Submission to the Australian Law Reform Commission – Inquiry into Surrogacy Laws

From: [redacted] – Same-Sex Parent and Intended Parent

Date: 26th of June, 2025

Introduction and Personal Background

My name is [redacted] and I am a same-sex parent living in Australia. My partner and I are raising a child born through international surrogacy in Canada and are now planning to grow our family through a second surrogacy journey. I make this submission to share our lived experience navigating Australia's fragmented surrogacy framework as LGBTQ+ intended parents and to advocate for reforms that better reflect the diversity, dignity, and rights of modern families.

Our journey into parenthood has been one of deep love, careful planning, and significant sacrifice. Yet it has also been marked by legal ambiguity, unequal treatment, and systemic barriers simply because of how our family is formed. The current laws in Australia, which vary widely between states and territories, do not adequately support or protect families like ours.

Key Challenges for LGBTQ+ Families Under Current Surrogacy Laws

1.

Unequal Access and Discrimination by Design

Eligibility criteria for surrogacy vary dramatically across jurisdictions. While some states are inclusive, others continue to impose requirements that indirectly exclude or complicate access for same-sex couples and LGBTQ+ individuals. These inconsistencies reinforce stigma and inequality.

2.

Parentage Recognition Delays and Emotional Insecurity

Under current Australian law, intended parents must often apply for a parentage order months after their child is born, creating a prolonged period of legal uncertainty. For us, this meant that despite being our child's biological and social parents from day one, we were not their legal parents under Australian law until after a lengthy post-birth process.

This delay affects our ability to make urgent decisions for our child's welfare, secure travel documentation, and experience the same recognition other families take for granted. It also sends a message that our parenthood is "less than."

3.

Criminalisation and Fear Around International Surrogacy

Although we chose Canada for its ethical, altruistic surrogacy model and legal protections for all parties involved, we had to navigate Australian laws that criminalise certain international commercial surrogacy arrangements. While our journey was legal, the fear of criminalisation and social judgement loomed large.

Families who turn overseas out of necessity—due to a lack of domestic options, extended wait times, or surrogacy being unavailable in their state—should not be punished for doing what is in the best interests of their family.

4.

Financial Uncertainty and Inadequate Regulation of Costs

The lack of national clarity around what constitutes "reasonable expenses" leaves intended parents and surrogates vulnerable. Reimbursement rules vary across states and often do not reflect the real costs borne by surrogates, including time off work, travel, and medical needs. This ambiguity can lead to anxiety, confusion, and risk for everyone involved.

Link to ALRC Themes and Broader Human Rights

These challenges fall squarely within the ALRC's identified themes of access, eligibility, legal parentage, reimbursement, and international surrogacy. More importantly, they engage the fundamental human rights of children and families—particularly the rights to non-discrimination, recognition before the law, and access to identity.

Australia's current approach is neither nationally consistent nor responsive to the reality of contemporary families. It creates inequity based on geography, sexuality, gender identity, and financial capacity. This is out of step with the best interests of children and the principles of equality and dignity under international human rights law.

Recommendations for Reform

I respectfully recommend the following reforms, aligned with the ALRC's mandate and the lived realities of families like mine:

1.

A National Surrogacy Framework for All Family Types

Introduce a single, uniform legislative framework for altruistic surrogacy that is inclusive of all family structures, including LGBTQ+ individuals and couples, regardless of marital status or sexual orientation. This would provide consistency, fairness, and clarity across all states and territories.

2.

Automatic Legal Parent Recognition at Birth

Legal parentage should be granted at birth to intended parents in surrogacy arrangements that meet agreed criteria (e.g. pre-conception agreements, surrogate consent, and independent legal advice). This reform would ensure immediate legal and emotional security for children and families.

3.

Decriminalisation of International Surrogacy

Remove criminal penalties for engaging in international surrogacy arrangements, particularly where the arrangement is ethical, consensual, and regulated in the country of birth. Australian law should support—rather than penalise—families who act in good faith to build their families overseas.

4.

National Guidelines on Reimbursable Expenses

Establish clear national standards for what expenses can be reimbursed to surrogates in altruistic arrangements. This should reflect the true costs of pregnancy and minimise legal grey areas, promoting fairness, transparency, and protection for all parties.

5.

A National Donor and Surrogate Registry

Create a national, centralised registry to preserve information about donors and surrogates, with age-appropriate access for donor-conceived and surrogacy-born children. This is vital to uphold children's rights to identity, origins, and connection.

6.

Professional Training and Public Education

Invest in training for professionals—including health, legal, and child welfare workers—on modern surrogacy practices and LGBTQ+ family structures. Public education campaigns can also reduce stigma, promote inclusion, and ensure better understanding of ethical surrogacy pathways.

Conclusion

Families like mine exist, grow, and thrive across Australia—but our laws haven't kept up. The ALRC has a once-in-a-generation opportunity to build a national surrogacy framework that is ethical, inclusive, and future-focused. Reform must centre the rights of children and recognise the diverse realities of how families are formed today.

I urge the Commission to ensure that all families—regardless of how they are created—are treated with dignity, equality, and legal certainty from the moment a child is born.

Thank you for the opportunity to contribute to this important Inquiry.

Sincerely,

[redacted]