11 July 2025

Dear Australian Law Reform Commission,

Thank you for the opportunity to make a submission in response to the *Review of Surrogacy Laws: Issues Paper*. I am currently a research officer at The Kids Research Institute Australia and an affiliate of Monash University. The position I present in the following pages is my own, based on over five years of research related to assisted reproductive technologies, third-party reproduction, and preterm birth. I was awarded a PhD in Translational Research from Monash University where I examined the regulation of surrogacy in Australia and the needs of surrogates, intended parents, and those born through surrogacy.

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

The rights and best interests of children born through surrogacy must remain the central focus throughout the surrogacy process. As outlined in the Issues Papers, Australia has a *responsibility* to uphold these rights. To meet this obligation, I believe Australia must ensure that intended parents have access to accessible domestic surrogacy options.

Domestic surrogacy offers stronger protections for the best interests of children. There is no international regulation of surrogacy, and unlike Australia some countries have limited oversight of fertility clinic practices. My research found that Australians who pursued international surrogacy commonly engaged in practices that are prohibited within Australia— specifically, multiple embryo transfer and anonymous egg donation (Kneebone et al. 2023 p.1452). The National Health and Medical Research Council (NHMRC) guidelines prohibit multiple embryo transfer in surrogacy to minimise the risk of twin pregnancies, which are associated with higher rates of preterm birth (2023 p.46). Preterm birth is the leading cause of death in children under five, and survivors face an increased risk of long-term disabilities (World Health Organization 2023). The NHMRC guidelines, along with state and federal laws, also ban anonymous gamete donation to protect a child's right to know and preserve their identity (2023 p.33). As a result, Australian children born through international surrogacy may face greater risks to their health and identity than those born through regulated domestic arrangements. To reduce these risks, intended parents should be discouraged from seeking surrogacy abroad.

In an effort to discourage Australians from engaging in international surrogacy, two main strategies have been used: (1) extraterritorial criminal offences for those that pursue commercial surrogacy, and (2) refusing to grant Parentage Orders for children born through commercial surrogacy. However, neither approach has been effective, with Australia remaining one of the world's largest 'exporters' of intended parents (Everingham & Whittaker 2023). Moreover, these measures can further harm children born through commercial surrogacy by reinforcing stigma surrounding their birth and violating their right to be cared for by their parents, and the right to privacy, family, and home.

My research shows that nearly all intended parents who pursue international surrogacy would have preferred to undertake the process within Australia (Kneebone et al. 2023 p.1451). This suggests that reducing domestic barriers to surrogacy could significantly decrease the number of Australians seeking arrangements overseas. In turn, more Australian children would be born through a surrogacy system

designed to safeguard their best interests. If Australia is committed to upholding the rights and welfare of children born through surrogacy, this responsibility must include ensuring that accessible domestic pathways are available.

> **Question 5.** What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome?

In 2021, 203 Australian intended parents who were considering, were undergoing, or had completed international surrogacy were surveyed about why they choose an overseas destination (Kneebone et al. 2023 p.1452). The options '*Surrogacy in Australia looked like too long/or complicated a process*' and '*I could not find a surrogate in Australia*' were selected by most participants (Table 1).

Table 1. Reasons for intended parents (n=203) choosing international surrogacy.

Reasons for choosing international surrogacy	**% of respondents (n)**
Surrogacy in Australia looked like too long/or complicated a process	69% (140)
I could not find a surrogate in Australia	56% (114)
I wanted a professional surrogacy provider to screen potential surrogates and facilitate my arrangement	46% (94)
In Australia, the surrogate has the right to keep the child if she changes her mind	43% (88)
I wanted to be able to compensate a surrogate for carrying my child	35% (71)
I was not eligible to pursue surrogacy in my State or Territory	15% (30)
I wanted greater choice of egg donors	14% (29)
I did not want any/much contact with my surrogate	11% (22)

In 2022/23, Australian surrogates, intended parents, and surrogacy professionals (e.g. lawyers, counsellors) were asked about their views on how access to domestic surrogacy could be improved (Kneebone et al. 2024). Four overarching strategies to improve access to surrogacy in Australia were identified:

1. Improve public awareness
2. Develop policies to guide healthcare practitioners
3. Establish agencies
4. Reform the law

'Reform the law' had four sub-themes: 1) harmonise laws across the states/territories; 2) grant intended parents legal parenthood at birth; 3) legalise commercial surrogacy and gamete donation; and 4) fair surrogate compensation. These strategies will be discussed in more detail at the appropriate questions.

> **Question 7.** Are there any eligibility requirements which should be introduced, changed, or removed?

Restrictions against same-sex couples and single men becoming parents through surrogacy should be removed because it is unlawful to discriminate on the grounds of gender identity, marital or relationship status, and sexual orientation under the Sex Discrimination Act 1984 (Cth).

The requirement for a person to have already given birth before they become a surrogate should also be removed as it is overly paternalistic. As noted by Cameron, "only allowing women to become surrogates if they have previously carried a pregnancy to term undermines the notion that they are an autonomous individual capable of identifying and pursuing their own interests" (2018 p.388).

Question 16. Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy?

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

I support surrogate payment (beyond the reimbursement of expenses) under two conditions:

1) the payment serves to recognise the non-financial losses that are incurred in a surrogacy arrangement (such as inconvenience, discomfort and time); and
2) the payment does *not* serve to entice people to become a surrogate who otherwise would not consider it.

I do not have a definitive view on what the appropriate amount of compensation should be. Further empirical research is needed to first answer key questions: How do Australian surrogates and their families experience non-financial losses? What are the views of surrogacy teams and people born through surrogacy on a fair and appropriate compensation amount? And how much payment might encourage someone to become a surrogate who would not otherwise consider it? This evidence is essential to inform decisions about what constitutes an appropriate level of compensation.

A note on definitions

The type of payment I have suggested aligns with the definition of 'compensation' proposed by the Nuffield Council on Bioethics (2011 p.70). It possibly aligns with how you have described 'compensated' surrogacy in the *Issues Paper* if payment for non-financial losses is considered a clearly defined limit. However, I propose that your definitions be amended to clarify what the payment is meant to *represent*:

Compensated surrogacy: Payment for *non-financial losses* (such as inconvenience, discomfort and time).

Commercial surrogacy: Payment that goes beyond compensation and provides a material *advantage* to the person acting as a surrogate.

These definitions align with the terminology proposed by the Nuffield Council on Bioethics to describe financial compensation and reward in the context of gamete and other bodily tissue donation (2011, p.70). It is crucial to clarify what a particular payment is intended to represent — that is, what it is for — because different types of payment carry distinct risks, benefits, and ethical considerations. For instance, concerns about financial motivation are frequently raised by those who oppose all forms of surrogate payment. Yet financial compensation is only designed to remove disincentives to participation, without providing a financial advantage. As such, it is unlikely to incentivise surrogacy for non-altruistic reasons. Surrogacy, particularly the issue of payment, is a complex and contentious topic shaped by diverse ideological perspectives. Therefore, I suggest revising the definitions of 'compensated' and 'commercial' surrogacy to

clearly specify what the payment is intended to cover. This clarification can help support a more informed and constructive public debate.

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

I support automatic recognition of legal parentage in domestic surrogacy arrangements, provided the pre-conception requirements (e.g. counselling, legal advice) have been met. This approach would grant intended parents the same legal status and protections as those who become parents through gamete donation (Ludlow 2015). For all other surrogacy arrangements, including those undertaken overseas, I support a post-birth judicial process to transfer parentage. Maintaining a judicial process, as currently used for domestic surrogacy, would help discourage the use of unregulated or international pathways. Importantly, however, it would still ensure that children born through these arrangements can have their legal parentage formally recognised.

Two key benefits of the current post-birth transfer of parentage process have been raised with me by surrogates and surrogacy professionals, and I believe these are important to consider when evaluating potential reforms to the system (Kneebone et al. 2024). First, having the surrogate listed on the original birth certificate is seen as a meaningful acknowledgement of their role in bringing the child into the world. Second, the judicial process creates a level of accountability for intended parents and ensuring they follow through on commitments such as maintaining contact with the surrogate and reimbursing post-birth expenses. In my view, these benefits do not outweigh the broader disadvantages of the current process. However, they remain valid concerns that should be addressed. One potential solution is the establishment of professional surrogacy organisations that could oversee reimbursements, help match surrogates and intended parents with aligned expectations around post-birth contact, and provide support in managing any relationship challenges that arise.

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

Increasing public awareness and understanding of surrogacy could both improve the experiences of future surrogacy teams in Australia and encourage more people to consider becoming surrogates. Many of the surrogates I interviewed were motivated by indirect experiences of infertility, such as working in fertility clinics or having close relationships with same-sex male friends (Kneebone et al. 2024). Similarly, research from Canada found that social media representations of surrogacy influenced some women's decisions to pursue it (Fantus & Newman 2019). However, both surrogates and intended parents in my study noted that members of the public often lacked basic knowledge about surrogacy — particularly regarding its legal status and the fact that surrogates are not paid. This lack of understanding sometimes led to uncomfortable encounters, with participants recalling being asked "the rudest, weirdest, strangest things" (Kneebone et al. 2024). Raising public awareness that surrogacy is a legal option in Australia may therefore help normalise it, encourage participation, and foster more positive interactions.

There is also a need to improve hospital staff's understanding of surrogacy. The South Australian Law Reform Institute heard from members of the surrogacy community about "clumsy" and "insensitive"

treatment by healthcare providers (Plater et al. 2018 p.202). One surrogate I interviewed even reported being refused care at a public hospital, with a staff member stating, “we don’t really do surrogacy” (Kneebone et al. 2024). While recent guidelines in the ACT and SA marks important progress, additional national effort are required to ensure hospital staff have the appropriate knowledge to care for surrogacy teams.

Kind regards,

Dr Ezra Kneebone

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References

Berend Z (2012), The Romance of Surrogacy, *Sociological Forum*, 27(4), 913–936.

Cameron J (2018), An Ethics of Care Approach to Regulating Surrogacy, *Journal of Law and Medicine*, 26(2), 374-388.

Everingham S, Whittaker A (2023), Trends in engagement in surrogacy by nationality 2018–2020: a survey of surrogacy agencies, *Global Reproductive Health*, 8(1), e64.

Fantus S, Newman P. A. (2019), Motivations to pursue surrogacy for gay fathers in Canada: A qualitative investigation, *Journal of GLBT Family Studies*, 15(4), 342–356.

Kneebone E, Hammarberg K, Everingham S, Beilby K (2023), Australian intended parents’ decision-making and characteristics and outcomes of surrogacy arrangements completed in Australia and overseas, *Human Fertility*, 26(6), 1448–1458.

Kneebone E, Hammarberg K, Beilby K (2024), Surrogates’, intended parents’, and professionals’ perspectives on ways to improve access to surrogacy in Australia, *International Journal of Law, Policy and the Family*, 38(1), ebae009.

Ludlow K (2015), Genes and Gestation in Australian Regulation of Egg Donation, Surrogacy and Mitochondrial Donation, *Journal of Law and Medicine,* 23(1), 378-395.

National Health and Medical Research Council (NHMRC) (2023), Ethical guidelines on the use of assisted reproductive technology in clinical practice and research (ART guidelines), available at: https://www.nhmrc.gov.au/about-us/publications/art.

Nuffield Council on Bioethics (2011), Human bodies: donation for medicine and research, available at: https://www.nuffieldbioethics.org/publication/human-bodies-donation-for-medicine-and-research/.

Plater D, Thompson M, Moulds S, Williams J, Brunacci A (2018), Surrogacy: A Legislative Framework: A Review of Part 2B of the Family Relationships Act 1975 (SA), South Australian Law Reform Institute, Adelaide.

Smietana M (2017), Affective De-Commodifying, Economic De-Kinning: Surrogates' and Gay Fathers' Narratives in U.S. Surrogacy, *Sociological Research Online*, 22(2), 163–175.

World Health Organisation (2023), Preterm Birth, available at: https://www.who.int/news-room/fact-sheets/detail/preterm-birth.