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24/06/2025

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 parent via surrogacy, due to chronic health issues that caused multiple miscarriages, that left me unable to carry a pregnancy. Surrogacy was not a choice made lightly, it was the only safe and medically advised option for my husband and I to have a biological child together. 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.

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

I am a parent via surrogacy. My child was born in [redacted] through a gestational surrogacy arrangement in South Australia.

I was diagnosed with Crohn's disease at the age of 13 and underwent a total colectomy and proctocolectomy (removal of the entire large bowel and rectum) at 24. After my husband and I were married in January 2020, we began trying to start a family in February that year. When we were unsuccessful, we accessed fertility care in December 2020 and began IVF in February 2021.

Over the years that followed, we went through six egg retrievals, six embryo transfers, and experienced three miscarriages. During this time, I was also diagnosed with endometriosis, and an MRI revealed extensive surgical adhesions and complications from previous operations that would prevent me from safely carrying a pregnancy to full term. Based on this, our IVF clinic advised that surrogacy would be our only safe path to parenthood.

Our journey into surrogacy began with a three-part video series we shared on our Facebook and Instagram accounts, where we openly shared our story and dream of becoming parents. We did this as none of our family or friends came forward to help us. Through that, we connected with an incredible woman who reached out after seeing our videos and who would go on to become our surrogate and a dear friend. This experience gave us a deep sense of hope, community, and connection during a time that had otherwise felt incredibly isolating.

Throughout the pregnancy, we felt supported, included, and emotionally connected. Our relationship with our surrogate was built on mutual respect, trust, and clear communication. Although the legal and medical processes, counselling, IVF, legal agreements were complex, we had a very positive experience overall.

One challenge we encountered during the pregnancy was attending medical appointments. Because our arrangement involved three people; our surrogate, my husband, and myself, we often had to justify why all three of us were present in the room. While once we explained the situation most healthcare professionals were accommodating and supportive, it was clear that there isn't a widespread understanding of how surrogacy works in practice. In fact, we were the first surrogacy team our private obstetrician's clinic had ever worked with.

This added an extra emotional burden at times, as we were already navigating a sensitive and complex process, and simply wanted to be present and involved in our child's journey from the very beginning. It may seem like a small thing, but needing to repeatedly explain and validate our roles served as a constant reminder that the system isn't yet fully set up to support or understand families formed through surrogacy.

That said, there were several negative experiences after our daughter was born that made the journey more stressful than it needed to be.

One of the most difficult aspects was navigating government systems. Applying for Centrelink's Paid Parental Leave was overwhelming and, at times, disheartening. I was required to provide excessive documentation and justification to prove my

eligibility, while our surrogate had her claim approved almost immediately. It felt as though the system did not fully recognise or respect my role as a parent.

The Medicare process was equally frustrating. I contacted Medicare multiple times and received conflicting information depending on who I spoke to. Eventually, I was told I couldn't apply for a Medicare card for our daughter until both her birth certificate and the Parentage Order had been finalised. This caused significant delays and unnecessary stress when accessing healthcare. We were required to pay full fees for medical appointments, even though our daughter is an Australian citizen born to Australian parents. Medicare advised that we could claim these fees back once a card had been issued. In the end, it took 5.5 months after birth for our daughter to receive her Medicare card. Our Parentage Order was finalised at 4.5 months.

As strange as it may sound, I did not 'fully' feel like my daughter's mother until we received the Parentage Order. Of course, I loved and cared for her from the moment she was born, but there was a lingering sense of uncertainty, like I was waiting for official permission. The legal recognition mattered more than I expected it to. Until that moment, despite everything we had gone through to bring her into the world, it felt like there was something missing, something incomplete.

In addition to the above, we were surprised to learn that our daughter had been incorrectly placed on the South Australian Department of Health donor registry at birth, despite not being a child who was donor-conceived. We received an email from the South Australian government that incorrectly identified us as donors of our own child. Although this was eventually resolved after the Department was notified by a health professional who was made aware of our situation, it was yet another example of how systems don't always accommodate the realities of surrogacy.

One of the most important changes I believe we need is the introduction of a **pre-birth parentage order**. This would be a document signed by both the surrogate and the intended parents during pregnancy, clearly establishing that the intended parents are the legal parents from birth.

Having a pre-birth order in place would streamline many of the post-birth processes including; Centrelink, Medicare, birth registration and remove the legal limbo that intended parents currently face. It would ensure that the people raising and caring for the child are legally recognised from day one, which is not only administratively practical but also emotionally significant for families like mine.

In our case, the delay in being legally recognised as our daughter's parents caused unnecessary stress and complications. This reform would provide dignity, certainty, and emotional security to all parties involved and better reflect the reality of modern surrogacy arrangements in Australia.

I would also like to highlight an issue that caused unnecessary distress following the birth of our daughter. Under the current legal framework, our **surrogate was required to register the birth with Births, Deaths and Marriages**, and in doing so, she was listed as our daughter's **birth mother**.

While this may be a legal requirement, it does not reflect the truth of our family's story. Our surrogate was our daughter's gestational carrier, not her mother. Referring to her as the birth mother on official documentation is not only inaccurate, but emotionally confronting - for us as the intended parents, and I believe this process needs to be revised.

Instead of using the terms "birth mother" or "birth father," birth registration forms could simply refer to each party as a **"parent"**, allowing for clarity and inclusivity, and better reflecting the diverse family structures that exist today. This small change would reduce distress, promote accuracy, and honour the intent and truth of surrogacy arrangements.

Another area that urgently needs reform is access to **Medicare rebates for fertility treatments** used in surrogacy. My husband and I were not eligible for any Medicare rebate for the embryo transfer to our surrogate simply because it was classified as a surrogacy arrangement.

This felt deeply unfair, especially as my infertility is the direct result of a chronic medical condition, Crohn's disease, which I have lived with since I was 13.

I didn't choose this path, and we turned to surrogacy because it was medically necessary. Being denied financial support for this reason felt discriminatory and added a further burden to an already expensive, emotionally complex journey.

Intended parents with medically documented conditions should not be penalised for needing surrogacy. There needs to be compassion, fairness, and recognition of the unique challenges that bring families to this path.

Human Rights

Question 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?

I believe that children born through surrogacy benefit from access to age-appropriate, accurate information about the circumstances of their birth, ideally from a young age. In our family, we are committed to being open and honest with our daughter about her surrogacy story. We will begin sharing this with her as soon

as she is able to understand, because we see it as something to be proud of, a beautiful, selfless act that brought her into our lives.

While I understand that not all families may feel the same or be ready to disclose this early, I do believe it is in the best interests of families and children to be open and transparent about their conception story. This promotes security between parents and children, however this should be the responsibility of the family. The government should not be involved in this process.

Ultimately, I believe surrogacy should not be something hidden or treated as shameful. Children deserve the truth about how they came into the world and when shared with love, it becomes a powerful part of their identity and story.

Barriers to domestic surrogacy

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

There are several significant barriers that prevent people from entering into surrogacy arrangements in Australia.

One of the biggest challenges is simply finding a surrogate. In many Australian states and territories, including South Australia, it is illegal to advertise for a surrogate. This makes the process extremely difficult and isolating. In our case, none of our family or friends were in a position to carry a pregnancy for us, so we turned to social media and shared a three-part video series on our personal platforms. It was only through this that we were fortunate enough to connect with a woman who would eventually become our surrogate and dear friend.

Another major barrier is a general lack of understanding within the community about surrogacy. Many people don't realise that surrogacy is legal in Australia (when done altruistically), and they're often unsure of what's involved. This confusion, paired with complex and inconsistent state-by-state laws, leads many intended parents to look overseas, despite the additional risks and ethical concerns that may come with international arrangements.

Cost is another huge barrier. Before we even began our surrogacy journey, we had already spent upwards of $80,000 to $90,000 on years of IVF and fertility treatment. Surrogacy, though altruistic in Australia, still comes with considerable out-of-pocket expenses, including legal fees, counselling, IVF cycles, and lost wages or reimbursements for the surrogate. For many families, it is simply out of reach financially.

Together, these factors, alongside legal restrictions, lack of education, difficulty finding a surrogate, and high costs, create a system that is incredibly hard to

navigate and often pushes people away from pursuing surrogacy in Australia, even when it is their only option to have a family.

Surrogacy agreements – validity and enforceability

Question 9. Should surrogacy agreements be enforceable?

Both the surrogate and the intended parents should have the ability to enforce parts of the agreement if one party does not fulfil their responsibilities, particularly where it relates to the welfare of the child, medical costs, or the agreed-upon process for birth and postnatal care.

There should be a clear legal framework- perhaps overseen by a Family Court that could intervene when disputes arise, and enforce terms of the agreement where appropriate. At the same time, the law must continue to protect the surrogate's right to bodily autonomy, meaning she should always have the right to make decisions about her own body during the pregnancy.

Ultimately, making aspects of the surrogacy agreement enforceable would bring greater clarity, consistency, and protection for everyone involved, especially the child.

Limits on advertising

Question 13. How should surrogacy advertising be regulated?

My husband and I had been sharing our infertility and IVF journey for many years on our social media accounts. I openly share about my Crohn's disease and what it is like living with a permanent ileostomy. So as mentioned previously we shared a 3 part series video on our social media about our current IVF/infertility journey and that the next step for us was to find a surrogate to help us become parents. We never formally advertised for a surrogate, in fact, we knew that advertising wasn't permitted.

By being honest and vulnerable with our story, we were incredibly fortunate to connect with someone who offered to be our surrogate. But I know not everyone has that opportunity, and for many, finding a surrogate in Australia is the most difficult part of the process.

I truly believe that if advertising for a surrogate were permitted in Australia, more people would be able to access surrogacy here, and more potential surrogates would come forward- many of whom may not even realise that altruistic surrogacy is legal.

There needs to be a way to increase awareness and connection between intended parents and potential surrogates in a safe and respectful framework. I don't know exactly what that framework should look like, but I do believe it's something we need to work through as a country.

Whether that's through a regulated national platform, a government-supported matching service, or a safe, transparent way to share stories, we need to open up the conversation, reduce the stigma, and make it easier for families to connect with the right people here in Australia, rather than feeling forced to go overseas.

Access to Medicare and parental leave

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

I believe both surrogates and intended parents should have equitable and clearly defined entitlements, particularly around access to parental leave.

I also want to acknowledge that I'm employed within SA Health, and I was fortunate that my workplace had a surrogacy-specific paid parental leave policy. This was an incredible support during a time of significant emotional and logistical pressure. I strongly believe that all intended parents across Australia should have access to equivalent paid parental leave entitlements, just as adoptive parents and birth parents do. The care and responsibility for a child begins from birth, regardless of who physically carried the pregnancy and leave entitlements should reflect that.

I also believe that people accessing surrogacy should receive Medicare entitlements. As I have mentioned previously, I have a chronic health condition that means I am medically unable to carry a pregnancy. That was not a choice- it was a consequence of my illness, diagnosed in childhood. Despite this, my husband and I were ineligible for Medicare rebates for the embryo transfer to our surrogate because it was classified as a surrogacy arrangement. This felt deeply unfair. We had already spent upwards of $80,000–$90,000 on IVF and fertility treatment, and to then be excluded from access to Medicare rebate because we required a surrogate was disheartening and discriminatory.

If someone requires fertility treatment due to medical infertility, they should not be penalised because surrogacy is the only safe pathway available to them.

Once our surrogate was pregnant she was able to use her own Medicare for the pregnancy. This should remain the case for all future surrogates.

Ultimately, the surrogacy system in Australia needs to reflect fairness, equity, and compassion. Intended parents should not be punished for following a different path to parenthood.

Reimbursing and compensating surrogates

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

In our own experience, we had a very respectful and trusting relationship with our surrogate. We provided her with a debit card to cover pregnancy-related expenses, as agreed in our legal documents. However, she often felt guilty or hesitant about using it, even though we were adamant that she should not be out of pocket for any expenses that were related to the pregnancy.

I believe the hesitation came from a lack of clarity around what was considered "reasonable" and from the fear of doing the wrong thing. It shouldn't feel that way.

To improve this process, I believe there needs to be:

- A **clear national framework** outlining what constitutes reasonable expenses (e.g. medications, maternity clothing, travel, loss of income, childcare for existing children, prenatal vitamins, etc.).

- The option for **structured, regular reimbursements**, such as fortnightly or monthly payments- rather than ad hoc or lump sums, to ensure consistency and reduce financial stress for surrogates.

- The development of a **reimbursement template or tracking system**, supported by legal and/or fertility clinics, to help both parties document and agree on expenses as they arise.

- Most importantly, **education and reassurance** for surrogates and intended parents alike, so surrogates feel comfortable accepting the support they are entitled to, and intended parents feel confident that they are fulfilling their obligations fairly and appropriately.

Ultimately, a clearer, more transparent reimbursement system would protect all parties and help preserve the trust and goodwill that are so essential in surrogacy arrangements.

Question 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 the introduction of compensated surrogacy in Australia, but not commercial surrogacy in the sense of profit-driven arrangements.

I believe compensating surrogates fairly and ethically would make the process more appealing and accessible within Australia, and reduce the number of people who feel forced to seek surrogacy overseas, often at greater legal, financial, and emotional risk. There should be a clear criteria for what the surrogate should be financially compensated on.

Surrogacy is a significant physical and emotional undertaking. While our surrogate was altruistic and incredibly generous, I believe it is entirely reasonable that women who choose to carry a child for someone else should be offered structured, regulated compensation that reflects the time, effort, and sacrifice involved.

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

To ensure this is done ethically and fairly, I would recommend a review process or advisory panel, which includes previous Australian surrogates themselves, to help determine what reasonable and standardised compensation might look like. This could include things like:

- A fortnightly payment structure to offer consistency and reduce financial stress during pregnancy.
- Reimbursement for pregnancy-related costs, such as medication, maternity clothing, transport, and other incidental expenses.
- Consideration of time off work or lost income, especially in the later stages of pregnancy and post-birth recovery.

Compensation should not create a commercial marketplace, but rather provide surrogates with the respect and practical support they deserve. I believe this kind of model would encourage more women in Australia to consider surrogacy, helping intended parents stay within a regulated and safe domestic system, and strengthening ethical and emotionally secure arrangements for everyone involved.

Legal parentage of children born through surrogacy

Question 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?

One of the main problems we experienced with the current process of obtaining legal parentage was the delay in being able to apply for a Parentage Order. In South Australia, we were required to wait until our daughter's birth certificate was issued before we could even begin the legal process. Unfortunately, there was a

delay with Births, Deaths and Marriages in South Australia, which significantly pushed back our timeline.

As a result, it took 4.5 months from the time our daughter was born until we were legally recognised as her parents. During this time, we were caring for our newborn, making medical decisions, and navigating parental responsibilities, without the legal recognition or protections that should have been in place from birth.

This waiting period not only caused emotional strain but also complicated practical matters like enrolling our daughter in Medicare, accessing services, and feeling fully secure in our role as her parents.

I believe this system could be improved by allowing pre-birth parentage orders, or at the very least, streamlining the post-birth legal steps so that intended parents are not left in legal limbo for months after their child is born

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

I believe this system could be improved by allowing pre-birth parentage orders, or at the very least, streamlining the post-birth legal steps so that intended parents are not left in legal limbo for months after their child is born. I have mentioned this above.

Lack of awareness and education

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

Yes, there absolutely needs to be improved awareness and understanding of surrogacy laws, policies, and practices in Australia.

Right now, most people only learn about surrogacy through their IVF clinics, word of mouth, social media or personal connections. There is no centralised education, and the lack of public awareness means many people don't even realise that altruistic surrogacy is legal in Australia. This leads to confusion, misinformation, and often pushes intended parents to pursue surrogacy overseas, where there may be less protection, more risk, and higher costs.

I believe the Australian Government needs to take the lead in raising awareness. This could be through a national education campaign, either delivered via TV, online platforms, social media, that informs the public about what surrogacy is, how it works legally in Australia, and how people can get involved either as intended parents or surrogates.

There are currently more intended parents in Australia than there are surrogates, and unless people know that surrogacy is legal and supported here, that imbalance will continue.

The more we normalise and openly talk about surrogacy, the more likely it is that willing and compassionate surrogates will come forward and that families like mine will be able to build their families safely, ethically, and within our own country.

In conclusion, our journey to parenthood through surrogacy was filled with love, resilience, and unwavering hope, but it was also shaped by systems that often made the process harder, more confusing, and more expensive than it needed to be. We were fortunate to find an incredible surrogate who has now become a dear friend. We were so lucky to have experienced a pregnancy that was respectful, joyful, and positive. But the legal, administrative, and emotional hurdles that followed highlighted just how far we still have to go in creating a system that truly supports families like ours.

The financial cost of this journey has been enormous. Before even entering surrogacy, we had already spent between $80,000 to $90,000 on years of IVF treatment. On top of that came the legal fees, mandatory counselling (which is essential, but costly), IVF-related procedures for the surrogate, which are excluded from Medicare rebates and all the additional out-of-pocket costs that come with managing a process the system doesn't fully understand.

For families already carrying the weight of infertility and loss, the lack of financial support feels deeply unfair.

We believe intended parents should not be penalised- emotionally, legally, or financially for pursuing surrogacy when it is their only safe path to parenthood. With national consistency, access to Medicare support, pre-birth parentage orders, fairer pathways to find surrogates, and public education to raise awareness, Australia can build a surrogacy system that is ethical, accessible, and deeply human.

Despite the challenges I have shared, I want to finish by saying that **surrogacy is one of the most beautiful, life-changing experiences my husband and I have ever experienced**. It gave us our daughter, our greatest joy - and we will be forever grateful for our surrogate and for altruistic surrogacy in Australia. It is a pathway built on trust, generosity, and love, and it deserves a legal and social framework that reflects that beauty and supports every person involved.

Thank you for the opportunity to share our story and contribute to this important review. We hope that by sharing our experience, we can help create a better, clearer, and kinder future for all families who walk this path.

Thank you for considering my submission.

Yours Faithfully,

[redacted]