Submission to the Australian Law Reform Commission on Surrogacy Reform
By [redacted]

My name is [redacted]. My husband, [redacted], and I are currently overseas, undertaking a commercial surrogacy journey in Colombia. We began this process almost two years ago, and we are now the proud fathers of a son, born five weeks ago, and are expecting our daughter in July. We are both recognised as the intended parents in this arrangement, and we chose to pursue surrogacy in Colombia due to the country's well-established and regulated surrogacy framework.

Our experience overall has been positive. We've engaged with professional and ethical surrogacy agencies in both Australia and Colombia, and all of the medical staff, clinics, and surrogate mothers we have worked with have been transparent, respectful, and supportive. However, we have faced considerable frustration and confusion in navigating the paperwork to secure Australian citizenship by descent for our children. This process, like so many aspects of surrogacy policy and practice, remains overly complex and uncoordinated.

Initially, we explored domestic surrogacy in Australia. Unfortunately, the stringent legal and procedural barriers made it practically unfeasible. In 2025, the average age of women giving birth in Australia is much higher than it was when many of the existing regulations were first introduced. Several female friends had expressed willingness to help us, but by the time we were ready to proceed, they would have been over the age of 40 and thus ineligible under Australian law. This arbitrary threshold eliminated meaningful and supportive pathways for family building that should have been available to us.

In the end, we found it more viable to pay for a comprehensive surrogacy package overseas. While we acknowledge that Medicare has recently extended IVF rebates to female same-sex couples, these do not assist male same-sex couples like ourselves. Even if we had chosen to pursue IVF domestically, there were no guaranteed birth outcomes, and we would have had to bear the full financial burden for each cycle until a successful pregnancy occurred. That could have far exceeded the predictable cost of our overseas surrogacy arrangement.

We researched multiple countries where commercial surrogacy is legal. However, due to our status as a same-sex couple, we were automatically excluded from most jurisdictions. Only three options remained: the United States, Mexico, and Colombia. We ultimately chose Colombia, based on affordability and strong recommendations from other Australian same-sex male couples who had positive experiences there.

Our surrogacy journey has brought to light several policy gaps and inconsistencies that I believe the ALRC must address in its review. Specifically, **Australia needs surrogacy reform that prioritises fairness, national consistency, and ethical accessibility**. These reforms should include:

1. **Legalising and regulating compensated surrogacy.** The current altruistic-only model is inequitable. While surrogacy agencies, doctors, IVF clinics, lawyers, and counsellors can all legally profit from a surrogacy journey in Australia, the woman bearing the greatest physical and emotional burden—the surrogate—is excluded from any form of compensation beyond reasonable expenses. This is not only unfair, but deeply out of step with other sectors where individuals undertaking high-risk or high-

impact roles are compensated accordingly. Surrogates deserve fair, structured compensation for the substantial toll of pregnancy and childbirth.

2. **Establishing a capped compensation framework.** In our case, the surrogacy agency fees totalled approximately $130,000 USD—around $180,000 AUD at the time—for a double guarantee journey. Including travel, health care, legal fees, and post-birth expenses, our total costs exceeded $200,000 AUD. While we acknowledge the complexity of international arrangements, a more accessible and predictable model could be implemented domestically. For example, a regulated compensation range of $50,000–$75,000 for surrogates, or a structure aligned with annual minimum wage benchmarks, would allow fair recognition of the surrogate's contribution. This would also help deter exploitation and ensure genuine intent from intended parents.
3. **Moving parentage orders from the judicial to the administrative sphere.** In Colombia, we are currently navigating a judicial process to remove the surrogate from the birth certificate and add the second father. This process is time-consuming, discretionary, and reliant on a judge's approval—even when DNA tests and legal agreements clearly support our claim. In Australia, I believe parenting orders should be an **administrative process** rather than a judicial one, and should be **available pre-birth** based on signed agreements and official recognition of both intended parents, regardless of genetic contribution. Marriage certificates and signed contracts should be sufficient evidence of intent and responsibility.
4. **National regulatory consistency.** One of the major frustrations for Australian intended parents is the lack of uniformity between states. A family's ability to build a life should not depend on arbitrary geographic boundaries. Advertising for a surrogate, accessing legal rights, and complying with regulatory conditions can vary dramatically from one state to another, despite Australians having freedom of movement and equal citizenship nationwide. Just as Medicare operates on a national level, so too should surrogacy regulation be unified under a **federal framework**.
5. **Establishing non-profit surrogacy agencies.** These agencies could be authorised to operate nationally, offering services such as pre-surrogacy counselling, surrogate-intended parent matching, administration of staged payments to surrogates, and guidance through the surrogacy journey. Health and medical care would remain with IVF clinics and public hospitals—just as with any pregnancy in Australia—but all the administrative, emotional, and legal aspects could be managed through these non-profits to ensure accessibility, fairness, and compliance.

In Colombia, surrogate compensation is typically provided in **staged payments**—at confirmed pregnancy, mid-way through gestation, and post-birth. This structure builds trust, protects the surrogate's interests, and ensures a smooth process for all parties. Australia could adopt a similar model under a non-commercial, yet **fairly compensated**, system.

Finally, I would like to directly address a theme that recurs throughout the ALRC's Issues Paper: the concern that surrogates may change their mind during pregnancy. In our experience, and through many conversations with surrogates overseas, this fear appears unfounded. Surrogates are often motivated by generosity and a clear understanding of their role. They do not see themselves as the mother, but rather as someone who is helping to bring a child into the world for another family. The ambiguity in policy discussions around this issue seems to reflect outdated assumptions rather than real-world experience.

Conclusion and Recommendation

Surrogacy reform in Australia is long overdue. The current model excludes, penalises, and overburdens intended parents while failing to honour and support the vital role of surrogates. It is neither equitable nor practical to maintain a system that drives Australians offshore in search of clarity, support, and fairness.

I respectfully urge the ALRC to recommend a nationally consistent, fairly compensated, and ethically regulated surrogacy framework—one that supports families, respects surrogates, and reflects the values of modern Australia.

Thank you for the opportunity to provide this submission.

[redacted]