need to provide receipts like we do in the workplace for expense claims (e.g. cleaning / gardening – as some small businesses accept cash). Can be confusing in application.
- **More efficient processes to speed up time –** better access to potential surrogates, egg donors, more knowledge of the process & support by service providers, less counselling (or condensed based on needs as a risk-based approach).

- **Better access to trained surrogate psychologist for assessment report for PRP in Victoria –** some professional had 3 month waiting time for an appointment.
- **More transparent success rates & information to make informed decisions –** publish people's success and failure stories more. Why do we need to keep joining up to the numerous Facebook groups to seek information we don't get from clinics.
- **Less regulation for clinics to make our decisions for us –** why can't surrogates transfer mosaic or abnormal embryos? In the US as a patient, they are given the information to take a chance / make an informed decision – e.g. why do clinics have to destroy all our PGT tested embryos that are abnormal when the accuracy of the test isn't 100%. Why can't we take the risk to transfer a HLM +21 as it may self-correct or don't implant or we abort at 10 or 12 weeks? In the US there has been live births from these type of embryos. [I've personally destroyed over 17 PGT abnormal embryos from 30 egg collections]. What happens if science catches up and we can modify the genetics at the embryo stage. I would prefer to freeze these embryos and destroy them myself when I feel it's the right time.

2. What reform principles should guide this Inquiry?

- Agree with the ones proposed
- Additionally:
- **Value** – what is the cost (to the taxpayer and individual) and benefit against various options, medically, to achieve the highest chance of a safe live birth and in a timely manner for the intended parents. More holistic, risk-based approach required. How many failures triggers the need for surrogacy at various ages?
- [Example - I personally had 5 failed implants using PGT normal embryos for a person over 40 years. I should have been given the option of surrogacy earlier and could have had my own genetic child opposed to now a donor created one. What was my odds / costs / options? to achieve a live birth? We put so much trust in our medical provider to make informed decisions].

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?

Agree with the children's rights, surrogate's rights and intended parents rights outlined.

After watching the movie on Netflix called 'Baby Farm', it really brings home what can happen if people's rights aren't protected and they aren't free to make their own choices in life. Being held a prisoner against their right to be free and forced to produce babies is not acceptable in life.

As an intended parent it would be great if we have more certainty around our rights post birth – e.g. right to care for our baby when born, including breast feeding., right to the same services the birth parent gets when having a baby (why can't we just agree between ourselves what role we will play and when). The child should have the right to receive the same services from the health care provider. Intendent parents shouldn't have to seek private services when a public hospital refuses to only service the birth parent.

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?**

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?**

- **It's quicker result overall to go overseas** via commercial surrogacy compared to altruistic surrogacy, especially in Victoria as I've personally experienced (taken seven years to achieve the first pregnancy, now at 22 weeks).
- **Overseas via a commercial surrogacy agreement does come with high risks and significant time off work** – being away from home with no support and managing risks including different cultures, laws, risks of trafficking surrogates / farming, seeking passports and legally coming back to Australia via the right states.
- **The lack of support and knowledge by fertility clinics in Australia to consider the real option of using a surrogate** in Australia to increase the chances of a live birth. Why does countries like the US (e.g. celebrities, like Rebel Wilson) allow patients the option of using a surrogate when over 40 (and in Rebel's case also have PCOS).
- **The extensive bureaucratic process, particularly in Victoria,** adding years to achieve a successful outcome. Quicker to go overseas, however can be less ethical and in the best interest for the child long-term.

- **Knowing how to find a surrogate and also finding a surrogate when you don't have close friends or family who is young and can offer to be a surrogate for you.**
- **The lack of protection legally in Australia for intended parents and also the birth parents –** it's a real trusting relationship where in Victoria the child isn't legally the intended parents
- **Lack of recognition of a government issued Surrogacy Agreement.** Even when you do have a surrogacy agreement executed (in Victoria) – there is inconsistent recognition of this agreement by Medicare, and hospitals. Monash Health for example in Victoria have an in-house lawyer who is not practical and dated in their approach for surrogacy. Everything we're learnt from our expert surrogacy lawyers, including best practice guidelines, they are not applying. The hospital in their own guidelines will pick and choose when and who is the legal or intended (or commissioning) parent and who can make decisions about the child across the activities from the birth planning, to birthing and discharge of patients (being the child and birthing parent). As intended parents we don't get all the pre and post services like the birth parents do (e.g. parent classes). I feel as an intended parent I'm not being respected and recognised as the future parent where we intent to care for the child post birth, including breast feeding (via induced lactation). The birth parent should also have a right to autonomy and relinquish the baby to us for care. A consent form can be signed using Sarah Jefford's template (agreement between the birth parents and intended parents) – we still don't know whether the hospital will accept this document. Feel like we can't negotiate as they, including their lawyer wanted to meet with us around 22 weeks, without our lawyers.

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

Yes, but a simple criterion that is practical and can be applied as a risk-based approach – case by case approved medically and individually to form a surrogacy arrangement between parties.

Disagree:

- Restrict eligibility (e.g. WA)

Agree:

- National consistency on application
- Removing eligibility requirements that exclude some people or groups

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

- All parties should be protected more, legally (i.e. legally binding surrogacy agreement). As an intended parent, there would be no worry that the surrogate will keep the baby post birth. Also, the intended parent will not accept the baby if there was a criteria for an agreement to be legally binding (like a contract). However knowing that this is 0% chance in Australia, could be no risk. It would help with other processes though – particularly when applying law and health provider services more fairly.
- If a female wishes to carry a child for an intended parent, they should have a right to do so at any age if all parties agree.
- As an intended parent following the current criteria in Victoria it has worked for us personally. Knowing our surrogate has completed her family provides less risk for us knowing that that she will not keep the baby post birth and that she's more mature at the age of [redacted] to make responsible decisions. A tested surrogate is also a great role model for intended parents, if they have had children before.
- Surrogacy should be considered as solution to having the best chances of live birth using a tested uterus, particularly when the embryos are over the age of 40. This may result in less IVF treatment and cost. Example - we have for example spent over $180,000 out of pocket on 30 IVF cycles with no live birth. Could the other 5 PGT tested embryos that didn't work for us, have more success using a tested surrogate?
- Risk based approach – medical success, surrogacy agreement intent achieved. Overall all parties involved should be well informed and make the right risked based decision for themselves / family and decide whether to enter into a surrogacy arrangement or not.

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

- Making them legally binding and enforceable nationally – like in contract law where this document could then be used as evidence to fast track for example parenting orders or get rid of the parenting orders and just issue the right birth certificate from the day of birth. Recognise the roles of the birth parents, parents and donors (if applicable).
- The question is also who has delegated authority or are the parties for enacting a legally binding agreement to be enforceable.? PRP – maybe appropriate nationally but needs to be well supported.
- Changing all legislation / regs / process to recognise a valid agreement.

- Standardised agreement (template) nationally. Legal advise sought for special conditions or oversee of agreement.
- To be enforceable in family law (like a financial agreement) I assume the agreement has to be reviewed by two independent lawyers who specialise in surrogacy).

9. Should surrogacy agreements be enforceable?

Yes. Comments in question 8.

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

- Agree counselling could be made available to the child, under the age of 18.
- If legal advice and counselling wasn't provided all parties wouldn't be making an informed decision to form such agreement. Having more knowledge, particularly the current inconsistencies in various legislation & regs can create life changing problems (e.g. keeping a child)
- I wish there wasn't the need for a parenting order – just adds more stress due dated law.
- Standard agreements – with counsellor or lawyers available to ensure an understanding for application.
- More education and guidance (various channels / types) for all parties involved in surrogacy, including health care providers.

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

- Regulated surrogacy matching services
- That would be amazing to have better administrator / coordination at a cost to drive the process in a timely manner given fertility is also time bound (if it remains a bureaucratic process, e.g. surrogacy agreement via PRP).
- Clinics currently charge for some of these services, but they don't for example prepare the PRP application and drive timelines. They are only involved in providing health care services like IVF treatment and counselling. They have limited knowledge of current processes, law etc.
- I see the services like putting together a planning permit application into a planning permit system following a set guideline.

- Happy for surrogacy agencies to operate in Australia, as long as they are regulated and have transparent commercial values.
- The government should regulate these services to ensure parties are not taken advantaged of and provide more guidance material, like Sarah Jefford provides for free as an advocate of surrogacy. The Australian Government should engage someone like Sarah to provide such information in a centralised accessible location.
- Agree – there are limited access to qualified domestic counsellors, lawyers and psychologists. The psychologist was the hardest to source and only engaged from a known contact. The wait time on some psychologists was 3 months. This time all adds to the time.
- Centralised register of surrogate services providers would be great. Out clinic did give us as part of the one-page hand out a list of providers.
- With all these services – each services should be assessed for the benefit they truly bring to the surrogacy process.
- Counselling should be independent of clinics too. We had for example donor counselling at City Fertility and then when we moved our embyros created to Newlife IVF we were required to undertake counselling again in the format for PRP.
- The usual process with counsellors is to have the first individual session with the donor / partner, surrogate / partner and intended parents. The second session is a repeat of the first session to reflect on the first session that is documented. The third session is joint for all parties and then another two sessions – reflecting and confirming information. It's too much and takes up too much time for the output and benefit. Finding times when everyone is free is always a challenge too. All this delays the process significantly. By the end of our counselling sessions, we were all angry and not seeing the value in counselling. Just services wasting out time and money. Risk based approach to counselling – some patients can be less complex than others. Selling counselling packages too is a lot upfront too. Newlife IVF outsource to a provider. The provider doesn't streamline well back into Newlife's IVF processes / services. We had many meetings with the Director or the clinic to complain about the counselling team, caring more about feelings, than cost and time.

12. How should professional services operate in Australia?

- Independent of IVF clinic
- Part of standard legal, counselling, and health services. Commercially funded with government rebates / Medicare.

- Could be a health plan – allied services? Not sure if there's any legal rebate (for low income earners).
- Standard process or agreements could reduce costs too.
- Yes, counselling should be separate from fertility clinics as clinics charge a surrogacy management fee or package.
- We should be able to go to the professional, like we did with legal and psychology to have the number of sessions as required to achieve the output being the report to present to PRP.
- Surrogacy could be more accessible to everyone if there was a better funded / part funded program by government or more repeatable processes, education etc. Currently stable job and security is required to afford surrogacy.

13. How should surrogacy advertising be regulated?

- Agree - rules needs to be clearer what you can and can't do.
- This is a major barrier to engaging in surrogacy in Australia.
- Advertising could be controlled if allowed.
- Social media including Facebook private Groups should be allowed as they are a great networking tool.
- Could apps like in dating or business, LinkedIn be allowed too? Can these be regulated by Government – including a subscription fee for such service.
- Meet-up groups should also be allowed to bring community together.
- A surrogacy register is only beneficial to reduce risk by recording approved advertising – is this the Minister for Health approves the advertisement – that process is not beneficial to the patient care and outcome. Nine months for use to obtain that approval.
- Maybe a government controlled environment for information and connecting with services and others.

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

- Universal access to Medicare under a surrogacy agreement as a reform

- Agree there should be reform on the criteria for surrogates accessing Centrelink's paid parental leave. Our child is due for example on 7 Government. Our surrogate was in a high paying full time contract position where the position was unexpectedly terminated at EOFY. Now the question is whether she qualifies for 10 months of working prior the birth. Being pregnant can be a barrier to secure a new role knowing they will need time off for the birth and recovery.
- All enterprise agreements should extend to surrogates and include access to surrogacy leave (paid or unpaid).
- As an intended parent this is currently one of my worries for our surrogate who's doing the kindest act for us.
- Medicare should be easier for the intended parent to access rebates for out-of-pocket medical services. Currently it's uncomfortable using many providers for services and some allowing intended parents to be recognised as a payee on the claim for the patient. When I pay for the invoices for providers who don't offer that – the claim goes back to the surrogate. I never ask for the rebate back only if they offer.
- Yes – universal Medicare where the roles are recognised in all systems

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

- Agree is extremely confusing as to what is a reasonable expense and the evidence required to justify reimbursement
- Sometimes surrogates may not ask for reimbursements in particular petrol, parking etc
- Happy to support the compensation of surrogates beyond reasonable expenses.
- We have a shared excel sheet to share expenses and reimbursements paid, as I worry currently of being seen to pay [redacted] cash via transfer.

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, commercial seems a little lose and comes with risks.

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

- I think it needs to be managed like at work using agreed expense claims with receipts and documented items that can be compensated as outlined a schedule of items / rates within the surrogacy agreement (like in a standard contract of rates / services). This avoids the unknowns.
- Acceptance of gifts should also be limited (like at work).
- Definitions and standard tools by Government to support implementation would be great and knowing we're doing the right thing legally.

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 having all the right controls in place as evidence to seek a legal parental order
- This is one of the highest barriers preventing g people entering into a surrogacy agreement
- Laws are dates and not aligned to society today who has advanced with science and opportunities.
- Admitting criminality by bringing home a newborn from overseas to then be the parent is insane and we should have more certainty to enter overseas surrogacy agreements, knowing we can enter back into our country safely and enjoying life. This is a future potential taxpayer too and increases population.
- Timing is definitely the barrier.
- Paperwork should be prepared pre-birth and executed post. We have the majority of the documentation including surrogacy agreement.
- There should be no stress in obtaining a parental order from the federal court – intended parents should be focused more on raising a newborn.
- Agree with reform 64. The birth certificate will of course be issued in another country. We can't control all countries unless there was a universal agreement of processes between low-risk countries.

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

- Clearer and more transparent process that are electronic with workflow

- Applications can be prepared pre-birth and all systems talk with each other through services like MyGov.

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

a. Australian citizenship;

- Unsure as involved in domestic surrogacy

b. an **Australian passport; or**

- Unsure as involved in domestic surrogacy

c. an Australian visa.

- Unsure as involved in domestic surrogacy

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

- With my experience in domestic surrogacy only, I support the idea of the proposed reform outlined in 67. This hopefully can reduce the time for example when bringing a baby back from Georgia and wanting to enjoy raising your child in your own Australian environment where we feel supported by family, friends and a world class health system.

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

- States and territories to refer their current powers to the Commonwealth for national oversight which will ensure consistency and mitigate the issue mostly outlined in this paper.
- The issue is a national issue that also involves international relations and protection of our citizens to ensure they are safe.

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

- A panel like PRP is sufficient to provided overall approval of a surrogacy agreement on behalf of the Commonwealth of Australia, which then feeds into services like Services Australia, Passports, Medicare. Births, deaths and marriages could be reformed too. Should all be National.
- There should also be a national regulator to oversee compliance of surrogacy agreements, fertility clinics and services providers. Processes need to be efficiently and practical including lots of online services. Possibly access via MyGov.

- Agree there should be harmonising ethical guidelines for health professional. Example – Monash Health is advised by it's own legal team who may not have experience in surrogacy. Best practice guidance was provided to them, however they wanted nothing to do with it as they are running a hospital. Definitely a regulator may assist in changing behaviour or allowing surrogate teams to choose the hospital that does align with best practice.
- Unsure the line of sight for hospital regulation – State or Federal. Who ever has control.

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

- Yes – those without a surrogacy agreement
- There was a story on A Current Affair this week, channel 9. They thought they were in a surrogacy arrangement (without an actual agreement). The surrogate became pregnant naturally and offer the child instead when born. This changed the intention of a surrogacy arrangement to potentially adoption. The birth parent kept the baby even though the intended parent paid for all the pregnancy costs.
- Education and counselling should assist in this situation as a prevention causing great stress and no where to stand legally.
- Consider we may look at overseas entering a commercial surrogacy agreement, given the extensive barriers lived personally in domestic surrogacy, it would be great to allow Australian the option of going overseas to create their family as more timely. Our barrier is getting embyros created in Victoria overseas without the right documents.
- As stated in item 80 of the paper – deterring commercial surrogacy is not being achieved through criminal law.
- I support decriminalisation as this is our biggest fear.
- It should be ok if we go overseas and follow the laws overseas that allow commercial surrogacy in another country.
- Australia can then choose whether to have compensated surrogacy or commercial.

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

- Definitely. Any friend or colleague we talk to about our surrogacy journey (if we choose to share) is fascinated by the legality and

extensive live long process we have to go though to achieve a heathy baby.

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

- Nil – contained throughout this submission.

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?

- Nil - Well done on preparing a professional issues paper on proposed surrogacy law reform that is detailed, practical and is relatable from shared lived experiences.

Thank you for considering my submission.

Yours Faithfully,

[redacted]

[redacted]

Attachment B

Notes:

Sarah Jefford's Best Practice Guideline for Care in Surrogacy (for Australia health practitioners)	**Monash Health's Surrogacy Guideline**
Relevant extracts: 1. The birth mother retains her **bodily autonomy** throughout pregnancy and birth 2. The birth is **registered** by the birth parents, with the full name chosen by the intended parents. 3. The birth parents are the **legal parents** at the time of birth. **Pregnancy Care** 4. The intended parents apply for a **Parentage Order** after the birth, which transfers parentage from the birth parents to the intended parents. 5. The intended parents should be supported to attend appointments, with the surrogate's consent. 6. Information should be provided to allow the parties to make decisions together. The surrogate can make the final decision. 7. The surrogate is entitled to her privacy; medical information about the pregnancy can be shared with the intended parents with the surrogate's consent. 8. The intended parents should be offered parentcraft and birth classes and provided with information and supports as appropriate. **Birth Planning** 9. Health practitioners should meet with the birth parents and intended parents to discuss plans for the birth. 10. Arrangements for the birth such as cutting the cord, skin-to-	Relevant extracts of Guideline states: 1. "For the purpose of pregnancy, birthing and postnatal care, only the surrogate and her baby are considered to be the **patients of Monash Health.** 2. "The commissioning parents may not apply for an order whilst the child is in hospital" isn't this our right individually not the hospital if the baby was to stay in there for an extended time 3. "Monash Health must only **discharge the baby** to either with, or to the surrogate mother. The only circumstances where Monash Health can discharge the baby to the commissioning parents is where the commissioning parents presents evidence of a parenting order to Monash Health." 4. **Consent for treatment for the baby** is to be obtained from the surrogate mother. This includes consent for routine procedures, and medical treatment / admission to Special Care Nursery (SCN) or Neonatal Intensive Care (NICU). 5. **Care of newborn** – Any consent for treatment or for the carrying out of procedures on the baby (for example immunisation and newborn screenings) must be obtained from the surrogate mother. • In the absence of the surrogate mother, the hospital may require other legal clarification • Permission to include the commissioning parents contact details on the newborn screening card is to be given to the surrogate mother in the event that follow up testing post-discharge is required. • The surrogate mother shall also give permission for the commissioning parents contact details so be included in the

skin, breastfeeding and placenta delivery should be discussed with the parties and information and support provided to allow them to make informed decisions.

Milk & Feeding

11. The intended parents can provide all care for baby, including feeding, immediately from the moment of birth, with the surrogate's consent. This can include:
    - The intended parent may induce lactation and feed baby.
    - The birth mother may breastfeed the baby.
    - The surrogate may express colostrum and milk for baby.
    - The baby may be formula fed.
    - A combination of the above.
12. The feeding arrangements should be agreed between the parties, and plans will often change throughout the pregnancy and post-birth.

Postnatal care

13. The birth mother's privacy should be respected, and every effort made to accommodate her in a separate room from the intended parents and baby.
14. If there are no available rooms for the intended parents to stay, an intended parent should be accommodated to stay in the same room as the surrogate, with the baby.
15. The intended parents should be treated as the parents of the child, subject to any agreement with the birth parents.
16. The surrogate is not obliged to care for the baby and is unlikely to want to do so.
17. The intended parents should be supported to provide all care for the baby, and provided with parent craft assistance.
18. The intended parents can care for the baby from the moment of birth. The birth parents may provide consent to any medical treatment of the baby if necessary.

Maternal and Child Health referral and Discharge Summary to the GP

6. The surrogate mother must be supported in all aspects of **her postnatal care.**
7. **Centrelink advice** in the Guideline is dated – now includes surrogate and intended parents not just the "surrogate mother" . Guideline should link off to current information. Who can get Parental Leave Pay for a child born or adopted from 1 July 2023 - Parental Leave Pay for a child born or adopted from 1 July 2023 - Services Australia includes gaining parents in a surrogacy arrangement
8. Intended parents under the **Medicare Policy** can also add the baby to their Medicare card by submitting a copy of the Victoria Surrogacy Agreement Approval certificate and other evidence
9. **Baby discharge –** Monash Health must exercise its duty of care in relation to the discharge of the child in the same way that it would in relation to any other child. The baby label is to be matched with that of the surrogate mother for discharge. ..The only circumstance where the child can be discharged to the commissioning parents is where they provide evidence of a parentage order from the Court that state that they are the legal parents of the child.
10. **Post discharge follow-up** (Hospital in the home) or extended postnatal care will be provided to the baby as required and to the surrogate mother.
11. **A home visit safety assessment** must be completed prior to discharge (expecting those who decline a visit).
12. Commissioning parents – The commissioning parents is not a patient of Monash Health and therefore ineligible for services provided by Monash Health… to source own providers.

Discharge from hospital 19. The baby and the surrogate may be discharged together or separately, depending on the circumstances. 20. If there are to be separate discharges, the hospital may seek that the birth parents provide written consent for the intended parents to remain in hospital or leave with the baby 21. The intended parents and baby should be provided with home visits and referrals for their local child health nurse. The surrogate should be provided with postnatal check-ups and referred to their treating general practitioner as appropriate. ✓	