Review of Surrogacy Laws in Australia

Personal Introduction

My husband and I are a gay couple living in Melbourne, currently on an altruistic domestic surrogacy journey. We're eagerly anticipating the birth of our son, due 15 August 2025. While this process brings immeasurable joy, it also highlights the legal and social hurdles still facing same-sex intended parents (IPs) in Australia.

Real-World Challenges Faced by IPs

Legal limbo for overseas IPs

Even with domestic altruistic surrogacy, our Australian law does not formally recognise IPs in overseas surrogacy. Family Law Council and submissions like those by Equality Australia highlight how children born overseas often face legal uncertainty in parentage and citizenship. Without clear federal mechanisms, families like ours must navigate costly court processes just to establish parentage.

Inconsistent, discriminatory state laws

Some states—WA in particular—bar same-sex male couples and single men from accessing domestic altruistic surrogacy. While Victoria (where we are based) is more progressive, the patchwork system forces couples to cross borders or turn overseas, creating inequity and emotional strain.

Overseas surrogacy pitfalls

Many Australian IPs go overseas due to local restrictions or cost. News reports confirm heartbreaking tales such as couples spending $65k and years abroad without a child, facing emotional, financial, legal, and regulatory uncertainties. These stories underscore the urgency of regulated, accessible domestic options.

Social stigma

Despite growing acceptance, children and families born through surrogacy—especially same-sex families—still face stigma and prejudice. The lack of national recognition reinforces outdated ideas that these families are "different". A child-centred and inclusive framework would provide stronger social legitimacy and protection.

Key Reform Requests

1. Legal recognition for overseas IPs

Amend national family law to automatically recognise parentage for Australians who become

parents via overseas surrogacy (altruistic or compensated). This ensures children are never in a legal grey zone upon entry to Australia.

2. Uniform, child-centred national framework
As the ALRC's Terms of Reference emphasise, harmonisation of state, territory, and Commonwealth laws is critical. A consistent legal regime would reduce confusion, expedite parentage orders, and prioritise the rights and best interests of children.

3. Stigma reduction through clarity and visibility
Official recognition of all forms of surrogacy—domestic/altruistic, international, or even compensated—can normalise these pathways in the public eye. Policies should actively promote social inclusion of surrogacy-born children and diverse families.

4. Respectful of all surrogacy types
Whether altruistic or compensated, domestic or international, what's essential is a robust system ensuring informed consent, ethical protections for surrogates, and safeguarding of IPs and children. We must set aside ideological divides to build a system rooted in dignity and choice.

5. Prepare for opposition
Progressive reform will likely face resistance from conservative groups who view surrogacy negatively. We must anticipate this opposition and craft messaging emphasising that reform doesn't undermine children's welfare—it uplifts it by protecting families.

Why This Matters
For us—as a same-sex couple, about to become first-time parents—the current legal ambivalence is more than a bureaucratic nuisance: it's a source of anxiety, delay, and emotional stress. We face uncertainty until a court grants a parentage order after August 15, when our baby is born. That's time we cannot get back.
But this isn't just our story—it's the story of many Australian couples and children.

When reform comes, it should:
Bring legal clarity from day one,
Normalise surrogacy in the public conscience,
Ensure accessibility and equality regardless of parental sexuality or location,
Protect surrogates, ensuring they are valued and compensated appropriately,
And create resilient, future-proof frameworks that adapt as family structures evolve.

A Call to Unite

Let us come together—for us, for our baby, and for all future families. By harmonising laws, uplifting every pathway to parenthood, and centring children's welfare, Australia can create a system where families of all kinds are valued equally. We urge the Commission to adopt a holistic, child-centred, national approach that includes:
Immediate recognition of overseas IPs,
Uniform laws and streamlined processes,
Societal education to reduce stigma,
Provisions for compensation and protections for surrogates,
And a firm stance against ideological resistance.

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Timing & Context
This inquiry is well-timed: the ALRC aims to release its Discussion Paper soon, and deliver a final report by mid-2026. There is broad political momentum—Labor has pledged reform, and legal experts back streamlined, equitable surrogacy legislation.

In conclusion:
Our family’s journey—though joyous—is marred by systemic inconsistencies and emotional strain. We believe national, inclusive, and legally certain surrogacy laws are not just a policy priority—they are a moral imperative to support families like ours and the children we are soon to welcome.