[redacted]

27 June 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 a parent via surrogacy as well as an intended parent and I am a father through surrogacy as well as hoping to have another child.

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

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

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 same sex male partner and I had our daughter through surrogacy in Australia in 2023 thanks to a lifelong friend of ours.

    After we went through the long process associated with surrogacy and could start the process of transferring an embryo it was positive, with the biggest positive being the birth of our daughter. Our daughter was born in the [redacted] Adelaide and all of the midwives there were wonderful, albeit constrained by policies which did not consider a dynamic like surrogacy. Although I don't agree with the PRP process, the actual panel were lovely and made us feel seen.

We are located in Victoria and needed to comply with the PRP process. The process overall was long, challenging and needing to get court approval for consenting adults to proceed with a decision we had collectively made felt degrading. The red tape attached to the process cost us 10's of thousands of dollars and added over a year to the process. The IVF clinics took months between each counselling session and charged us a $6000 surrogacy management fee. Medicare was not available and we were classified as 'socially' infertile as a same sex male couple. The term 'socially' infertile felt cruel.

Seeing the different requirements in different states highlighted the need for a uniform approach to surrogacy in Australia. We saw couples meet, start the process and get pregnant before we were even half way through the PRP requirements. An IVF clinic should be in place to help people with fertility issues. Having them also responsible for counselling, writing a report about us, submitting paperwork to the courts etc feels misplaced.

Our daughter is now 19 months old and we would like to have a second child. We have had an offer from a friend but because of the laws in Victoria that she must have had a child of her own in order to be a surrogate, we are not able to proceed. We are now having to look overseas and as a same sex couple have limited options. The most likely option is Colombia for us and honestly I'm filled with dread about the idea. We have researched as best we can but its incredibly hard to know for sure that the agency we are looking at is ethical and respects all parties as part of this process. We will likely have to live in Colombia for 3-6 months with no work, paying accommodation and living costs and be there with our daughter and the new baby.

2. **What reform principles should guide this Inquiry?**

   This should be guided by principles that prioritize the rights and welfare of all parties involved, especially children. Central to this is the recognition of the best interests of the child, ensuring their right to identity, legal certainty, and access to information about their origins. Equally important is the commitment to human rights and non-discrimination, guaranteeing that surrogacy laws are inclusive and equitable, irrespective of sexual orientation, marital status, or geographic location. Uniform laws across all jurisdictions is essential to eliminate inconsistencies and provide clear, uniform legal frameworks.

3. **Children born through surrogacy may face challenges in accessing information about their biological origins, impacting their right to identity and family life.**

Surrogates, especially in countries lacking robust legal frameworks, risk exploitation, coercion, and inadequate medical care. Intended parents, particularly LGBTQ+ individuals, often encounter legal uncertainties and discrimination, both domestically and internationally, due to inconsistent laws and recognition of parentage.

Having better access to surrogacy in Australia and uniform laws will help to resolve this.

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?**

All information and on the back of their birth certificate so that there is a running record of their birth and history.

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?**

Every state has different requirements and there is a lot of policing around what can and can't be done. The process should be legislated at a national level that balances the protection of the surrogate, the intended parent/s with the rights of the child paramount. This needs to be balanced against the preservation of autonomy of adults who are capable of making decisions for themselves without the intervention of the legislature.

I think that surrogates should be able to be compensated and that level of compensation is legislated so that it is reasonable and proportionate to what the surrogate is giving up to have a baby for someone else.

Some additional points which have different relevance in different states but are a barrier:

- Not allowing compensation for a surrogate.
- It is people illegal for some people (men in WA).
- The state based legal intervention being so markedly different.
- Not being able to 'advertise' that you are wanting to meet a surrogate.
- The requirement that you have had your own child before being a surrogate.
- The legal and counselling requirements being overly burdensome.

The legislature does not intervene into the decisions that fertile heterosexual couples make regarding having a child so why is it overly intrusive when it comes to couples who are incapable of having a child naturally?

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

   Yes.

   - There must be a medical or social reason for surrogacy – the intended parents must have a reason why they cannot or should not carry themselves.
   - The parties should be over the age of 25 years.
   - Traditional surrogacy and gestational surrogacy should be treated in the same way.
   - The parties should engage with a qualified counsellor prior to entering the arrangement.
   - The parties should engage with independent lawyers prior to entering the arrangement.
   - The parties should sign a surrogacy agreement prior to pregnancy attempts.

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

   - The requirements within Australia should apply equally to children born via international surrogacy, including the granting of parental orders and a birth certificate that recognizes the interested parents as being the parents of that child. You currently have children in Australia being raised by parents who have no legal status as the parent of the child. This is not in the best interest of the child and is being ignored. I believe that the trauma of being both a parent without legal status to their own child as well as a child who's birth certificate doesn't recognize both of their parents in a failing in this process.
   - State based laws should be replaced with national laws.
   - Pre-birth parenting orders should be able to be applied for prior to birth.
   - Parents who have a child born via surrogacy overseas should be able to apply in advance for citizenship by descent (subject to confirmation post birth) and the process for a passport in advance. You currently have parents overseas who are stuck in other

countries for months while they go through this process. For example the process for Australian Citizens in Colombia takes approximately 3-4 months, for US citizens the process is 1-2 weeks.

8. **Should surrogacy agreements be enforceable?**

No. Whilst they have weight as to the intention of the parties and should be considered by a court in granting parenting orders in the event of a dispute, a surrogate needs to retain body autonomy throughout the process. Up until the point of pregnancy all parties should be able to walk away, post pregnancy it becomes tricky but they should not be enforceable. Mandated legal advice and counselling should help to ensure any surrogacy agreement is successful.

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

- Mandatory legal and counselling requirements prior to starting the process.
- Having the lawyer need to co-sign the surrogacy agreement will mean they know if they have provided the advice, they can sight the counselling sign off before executing. The IVF clinics should need to view the surrogacy agreement attaching the legal advice and counselling before starting the IVF treatments. This would ensure all gestational surrogacy arrangements have a gate check before getting pregnant.
- Traditional surrogacy arrangements should still be required to follow the above but if they apply for parenting orders without having followed it be fined an amount higher than the cost of complying with the above so that they aren't skipping steps to save money. I don't think withholding parenting orders is in the best interest of the child whether parties have complied or not but a sufficient deterrent would hopefully mean the process is followed.
- Counselling post birth should be available to the parties if they want to utilize it but not mandated. I'd support a system that required IP's to pay for a surrogate's counselling post birth up to a reasonable number of sessions.

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

I think we need to allow for surrogacy matching services in Australia who can help connect surrogates and IP's. They should be responsible for ensuring that all legal requirements have been met and then work with IVF clinics once they have. Having people meet each other on Facebook with something so critical

leaves this open to people taking advantage of each other and unfairly favours people who are extroverted. Its incredibly difficult to tell your open, vulnerable story on a forum in front of 1000's of strangers.

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

Under strict guidelines and regulations. Their fees should be regulated so its not open to abuse.

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

- Medicare should be available for surrogacy and the process of adding a child to your medicare card post birth reformed.
- The centerlink paid parental leave process needs to be reformed for surrogacy with pre-application available for both the IP's and the surrogate.
- A national approach to how a surrogate is able to access paid parental leave offered by their workplace (where applicable). Workplaces are confused by surrogacy and it's a clunky and inconsistent process.
- Hospitals nationally should be educated on surrogacy and have a policy in place that recognizes the unique nature of surrogacy and allows both the parents and the surrogates support person into the birthing suite (where safe to do so).
- IP's should be given a room in hospital near the surrogate until she is discharged. Its incredibly important that the IP's are the parnets to the child from when it is born but equally that the surrogate has that proximity to both the baby and Ips post birth. Our hospital went back and forth on this and it added unnecessary stress at a time that was already stressful and should have been excited, not about whether we would be able to remain in the hospital with our baby.

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

Having a prescribed list with some flexibility for the circumstances of the individuals will help to make sure nobody is taken advance of. For example paying for cleaning services or a pregnancy massage is a reasonable expense to be reimbursed, paying for a holiday to help the surrogate relax probably isn't. If there were prescribed

categories included in the surrogacy agreement it would help to ensure all parties are on the same page.

14. 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?

I support compensated surrogacy like the models in Colombia and Canada. This model acknowledges the significant commitment surrogates make, offering a fair and ethical middle ground between altruistic and commercial arrangements. It also has the potential to increase the number of domestic surrogacy arrangements, reducing the need for Australians to seek surrogacy services overseas, where legal protections may be inconsistent or lacking.

I do not support commercialized surrogacy in Australia.

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

Mirror a model like in Canada. Compensation could be structured to cover reasonable expenses and acknowledge the surrogate's time and effort, without creating a market-driven industry that commodifies reproduction. Such a model would aim to reduce the reliance on international surrogacy arrangements, which often lack consistent legal protections and can lead to complex legal and ethical issues.

16. What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

The process of obtaining legal parentage for children born through surrogacy in Australia is incredibly stressful and leaves the parent/s caring for their child without the proper legal recognition. They can't travel internationally and leaves them with uncertainty if something required medical care or an emergency. It also adds an additional step that has really odd timing requirements (must be between 28 days after they're born but before 6 months) at a time when the parents are focusing on caring for a newborn. The court process is stressful, it costs too much money and should be replaced with a pre-birth order so that the birth certificate can be issued with the IP's names from birth.

International surrogacy arrangements further complicate the establishment of legal parentage. As I understand it, Australian law does not recognize the intended

parents as the legal parents if the surrogacy arrangement was commercial or did not comply with local regulations. This lack of recognition can result in children being in a legal limbo, where their parentage is not formally acknowledged, affecting their rights and access to services. To address these issues, there is a pressing need for a national framework that provides clear, consistent, and timely processes for the recognition of legal parentage in both domestic and international surrogacy contexts. Not recognising the legal parentage of the parents of children born through international is non-sensical nor in the best interests of the child or its parents.

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

I've addressed this through all of the questions above.

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

a. Australian citizenship;

b. an Australian passport; or

c. an Australian visa.

The process is incredibly long and complicated and leaves the IP's often stuck internationally with their child and no way of returning home. I understand the timeframe differs in different countries. My partner and I are looking to have a second child but because of the law in Victoria that a surrogate must have had a child before being a surrogate, our friend who has offered is unable to be our surrogate. As a result we are looking at options internationally but because we were same sex couple there are limited options. One of the most accessible options to us is Colombia but it takes most intended parents between 3:00 to six months before their output to return home to Australia. Other countries by comparison take between one to two weeks to be granted citizenship and an emergency passport come home. This adds huge costs to the intended parents both through their lost wages as well as travel and accommodation costs while they're waiting for the rights to be able to return to Australia. I've been looking at accommodation in Bogota and it's likely to cost us around 10,000 Australian dollars per month for an Airbnb. Not only that but this is incredibly disruptive to their lives and in our case would mean we need to leave our dog back in

Australia and travel to a country with the uncertain safety with our toddler and a newborn.

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

Similar to the granting of a pre-birth order when granting parentage within Australia I think that intended parents who are expecting a child through surrogacy internationally should be able to apply in advance of the child born for these documents post op there is no reason why everything bought the birth certificate couldn't be granted in advance and a pre-approval granted. Then upon the birth of their child they could submit the required evidence of the live birth of their baby as well as genetic links if required and automatically have the approval granted. I'd also like to see preapproval granted in this instance of parenting orders upon their return to Australia. There are many countries where a baby will be born and only the genetic leave related parent will be shown on the birth certificate. I believe that this should reflect what was the intended arrangement and both parents should be on there both for their sake and for their child's sake. No child wants to grow up feeling like one of their parents is lesser than the other because they're not named on their birth certificate or a forced to have a surname other than the one that is chosen by its parents.

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

Change them so there is a national laws or state based laws that mirror each other.

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

Striking a much better balance between having oversight of a surrogacy arrangement and controlling consenting adults needs to be reached. You have laws in places like Victoria which are cumbersome and requires the court to approve consenting adults to enter into an arrangement that they agree to and then other states like South Australia where the requirements are set out but as long as the parties demonstrate they have met them, are able to start embryo transfers.

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

I think that this should be approached in 2 ways. By encouraging surrogacy reform in Australia with a compensated model to see an increase in altruistic surrogacy whilst discouraging practices or jurisdictions that pose significant ethical, legal, or human rights concerns. I don't think that any IP would knowingly undertake surrogacy that in a jurisdiction that posed a human rights concern so perhaps providing guidance on surrogacy in each jurisdiction in the same way the government provides travel warnings?

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

    Yes. I think that most Australians still think that surrogacy is illegal in Australia.

Thank you for considering my submission.

Yours Faithfully,

[redacted].