Submission to the Australian Law Reform Commission:

Review of Surrogacy Laws

Submitted by: [redacted]

Location: Brisbane, Queensland

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1.0 Background

I am a gay man married gay man living in Brisbane. My husband and I became parents to our son, [redacted], in February 2022 through a surrogacy arrangement in Canada. The process took over three years and cost us more than $250,000. I am a lawyer and was highly conscious of ensuring our arrangement complied with Australian laws, including those that apply extraterritorially. I make this submission to highlight the very real legal, financial, and emotional hurdles faced by intended parents in Australia, particularly same-sex male couples.

2.0 Why did you pursue international surrogacy instead of domestic arrangements?

2.1 We initially explored altruistic surrogacy in Queensland with a family member, but quickly discovered that there is no meaningful framework in place to support domestic arrangements. The process was informal, unregulated and confusing. There are no agencies (at least that I know of) to guide you, and most of the information we found came from unmoderated Facebook groups. Our relative was willing to help, but was overwhelmed when she discovered what was involved, including medication, counselling and legal steps. Ultimately, she felt she couldn't commit.

2.2 We chose Canada because it has an altruistic surrogacy model, which we believed aligned with Australian law. I deliberately avoided commercial jurisdictions to stay within the bounds of the law. While Canada was not without issues, it still offered more structure and clarity than what we found domestically.

3.0 What challenges did you experience with the overseas surrogacy process?

3.1 Although our outcome was positive, the Canadian model is not as straightforward as it appears. While it is legally altruistic, many of the agencies and processes mimic the commercial model used in the United States. This leads to questionable practices, such as inflating "expenses" or creating employment solely to claim lost wages.

3.2 The biggest issue was financial unpredictability. We were initially told to expect costs around $140,000, but ultimately spent more than $250,000. There was no certainty around what expenses would arise, and the lack of regulation made us vulnerable to cost blowouts. This uncertainty caused enormous psychological stress. For three years I constantly worried about whether we would be able to complete the process, and how much it would ultimately cost.

4.0 What was your experience with legal parentage and recognition in Australia and Canada?

4.1 Canada’s approach to parentage was seamless. The birth certificate automatically listed both my husband and me as "Parent 1" and "Parent 2", regardless of biological connection. A court order was not required, but we obtained one voluntarily for added certainty.

4.2 In contrast, returning to Australia presented numerous challenges. Our son had to acquire Canadian citizenship and a passport before we could even apply for Australian citizenship. That process was bureaucratic and frustrating.

4.3 Centrelink's systems were particularly outdated. When we applied for parental leave, the system assumed there must be a mother. It asked us to provide her consent, as if we were separated from her. At one point, we were asked whether our Canadian surrogate could approve our parental leave

application. This lack of system recognition for male/male couples was humiliating.

5.0 Should Australia introduce a compensated or commercial model for surrogacy?

5.1 Yes. The current altruistic-only model drives people offshore into less transparent systems. In practice, the Canadian system involved significant financial transactions disguised as "expenses." It would be far more honest, ethical and manageable to allow a regulated compensated model within Australia.

5.2 Knowing the full cost upfront would have spared us immense emotional distress. Rather than trying to read between the lines on expenses and motivations, a clear legal and financial framework would allow intended parents and surrogates to enter into arrangements with certainty and dignity.

6.0 Should intended parents be recognised on the birth certificate from the outset?

6.1 Yes. Parenthood is about love, intention, and responsibility — not biology. I am not the biological father of my son, but I put in just as much effort to bring him into the world. Australia should stop referring to a "mother" in cases where that term does not reflect the family structure.

6.2 The current approach creates distress and confusion, not only for same-sex male couples like us, but for heterosexual couples using a surrogate and for the children themselves. Surrogates who have no genetic link and no intention to parent should not be legally identified as mothers.

7.0 What rights should children born via surrogacy have to information about donors and surrogates?

7.1 Children should have the right to access information about their genetic and birth origins, but this must be balanced carefully. For both donors and surrogates, I believe anonymity should be protected until the child reaches adulthood. Once the child turns 18, identifying information could be made available, allowing for contact if both parties agree.

7.2 If we make the process too intrusive or burdensome for donors and surrogates, fewer people will participate, and more Australians will be pushed into overseas arrangements with even fewer safeguards.

8.0 Do you support a nationally consistent approach to surrogacy laws?

8.1 Absolutely. Australia's current patchwork of state-based laws leads to confusion and inequality. Jurisdiction shopping should not be necessary to build a family.

8.2 Canada has generally achieved national consistency, even though there are some provincial variations. Australia could easily follow suit. After all, we already have a single federal law for marriage — the *Marriage Act 1961* (Cth) — which applies equally to all Australians. Family formation through surrogacy should be no different.

9.0 Did you experience discrimination as a same-sex male couple?

9.1 Yes. Medicare denied us any rebate for IVF (even though embryo creation occurred in Brisbane, not overseas) because we didn't meet the definition of "infertile." A female/female couple, where one could carry the child, would have qualified. This is discriminatory, even if unintentionally so, and reflects outdated assumptions about what constitutes a family.

9.2 Government systems also failed to acknowledge our structure when we applied for parental leave. These systems must be updated to reflect the diversity of Australian families.

10.0 Conclusion

10.1 We were lucky to have the resources and support to complete an international surrogacy arrangement and bring our son home. But the path was long, expensive, and full of legal and emotional obstacles. Most Australians in our position would not be able to do what we did.

10.2 It is time for Australia to provide a safe, transparent, and equitable surrogacy framework that supports all families. We need legal clarity, nationally consistent laws, and recognition that love and intention — not biology — form the foundation of parenthood.

10.3 Please help us build a better future for the families who will follow.

10.4 Love is love. Let's help more love come into the world.

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