Response to ALRC Issues Paper No. 52 Reform of Surrogacy Laws

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[redacted]

1. Introduction:

This submission is based upon my personal experience as a parent through surrogacy in Ukraine. I am the parent of a daughter born in 2023 and a son born in 2024. Our decision to go down this road followed years of failure with IVF including with eggs from an anonymous altruistic donor. It is written hastily as both our children, and my wife have been unwell for some days, and I have had very little free time to collect my thoughts. I have drawn on personal experience and that of other participants in the Ukrainian surrogacy process, especially those active in a Facebook group [redacted]

2. Further background:

I am the biological father of my children; the other party was an anonymous egg donor from Ukraine. My genetic material was produced in Australia in 2020, but Covid and then war intervened. We used Lotus, one of the major and well-established surrogacy agencies in Ukraine. Lotus is a separate agency, that deals with various reproductive clinics, there are some clinics that operate on their own as surrogacy providers. There are large number of surrogacy agencies and clinics (I will from here on use agency to refer to both).

3. Addressing Question 1

The most positive part of the experience was the surrogacy process was successful and resulted in our son and daughter. We also very much enjoyed our time in Ukraine; we spent most of our time in the western city of Uzhhorod which has largely escaped the war. Both our surrogates wished to give birth in Uzhhorod, as an escape from being closer to the front line, and we supported them in this request.

Some of the negative aspects were I think unavoidable and not so negative as to justify excluding people from international surrogacy on

the grounds of self-protection. The agency, Lotus, was at times disorganised, but Ukrainian surrogacy agencies operate with a very flat management structure. We had unhappy experiences with the highly regulated Australian IVF industry; Monash IVF inadvertently disclosed the identity of an anonymous egg donor to ourselves. Lotus was happy to facilitate direct communication with the surrogates of both of our children, we were very keen to do this, and we established a good relationship with both surrogates. I understand that at least one agency discourages this.

What was attractive about Ukraine, was the lower cost, and the clear legal framework, established under Ukrainian law, for my wife and myself to be declared as parents on the Ukrainian birth certificate. Recognition as a parent required me to prove a genetic relation with the child. Procedures for the issue of the birth certificate had changed in 2024 and we had to travel to Kyiv. A week in a city under attack was more stressful than our time in Uzhhorod.

We are eternally grateful to our surrogates, the two [redacted] and the people of Ukraine.

What could be improved? I here focus on the Australian aspect:

1. The process of securing Citizenship by Descent (CBD) for our children was difficult. I recognise that this is administration rather than law, but perhaps the law could be amended to clarify what administrative process of required. I understand that most applications are for children currently born in Australia. The Department specifies on its website that there is a lengthy turnaround for these, currently around 5 months < https://immi.homeaffairs.gov.au/citizenship/citizenship-processing-times/citizenship-processing-times. Obviously after the birth parents via surrogacy wish to return to Australia as soon as possible. It is clear that the Department does give some sort of priority to surrogacy CBD applications, but there is no policy statement to this effect. An FOI application by myself revealed that the Department has no manual to guide the assessment of Surrogacy applications. There are wide variations in what documentation the Department asks for, and their views on what is

required can change through the process. For example, with our daughter Immigration at one stage requested that I provide I complete description of the travels of my genetic material from when it left Australia in 2020. This would have been very difficult to provide as it was moved between multiple locations due to the war. Eventually Immigration relented and was content with a certificate of genetic affinity that confirmed I was the biological father.

2. Passport travel: One CBD is obtained it is necessary to present documents in person at an Australian embassy to obtain a passport for the child. It would be simpler if it was possible to do this at the embassy in Kyiv, rather than Austria or Poland, but I recognise this is an administrative rather than a legal matter.
3. Recognition as parents: under Ukrainian law commissioning married heterosexual parents in a surrogacy arrangement are recognised as parents of the child (subject to genetic affinity). I believe a consequence of this should be recognition under Australian law as parents. I think however that this recognition should be dependent on an evaluation of legal procedures in the country of birth. Ukraine meets adequate standards others probably less so? Perhaps legislation could allow the Minister to designate certain countries for automatic recognition, subject to an evaluation of their legal procedures.
4. The discussion paper argues that ethical principles should be considered in the evaluation of surrogacy processes. The Australian prohibition of commercial domestic surrogacy displays one set of ethical principles, the legality of these procedures in Ukraine reflects another. I notice that the Commission adopts pragmatic approach recognising that international commercial surrogacy is a reality. Even if commercial surrogacy remains illegal in Australia the existing legislation that bars access to international commercial surrogacy should be repealed. The Ukrainian industry is however lightly regulated in a poor country at war. One agency has a bad reputation among surrogates for unethical conduct. It is beyond the capacity or competence of the Australian government however to provide consumer advice in this area. The best resource for this is the Facebook group. If the course of action

proposed in 3 was adopted the government could point customers of overseas surrogacy to resources such as the Facebook group.