[redacted]
10/07/2025

The Commissioner
Australian Law Reform Commission
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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 on behalf of my husband and I to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. We have been a couple (same sex male) for 7 years and married almost 2, and have been exploring surrogacy as an option to create a family together.

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

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

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?

My husband and I have been considering surrogacy to build a family together, either through domestic or international pathways. We live in Victoria, though my husband's family is based in Western Australia. In our learning we have attended surrogacy education conferences, met with a family lawyer with surrogacy experience, read online government and NGO material about national, state, international and local clinic requirements for egg donation and surrogacy. We have attended local surrogacy meet up groups, joined facebook groups about surrogacy and egg donation in Australia and overseas. We've also met with two psychologists with experience in surrogacy to check in with our journey. We are both health professionals and want the best health and happiness for all parties involved, including potential future children. We have heard stories from children born through surrogacy arrangements and watched stories from the online Australian community of successful surrogacy matches and families. We've found our learning pathway a relatable experience when hearing from others on the surrogacy journey - everyone is dedicated to doing the best they can within their means.

After a lot of research and reflection we decided to first try to find an egg donor and/or surrogate domestically, through either our own connections or the online communities. We came to this decision from a few key takeaways from our learnings:

1. Having a domestic egg donation and/or surrogacy journey may give us a better chance to participate in the pregnancy journey and best support the surrogate and her family.
2. The option for the future child to connect with their egg donor and/or surrogate as an aunty figure as they grow up is much easier in a domestic arrangement.
3. International surrogacy through commercial channels is very expensive, especially in countries in which surrogacy is protected by law and the rights and care of the surrogate are prioritised

4. Some countries which allow surrogacy
    a. prohibit surrogacies for same-sex couples like us, which meant a smaller pool of countries to choose from.
    b. did not give us great confidence that women involved would be treated with their best interests looked after (due to unregulated commercial markets)
    c. offered surrogates which spoke little or no English, meaning a long term relationship with ourselves or the future child may be difficult.
    d. Offered surrogates which did not want further contact with the intended parents/child after the birth
    e. May not be able to have both parents on the birth certificate

While domestic surrogacy is a preferable pathway, the barriers to achieving this have proven insurmountable. Firstly if we make embryos in Victoria we would need to find a surrogate in Victoria due to state restrictions on moving embryos outside of the border. Secondly the laws in WA currently prohibit same-sex male couples from undertaking surrogacy. Lastly if we had embryos organised in Victoria but then couldn't find a surrogate we wouldn't legally be able to ship them internationally to a willing surrogate should one become available overseas. So we are quite limited or need to make major life changes such as moving to another state or internationally to find a surrogate.

We contacted over 200 of our personal contacts to let them know that we were looking for a surrogate and/or egg donor in Australia. Given any form of financial compensation is not allowed, it would be incredible for anyone to step forward. Despite this, we had an offer from a family friend to be a potential surrogate in WA, but given the state laws were unable to proceed with her. We then had another close friend offer in Victoria, but laws prohibit her from being a surrogate because she has not had children, even though she is reaching the end of her fertile life and has no intention to have her own children.

We are now more seriously looking into commercial surrogacy in the US or Canada. The costs are exorbitant and out of reach for most Australians. This pushes intended parents to seek surrogacy elsewhere, leaving them at risk of sudden changes in unregulated countries such as Columbia, Argentina and Ghana which carry higher risks of emotional/financial/physical harm to all parties and potentially their future children.

Out of respect for the autonomy of consenting adults with the capacity to make decisions about their lives, we think that commercial surrogacy should be allowed in Australia.

2. What reform principles should guide this Inquiry?

Respect for the autonomy of consenting adults with the capacity to make decisions about their lives

3. What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements and how should these be addressed?

The rights of the child to being cared for by their parents (including non-genetic parents)

The rights of the child to a sense of identity / belonging / an origin story

The right to autonomy for the surrogate; that should include the right of a woman who is a freely consenting adult to choose surrogacy even if it comes with medical risks provided she is well informed.

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?

It is probably important for a person / child to know their origin story to form a stable sense of identity

This would ideally be provided by the parents throughout the childhood in an open way.

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?

Significant restrictions on advertising (both for intended parents looking for a surrogate and for surrogates looking for an intended parent)

Prohibition of commercial surrogacy means prohibition of even meagre financial compensation for the significant amount of time, effort, risk and opportunity cost a surrogate takes on to help intended parents.

Restrictive rules that require a surrogate to have given birth before embarking on surrogacy, even if they do not have plans to have children of their own.

6. Should there be eligibility criteria for surrogacy? If so, what should those requirements be?

Medical certificate stating the surrogate does not have a known medical condition that is likely to endanger the woman's life during a pregnancy.

7. Are there any current requirements which should be changed or removed?

In WA same sex male couples are not allowed to arrange surrogacy - this is clearly discriminatory and needs urgent review.

The requirement for a surrogate to have had a child prior, even if the surrogate is confident of having no intention for children.

8. Are there any requirements for a valid surrogacy agreement you think should be added, removed or changed?

Establishing consistent requirements nationally for a valid surrogacy agreement

9. Should surrogacy agreements be enforceable?

Unsure

10. What process requirements should be in place for surrogacy arrangements?

Requirements for counselling and independent legal advice prior to a surrogacy agreement
Parentage applications should require proof these

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

Specialist surrogacy agencies are needed to connect intended parents with potential surrogates.
Currently this is not allowed or is heavily restricted in Australia.
This would allow more Australian intended parents to find surrogates domestically.
Because surrogacy is not common due to the many barriers in Australia legal and fertility services are also unfamiliar with surrogacy.

12. What is the best way for professional services for surrogacy to operate?

Professional surrogacy services in Australia should be allowed to develop freely, whether profitable or not-for-profit.
A government provided state-based service eg. a website would be a cheap and unbiased option.

13. How should surrogacy advertising be regulated?

There is no need to regulate surrogacy advertising. This is an overly controlling and paternalistic approach. If consenting adults want to be surrogates or intended parents, and have capacity to make these decisions, we should respect their autonomy to do so. Agencies that look after surrogates and their privacy will naturally be the places surrogates will go to find intended parents.

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

Access to medicare

Access to parental leave

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

A simple escrow account arranged by a specialty legal / surrogacy agency, that the surrogate has ready access to

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?

Yes.

Out of respect for the autonomy of consenting adults with the capacity to make decisions about their lives, we think that commercial surrogacy should be allowed in Australia.

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

Look toward USA and Canada for how this is done, as it has been done there for a long time in a respectful and non exploitative balanced way.

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?

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

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20. What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy:

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21. How could the process for obtaining these documents be improved?

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

Federal legislation would be ideal

23. Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach?

There should be respect for the autonomy of consenting adults with the capacity to make decisions about their lives.

This is currently absent.

24. Should the law have a role in discouraging or prohibiting certain forms of surrogacy?

It may be worth considering regulations that prevent widespread future social surrogacy eg. in cases where intended parents have a reasonable chance of having a pregnancy in the next 1 year if using assisted reproductive technology (as per medical advice).

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

Yes as commonly widespread awareness is required to provide the political will to enact change.

26. Do you have any views about the issues we consider to be in or out of scope?

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27. Are there any important issues with regulating surrogacy that we have not identified in the Issues Paper? Do you have any other ideas for reforming how surrogacy is regulated?

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Thank you for considering my submission.

Yours Faithfully,

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