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29 June 2025

The Commissioner
Australian Law Reform Commission
PO Box 209
Flinders Lane
Victoria 8009
Email: surrogacy@alrc.gov.au

Re: Submission to the ALRC – Review of Australia's Surrogacy Laws

Dear Commissioner

I am making this submission to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. I am an intended parent currently undertaking surrogacy in the United States, specifically in the state of Nevada. After exploring the domestic system in Australia, we ultimately chose an international pathway because of the significantly greater legal clarity, emotional security, and institutional support available to all parties. However, this is resulted in significantly higher expense, risk and uncertainty for our family that, law abiding Australian citizens, we should not have to undertake.

My submission draws on our ongoing experience and recommendations informed by ethical practice and human rights.

I hope this will help Australia develop a fairer, safer, and more functional surrogacy framework.

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

Question 1: Personal Experience
My partner and I are currently pursuing a surrogacy arrangement in Nevada, United States. Our experience there has been positive. The legal framework in Nevada provides a well-regulated environment in which surrogates and intended parents are both protected and supported. Key aspects such as pre-birth parentage orders, legally binding agreements, and permitted surrogate compensation provide clarity and confidence to all parties. We have been guided at every step by experienced surrogacy agencies, legal professionals, counsellors, and medical practitioners. Our surrogate is fully informed, supported, and empowered throughout the process. She is excited about being part of an ethical surrogacy relationship.

In contrast, we found the Australian surrogacy landscape to be fragmented, difficult to navigate, and highly restrictive. The absence of professional agencies and the ban on advertising made it nearly impossible to connect with a potential surrogate. The limitations on compensation felt unjust given the significant physical, emotional, and time investment required from a surrogate. Moreover, the legal uncertainty created by post-birth parentage transfer processes added to our stress and concerns.
We strongly believe that Australia must adopt a nationally consistent, ethical, and supportive model, learning from jurisdictions like Nevada that balance autonomy, protection, and clarity.

Question 2: Reform Principles
The reform of Australian surrogacy law must be anchored in principles that promote the rights and dignity of all involved. The best interests of the child must remain paramount, ensuring legal recognition of their social and psychological parents from the outset. Bodily autonomy and dignity of surrogates must be preserved, ensuring they are never coerced or disrespected. Equality and inclusion must guide eligibility and access, removing discriminatory barriers based on gender, sexuality, relationship status, or disability. Legal clarity and efficiency are essential to reduce unnecessary stress, delay, and confusion. National consistency is imperative to prevent forum shopping and unequal treatment across jurisdictions. Lastly, reforms must include supportive infrastructure and transparent ethical frameworks to ensure safety and informed consent.

Question 3: Human Rights Issues
Surrogacy intersects with several key human rights considerations. Domestic and international arrangements must uphold the surrogate's right to bodily autonomy, including informed consent for medical procedures, protection from exploitation, and freedom from coercion. Intended parents must be able to access surrogacy free from discrimination based on gender, sexuality, or relationship status. Most critically, children born through surrogacy have a right to legal recognition of their parents, access to their origins, and a stable identity from birth. Current laws that delay or deny legal parentage recognition risk breaching the rights of the child under international conventions. A regulatory approach that protects all parties while enabling access and fairness is far preferable to a punitive or restrictive model.

Question 4: Access to Birth Information
Children born through surrogacy should be entitled to access comprehensive information about the circumstances of their birth. This includes the identity and background of their surrogate, non-identifying details about the surrogate's family and medical history, and details of any donor involvement. This information should be made available through a secure, centralised national surrogacy register, which children can access in accordance with age-appropriate protocols. Facilitated access through supported disclosure processes, including counselling where necessary, should also be offered to assist families in communicating this information openly.

Question 5: Barriers to Domestic Surrogacy
Australia's domestic surrogacy framework presents multiple barriers. These include the blanket prohibition on compensation, which does not reflect the surrogate's considerable emotional, physical, and financial contribution. Advertising bans hinder the ability of intended parents to find a willing surrogate, particularly those without a pre-existing personal network. The absence of surrogacy agencies leaves individuals to navigate complex legal and medical terrain alone. Legal uncertainty arising from post-birth parentage transfer discourages participation. Inconsistencies between state laws lead to confusion and forum shopping, resulting in inequitable access.

To overcome these barriers, Australia should introduce a system of ethical, nationally regulated not-for-profit surrogacy agencies to facilitate safe and informed matching of surrogates and intended parents. Reasonable compensation should be allowed, recognising the surrogate's time, disruption, and risks incurred. Caps on compensation would protect all parties.

Pre-birth parentage orders should replace post-birth processes to provide legal certainty and protect the child. Ethical advertising should be permitted under regulated conditions, and laws should be harmonised nationally to ensure consistency, clarity, and equality of access across Australia.

Questions 6 & 7: Eligibility Requirements
Eligibility criteria for surrogacy should be inclusive, non-discriminatory, and based on informed consent rather than arbitrary thresholds. Intended parents should not be excluded on the basis of relationship status, sexual orientation, gender, or whether they have a medical or social need. Surrogates should not be excluded simply because they have not previously given birth, provided they undergo psychological and medical assessment. Instead, the focus should be on ensuring all participants are legally informed, psychologically prepared, and voluntarily engaged in the process.

Questions 8 & 9: Surrogacy Agreements
Surrogacy agreements should be a cornerstone of the process, clearly setting out the expectations, responsibilities, and intentions of all parties. These agreements should be written, independently reviewed by lawyers representing each party, and finalised before the embryo transfer occurs. They should include agreed processes for reimbursement, decision-making protocols during pregnancy, and post-birth plans. While the agreement should not override a surrogate's bodily autonomy or force them to relinquish a child against their will, it should be legally enforceable in all other respects. Financial and procedural components, such as reimbursement of costs, attendance at medical appointments, and agreed modes of communication, should be enforceable through a specialised tribunal or administrative mechanism. This ensures fairness and accountability while safeguarding autonomy and dignity.

Question 10: Process Requirements
Surrogacy arrangements should involve clear and consistent process requirements. These should include mandatory pre-conception counselling and independent legal

advice for all parties. Background checks and psychological screening may be required to assess preparedness and compatibility. Documentation of counselling and legal advice should be submitted as part of any parentage order application. However, there should be no mandatory requirement for post-birth counselling unless requested by the parties. The goal is to support informed decision-making and emotional preparedness before the journey begins.

Questions 11 & 12: Professional Services
The absence of surrogacy agencies in Australia is a major gap in the current framework. Agencies play a vital role in providing structure, guidance, and emotional support for all parties. In our experience in Nevada, the agency model ensured that expectations were aligned from the beginning, all legal and psychological requirements were addressed, and support was continuous and tailored. However the US system sees enormous costs placed on the intended parents.

In Australia, surrogacy agencies should be permitted to operate under a regulatory framework that ensures ethical practice, transparency, and non-exploitation. These agencies should be able to assist in matching surrogates and intended parents, coordinate legal and medical processes, offer counselling referrals, and provide logistical support. Ideally, agencies should be not-for-profit and their operation should be licensed and audited. These services must be culturally inclusive and accessible to diverse families.

Question 13: Advertising
Advertising should be permitted in Australia. The current prohibitions are a significant barrier for intended parents and surrogates to find one another. Advertising should be allowed in online forums, social media, clinics, and official registries, with clear ethical standards to prevent exploitation. Allowing open communication will demystify the process and enable more safe, informed connections. The prohibition has no meaningful protective benefit and only drives the process underground or overseas.

Question 14: Entitlements
Surrogates should be entitled to access Medicare for all health care related to the surrogacy pregnancy, including pre-natal care, birth, and postnatal recovery. They should be entitled to paid parental leave for the period of physical recovery following the birth, as well as superannuation contributions during that time. Insurance coverage should be expanded to ensure that any medical or psychological complications are covered.

Intended parents should be entitled to fertility treatment rebates and to paid and unpaid leave in accordance with national parental leave standards. They should also be eligible for birth certificates, passports, and Medicare enrolment for their child without delay.

Question 15: Reimbursement Improvements
The reimbursement process should be clear, structured, and nationally consistent. A comprehensive list of allowable expenses should include travel, lost income,

counselling, childcare, maternity wear, insurance, medications, and recovery time. Funds should be held in trust, with disbursements managed either by a surrogacy agency or a designated third party. Receipts and record-keeping should be encouraged but not over-burdening. Anticipated budgets should be approved in advance, and payments should be accessible and fair.

Questions 16 & 17: Compensated Surrogacy
Compensated surrogacy should be introduced in Australia. The Canadian model, which reimburses expenses with oversight, offers a useful baseline. However, Australia could go further by recognising the surrogate's unique contribution and allowing limited, regulated compensation for the time, inconvenience, and risk involved.

As proposed by Sarah Jefford, compensation should be respectful, capped, and managed through a centralised system. Payments should be made in instalments, with a trust account structure overseen by an independent agency. The amount could be set by regulation, reviewed by tribunal, and reflect considerations like lost income, risk, and time. This ensures dignity and fairness, without opening the door to commercial exploitation.

Questions 18 & 19: Legal Parentage
Australia should implement pre-birth parentage orders, similar to those in Nevada, which ensure the intended parents are legally recognised before the child is born. This offers immediate clarity at birth, ensures appropriate hospital consent, and prevents the distress of a court process after the child's arrival. Surrogates still retain full autonomy during pregnancy, but the legal status of the child's parents is confirmed in advance through court-reviewed agreements. The process should prioritise the best interests of the child in supporting intendent parents to have full legal recognition ahead of birth.

Questions 20 & 21: International Documentation
Children born through international surrogacy arrangements must have their Australian citizenship and identity documents processed quickly and fairly. Delays in granting citizenship, passports, or visas create enormous stress for new families. Legal parentage orders from recognised overseas jurisdictions like Nevada should be fast-tracked for recognition. A dedicated federal office should manage these cases, providing a streamlined, transparent process with clear criteria. Automatic citizenship should be granted where legal parentage is confirmed and the intended parents are Australian citizens.

Questions 22 & 23: Harmonisation and Oversight
Surrogacy laws should be nationally harmonised through either federal legislation or uniform state legislation. Current inconsistencies are deeply unfair and ineffective. A National Surrogacy Commission should be created to oversee registration, compliance, public education, and best practice. This body could manage a national register of surrogacy arrangements, monitor outcomes, and ensure safe, ethical practices. Oversight should extend to agencies, clinics, and legal professionals, ensuring quality and accountability.

Question 24: Criminal Law
Criminalisation of certain forms of surrogacy, particularly international arrangements, has not prevented families from seeking those paths. It has merely created risk, stigma, and vulnerability. Rather than criminalising families who pursue ethical arrangements overseas, the law should regulate, register, and support those arrangements. The criminal law should focus exclusively on exploitation, coercion, trafficking, and lack of consent, not on the pursuit of parenthood.

Question 25: Awareness and Education
There is an alarming lack of awareness and accessible information about surrogacy in Australia. Most intended parents are forced to rely on Facebook groups and anecdotal advice. Government agencies, fertility clinics, general practitioners, and lawyers should be trained and resourced to provide clear, accurate guidance. Public education campaigns should normalise and explain surrogacy, dispelling myths and addressing stigma. Resources must be inclusive, culturally competent, and accessible for regional, First Nations, LGBTQIA+, and CALD communities.

Questions 26 & 27: Scope and Further Issues
Issues considered out-of-scope, such as donor conception, identity rights, and ART access, are intrinsically linked to surrogacy. A national register should record surrogacy and donor origins to protect the identity rights of children. ART access and funding should be equitable and inclusive. A national code of practice should govern all aspects of surrogacy, including ethics, consent, professional standards, and record-keeping. Regular monitoring and public reporting will build trust, transparency, and continuous improvement.

We participated a process of egg donation in Nevada. Following our own ethical guidelines, we would only accept a donated egg from a donor who was willing to be known, in line with Australian guidelines. After an extensive search, we were able to find a donor who was willing to meet these conditions. However, this is not the norm for most egg donors. The majority of Australians utilizing American egg donors are doing so anonymously, which is not in the best interests of the child. Supporting Australians to participate in paid egg donation in Australia alongside surrogacy is vital.

If you have any further enquiries please don’t hesitate to contact me.

Your sincerely,