[redacted]

23 June 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.

My name is [redacted]. I am the father to a beautiful son, [redacted], born in *January 2025* through an *altruistic gestational surrogacy arrangement in Australia*.

I live in Western Sydney (Penrith) in New South Wales, with my husband, [redacted] and our precious son. Every day we are reminded of the extraordinary love, trust, and generosity that made our family possible.

Our journey to have [redacted] was made possible through the selfless gift of two incredible women: our surrogate, who was previously a stranger but is now a life-long friend, and our egg donor, who was, and still is, a close friend (and very much like family to us). We continue to have a strong, loving and meaningful relationship with them both.

As a gay couple in Australia, becoming parents through surrogacy in our own country was both a great privilege, a profound, exhausting and emotionally-taxing challenge and the most rewarding experience of our life, to date. However, navigating the surrogacy process in NSW was far more complex, confusing, political, clinical and costly than anyone could imagine, and unless an individual has experienced it first-hand, they can have no deep understanding of the resilience

and determination that is necessary to get through it unscathed, and with all relationships in-tact.

I come to this review not as a legal or medical expert, but as someone who has lived through the exuberant joys and immense challenges of a recent altruistic gestational surrogacy process in Australia.

I believe that my lived experience, and my engagement with the broader surrogacy community, gives me a grounded perspective on the gaps, strengths, and inconsistencies in the current framework.

While my submission may be long, the length itself reflects the reality that surrogacy in Australia today demands extraordinary resilience. My goal is not only to share our experience, but to offer constructive, thoughtful reform suggestions that honour the love and trust at the heart of surrogacy, while addressing the unnecessary burdens the current system places on intended parents and surrogates. It reflects not just my personal path to parenthood, but also the many conversations I've had with my husband, our surrogate, and other surrogacy community members, who all want to see a legal framework that protects, respects, and uplifts *everyone* involved.

I believe Australia can lead the way in creating surrogacy laws that honour the dignity and complexity of these unique and life-changing relationships.

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

I seek that my submission be published but de-identified.

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

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

The unimaginable generosity of our surrogate

Our surrogate, [redacted], gave us the greatest gift possible. Her willingness to carry [redacted], with no expectation of personal gain, was an act of profound love and selflessness. The bond we built with her will last for the rest of our lives. She not

only carried our child, she walked beside us with open arms, compassion, and grace. There are no words that can truly capture the depth of our gratitude.

The strength of our surrogacy team
From the very beginning, we built a foundation of honesty, transparency, and trust. Every conversation, no matter how difficult, was approached with care and respect. The counselling we undertook together helped strengthen these bonds, ensuring that everyone's needs and feelings were heard. We faced every challenge as a united team.

The dream of parenthood realised
After years of hoping, planning, and wondering if parenthood would ever be possible, holding [redacted] in our arms was a moment of indescribable emotion. The love we feel for him is overwhelming. He was not born out of chance or accident; he was born out of longing, intention, sacrifice, and love. That knowledge makes our bond with him even more profound.

The invaluable support of our private midwife
One of the greatest sources of stability throughout the pregnancy was our private midwife, who provided consistent, compassionate, and highly personalised care. She offered continuity, reassurance, and advocacy for [redacted], for us as intended parents, and for [redacted]. In a process filled with legal complexity and administrative strain, having a trusted, constant care provider who understood our journey (without judgement or prejudice) gave all of us enormous *emotional security*.

The value of consistent, relationship-based maternity care in surrogacy arrangements cannot be overstated. This was a critical element of success in our journey; however, with the enormous costs of IVF and surrogacy already, a private midwife is not within the financial means of many.

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

Being deemed "socially infertile"
As a gay couple, my husband [redacted] and I have always understood that our pathway to parenthood would require surrogacy and egg donation. Not because we are infertile, but simply because, biologically, two men cannot conceive a child together. Yet under the current system, we were officially classified as *"socially infertile"* to access fertility treatments.

We find this term deeply uncomfortable. It frames our reality as though we are lacking or deficient, when in fact, nothing about our desire to have a child is broken. We simply require the involvement of others to create a family. The term *"social infertility"* reduces a loving, intentional family-building journey into something clinical and psychologically abnormal, as though our relationship itself creates a

kind of infertility that must be diagnosed and corrected. That framing feels dismissive, stigmatising, and hurtful.

This language has very real consequences in practice. In order to begin our surrogacy journey, which began in January 2023, [redacted] and I were required to visit a general practitioner to obtain a referral to our fertility specialist at Monash IVF, Sydney CBD. We walked into that appointment knowing exactly what was required: a written referral stating that we were considered "socially infertile" so we could meet the formal eligibility requirements to proceed with IVF and surrogacy. Yet the GP we saw had never encountered this situation before. They had no understanding of why we were requesting the referral, what "social infertility" even meant, or why it was required. We were forced to sit there, already vulnerable, and educate the doctor on the technicalities of the system that applied to our own family. It was uncomfortable and degrading. It felt as though we were pleading for permission to become parents, having to justify and explain why our love for each other was valid enough to be treated medically. And this was just *the very first step* of so, so many.

Most heterosexual couples trying to conceive don't ever face this kind of embarrassment. The system forced us into a position of having to "prove" our worthiness to proceed, not because of infertility, but because of *who we are*.

Language matters, and there is a better way to frame this. Rather than terms like "social infertility," which imply deficit, we should adopt language that better reflects the reality of families like ours. Terms that I believe are better reflective of our circumstances include:

- Collaborative reproduction
- Surrogacy-dependent family formation
- Assisted family-building
- Non-traditional pathways to parenthood

All of these alternatives are respectful, accurate, and honour the love, intention, and planning that go into our family-building journey. We are not infertile. We are simply following a pathway that requires the support of others, including our surrogate and egg donor, to bring our child into the world.

Reforming not only the laws but also the language of surrogacy is critical to ensuring that all families, regardless of structure, are treated with dignity. Terms like "social infertility" may seem harmless to policymakers, but to those of us living this journey, they reinforce feelings of exclusion and discomfort at moments when we are already vulnerable. Language should reflect respect, not judgment.

The legal limbo that shadowed our family post-birth

From the moment [redacted] was born, we were his parents in every way that mattered; emotionally, physically, practically. Yet for months, we were not legally recognised as his parents. Despite [redacted] clear and unwavering intent, the law still treated us as strangers to our own child. The fear that, in theory, someone could intervene and question our parentage was deeply unsettling. Those who have not lived it feeling can never understand it. Even the kindest reassurances from [redacted] did not erase the underlying anxiety that lived in the background of those first precious months. Refer to question 11 for more comments about this matter.

The crushing and constant administrative burden
In the weeks after [redacted] birth, while we were navigating sleepless nights, first feeds, and the tender beginnings of bonding with our new son, we were also consumed by endless paperwork; affidavits, counselling reports, legal filings (all urgent, all essential) demanded our attention at a time when our only focus should have been on [redacted]. I vividly remember holding him in one arm while scanning legal documents with the other, so desperate to meet deadlines, while caring for a tiny new life.

The emotional weight of uncertainty
Throughout the pregnancy, and even into the months after birth, a constant thread of uncertainty ran beneath the surface; fear that something could go wrong, that paperwork could be rejected, that processes would be delayed. Even with supportive professionals, we felt exposed and vulnerable. When querying processes, potential delays or possible setbacks along the way, even professionals with surrogacy industry expertise would proclaim to us "*it depends on who receives your paperwork*". We heard this remark countless times when preparing to engage with Medicare, Centrelink and even about the Supreme Court. There is no way to fully describe the emotional toll that *"what if"* can take when your child's security feels dependent on bureaucratic timelines in the hands of the uneducated.

The fear of hospital separation
In the lead-up to [redacted] birth, we faced another layer of anxiety, and that was whether [redacted] and I would even be allowed to stay in the hospital with our son after delivery. We worried about how staff would respond to us as two fathers arriving through surrogacy. Would prejudice or outdated policies prevent us from being with him? The thought of being physically separated from our child in his first hours was agonising. Thankfully, we were granted a shared room, but that relief only came *once he was born*. The stress leading up to that moment was immense. Hospitals must do better to recognise and proactively support modern family structures like ours.

The emotional discomfort surrounding reimbursements
[redacted] was always mindful of not wanting to impose on us financially. She would downplay expenses, offer to find cheaper alternatives, or apologise for needing

support, even when the costs were entirely legitimate. This is something many surrogates feel, i.e. guilt for needing reimbursement in an altruistic arrangement. The emotional discomfort around money added a layer of tension that clear national reimbursement frameworks could easily prevent. Refer to question 8 for more comments about this matter.

The confusion around who to engage, and when
At every step, we struggled to understand the correct sequence of professionals to engage; fertility specialists, counsellors, lawyers, psychologists, courts, hospitals. Each operated independently, and no one offered a single, clear roadmap. We became our own project managers, navigating an unfamiliar legal and medical system while preparing for the arrival of our child. The lack of integration made an already emotional journey even more exhausting.

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

Our experience was extraordinary, *but it does not need to be this hard*. Australia can do better. Whilst I have expanded on relevant questions in this broader document to fully address where things could improve, in summary, believe:

- Pre-birth parentage orders would remove the painful legal limbo after birth.
- Centralised, integrated surrogacy support services would guide intended parents, surrogates, and donors through every step.
- A national reimbursement framework would take away the emotional discomfort around financial discussions.
- Hospitals must adapt to proactively welcome and support diverse family structures.
- Simplified, transparent processes would remove much of the emotional exhaustion that currently shadows what should be a time of joy.

2. 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?

In my opinion, a surrogacy journey does not end at birth. Children born through surrogacy grow into adults with questions about their origins and identity. These children should *never* live their life with gaps, uncertainties, or barriers to understanding their own beginnings. Australia should facilitate a compassionate, future-focused approach that balances legal integrity, privacy, and the enduring importance of truth.

Children born through surrogacy have *the right to know the truth of their conception, their birth story, and the people who helped bring them into the world*. This knowledge forms part of their personal identity, their medical history, and their sense of belonging. Full, age-appropriate openness is not only *ethically important*, but it *fosters healthy emotional development* and *trust within families*. From the very beginning of our journey to parenthood, my husband and I have been committed to transparency. Our son [redacted] will grow up always knowing that he was born through surrogacy, carried by [redacted], and conceived with the generous gift of an egg from [redacted]. These are not secrets to be hidden, but beautiful parts of his story to be celebrated.

Currently, birth certificates in Australia do not indicate when a child is born via surrogacy. While the issuing of an accurate, timely birth certificate listing the intended parents is essential (and should happen as early as possible), there may be merit in including an optional surrogacy marker or notation that discreetly acknowledges that the child was born via surrogacy.

This marker would not need to be included on short-form birth certificates used for everyday administrative purposes but could be present on the full or long-form certificate, or in the state's secure birth register. This approach strikes a balance between:

- Privacy: ensuring the child is not unnecessarily "outed" in routine situations.
- Transparency: ensuring accurate recording of the child's origins for their personal knowledge.
- Future access to information: supporting the child's right to know their story when they choose to explore it.

How this could be facilitated:

- Create a discreet registry code or note on the long-form birth record (not front-facing on day-to-day certificates).
- Allow parents the option of requesting a certified extract of the full record for the child's personal knowledge, when appropriate.
- Ensure children born through surrogacy have full access to this information when they reach maturity.

Including a marker on their birth certificate acknowledges that surrogacy is a distinct pathway to family formation, without creating stigma or a sense of 'otherness.' It supports a child's lifelong right to access information about their birth circumstances while balancing privacy in their everyday life. As intended parents, my husband and I are committed to ensuring our son always knows his full story, not because it defines him, but *because it belongs to him*. A thoughtfully

designed birth certificate framework would help families like ours honour that truth, while respecting dignity and privacy.

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

Based on my own journey to parenthood via altruistic gestational surrogacy in Australia (and conversations with individuals who have also lived surrogacy experiences), I believe the main barriers are:

Barrier 1. The lack of legal clarity and consistency
My husband and I researched the process *for years*, over multiple community forums, websites (government, non-profit organisations), and sought community information from social media groups and the lived experiences from others before us… and still, it was so incredibly difficult to source information that was clear, current, accurate and applicable to our circumstances in NSW.

For example, the Australian Government website https://www.surrogacy.gov.au/ contains information that is intended to simplify the law for ease of comprehension for intended parents and surrogates; however, at every stage it mentions that *laws differ widely* across the country. Consequently, it provides very little value in its current state (to be frank, it feels as though the Australian Government does not take surrogacy seriously). The website needs a *major* overhaul.

Furthermore, and more importantly, inconsistency creates confusion and uncertainty for intended parents and surrogates alike, particularly in cross-border surrogacy arrangements. It is so incredibly difficult for people to feel confident entering into a process when the legal status of their parenthood, or even the legality of their agreement, depends on where they live.

When Australian men and women yearn for children this fiercely, and when they are willing to navigate enormous emotional, legal, and financial hurdles for years, the Australian Government should not stand by as a passive observer. It should walk beside them. It should create systems that honour this commitment, that remove unnecessary burdens, that protect the dignity of all involved, and that ensure these children enter the world into legal, emotional, and social certainty, not ambiguity.

Supporting surrogacy is not simply about making a pathway to parenthood; it is about recognising the profound human drive to create family, and building a system that reflects the compassion, care, and integrity that these journeys deserve.

Potential solution: Australia needs a nationally consistent surrogacy framework that ensures equal protections, processes, and rights across jurisdictions. Clear,

accessible information streamlined websites and central, reliable and legal pathways would empower more people to consider surrogacy as a viable and safe family-building option.

Barrier 2. The difficulty of finding a surrogate
Finding a surrogate in Australia is incredibly difficult. Because commercial surrogacy is prohibited, and advertising for a surrogate is either restricted or entirely banned in some jurisdictions, intended parents often rely on personal networks or social media.

My husband and I connected with our surrogate on a Facebook group called the 'Australian Surrogacy Community' (ASC) in January 2023; however, our connection was purely by chance and occurred several years after being a member of the ASC group.

This informal and unpredictable approach can be discouraging, disheartening and heartbreaking, particularly for LGBTQ+ individuals or couples who may not have connections to women who feel able to carry for them. For context, there are over 1,800 members in the ASC Facebook group as at the time of submitting my paper. Whilst the ratio of intended parent to surrogate is unknown (and difficult to estimate), intended parents are, without a doubt, the majority. Although there are surrogates in the group, the sheer volume of heartbreaking introductory posts by men, women and couples seeking a surrogate are overwhelming. One only needs to read the emotionally fuelled, passionate and often heartbreaking Facebook posts made by individuals in the ASC group to learn that many have suffered years of infertility trauma and/or have the deepest yearning to be parents, and all feel lost, stuck and unsupported by our systems.

The reality is children wanted or born through surrogacy are never accidents. They are not the result of one-night stands, unplanned surprises, or fleeting moments of chance. They are the product of extraordinary intention, profound commitment, and deep, unwavering love. Every child conceived through surrogacy exists because a group of people made conscious, careful, often painful decisions to bring them into the world. *It takes years of preparation, counselling, legal processes, medical procedures, sacrifices and soul-searching take place before that child ever draws their first breath*. These children are deeply, fiercely wanted. They are longed for, and they are dreamt of long before their existence becomes reality. Despite the challenges, the obstacles, the cost (financial, emotional, and physical) men and women, like my husband and I, walk this path because the dream of parenthood is that powerful. Surrogacy-born children are not children of convenience. They are children of devotion.

Potential solution: Introduce regulated and ethical avenues to help intended parents and potential surrogates connect, such as government-supported registers

or matching services. These services could include pre-screening, education, and counselling to ensure all parties are supported from the outset and to protect against exploitation without making surrogacy inaccessible.

Barrier 3. Emotional and legal burden post-birth
Even once a match is made and a child is born, the current post-birth legal process is complex, slow, and emotionally taxing. From mandatory counselling and court applications to delays in parentage orders and birth certificate changes, the system places intense pressure on new parents at a time when they should be bonding with their child.

Potential solution: Simplify the parentage transfer process, particularly in gestational surrogacy. Options include pre-birth orders, administrative pathways for parentage recognition, and faster, more accessible court processing. This would ease the burden on all parties, including surrogates who may feel an ongoing responsibility until legal parentage is finalised.

Barrier 4. Financial barriers
Although altruistic, surrogacy via altruism is not free. My husband and I spent over $90,000 to have our son via altruistic gestational surrogacy. All our expenses were related to meeting the requirements of IVF and surrogacy legislation, including legal fees, court costs, counselling costs, IVF expenses (not covered by Medicare or private health when surrogacy is involved), and out-of-pocket payments for tests, medications, time off work, and more. Most intended parents spend tens of thousands of dollars… not for a commercial arrangement, but just to comply with existing requirements set out in Australian law.

Potential solution: Introduce financial assistance or tax relief for eligible surrogacy-related expenses, and explore partial Medicare coverage for counselling, fertility treatment, and postnatal care for surrogates. Making altruistic surrogacy financially viable without commercialising it would lower a major barrier for many would-be parents.

Barrier 5. Misunderstanding and community stigma
Surrogacy is still misunderstood by the broader public, and that stigma can affect intended parents and surrogates alike. The hospitals are also uninformed and unprepared for surrogacy arrangements. Some people are reluctant to come forward as surrogates because they fear judgement, while intended parents, especially LGBTQ+ couples, often face subtle or overt questioning about the legitimacy of their families. For example, when our son was born in [redacted], a staff member of the hospital entered our room, and upon learning that our son was born via surrogacy, stated "That's weird". This occurred in front of our surrogate, myself and my husband while we held our newborn son in a shared hospital room. education needs to occur first and foremost in the systems that are

designed to support us. Additionally, to avoid judgement and discrimination from professional services throughout the pregnancy (which is already an emotional and stressful process), we hired a private midwife (at an additional out of pocket expense of $7,500) for continuity, and to avoid having to repeat ourselves over and over again by explaining our surrogacy arrangement to ignorant or judgemental medical professionals who simply don't understand altruistic surrogacy in Australia.

Potential solution: Invest in public education campaigns and medical-industry education campaigns that demystify altruistic surrogacy, celebrate diverse families, and share real stories. Seek information from the community who have been through surrogacy. The reality is, you can only understand it, and fully appreciate it, once you've been through it. This would help foster community understanding, reduce stigma, and encourage more people to participate with confidence and pride.

Overall, surrogacy in Australia is an act of generosity and love, but at present, it remains too hard, too confusing, and too uncertain for many. Removing legal inconsistencies, offering better support structures, and reducing emotional and financial stress would allow more people to create families through ethical, well-supported surrogacy. These are not just policy changes, they are opportunities to uphold dignity, protect relationships, and help children be born into homes that are ready and waiting for them with so much love.

4. Should surrogacy agreements be enforceable?

In my view, surrogacy agreements should be enforceable, *but only in cases of gestational surrogacy (i.e. where a surrogate has no genetic link to the child)*. In these circumstances, the agreement reflects a mutual understanding that the surrogate is not intending to parent the child, and that the intended parents are the rightful parents from the outset. Enforceability, in this context, provides necessary legal clarity and emotional security for all involved, particularly the child. I would argue that it would *never* be in the best interests of a child born via gestational surrogacy to be retained by a surrogate, but rather, the very opposite – it may have damaging emotional consequences to the child to be removed from their intended parents (if not immediately, in their adult life) and later learn of the biological family that wanted them, but was denied.

As stated, my husband and I recently became parents through altruistic gestational surrogacy. Our surrogate, [redacted], carried our son, [redacted], but she has absolutely no genetic connection to him. All parties entered the arrangement with informed consent, independent legal advice, and formal counselling. We had a surrogacy agreement that clearly outlined our shared understanding, with that being, my husband and I were to be the child's parents from birth, and that [redacted] was

generously helping to bring him into the world, not to parent him. In our case, we spent more than $5,000 preparing surrogacy arrangements with two different lawyers (one for us, as intended parents, and one for our surrogate, as is required). One of our lawyers reminded us that "*a surrogacy arrangement is not worth the paper it's written on, but you have to do it*". Whilst it provided some sense of clarity of responsibility sand understanding, it felt like an expensive box ticking exercise.

When people asked [redacted] how she felt about "giving up the baby," her response was always calm and unwavering. She would say, "*He's not mine*", *"He's not my baby"* or *"I'm not giving him up, he's going <u>home</u> to the family he was always meant to go to".* These distinctions are critical. They reflect the emotional and ethical clarity that is often present in gestational surrogacy arrangements. When the surrogate does not share a genetic connection with the baby and the arrangement has been thoughtfully planned, there should be a legal framework that acknowledges and upholds that clarity.

Legally enforceable surrogacy arrangements would also provide important security and reassurance for surrogates. A legally enforceable agreement would help to give surrogates the confidence of knowing that they have guaranteed access to all agreed and reasonable pregnancy-related costs, that these expenses will be reimbursed without hesitation or emotional discomfort, and that the intended parents have a binding legal obligation to uphold their commitments. Instead, they could focus fully on their wellbeing and the pregnancy, knowing the law compels the intended parents to meet their financial and ethical responsibilities. It is about providing protection, fairness, and peace of mind for both parties in a process that demands extraordinary trust.

However, despite clear intent and mutual trust, surrogacy agreements are not enforceable by law. In our circumstances, we were required to go through months of legal processes post-birth; attending counselling, preparing affidavits, and filing for a parentage order, during which time we were not recognised as [redacted] legal parents. The emotional impact of this was significant. Enforceable agreements in gestational surrogacy, particularly where all legal and ethical prerequisites have been met, would go a long way toward reducing this stress, protecting the child's best interests, and honouring the intention of everyone involved.

Gestational surrogacy arrangements can and should be handled with compassion, transparency, and strong legal structures. Enforceability of agreements in those circumstances gives intended parents peace of mind, ensures surrogates are protected, and allows the child to be raised in the secure and loving home that was planned for them from the beginning.

That said, I do not believe surrogacy agreements should be enforceable in *traditional surrogacy*, *i.e. where the surrogate is also the genetic mother of the child*.

In these cases, the legal and emotional dynamics are vastly different. The surrogate has a biological connection to the baby, and there must always be space for reflection, autonomy, and even change of heart in these circumstances. Enforceability in such cases risks crossing ethical lines and could unduly pressure surrogates to follow through with something that may no longer feel right once the child is born.

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

Currently, surrogacy in Australia requires intended parents and surrogates to navigate a significantly disjointed and highly fragmented system where every step of the process (medical, legal, psychological, and administrative) is handled separately, with no central coordination. Each professional operates within their own silo: fertility clinics oversee medical procedures; multiple counsellors handle psychosocial screening; multiple lawyers manage legal contracts; courts handle parentage; and state registries manage birth certificates. The burden of connecting all these steps falls squarely on the intended parents.

From the very beginning of our surrogacy journey, my husband and I had to act as the organisers, administrators, and coordinators of a complex process we were experiencing for the first time. We were responsible for:

- Sourcing independent legal professionals for both ourselves and our surrogate;
- Scheduling multiple rounds of counselling, often with different providers for ourselves, donor, their partner and surrogate;
- Managing fertility clinic appointments, embryo transfers, and ongoing medical care for our donor and surrogate;
- Organising and collecting necessary documentation for legal filings (affidavits, statutory declarations, medical reports, counselling reports, etc.);
- Co-ordinating communication between professionals, who often had no contact with each other directly.

Even with our strong surrogate relationship, high level of trust, and clear agreement, the logistical and emotional burden of managing this entire process was enormous. It often felt like a full-time job, and it was exhausting and emotionally draining. We were constantly worried about missing a requirement, delaying the timeline, or inadvertently breaching a legal obligation. Every step carried a heavy administrative load that required time, energy, and careful attention to detail, often while balancing full-time jobs, preparing for parenthood, and eventually caring for a newborn.

This lack of coordination is even more daunting for intended parents without legal, medical or administrative experience, or who do not have flexible working arrangements to attend countless appointments across different sectors. For many, it is so overwhelming that they are discouraged from pursuing surrogacy altogether, or once they are in it, they collapse under the pressure and relationships are damaged or broken beyond repair. There is currently no "case manager," no central authority, no roadmap. Families are left to figure it out alone.

The human cost of this fragmentation cannot be overstated.

- Instead of focusing on preparing emotionally for parenthood, we were immersed in administrative tasks.
- Instead of being present and fully engaged during the early days of our son's life, we were still chasing legal documentation and coordinating multiple professionals.
- Instead of receiving holistic support, we were left to bridge the gaps between disconnected services.

Australia would benefit from an integrated surrogacy support service/model, either as government-led agencies or certified non-profit organisations, that offer:

- End-to-end co-ordination of the full surrogacy process;
- Centralised case managers who guide intended parents, surrogates, and donors through each stage;
- Integrated access to legal, counselling, medical, and administrative services;
- A single, clear timeline of what steps are required and when;
- Ongoing emotional support throughout the entire journey.

This would reduce stress, prevent delays, minimise duplication, improve compliance, and most importantly, allow intended parents and surrogates to focus on the human relationships that make surrogacy possible. It would also help ensure that legal, ethical, and emotional standards are upheld consistently, preventing unintended gaps or missteps due to misunderstandings or misinformation. Surrogacy is a complex journey, but the system doesn't need to make it *more complicated* than it already is. The administrative process should serve the people, not overwhelm them.

6. How should surrogacy advertising be regulated?

Currently, in most parts of Australia, surrogacy advertising is either heavily restricted or outright prohibited. In my view, these bans are outdated, unnecessarily

paternalistic, and fail to reflect the realities of modern altruistic surrogacy arrangements.

Women who are considering surrogacy are not vulnerable, passive participants who need to be "protected" from exposure to intended parents. They are autonomous, capable adults making an informed, deliberate decision to help create a family. Restricting advertising assumes that women cannot make these decisions thoughtfully and safely, which is both disrespectful and disempowering.

In altruistic surrogacy, where no commercial gain is involved, women are not advertising for profit. They are expressing a personal willingness to consider carrying a child for someone else. This is no different, in principle, to donors advertising their availability to donate eggs, sperm, or embryos, which is largely permitted and regulated in Australia.

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

As two gay men, my husband and I had no option but to pursue surrogacy as our pathway to parenthood. We were classified as *"socially infertile"* (a term that already carries uncomfortable implications, which I elaborated on in question 1), and surrogacy was our only viable route to have a child biologically connected to us.

Despite being fully committed, emotionally prepared, and medically ready to begin creating embryos, our IVF clinic refused to proceed with donor egg collection or embryo creation until we had secured a surrogate.

This requirement (i.e. that a surrogate must be confirmed before any embryo creation can occur) created enormous pressure at an already emotionally vulnerable time. But more importantly, it meant that we were effectively excluded from accessing any Medicare rebates for so many expenses.

What did this mean for us in actual dollars and cents? Using only our donor egg collection and embryo creation as examples, instead of being out-of-pocket $5,328.95 for our stimulated IVF with ICSI, we were out-of-pocket $11,217. Instead of being out-of-pocket $2,069.30 for our frozen embryo transfer, we were out of pocket $3,712. For these two procedures alone (of which there were many more, and many more rebates we were unable to access due to this being a surrogacy arrangement), we paid $14,929. The *sole reason* we paid this amount, and could not get the Medicare rebate, was because it was under a surrogacy arrangement. If we had been able to receive the Medicare rebate, we would have only paid $7,398.15 for these two treatments (note that these costs applied in 2023 only and have since increased).

The process was medically identical. The emotional investment was identical. The hope and longing for a child was identical. Yet because we required a surrogate, we were *financially penalised*. There is no other way to describe it.

This experience was frustrating, exhausting, and frankly, disheartening. We were already navigating the complex emotional landscape of finding a surrogate, building a relationship, attending counselling, and coordinating multiple professionals; all while knowing that simply because of the structure of our family, we were being denied support that others receive without question.

This inequity sends a painful message: That our desire to have a child is somehow less valid. That our path to parenthood is considered secondary. That same-sex couples pursuing altruistic surrogacy are not equally deserving of support.

Medicare support should be reformed to reflect the reality that all intended parents pursuing altruistic surrogacy, regardless of sexual orientation, relationship structure, or medical circumstance, deserve equitable access to fertility rebates. The current structure leaves intended parents like us absorbing extraordinary costs for procedures that are no different in medical nature, simply because of who we are and how we are required to build our family.

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

One of the very real challenges in altruistic surrogacy is the emotional discomfort that surrogates often experience when seeking reimbursement for legitimate expenses.

Our surrogate, [redacted], was incredibly thoughtful and selfless throughout the entire journey. But time and again, she expressed hesitation or even guilt when it came to asking for reimbursement for pregnancy-related costs. Despite us telling her to purchase *"whatever you need",* she would say things like *"I don't want to be a burden,"* or *"I'll see if I can find something second-hand to save you money"*. She consistently tried to minimise her requests, even though we wanted her to feel *fully* supported and never to feel that cost was a barrier to her wellbeing or comfort during pregnancy; however, no matter what we said or did, and no matter how much we reassured her that she could buy whatever she needed, it was so hard for her to do.

Her hesitation was not because she lacked trust in us, or because we were unwilling to support her… it was because the system itself offers hardly any clarity or reassurance about what is *reasonable*. When the law provides no clear, definitive framework for what expenses are reimbursable, surrogates are left to *self-regulate* their requests, often erring on the side of not asking, even when they are fully

entitled to support… and what's worse, they absorb financial costs when they absolutely should not.

Surrogates enter altruistic arrangements to give a profound gift. What our government fails to understand, is that surrogates are often highly empathetic, community-minded women who want to give, which can make it even harder for them to speak up about money… *especially* in an altruistic context where financial motives are absent. The ambiguity around "reasonable expenses" puts them in an emotionally uncomfortable position where they worry about appearing demanding or greedy, even when their requests are entirely legitimate.

This is <u>not</u> how surrogates should feel.

When someone is offering to carry a child for another family, they should not be placed in the awkward position of negotiating or justifying their need for proper support. The law should carry that responsibility by providing clear, comprehensive guidance, so that both surrogates and intended parents know exactly what is appropriate, allowable, and fair. Removing ambiguity would ease the emotional strain for both parties.

Potential solution: Create a National Standardised Schedule of Approved Expenses**.** Develop a nationally consistent, legally approved list of reimbursable expense categories. Categories could include medical costs, travel, accommodation, childcare, lost income, counselling, insurance, and pregnancy-related wellbeing costs. This schedule should be published, accessible, and regularly updated.

9. 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?

Our surrogate, [redacted], carried our child with profound care, love, and selflessness. She asked for nothing in return but the joy of seeing us become the parents we longed to be. Our journey together was deeply respectful, built on mutual trust and open communication. There was no financial incentive, only a shared determination to bring a child into a home where he was longed for, planned for, and deeply loved even before his conception. It is because of this lived experience that I feel strongly: *altruism must remain at the heart of surrogacy in Australia*.

The absence of commercial motivation allowed us to build a relationship that was personal, ethical, and profoundly meaningful.

Our journey was not transactional; it was relational. *That distinction matters*.

At the same time, my lived experience has also shown me that even in the most beautiful and well-supported arrangements, surrogacy carries immense physical, emotional, and practical burdens for the woman who carries the pregnancy. [redacted] experienced all the physical demands, discomforts, and risks of pregnancy, while also juggling her own family responsibilities, work, and recovery. She took time away from her own children and faced countless medical appointments, procedures, and physical strain; all while carrying a child who would not become part of her family.

And yet, like many surrogates, [redacted] consistently downplayed her own needs, often expressing reluctance to ask for reimbursement, and frequently looking for second-hand options on Facebook Marketplace to "save us money". She never wanted to feel like a financial burden, particularly with the knowledge of how expensive IVF and surrogacy is, even without the standard costs associated with pregnancy and setting up for a baby.

Surrogates like [redacted] give so much of themselves, but the law provides very little structure to fairly recognise their labour beyond reimbursing expenses. The emotional discomfort around financial discussions adds unnecessary strain to what should otherwise be a joyful, supportive experience for all involved.

Whilst I firmly believe that altruism works, I must acknowledge that it is not without cost. I have seen first-hand that even the most beautiful altruistic journeys carry significant burdens for surrogates. Pregnancy takes a physical toll. There are risks, discomforts, and impacts on work, family life, relationships, and mental health. Surrogates set aside months of their lives, and often years of preparation beforehand, to make parenthood possible for someone else.

The law currently allows for reimbursement of expenses, but nothing further. Surrogates like [redacted], who carried our child with such care, routinely downplay their own sacrifices, even feeling guilty about seeking reimbursement for entirely reasonable costs. As mentioned previously, this reluctance is compounded by a lack of clear legal definition around "reasonable expenses," creating ongoing emotional discomfort for surrogates and intended parents alike when financial discussions arise.

I am not in support of introducing commercial surrogacy in Australia. It is my firm view that surrogacy in Australia should *never become a business transaction where children are commodified, and financial incentives drive women's reproductive choices.* Vulnerable women must be protected from coercion, and children's wellbeing must always come first; however, I do believe there is room for a conversation about ethical, limited compensation.

While I remain protective of Australia's altruistic model, I also acknowledge the reality that some intended parents turn to overseas commercial surrogacy as their only viable option to build a family. These journeys are often taken after long periods of frustration, delay, and heartbreak. I do *not* believe Australia should criminalise or punish intended parents who engage in lawful commercial surrogacy arrangements overseas. Rather than focus on penalising these families, we should focus on strengthening ethical, accessible surrogacy pathways here at home so fewer people feel forced to look elsewhere.

I do not support commercialisation of surrogacy, but I believe Australia can thoughtfully explore a tightly regulated, limited compensable model that continues to place human dignity, consent, and ethical integrity at the heart of surrogacy.

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

As mentioned in question 9, I believe there is space for a careful, respectful national discussion about whether Australia's model can evolve to acknowledge the true extent of the surrogate's labour and sacrifice in a *controlled, non-commercial way*.

For example, a capped, tightly regulated compensable model could:

- Respect and preserve altruism while acknowledging the physical and emotional labour involved.
- Provide a symbolic recognition of the surrogate's extraordinary contribution beyond simply reimbursed expenses.
- Reduce the discomfort many surrogates feel about asking for support.
- Avoid forcing intended parents into overseas arrangements, which carry greater risks of exploitation

Such a model could still protect surrogates through:

- Mandatory independent counselling before and throughout the process.
- Comprehensive legal advice for all parties.
- Strict caps on any allowable compensation, preventing financial inducement or profit-driven surrogacy.
- Ongoing psychological support during and after pregnancy.
- Independent oversight to monitor compliance and ensure the wellbeing of all parties remains central.

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

One of the most distressing aspects of the current surrogacy framework in Australia is the delay in legally recognising intended parents as the lawful parents of their own child.

In NSW, our legal parentage is not established until a court order is made many months after birth, but it must be done before the child is 6 months old. That timeframe is terrifying (and make no mistake, you feel every heavy second of that ticking clock). During this time, intended parents, despite being solely responsible for the child's care from the moment of birth, are not legally recognised. This disconnect between legal status and lived reality takes an emotional toll that undermines what should be one of the most joyful and secure periods in a new family's life.

As a new father, I have lived through this with my husband. We all willingly entered a surrogacy arrangement with clarity, support, and full consent; however, after [redacted] was born, we found ourselves subjected to weeks and months of intense, ongoing legal and administrative processes to be recognised as his parents.

To be clear, we had already completed a lot of mandatory surrogacy counselling before the birth. But we were required to attend post-birth counselling as well, at a time when we were adjusting to the exhaustion, unpredictability, and emotional intensity of caring for a newborn. [redacted] was also required to attend counselling sessions during the postnatal period, when she too was physically and emotionally recovering from the birth. While counselling has value, the inflexibility of this requirement during such a vulnerable period felt unreasonable and, frankly, insensitive to the needs of new parents and surrogates alike.

In parallel, I was also liaising with our lawyer, preparing affidavits, and chasing signatures and statutory declarations. Every step felt like a new administrative burden. I vividly remember sitting at home, with [redacted] crying in one arm, while trying to scan and send legal paperwork with the other. There was a constant sense of pressure. A sense that if I didn't keep things moving, our legal parenthood, and by extension, our son's legal clarity, would remain in limbo. It is not a pleasant feeling.

Additionally, friends and family react in shock when they learn we are not [redacted] legal parents, and many would then often try to reassure us by saying things like, *"You know he's yours,"* or *"You know* [redacted] *would never take him away"*... and all of this was true. We never believed for a moment that [redacted] would challenge our parentage (nor did she want to); however, the point is that she didn't have to, *because our laws already did that for her.* The fact remained that, in the eyes of the law, we were not [redacted] legal parents. Someone else was. While she may not have intended to take him from us, *the system allowed for that possibility*. No one can understand the deeply unsettling and disempowering feeling that exists when caring for, protecting, and loving *your own child* while knowing you have no legal

authority to stop someone from removing him. When that possibility exists, it is unsettling.

After months of compiling paperwork, counselling, and legal coordination with a newborn baby, our lawyer filed the application for a parentage order with the Supreme Court on 22 April 2025. We received confirmation from our lawyer on 17 June (exactly 8 weeks later) that the judgement of our parentage order was completed. That means our son was nearly five months old until we were recognised as his legal parents. The emotional toll of that cannot be overstated.

We did *everything* asked of us. We followed every rule. *And yet we needed to wait months to be acknowledged as what we already were:* [redacted] *fathers*.

This is not how the early weeks of parenthood should feel. Instead of being able to focus fully on bonding with our son, we were entangled in a system that treated us as temporary carers of a child we had long planned for, deeply wanted, and were raising from day one. It is exhausting, disheartening, and it feels deeply unfair.

At the end of the day, we had an agreement in place, a strong relationship with our surrogate, and full alignment on the intention that [redacted] and I would be [redacted] parents. And yet, we were required to "prove" ourselves (yet again) through a rigid, legal framework that did not reflect our reality. To be treated as legal strangers to your own child under such clearly defined circumstances is not only outdated, but also emotionally harmful.

The presumption should be that when a gestational surrogacy agreement is in place, and all parties have fulfilled their obligations and given informed consent, legal parentage flows naturally and promptly to the intended parents.

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

The early weeks of parenting should be defined by connection, healing, and joy; not legal uncertainty as we have experienced. The current process undermines the dignity of intended parents and distracts from the very role it is meant to support. By introducing reforms that reflect the reality of modern surrogacy arrangements, we can build a system that is not only ethical and robust, but also humane, respectful, and fit for purpose.

To reduce this burden and emotional toll, I support the following reforms:

- *Pre-Birth Parentage Orders:* Establish a process for intended parents to apply for legal recognition prior to birth, with final confirmation via surrogate consent

after birth. This would align the law with the lived intention and allow new parents to focus on parenting, not legal paperwork.

- *Administrative Pathways (Not Judicial Pathways):* Remove the need for intended parents to apply through the courts in straightforward, uncontested cases of gestational surrogacy only. I note that traditional surrogacy may require a different approach since, unlike gestational surrogacy (where the surrogate has no genetic link to the baby), a surrogate is genetically linked to a baby born via traditional surrogacy. An administrative process (e.g. through a Births, Deaths and Marriages Registrar) could handle parentage recognition in a more timely and compassionate way.

- *National Consistency:* Introduce a uniform surrogacy framework across all Australian states and territories. The current patchwork of laws causes unnecessary confusion and anxiety for families who may relocate or have interstate connections, as well as for anyone who first begins researching how surrogacy works in Australia. It is an absolute mess, and it is already confusing enough without being further complicated by misinformation stemming from different advice or approaches carried out in different states and territories. A uniform surrogacy framework should be paramount.

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

Surrogacy laws should *not* depend on geography. The legal identity of a child, the rights of intended parents, and the protections for surrogates should be *the same across Australia*. The fact that we currently have different legal frameworks depending on state borders creates unnecessary confusion, delays, and vulnerability for families who are already navigating one of the most emotional, personal journeys of their lives.

In my own experience, we were incredibly fortunate to have what many would call a "local journey". [redacted], our surrogate, lives only 10 to 12 minutes away from us (or 4.5 kms). That physical closeness provided enormous comfort: practically, emotionally, and logistically. We could meet regularly, attend appointments together, and build a strong, connected relationship throughout the pregnancy.

But before we connected with [redacted], like many intended parents, we faced the possibility that our surrogate might live in another state. The thought of managing an interstate surrogacy journey with conflicting laws, additional legal complexities, and questions about which jurisdiction's rules would apply, was overwhelming and quite frankly, terrifying. The uncertainty about how to navigate those differences added *another* layer of anxiety to what was already a deeply emotional pathway.

No parent should have to carry that extra fear while trying to build a family. The legal system should not add new burdens to a process that is already full of vulnerability, sacrifice, and hope.

Surrogacy is not a state-by-state experience; it is a national one. The love, commitment, and intent that bring a child into the world are the same no matter where you reside in Australia.

My view is that Australia needs full national consistency in surrogacy law through a single, uniform national framework that applies equally across all jurisdictions. If that is not immediately achievable, then at a minimum we need binding national standards for counselling, legal processes, parentage transfer, financial reimbursement, hospital policies, and long-term records. Surrogacy requires extraordinary courage, trust, and sacrifice, and the Australian legal system and framework should support that, and not make it harder, riskier, or more confusing based on where people happen to live.

The intention to create a family is the same in every state and our legal system should reflect that consistency by placing the child's stability, security, and identity at the centre of the framework.

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

Yes, absolutely. In my experience, there is still a significant lack of understanding about surrogacy, even among healthcare professionals, administrative staff, and the general public. This misunderstanding often leads to judgement, misinformation, and unnecessary emotional strain on surrogacy families.

When we told people we were pursuing surrogacy here in Australia, we were met (even from well-meaning people) with disbelief, confusion, and sometimes outright misinformation.

Some people were shocked that surrogacy was even legal here. Others confidently (and wrongly) told us that what we were doing was illegal. We constantly found ourselves explaining that Australia allows *altruistic surrogacy*, and that we were carefully following every legal, ethical, and medical requirement. Having to repeatedly defend the legitimacy of our own family-building journey was exhausting, and at times, deeply hurtful.

Sadly, this misunderstanding extended into the healthcare system itself. As mentioned previously, during our hospital experience, one staff member, upon

learning that our son was born through surrogacy bluntly responded with, *"That's weird"*. We were left not only managing the birth of our child, but navigating an emotional minefield of discomfort, judgement, and subtle prejudice at one of the most vulnerable and intimate times of our lives.

It was, in part, because of this fear of prejudice and constant questioning that we chose to engage a private midwife to support us throughout the pregnancy and delivery. Having a private midwife allowed us to create a safe, consistent space where we didn't have to repeatedly explain or justify our situation to different staff at every appointment. It protected our emotional wellbeing, and that of our surrogate, at a time when what we needed most was compassion, sensitivity, and stability.

The truth is: surrogacy is still seen by many as 'different' or 'strange', and this lack of awareness hurts.

The medical, legal, and administrative systems need far better training and education to support surrogacy families with respect, dignity, and understanding. Surrogacy is becoming increasingly common in Australia; especially for same-sex couples, individuals experiencing infertility, and people with medical complications that make pregnancy unsafe. Yet most public-facing professionals are still underprepared to sensitively and confidently support these families.

Surrogacy is not "weird". It is not illegal. It is not unnatural. It is an act of profound generosity, love, and courage; it should be celebrated. The law has come a long way in allowing surrogacy to exist in Australia, but public understanding still lags far behind. Improving awareness and education is not just about legal compliance; it is about ensuring that surrogacy families, like ours, are met with kindness, dignity, and understanding from the very first moment we walk into a clinic, a counselling room, a lawyer's office, or a hospital delivery suite.

What is needed:

- Comprehensive professional education for healthcare workers, hospital staff, administrative bodies, government agencies, legal professionals, and counsellors.
- Clear, nationally standardised policies for how surrogacy births are handled administratively (hospital admissions, birth certificates, Medicare, Centrelink, etc.)
- Public awareness campaigns to normalise surrogacy and reduce stigma, helping the wider community understand that surrogacy in Australia can be an ethical, deeply loving, and lawful path to parenthood.
- Visibility of lived experiences so that policymakers and professionals hear directly from surrogates, intended parents, and children born through surrogacy about what this experience is really like.

Conclusion

I'd like to conclude my submission by saying that surrogacy in Australia provided a very long, confusing and tiring pathway, *but it was the love of two extraordinary women that made our family possible*. Our son, [redacted], did not arrive by accident or chance, but through profound trust, selflessness, courage, and intentional love.

Surrogacy created the structure that allowed us to build our family, but it was [redacted], who carried him with unwavering generosity, and [redacted], who gifted her eggs, who made that possibility real. Their sacrifice, compassion, and belief in our dream gave my husband and I the gift of parenthood. No legal process, no clinic, no court can ever fully capture the depth of what they gave. Surrogacy is not simply a legal or medical process. *It is a deeply human act;* one built on relationships, vulnerability, and hope.

Every moment of our journey that led to our precious son was deeply emotional: from the early hope and fear, to the careful planning, to the overwhelming gratitude we feel for [redacted] and [redacted], who made his life possible. It is a journey full of beauty, but also one marked by unnecessary legal complexity, emotional vulnerability, and at times, profound uncertainty.

The very real fact is: the system we navigated was <u>so much harder than it needed to be</u>. We faced fear that we might not be legally recognised as [redacted] parents for months after his birth. We carried the emotional strain of overwhelming paperwork and legal hurdles when we should have been fully present in those precious first months with our newborn son. We felt the quiet sting of misunderstanding, in the hospital, in public conversations, and in subtle moments of judgment from people (including family) who still struggle to understand that surrogacy is not strange or unnatural, but an act of purest generosity.

[redacted] carried [redacted] not because she was obligated, but because she *wanted* to help us become parents. Her selflessness is impossible to measure. And yet, even she sometimes hesitated to ask for reimbursement for legitimate expenses, worried about appearing demanding. We all walked this journey carefully, balancing love with the constant shadow of administrative complexity, confusion, and outdated structures that did not reflect the trust we had built.

What Australia needs is reform that honours the very heart of surrogacy: the generosity of surrogates, the vulnerability of intended parents, and above all, the wellbeing of the child.

We need a system that removes legal limbo and recognises intended parents from birth, that offers clarity and simplicity, that trains our healthcare professionals to welcome diverse families with dignity, that standardises processes nationally, and that provides honest, ethical conversations about how to best recognise the enormous contribution of surrogates without ever commercialising the precious gift they offer.

Surrogacy is not easy. It requires extraordinary trust and courage from everyone involved. But it should not be made harder by the system that governs it. Our children deserve better. Our surrogates deserve better. And future families walking this path deserve to feel secure, supported, and protected from the first moment they dream of holding their child. This is why surrogacy law reform matters. Because behind every legal form, every affidavit, every court hearing, is a real family, holding their breath, longing for the moment they can simply be parents.

Thank you for considering my submission.

Yours Faithfully,

[redacted]