Submission to the Australian Law Reform Commission – Review of Australia's Surrogacy Laws

[redacted]

11th July 2025

The Commissioner
Australian Law Reform Commission
PO Box 209
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 to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. I am an intended parent and paediatrician, and along with my partner [redacted], we are the proud parents of a beautiful baby boy, [redacted]. [redacted] was born in 2025 through a compassionate and ethical surrogacy arrangement in Mexico City after many years of planning, emotional preparation, and navigating the significant barriers in Australian law.

We are submitting this as loving parents and as professionals who deeply understand the importance of ethical and equitable health systems. Our personal story demonstrates the many flaws in the current legal landscape: the discrimination it imposes, the outdated assumptions it reinforces, and the unnecessary criminalisation of ethical, international arrangements that empower all parties — especially surrogates and children.

We seek that our submission be published but de-identified.

Executive Summary

We are the proud parents of a beautiful baby boy, [redacted], born in 2025 through a compassionate and ethical surrogacy arrangement in Mexico City. [redacted] arrival was the culmination of years of planning, emotional preparation, and hope. It was also a journey we were forced to take overseas—not because we wanted to, but because Australian system left us no viable path at home. Even the pathways for adoption has many challenges and significant barriers, especially for LGBTQI people, and given the work I carry out as a Paediatrician the complexity of fostering children would add a significant emotional burden but a conflict as a child protection specialist.

We write this submission as both loving parents and as professionals who deeply understand the importance of ethical, equitable health systems. Australia's surrogacy laws are broken. They are discriminatory, outdated, and fundamentally misaligned with modern family life. Worse, they criminalise the very people who go to extraordinary lengths to form families in ethical and responsible ways.

In the eyes of the law in our home state, we are technically criminals. And yet, at no point were we doing anything but what any parent does: pursuing a pathway to love, care, and belonging. We chose a clinic that treats surrogates with dignity, provides opportunities for education and empowerment, and builds long-term relationships between families. We have built a lifelong connection with the extraordinary woman who carried our son.

This is not exploitation.
This is not commerce.
This is family.

Australia urgently needs a nationally consistent, regulated framework for compensated surrogacy that protects all parties involved — especially surrogates and children — and reflects the rich diversity of families in this country.

Our Journey: [redacted]'s Story and Ours

After years of saving, counselling, and legal preparation, we began our surrogacy journey through an agency in Mexico City. This wasn't a decision made lightly. We explored every possible option in Australia. But as a gay couple, we encountered nothing but closed doors. The few domestic options available are unregulated, deeply limited, and, in many cases, unviable for those without close friends or family willing to act as altruistic surrogates.

From our very first interaction, the clinic in Mexico demonstrated compassion, professionalism, and ethics. Every stage of the process was carefully structured:

- Independent legal advice for both parties
- Psychological screening and counselling for us and our surrogate
- Medical care aligned with international best practice
- Ongoing support from a multidisciplinary team

But more than the process was the relationship. We didn't just match with a surrogate — we formed a genuine connection with an incredible woman and her family, a connection we maintain today. [redacted] will grow up knowing exactly who she is, what role she played in his life, and how deeply she is respected and valued by all of us. She is, and always will be, part of his story.

For her, surrogacy was an empowered decision. Through her involvement, she gained financial independence, continued her education, and accessed healthcare and wellbeing support that would otherwise have been out of reach. The agency fosters community, not contracts — connecting surrogates with other women, peer support, and educational pathways that genuinely change lives.

This is what ethical surrogacy looks like:
Not coercion, but choice.
Not profit, but partnership.
Not commodification, but connection.

And yet, because she was compensated — fairly and transparently — and because the process happened overseas, we are labelled criminals in our own country.

No one has ever been prosecuted under these laws — but their existence casts a shadow over families like ours. It sends a message that our son's life is somehow illegitimate, that our love is less worthy, and that the woman who carried him — and her entire community — are not trusted to make informed, empowered decisions about their own bodies.

Why Australian Surrogacy Laws Must Change

1. Criminalisation Is Cruel and Hypocritical

While most Australian states criminalise overseas compensated surrogacy, not a single person has ever been prosecuted. The law exists in name only — a legal fiction that adds fear, shame, and stigma to the lives of intended parents.

Any engagement with an external agency overseas is seen as commercial surrogacy and, by law, we are deemed criminals.

It criminalises love, not wrongdoing.

What kind of country allows lawyers, IVF specialists, psychologists, notaries, and agency staff to be paid for their role in creating families — but tells the woman doing the actual work of pregnancy that she must do it for free? That is not ethical. That is a failure of moral clarity and policy coherence.

If everyone else in the system is paid, the surrogate should be too. Anything else is exploitation by omission.

In addition, maintaining a relationship with a surrogate so that the child feels connected makes it impossible, under current law, for any gifts to be given — even at birthdays or Christmas — as part of that child's connection to their birth mother.

2. LGBTQ+ Families Are Systematically Disadvantaged

Although altruistic surrogacy is technically legal in most states, gay men are routinely shut out:

- Few women are willing or able to carry a child without compensation
- Fertility clinics often prioritise heterosexual couples or deny services entirely
- There is no funded public surrogacy pathway or infrastructure
- Gay men must navigate complex, inconsistent, and punitive parentage laws
- Overseas surrogacy is criminalised — making the only viable path to parenthood legally and emotionally fraught

This is not just a legal problem — it's a matter of equality, of dignity, and of being allowed to build a family like anyone else.

3. There Is No Evidence That Regulated Commercial Surrogacy Harms Surrogates

Much of the opposition to compensated surrogacy rests on assumptions — not evidence.

Where is the research that asks surrogates themselves how they feel? Where are their voices in this conversation?

From firsthand experience, we know that when surrogacy is regulated, respectful, and embedded in a supportive clinic and community model, it can be transformative for all involved.

The women in our clinic are not being exploited. They are gaining access to opportunity, healthcare, education, and choice — all within a system designed to support their wellbeing and long-term goals. Many are able to pursue degrees, support their children's

education, or start small businesses — all because of a decision they made with clarity and agency.

It is offensive to suggest they are incapable of making that choice simply because they live in a different country.

4. *Australia's IVF and ART System Needs Reform — and Surrogacy Can Lead the Way*

Australia's IVF success rates are lower than many other countries. Access is unequal. Psychosocial support is inconsistent. LGBTQ+ people, single parents, and older intended parents often face barriers.

Introducing a regulated surrogacy model in Australia would:

- Raise the standard of IVF and ART services
- Mandate multidisciplinary care teams and outcome tracking
- Embed psychological, legal, and medical protections across the sector
- Encourage greater equity in reproductive care

You now have large IVF centres implanting embryos with differing genetics into women. These private clinics urgently need regulation. This is the challenge of a public/private healthcare system — when everything is private, there is no oversight. Private services are focused on profit, not people. They are not incentivised to care about transfer success rates or patient welfare — only their bottom line.

5. *Children Born to Gay Men: Thriving, Loved, and Strong*

Opponents of surrogacy sometimes cloak their objections in concern for children — suggesting that being raised by two fathers is somehow unnatural, confusing, or harmful. These claims are not only offensive — they are untrue.

There is a robust international body of peer-reviewed research affirming what we, and thousands of other gay parents, already know:

Children born into families with two dads thrive. They are:

- Emotionally well-adjusted
- Socially competent
- Academically successful
- Less likely to experience neglect or abuse

- Raised in homes where parenting is intentional, thoughtful, and often shared equally

Many children of gay men grow up in financially secure homes, supported by older, emotionally mature parents, and embedded in strong chosen families and communities. These children learn resilience, empathy, and acceptance — not in spite of their family structure, but because of it.

Our son [redacted] is already surrounded by love, consistency, and support. He is growing up in a home where every part of his story is celebrated — where he will never have to wonder if he was wanted, or loved, or planned for. From the moment we began this journey, he was deeply, fiercely hoped for.

His story will include knowing the remarkable woman who carried him into the world — a woman who made a choice to help another family grow, and who remains part of ours.

The idea that [redacted] — or any child born through surrogacy to gay parents — is at risk, or needs protecting from the very people who love him most, is not supported by evidence. It is a relic of prejudice, not policy.

It is time for our laws to catch up to the truth: That love makes a family — not gender, not biology, and certainly not stigma.

6. The Discrimination Doesn't End After Birth

Even after bringing our son home, the hurdles continued:

- Navigating passport, Medicare, and citizenship processes with no clear guidance
- Facing workplace discrimination when applying for parental leave
- Encountering social invisibility in parenting spaces that assume heterosexual norms
- Having to fight to be legally recognised as parents to our own child

We spent months away from our friends, family, and community negotiating our return to Australia, repeatedly submitting documentation for citizenship and passport applications. We were required to share deeply personal data with multiple agencies — with no clear explanation of how this information is stored or protected from breaches.

The bureaucratic process didn't stop there. The same data had to be resubmitted to Medicare and Centrelink. As of writing, we've waited over five weeks for [redacted] to be added to our Medicare card — delaying access to vital health services, including immunisations like RSV unless paid for out of pocket.

Government forms constantly question [redacted]'s connection to [redacted] as a legitimate parent.

There are very limited LGBTQ+ parent playgroups, and Child and Family Health Nurse services are often designed around heterosexual couples, with language that can be exclusionary and alienating.

This is no way to treat families — especially ones who have gone through years of careful, ethical planning.

The Following Are Answers to Your Questions

1. If you or someone close to you has had personal experience of surrogacy, please describe:

What parts of your experience were positive?

- A deep and respectful relationship with our surrogate and her family, fostered through a reputable, ethical agency in Mexico City.
- A structured, transparent process including independent legal advice, psychological screening, and medical care in line with international best practice.
- Ongoing support, open communication, and the creation of a lifelong connection between our family and our surrogate.
- An empowering outcome for our surrogate, who accessed education and improved healthcare and achieved financial independence.

What parts of your experience were negative?

- The criminalisation of overseas surrogacy in our home state, leaving us technically defined as criminals despite engaging in an ethical, transparent process.
- The distressing, bureaucratic challenges of returning to Australia and securing legal recognition for our son — including repeated requests for deeply personal documents, delays in citizenship, and lengthy waits for Medicare access (which delayed vaccinations).
- Forms and services that repeatedly questioned my partner's legitimacy as [redacted]'s parent.
- Exclusion from mainstream parenting services, where LGBTQ+ families are often invisible or marginalised.

What could be improved and how?

- Decriminalisation of overseas surrogacy.
- Introduction of a regulated, nationally consistent compensated surrogacy framework in Australia.
- Clear, centralised pathways for citizenship, passports, Medicare, and legal parentage.

- Inclusive parenting support services and playgroups.
- Recognition and protection of the lifelong relationships that many families wish to maintain with their surrogates.

2. What reform principles should guide this Inquiry?

- Equity and inclusion for all family types, including LGBTQ+ parents.
- Protection and empowerment of surrogates, not paternalism.
- Transparency and regulation over prohibition and criminalisation.
- Child-centred frameworks that honour identity, connection, and truth.

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

- The criminalisation of intended parents for seeking surrogacy overseas infringes on the right to family life and non-discrimination.
- Denying surrogates compensation undermines bodily autonomy and fair work rights.
- Children's rights to know their origins, and to grow up free from stigma, are at risk under current laws.

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?

Children should have access to the full truth of their story — including the identity of their surrogate, how they were conceived, and the reasons behind it. This should be facilitated through:

- Open, lifelong relationships where all parties consent.
- Nationally maintained records, accessible to the child as they grow up.
- Developmentally appropriate information and support resources.

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?

- Lack of a legal framework for compensated surrogacy.
- Limited availability of altruistic surrogates.
- Inconsistent laws between states and territories.

- Discrimination against LGBTQ+ intended parents.
- A lack of public pathways, leaving only expensive, unregulated private options.

Solution: Legalise and regulate compensated surrogacy with national consistency and clear eligibility for all.

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

Yes, but they should be evidence-based, inclusive, and non-discriminatory. For example:

- Adults with capacity to parent.
- Willingness to engage in legal and psychological preparation.
- No exclusion based on marital status, sexuality, or gender.

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

- The ban on overseas compensated surrogacy.
- The restriction of parental recognition to biological ties in some jurisdictions.
- The requirement that surrogates be unpaid (which is inherently exploitative when everyone else in the process is compensated).

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

- Surrogacy agreements should allow for clear post-birth expectations, including maintaining relationships and contact where agreed.
- Compensation should be allowed and structured within ethical, regulated bounds.

9. Should surrogacy agreements be enforceable?

They should be partially enforceable — especially in matters related to reimbursement, legal recognition of parentage, and agreed medical protocols. Post-birth contact should always be guided by consent and the child's best interests.

10–15. [Grouped for brevity]

There are major gaps in professional services — especially in public systems. Surrogacy support should include:

- Government-funded legal, medical, and psychological services.
- Nationally accredited surrogacy clinics and agencies.
- Clear advertising and matching rules to ensure transparency.
- Reimbursement should be streamlined and backed by government oversight.
- Surrogates should have access to leave entitlements, postnatal care, and peer support.

16. Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy?

We support **compensated surrogacy**, where intended parents may ethically reimburse and fairly compensate a surrogate, within a regulated framework.

We do **not** support exploitative commercial surrogacy for profit. The distinction must be clearly maintained in legislation and language. However, there would need to be work to understand international surrogacy and how agencies and services appropriate. We have paid costs that would be the same cost heterosexual couples have spent on numerous IVF cycles and processes with private clinics. Many private clinics in Australia exploit people as they are also about profit, with Australia having some of the worst IVF/AVF success rates.

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

- A national, centralised registry of accredited clinics and agencies.
- Legal, psychological, and health safeguards for all parties.
- Fair compensation frameworks monitored by an independent body.
- Inclusion of surrogate perspectives in policy development.

18–21. What are the problems with the process for legal parentage and key documents for internationally born children?

- Complex, opaque systems with inconsistent timelines.
- No clear guidance for parents.
- Repeated data submission with no explanation of data use or storage.
- Delays in citizenship and Medicare access can impact the child's healthcare.

- Submitting for parentage in certain states, if you have engaged in international surrogacy, leads to length court processes and exposure parents to potential convictions and Police investigations.

Solution: Create a unified, streamlined pathway for citizenship, passports, and legal parentage.

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

Adopt a **national surrogacy framework**, with consistent laws across all states and territories — similar to national organ donation or child protection protocols.

23. Should surrogacy arrangements be subject to oversight?

Yes — through a transparent, compassionate regulatory body that includes surrogates, parents, legal and medical professionals, and child development experts. However, so should all fertility services.

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

The law should prohibit exploitative, unregulated surrogacy arrangements, but not ethical, compensated ones. Current laws do the opposite — criminalising good practice while ignoring poor behaviour. Engaging in overseas surrogacy which an agency is counted as ‘commercial’ despite many international agencies and services engaging in appropriate care of both the intended parents and the surrogate. If there were improvements in Australian surrogacy then it is likely that many people would not go overseas.

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

Yes — significantly. Public campaigns, healthcare provider education, and inclusive training for family support workers, nurses, and GPs are essential.

26–27. Final Thoughts and Recommendations

Australia's current surrogacy laws are harmful, outdated, and discriminatory — especially toward LGBTQ+ families. Reform must be grounded in evidence, ethics, and inclusion.

We make the following key recommendations:

1. **Decriminalise overseas surrogacy** in all jurisdictions.
2. **Legalise and regulate compensated surrogacy** in Australia.
3. **Create a nationally consistent framework** for surrogacy and legal parentage.
4. **Ensure equal parental leave rights** for all intended parents.
5. **Invest in inclusive parenting services** and support networks.
6. **Fund ethical research** centred on the voices of surrogates.
7. **Streamline processes for citizenship, legal parentage, and Medicare** for children born overseas.
8. **Recognise the legitimacy of diverse families** and prioritise children's connection to their story and surrogate.

Conclusion: Love Made This Family — Not Loopholes

We are not ashamed of our story. We are proud of it. And we will teach [redacted] to be proud of it too.

He will grow up knowing that his life began with planning, love, and a village that crossed oceans to bring him safely into our arms. He will know the name of the woman who carried him. He will see us visit her. He will grow up seeing surrogacy not as a secret or a scandal — but as a testament to courage, connection, and care.

And one day, when he is old enough, he will ask:
"Why did the law say you were criminals?"

We hope, by then, we will be able to say:
"It doesn't anymore."

It is time for our laws to reflect who we really are — and who our children will become.

Thank you for considering our submission.

Yours faithfully,
[redacted]