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

Dear ALRC,

Thank you for the opportunity to contribute to this important inquiry. I write as a same-sex intended parent in a de facto relationship, seeking to build our family through overseas surrogacy. Our journey is grounded in love, care, and responsibility—but the legal framework surrounding surrogacy in Australia leaves us in a state of uncertainty and vulnerability.

Who I Am and Why I'm Writing

My partner and I are pursuing surrogacy overseas due to the limited availability of surrogates in Australia and the uncertainty surrounding interstate arrangements. While we're fully committed to raising a child together, our pathway is legally complex—particularly for the non-genetically linked parent.

Under current Australian laws, our child's legal recognition and access to services could be delayed or disrupted simply because they were born via an international arrangement, and because only one of us will have a genetic connection. This undermines the security of our family from the moment of birth.

Key Challenges for Same-Sex Intended Parents in Overseas Surrogacy

1. **Lack of Clear Legal Parentage for Non-Genetically Linked Parents**
   The most pressing issue we face is the absence of immediate legal recognition for both intended parents. In most jurisdictions, only the genetically linked parent is recognised at birth. The other parent is required to undergo time-consuming and emotionally taxing post-birth legal processes to obtain parental rights.

   This creates unnecessary emotional stress, financial cost, and legal limbo at a time when the child's wellbeing should be paramount. It also leaves the non-genetically linked parent vulnerable if medical or legal decisions are required immediately after birth.

2. **Criminalisation of Overseas Arrangements**
   In some Australian states and territories, entering into commercial surrogacy arrangements overseas is a criminal offence. Even when acting in good faith and prioritising the best interests of the child, intended parents risk penalties for seeking a family through legal and ethical arrangements in other countries. This discourages transparency and drives people away from the support systems that could otherwise ensure safe outcomes for all parties involved.

3. **Uncertainty in Citizenship and Travel**
   Children born via overseas surrogacy may face delays in citizenship applications,

travel documentation, and Medicare access. These practical issues, stemming from the lack of immediate legal parent recognition, can significantly affect a child's start in life.

Key Legal Reform Themes and Recommendations

I recognise that the ALRC is examining both domestic and international surrogacy. While our personal experience relates to an international pathway, some recommendations below relate more broadly to national reform to ensure all children and families are treated fairly.

A. For International Surrogacy Arrangements (like ours)

1. **Decriminalisation of International Commercial Surrogacy**
   Australian law should no longer criminalise international commercial surrogacy arrangements where they are undertaken legally and ethically in the country of birth. Instead, safeguards and guidance should be developed to support families in navigating these arrangements transparently and safely.

2. **Automatic Legal Parentage for Intended Parents**
   Where both intended parents have consented and are recognised by the overseas legal process, Australian law should enable immediate recognition of both parents—regardless of genetic connection—on the child's return. This should include a streamlined administrative process to confirm legal parentage and protect the child's rights to identity, stability, and care.

3. **Improved National Guidance for Citizenship and Documentation**
   Clear, uniform national processes should be introduced to assist families with newborns born via international surrogacy. This includes expedited citizenship applications, access to Medicare, and appropriate parental leave entitlements.

B. For Domestic Surrogacy Reform

1. **A National Surrogacy Framework**
   I support the creation of a unified national approach to domestic surrogacy, removing state-based inconsistencies that currently create confusion and inequality. All intended parents, regardless of the state or territory they live in, should be subject to the same standards and procedures.

2. **Clear Rules on Reimbursable Expenses**
   The law should define what constitutes reasonable expenses that can be reimbursed to a surrogate, avoiding ambiguity or fear of inadvertently breaching laws. This protects both the surrogate and the intended parents and encourages transparent

and ethical practices.

3. **National Donor and Surrogate Registry**
   A central registry should be created to ensure children born via surrogacy or donor conception have access to identifying and non-identifying information in an age-appropriate manner. This supports the child's right to know their origins and promotes openness in family formation.

4. **Education and Training for Professionals**
   Healthcare workers, legal professionals, registry officials, and airport/border personnel should receive training on surrogacy processes to ensure they treat families with respect and understanding. This is especially vital for families returning from overseas surrogacy arrangements who may face additional scrutiny or delays.

Conclusion

Our desire to create a family is no different from that of any other couple. We seek to raise our child in a loving, secure, and legally recognised environment. The current laws—particularly around overseas surrogacy—fail to offer the protection and certainty that all children and parents deserve.

I urge the ALRC to recommend reforms that:

- Recognise both intended parents from birth, regardless of genetic link;
- Decriminalise international surrogacy entered into lawfully and ethically;
- Provide a consistent, national framework for domestic surrogacy;
- Establish clear rules on expenses and identity access;
- Invest in public education and professional training.

These changes will strengthen families, uphold children's rights, and ensure Australia's surrogacy laws reflect the diversity and dignity of modern parenthood.

Thank you for considering this submission.

Sincerely,
[redacted]