

# **Hadfield-Jia Submission to ALRC regarding Surrogacy Review**

**July 2025**

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[REDACTED]

## **Background**

My name is Paul Hadfield-Jia, and I am a proud married father to two children, [REDACTED] and [REDACTED], who were born through international surrogacy in the United States. Our family was made possible thanks to the compassion and generosity of our surrogate, [REDACTED], and our egg donor, [REDACTED]. They are both empowered, selfless women who played an essential role in helping me and my husband to become parents.

Since becoming a father, I have become a passionate advocate for surrogacy law reform and for supporting other families on similar journeys. I've shared our story through national television, newspaper features, podcasts, and across social media to help normalise surrogacy and counter misconceptions. My aim is to raise awareness and acceptance of surrogacy in Australia.

I am actively involved in a range of organisations. I lead Gay Dads WA (a community of gay WA men that are parents or looking to become parents), Surrogacy WA (a community of WA residents that are parents or looking to become parents), and I sit on the board of Rainbow Families Australia. Through these networks, I have supported many other families in Australia and overseas to explore and pursue surrogacy as a path to parenthood, often providing peer support, guidance, and advocacy.

In Western Australia, I've engaged closely with government leaders, including Premier Roger Cook and both former and current Ministers for Health. I've shared the lived experiences of families like mine, highlighting how outdated legislation creates real and unnecessary harm. More recently, I've been engaged with the WA Minister for Health's office and advocating with cross bench politicians to encourage support for the long-overdue reforms expected to be announced this year.

This submission draws on both my personal journey and the collective experiences of families I've supported. It is offered in the spirit of reform, compassion, and equality, with the hope that Australian law will better reflect the dignity, diversity, and realities of modern families.

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

#### **Response:**

My husband [REDACTED] and I are proud parents to two beautiful children, [REDACTED] and [REDACTED], both born through international surrogacy arrangements in the United States. Our journey to parenthood was filled with joy, resilience, and love, but it also exposed us to the deep inequities and challenges within Australia's surrogacy framework.

#### **Positive experiences:**

One of the most profound positives of our experience was the relationships we built, especially with our surrogate, [REDACTED], and our egg donor, [REDACTED]. Their kindness and commitment allowed us to become a family. We were fortunate to navigate the process in the U.S., where surrogacy laws are more established, structured, and supportive of all family types. The system there enabled us to focus on our connection with [REDACTED] and prepare for the birth of our children, knowing that our rights and intentions were legally recognised.

#### **Negative experiences:**

What remains deeply disappointing is that our own country could not offer the same pathway to parenthood. As a gay couple in Western Australia, we were excluded from accessing surrogacy under state law. We were left with no choice but to go overseas, which brought immense financial, legal, and emotional pressure. The process involved complex legal steps to bring our

children home, with no automatic recognition of our parentage. We were treated like legal strangers to our own children until we could complete an arduous and costly process.

In addition to this, in forcing us to go overseas, we had to navigate the first birth during Covid and the second during Trump's re-election. The emotional stress and pressure that this placed on us and our children could have been avoided if we had our children on Australian soil. For our first child, only I was permitted to leave the country during the lockdown and then we found ourselves stranded in the U.S. with no knowledge of when or how we would return home. It was only through the kindness of the people involved in our journey based in the States, that they ensured that we had accommodation and food. However, my biggest concern was that our daughter would be exposed to Covid and die. I cannot convey enough the emotional toll that this placed on all of us. Knowing that had we been heterosexual, our journey could have happened on home soil, surrounded by family and community. That hurt runs deep.

**What could be improved:**

Australia needs a national, inclusive surrogacy system that supports all families, regardless of sexuality, gender, or marital status. No Australian should be forced to travel overseas to have children. There must be consistent legal parentage recognition for all intended parents, including those whose children were born overseas. The system should centre the best interests of the child, starting with ensuring they are recognised as part of their family from birth.

It's time to stop discriminating against families like mine. Surrogacy should be accessible, safe, and celebrated in Australia.

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**Question 2: What reform principles should guide this Inquiry?**

**Response:**

This Inquiry should be guided by the fundamental belief that every child deserves to be raised in a safe, loving, and legally recognised family, and that every person, regardless of their gender, sexuality, relationship status, or background, should have an equal opportunity to create that family.

The following principles should underpin reform:

**1. Equity and Non-Discrimination:**

Surrogacy laws must be inclusive. Discrimination based on sexual orientation, gender identity, marital status or cultural background must be eliminated. In our case, as a married gay couple living in Western Australia, we were legally prohibited from pursuing surrogacy locally. This exclusion pushed us to undertake a costly and complex journey overseas, something that we may have avoided if we had been a heterosexual couple.

**2. Child-Centred Approach:**

The child's best interests must be the guiding star in all decisions. This includes their right to grow up with legal certainty about who their parents are, to know their story, and to be supported by systems that affirm and protect their family.

**3. Accessibility and Affordability:**

Surrogacy should be a safe and accessible option for all Australians, not just those who can afford to go overseas. Making surrogacy more affordable and feasible domestically will protect children, support surrogates within ethical frameworks, and strengthen the rights of families formed through surrogacy.

**4. National Consistency and Legal Certainty:**

We need one consistent national framework that ensures legal parentage for all intended parents, whether their child is born in Perth or Boise Idaho. The current patchwork of state laws causes distress and unnecessary delay in establishing parental rights and family recognition. In addition, I am aware of other gay couples that have moved out of WA in order to have their child through altruistic surrogacy in Australia, removing them from their support network and families.

**5. Respect, Dignity, and Informed Consent:**

Everyone involved in surrogacy (surrogates, intended parents, donors) should be treated with dignity, respect, and agency. This includes access to independent counselling, legal advice, and clear, transparent processes.

**6. Support for Domestic Surrogacy:**

Encouraging ethical domestic surrogacy through proper support systems will reduce reliance on international arrangements and associated risks. It would have meant the world to us to go through this journey within our own community, with local support and recognition.

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**Question 3: What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements? How should these be addressed?**

**Response:**

At the heart of surrogacy is the right to family, a right that should not be conditional on where you live, who you love, or how much money you have. Sadly, in Australia, these rights are not upheld equally. As a gay man in Western Australia, I was denied access to surrogacy under state law. This exclusion is a direct breach of the human right to found a family without discrimination.

Some of the most pressing human rights issues include:

**1. Discrimination against LGBTQIA+ individuals and couples:**

State-based bans or restrictions that limit who can access surrogacy create a two-tiered system where heterosexual, cisgender people are treated as more legitimate parents than the rest of us. That sends a message that families like mine are less worthy of protection. It's not just hurtful, it's a human rights failure.

**2. Legal insecurity for children born through international surrogacy:**

Our children, born overseas through ethical, loving arrangements, arrive home to a legal system that fails to recognise us as their parents. This delay and legal limbo impacts our ability to make medical decisions, enrol in services, and provide the security all children deserve from day one.

**3. Barriers to equal access based on wealth:**

Domestic surrogacy is so restricted, fragmented, and under-supported that many families feel they have no choice but to go overseas, if they can afford it. Those who can't are often left without any pathway to parenthood. Access to family-building should never depend on your bank balance.

**4. Lack of protection for surrogates in international arrangements:**

Although our personal experience overseas was overwhelmingly positive and ethical, we recognise the risk of exploitation in some international surrogacy contexts. A strong,

ethical, domestic surrogacy system in Australia would protect both surrogates and intended parents from having to navigate riskier overseas pathways.

**How these should be addressed:**

- Surrogacy law must be based on equality and inclusivity, removing discriminatory eligibility requirements across all states and territories.
- National legislation must ensure automatic legal parentage for children born through recognised surrogacy arrangements, domestic or international.
- The Commonwealth should ensure all families, regardless of formation method, have equal access to Medicare, Centrelink, and legal protections from day one.
- We must develop a well-regulated, ethical, and accessible domestic surrogacy system so Australians can build their families without leaving the country or facing unnecessary risks.

No child should have to wait for legal recognition of their parents. No parent should have to beg their country to see them as a family.

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**Question 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 or facilitated?**

**Response:**

Our daughter [REDACTED] is three, and she already knows the names [REDACTED] and [REDACTED], her surrogate and egg donor. We talk about them with love and gratitude, because they are a beautiful part of her story. We want both of our children to grow up with pride in how they came into the world, not confusion or secrecy. That means they should have access to information about their origins in a way that is age-appropriate, honest, and affirming.

**Children born through surrogacy should have access to:**

- Information about their **surrogate** and **egg or sperm donor**, including non-identifying details from an early age and identifying information when they are older or when they are ready.
- A clear and complete record of the **circumstances of their birth**, including the nature of the surrogacy arrangement (e.g. altruistic or compensated), the country it took place in, and who was involved.
- Access to **photos, letters, or even contact**, where appropriate and agreed upon, to help maintain the continuity of their story.

**How this should be facilitated:**

- Through a **central, secure national register** that allows children born through surrogacy to access their information at appropriate stages of their development.
- By ensuring **counselling and support services** are available to children and families navigating these conversations.
- By **educating intended parents** about the importance of openness and identity-building and embedding this expectation into the surrogacy process from the start.

Our family has always embraced openness because we believe it builds connection, not confusion. But we also know not all families are given the tools or confidence to do the same.

National reform should make this easier by creating consistent expectations and support for openness, not just as a best practice, but as a right for the child.

Every child deserves to know where they come from, and to feel proud of how deeply they were wanted.

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**Question 5: What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome?**

**Response:**

The biggest barrier we faced was exclusion. As a same-sex male couple in Western Australia, we were legally prohibited from pursuing surrogacy in our own state. That law told us, very clearly, that our desire to be parents was not valid here. We had the love, stability, and commitment to raise a child, but not the legal right to try. That was heartbreakingly.

**Some of the main barriers include:**

**1. Discriminatory laws and eligibility criteria:**

In several jurisdictions, including WA at the time of our journey, laws excluded same-sex male couples or single men from accessing surrogacy. This blatant discrimination forced many of us overseas, creating a divide between those whose families are legally accepted and those who are not.

**2. Lack of access to surrogates in Australia:**

Because Australia only permits altruistic surrogacy, and because there is little public awareness or structured support for surrogates, there are very few women willing or able to be surrogates. There is no national system for matching intended parents with willing surrogates, making the process feel inaccessible or near impossible.

**3. Fragmented and inconsistent legislation across states and territories:**

Each jurisdiction has its own rules, creating confusion and inconsistency. A couple eligible in Victoria may not be eligible in WA or NT. This inconsistency creates legal uncertainty and emotional distress, particularly for those already dealing with fertility loss or other trauma.

**4. High cost and lack of Medicare access for fertility services:**

Intended parents, especially same-sex male couples, often require egg donors, IVF, and embryo transfer services. These come at a significant cost, and unlike heterosexual couples with infertility diagnoses, we receive no Medicare support for these services.

**5. Lack of education and professional services:**

Many people don't even consider surrogacy because they have no idea how to begin. There are very few professionals with expertise in surrogacy law, counselling, or support. The process feels mysterious and out of reach.

**How to overcome these barriers:**

- Remove all discriminatory eligibility criteria across all states and territories.
- Create a **national surrogacy framework** that allows for consistent access and clear legal pathways.
- Introduce a **well-regulated system of surrogacy support services**, including matching programs, counselling, and legal advice for both intended parents and surrogates.

- Increase public awareness and normalise conversations about domestic surrogacy so more women feel supported to become surrogates.
- Provide **Medicare support and parental leave access** for all parties involved in surrogacy.
- Make surrogacy affordable and realistic, not something only accessible to the wealthy or desperate.

Families like mine shouldn't be forced to go overseas just to have a child. We shouldn't have to navigate foreign systems when our own country has the capacity to support us, if only it chose to.

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

**Response:**

Yes, there should be clear eligibility requirements for surrogacy, but they must be fair, inclusive, and grounded in the best interests of the child, not outdated ideas about who is "worthy" of being a parent.

Eligibility should be based on someone's capacity to provide a safe, loving, and stable home, not their gender, sexuality, relationship status, or biology.

As a same-sex couple, my husband and I were automatically excluded from pursuing surrogacy in our home state of Western Australia. That exclusion had nothing to do with our ability to love, nurture, and raise a child, it was purely about who we are. We had to leave the country to become parents. No Australian should be forced to do that because of discriminatory laws.

**Eligibility criteria should include:**

- A demonstrated intention and capacity to care for a child in a safe and supportive environment.
- A medical, social, or personal reason why the intended parent(s) are unable to carry a child.
- The ability to engage meaningfully in the required legal and counselling processes.
- A genuine commitment to the child's wellbeing, including openness about their origin.

**Eligibility criteria should not include:**

- Requirements to be heterosexual or cisgender.
- Requirements to be married or in a de facto relationship.
- Arbitrary age limits that don't consider individual health and parenting capacity.

Surrogacy should be about creating families, not about gatekeeping who gets to have one. We need eligibility rules that are consistent across the country, reflect modern family structures, and centre the child's need for loving, supported parents, not outdated notions of what a "real" family looks like.

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**Question 7: Are there any eligibility requirements which should be introduced, changed, or removed?**

**Response:**

Yes, several eligibility requirements currently in place across Australian jurisdictions should be changed or removed entirely, particularly where they create unnecessary barriers for loving, capable people to become parents.

**The following eligibility requirements should be removed:**

**1. Restrictions based on sexual orientation or gender identity:**

These are discriminatory and have caused real harm. My husband and I were excluded from domestic surrogacy in Western Australia simply because we are a male couple. That exclusion denied our children the right to be born in their own country, within reach of our families and support networks.

**2. Mandatory relationship status (e.g. being married or in a de facto couple):**

Single people can be just as capable of raising a child in a loving, stable home. A person's relationship status should never be used to judge their worthiness to become a parent.

**3. Inflexible age limits that don't account for individual circumstances:**

Age should be considered on a case-by-case basis, with a focus on parenting capacity, not arbitrary numbers. People start families at all stages of life, and the law should reflect that reality.

**The following should be introduced or strengthened:**

**• Universal, inclusive criteria across all states and territories.**

No more postcode discrimination. A family's legal recognition should not depend on where they live.

**• A requirement to engage in independent legal advice and counselling.**

This supports informed consent and strengthens relationships between surrogates and intended parents.

**• A child-centred approach that includes planning for how children will access their origin stories.**

The system should focus on supporting families, not filtering them out. The inconsistent rules negatively impact children, distress parents, and push people into international agreements against their wishes.

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**Question 8: Are there any requirements for a valid surrogacy agreement you think should be introduced, removed, or changed?**

**Response:**

Yes, surrogacy agreements in Australia need to be clearer, more consistent, and grounded in compassion and common sense, while setting out clear expectations along the surrogacy journey.

When we undertook surrogacy in the United States, our agreement was detailed, professionally supported, and legally recognised. It outlined everyone's rights and responsibilities, and most importantly, it gave all parties clarity and peace of mind. In contrast, Australia's current approach to surrogacy agreements often leaves people confused and vulnerable, especially when agreements aren't enforceable or vary wildly between states.

### **Changes I believe are needed:**

#### **1. Nationally consistent minimum requirements for a valid agreement:**

Every surrogacy arrangement in Australia, regardless of where it takes place, should follow the same basic framework. This should include:

- Informed consent from all parties
- Independent legal advice
- Mandatory counselling
- Agreement on expenses, communication, decision-making during pregnancy, and post-birth contact
- Clear expectations about parentage transfer

#### **2. Recognition of agreements that are ethical and well-supported, regardless of payment status:**

In our case, because our child was born overseas and the arrangement involved compensation (legal in the U.S., but not in Australia), our agreement would not have been recognised here. That doesn't make our family less valid, but it does create legal and emotional uncertainty that shouldn't exist.

#### **3. Ensure flexibility for how agreements are reached:**

Some people find their surrogate through family or friends, others through agencies or networks. The law should accommodate both, so long as the process is ethical, supported, and prioritises everyone's wellbeing, especially the surrogate's.

A good surrogacy agreement isn't just about legal protection, it's about building trust, respect, and understanding between people creating life together. Australia's laws need to support that, not get in the way.

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### **Question 9: Should surrogacy agreements be enforceable?**

#### **Response:**

Yes, to some extent, surrogacy agreements should be enforceable, especially in ways that protect the wellbeing of the child and ensure clarity for everyone involved. A well-supported, informed, and ethical agreement should carry legal weight. That doesn't mean forcing someone to parent or give up a child against their will, but it does mean providing certainty, consistency, and respect for everyone's intentions.

When we undertook surrogacy in the United States, our agreement was enforceable. That gave all parties confidence. Our surrogate, Deanna, had access to her own legal advice and counselling. We had ours. The agreement clearly outlined roles, medical preferences, expenses, post birth agreements (e.g. providing breast milk) and how the parentage would be transferred. It helped build trust, and it worked because we knew it would be respected in law.

#### **My thoughts on enforceability:**

##### **a. Should all parts of the agreement be enforceable?**

Not necessarily. Enforceability should focus on critical aspects like:

- Reimbursement of agreed-upon expenses
- Ensuring the intended parents take responsibility for the child

- Access to counselling or agreed post-birth contact

However, emotional or deeply personal choices, like the surrogate's right to make decisions about her body or to change her mind, should not be enforced in a coercive way.

**b. Who should be able to enforce the agreement?**

Both the surrogate and intended parents should be able to enforce elements of the agreement that protect their rights and responsibilities. But there should also be an independent body or tribunal that can intervene if disputes arise, focused on the child's best interests above all.

**c. How should agreements be enforced?**

There should be a transparent legal pathway, ideally through an administrative or family court process, that allows enforceable terms to be upheld. This must include access to dispute resolution or mediation before things escalate.

Enforceable agreements protect surrogates too. They ensure that their expenses are covered, their voices are heard, and their choices are respected. In our case, that legal recognition of Deanna's choices and our mutual agreement created a foundation of respect that we carried all the way through pregnancy and beyond.

Surrogacy is built on trust, but that trust is strongest when the law supports it.

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**Question 10: What process requirements should be in place for surrogacy arrangements?**

**Response:**

Strong, supportive process requirements are vital, not just to protect legal rights, but to nurture the relationships that make surrogacy possible. Our experience overseas showed us how valuable it is to have structured, clear steps that guide everyone through the emotional, medical, and legal aspects of the journey.

In the United States, we were required to engage in counselling and legal advice before proceeding. Our surrogate, [REDACTED], had her own independent support. That meant when we signed our agreement, we all understood what we were committing to, and we felt confident in each other.

Australia should ensure that all parties are supported through every stage of the process, not just before the baby is born.

**a. Should counselling also be available after the child's birth?**

Yes, absolutely. The time after birth can be emotionally intense for everyone involved. Surrogates may experience complex emotions as they recover and adjust. Intended parents often face legal uncertainty and stress. Ongoing counselling should be available to both the surrogate and the intended parents for at least six months post-birth.

When [REDACTED] was born, I remember the mix of joy, exhaustion, and disbelief. We were grateful that [REDACTED] had access to continued counselling and community. We also made the decision that we wanted to continue our relationship with [REDACTED] and her family as they are now part of our children's history, and we value and are proud of that. In Australia, this kind of post-birth support should be the norm, not the exception.

**b. What should happen if legal advice and counselling are not provided before entering a surrogacy agreement?**

Legal advice and counselling should be mandatory preconditions for a valid agreement. If they are not provided, the agreement should not proceed. These steps are crucial for informed consent and to safeguard everyone's wellbeing, especially the surrogate's.

**c. Should parentage applications require proof of legal advice and/or counselling?**

Yes. Proof of these supports ensures that the process has been ethical and informed. It also gives courts or regulatory bodies confidence that everyone entered into the arrangement voluntarily and with clear understanding.

Mandatory counselling and legal advice aren't just tick-box exercises, they're about protecting relationships and helping everyone feel seen, heard, and respected. That's what makes a surrogacy journey not just legal, but deeply human.

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**Question 11: What are the gaps in professional services for surrogacy in Australia?**

**Response:**

There are significant gaps in professional services for surrogacy in Australia, gaps that leave intended parents and surrogates overwhelmed, confused, and often alone.

When my husband and I were starting our journey, we tried to explore surrogacy within Australia. But we quickly realised there was no clear starting point. No central body to talk to. No coordinated access to lawyers, counsellors, or support services. We felt completely unsupported. It's no wonder so many people, like us, are forced to look overseas.

**The most urgent gaps include:**

**1. Lack of dedicated surrogacy agencies or support organisations:**

Unlike the U.S., where surrogacy agencies guide both intended parents and surrogates through every step, Australia has no centralised, trusted services doing this work. People are left to navigate complex systems on their own, which increases the emotional and legal risk for everyone involved.

**2. Limited availability of legal professionals experienced in surrogacy:**

Very few lawyers in Australia specialise in this area, and those who do are often based in major cities. This makes it difficult for people in regional or remote areas to get appropriate advice.

**3. Inconsistent access to counselling, especially independent counselling for surrogates:**

Counselling is essential, but access is patchy. Surrogates in particular need to be supported by counsellors who understand surrogacy and are not affiliated with fertility clinics. This ensures truly independent and meaningful support.

**4. No matching programs or safe, ethical pathways to find a surrogate:**

In Australia, intended parents have to rely on personal networks or Facebook groups to find a surrogate. That's a huge emotional burden and creates risks for all parties. By contrast, our U.S. agency provided a structured and ethical way to connect with our surrogate, ensuring that everyone felt safe and respected.

**5. Lack of publicly available, plain-English information about surrogacy:**

For people exploring surrogacy for the first time, there is no central, government-endorsed hub of information. This creates confusion and misinformation, especially for marginalised communities.

**Conclusion:**

Families like mine deserve a system where we don't have to guess, where support is built-in, and where professional services are available, ethical, and easy to find. Surrogates deserve better. Intended parents deserve better. And most importantly, children born through surrogacy deserve a process that supports their families from the very beginning.

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## **Question 12: How should professional services operate in Australia?**

### **Response:**

Professional services should be the scaffolding that supports everyone involved in a surrogacy journey, from the very first conversation to years after a child is born. In Australia right now, we don't have that scaffolding. We have a patchwork of services, uneven access, and a heavy emotional and administrative burden placed on intended parents and surrogates alike.

When we went through surrogacy in the United States, we worked with a coordinated team of legal experts, counsellors, agency staff, and medical professionals. Everyone understood surrogacy. Everyone knew their role. Most importantly, everyone centred the wellbeing of the surrogate and child. That kind of system gave us clarity and allowed us to focus on what mattered most, becoming parents.

Australia should build a national surrogacy support system with these principles in mind:

#### **a. What their role should be:**

Professional services should provide:

- **Information and education** for people exploring surrogacy
- **Independent legal advice** for all parties
- **Specialised counselling** before, during, and after pregnancy
- **Matching and coordination services**, where needed
- **Administrative and legal support** for managing agreements and parentage transfer
- **Support for donor-conceived and surrogacy-born children** as they grow

#### **b. For-profit or not-for-profit, or how should they be funded?**

Australia should aim to build an **ethically grounded, not-for-profit network** of services. These should be publicly funded or subsidised to ensure equitable access, especially for people in regional areas or on lower incomes.

For-profit services could have a role but must be tightly regulated and held to strict ethical standards to avoid exploitation or commercialisation of vulnerability.

#### **c. Should different types of services operate together or separately?**

Some services, like administrative support, matching, and coordination, can work well together in a single hub. But **counselling must remain independent**, to protect surrogates and intended parents from conflicts of interest. Similarly, **legal advice must be provided separately** to each party.

#### **d. How could they best meet the diverse needs and experiences of people involved in surrogacy?**

- Services must be **inclusive of LGBTQIA+ people**, single parents, and culturally and linguistically diverse families.
- Staff should be **trained in trauma-informed, culturally safe practices**.
- Services must be **available nationally**, including via telehealth, so that people in regional and remote areas aren't left out.

Ultimately, the system should make surrogacy more accessible and supported in Australia, so families like mine never have to go overseas to have children. Every Australian deserves to build their family safely and with dignity, right here, at home.

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### **Question 13: How should surrogacy advertising be regulated?**

#### **Response:**

Surrogacy advertising should be allowed in Australia, but it must be thoughtfully regulated to ensure safety, transparency, and respect for all involved.

When my husband and I were searching for a surrogate, there was no structured or safe way to connect with someone in Australia. We found ourselves relying on social media groups, word of mouth, and chance conversations. It was daunting and, frankly, unfair to everyone involved. That lack of structure is one of the main reasons we looked overseas, where agencies could ethically and professionally help us connect with a surrogate in a safe and supported way.

We need to take the fear and secrecy out of surrogacy in Australia. Ethical, regulated advertising could help prospective surrogates and intended parents find each other without relying on underground networks or luck.

#### **a. Should advertising be allowed?**

Yes, advertising should be allowed in a **regulated and ethical** manner. It should not be exploitative, coercive, or commercialised, but it should be legal to promote surrogacy arrangements that follow national guidelines.

#### **b. Who should be allowed to advertise?**

Advertising should only be permitted by:

- **Registered not-for-profit or accredited surrogacy organisations or clinics**
- **Intended parents or surrogates**, if they follow approved guidelines (e.g. using a national platform or registry)

This prevents third parties or brokers from operating without oversight, and ensures any advertisements meet clear ethical standards.

#### **c. What advertising content should be allowed?**

Advertising should be:

- Honest, respectful, and non-commercial

- Clear about the altruistic nature of the arrangement (if required under Australian law)
- Inclusive and non-discriminatory (e.g. not excluding people based on sexual orientation, relationship status, or cultural background)

**d. Where should advertising be allowed?**

- Through a **national surrogacy register or matching platform**, hosted or regulated by government or a national body
- On **approved websites or forums** with appropriate moderation
- Carefully and clearly through **social media**, so long as content guidelines are followed

At its core, advertising is just about connection. It's how families are formed, and how surrogates and parents find one another. With the right safeguards, regulated advertising could remove a major barrier and help more Australians build their families here at home, ethically and safely.

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**Question 14: What entitlements, if any, should be available to surrogates and intended parents?**

**Response:**

Surrogacy is an act of extraordinary generosity and love. Surrogates deserve to be supported, emotionally, physically, and financially. Intended parents, likewise, should have equal access to the same systems that support all new parents in Australia. Yet currently, surrogacy arrangements often fall through the cracks of government policy, leaving families and surrogates vulnerable.

Our surrogate, [REDACTED], was able to access parental leave in the United States and received proper medical support, counselling, and paid time off. We, as intended parents, were recognised from day one as our child's legal guardians. That made the transition into parenthood smoother and allowed us to focus on our baby, not bureaucracy. None of that support would have been available to us in Australia.

**a. Medicare rebates for fertility treatments:**

Yes, Medicare rebates should be made available to all intended parents, regardless of gender, relationship status, or sexual orientation. Currently, same-sex male couples are excluded from Medicare support for fertility treatment, despite requiring IVF to build their families. This is discriminatory and must change.

If surrogacy is to be accessible, we must remove financial barriers and fund fertility care equally for all.

**b. Access by surrogates to paid or unpaid parental leave:**

Yes, surrogates should be entitled to both paid and unpaid parental leave under the Fair Work Act or equivalent schemes. This should include:

- **Time off during pregnancy and post-birth recovery**

- **Access to paid leave through the government scheme or the employer**
- **Protection from discrimination in the workplace**

Surrogates are making an incredible contribution to a family's life. Supporting their health and wellbeing during and after pregnancy is the very least we can do as a society.

**c. Should surrogacy be made more affordable, and how?**

Absolutely. The high cost of surrogacy, particularly overseas, is one of the biggest barriers for many families. Making surrogacy more affordable would:

- Reduce the need for risky or unregulated overseas arrangements
- Promote ethical, domestic surrogacy
- Create a fairer system for all Australians, not just those who can afford international options

This could be achieved by:

- **Providing Medicare support for fertility and related services**
- **Funding legal and counselling services**
- **Subsidising surrogacy coordination through not-for-profit agencies**
- **Removing unnecessary legal delays that add costs and complexity**

Surrogacy should be supported by a system that values care, inclusion, and fairness, not one that burdens those who are already giving everything to create a family.

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**Question 15: How could the process for reimbursing surrogates for reasonable expenses be improved?**

**Response:**

Reimbursement is not about "paying" someone to carry a child, it's about making sure surrogates aren't financially disadvantaged for their incredible act of generosity. Right now, the reimbursement process in Australia is vague, inconsistent, and burdensome. That uncertainty can deter women from becoming surrogates and add stress to already emotional journeys.

In our U.S. arrangement, expenses and compensation were clearly agreed upon, documented, and managed through a third-party trust account. [REDACTED] never had to chase receipts or feel awkward about asking for support, she was respected, valued, and protected. That clarity helped us all focus on the relationship, not the paperwork.

Australia needs to take a similarly thoughtful and respectful approach.

**a. What expenses should be reimbursable?**

Any **reasonable out-of-pocket expenses** related to the pregnancy and birth, including:

- Medical bills (including private healthcare, IVF procedures, ultrasounds, and medications)

- Counselling and psychological support
- Legal fees for independent advice
- Maternity clothing and prenatal vitamins
- Travel and accommodation for appointments
- Lost income due to medical leave or recovery time
- Loss of surrogates partner's income due to attendance at medical appointments
- Childcare for the surrogate's own children during appointments or hospital stays

**b. How should payment be calculated?**

Reimbursement should be based on **actual costs**, but with clear guidance provided so surrogates know what is covered. There should also be an option for **modest pre-agreed allowances** (e.g. for travel or time off work), to reduce the administrative burden of keeping receipts for every item.

**c. Should there be limits on any amounts?**

Caps may help avoid perceptions of commercial surrogacy, but they must not be so low that they leave surrogates out of pocket. Instead of strict monetary limits, a **clear national framework** should outline what constitutes a fair and reasonable expense, allowing flexibility based on each case.

**d. What should the process look like?**

- Use of a **trust account or third-party payment system** to manage funds transparently
- All reimbursements documented and agreed upon in advance, with optional updates as needed
- Surrogates should never have to feel uncomfortable or ashamed about asking for reimbursement, this is about fairness, not profit

**e. Are there any jurisdictions worth learning from?**

Yes, Boise Idaho and other U.S. states provide strong, ethical models. The use of trust accounts, clear legal agreements, and structured support ensures that surrogates are financially protected and emotionally respected. Australia can adopt similar safeguards while retaining its commitment to altruistic surrogacy.

Reimbursement should reflect respect. A woman who carries a child for someone else deserves more than admiration, she deserves practical, reliable support that eases her journey.

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#### Question 16: Do you support a) compensated surrogacy and/or b) commercial surrogacy?

I support **both compensated and commercial surrogacy**, when they are ethical, regulated, and respectful. While I don't believe Australia is currently brave enough to take that step forward, I do believe we should be.

When my husband and I pursued surrogacy in the United States, we entered into a commercial surrogacy arrangement. Our surrogate, [REDACTED], was not "selling a baby." She was a strong, kind, empowered woman who chose to help create our family. The compensation she received acknowledged the emotional, physical, and logistical demands involved, not just during pregnancy, but in the many months before and after birth. She had independent legal advice, counselling, and full control over her body and decisions at all times. It was structured, respectful, and built on trust.

In Australia, surrogates can only be reimbursed for direct expenses. But this ignores the real impact on a woman's life — her body, career, family, health, and freedom. **Why should everyone else in the process such as clinics, lawyers, counsellors, be paid fairly for their time, while the woman carrying the child is expected to do it out of love alone?** That's not generosity...that's inequality.

A surrogate should have the **right to decide** if she wants to be compensated for her time, energy, and personal sacrifice. To deny her that choice is to ignore women's autonomy and to reinforce outdated ideas about what constitutes a legitimate act of care.

#### Why I support compensated and commercial surrogacy:

- They **recognise and respect** the surrogate's immense contribution.
- They can be **ethical, transparent, and empowering**, with the right safeguards.
- They make **domestic surrogacy more accessible**, reducing the need to go overseas.
- They reflect **economic fairness** and **personal agency**, no one should be expected to take months off work or risk their health for free.
- **International models**, like in parts of the United States, show that commercial surrogacy can work well when properly regulated.

Yes, we must guard against exploitation and profit-driven abuse. But we must also stop being afraid of compensation, and of trusting women to make their own decisions. Commercial surrogacy, done right, is not unethical. **It is empowering, respectful, and fair.**

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

##### Response:

If Australia moves towards allowing **compensated or commercial surrogacy**, it must be done with **compassion, structure, and strong safeguards**. From our experience overseas, I know that compensated surrogacy can be ethical, respectful, and deeply personal, not commercial or transactional. Our surrogate, [REDACTED], chose to help us create our family because she believed in

what we were building. The compensation she received honoured her time, effort, and sacrifice, not her womb, and certainly not our child.

Australia can create a model that reflects **our values**, while also learning from international best practices.

#### **a. How should compensation be calculated?**

Compensation should reflect:

- Time off work (including lost income)
- Physical and emotional toll
- Lifestyle restrictions (e.g. abstaining from certain activities, managing medical treatments)
- The extraordinary emotional and physical labour of carrying a pregnancy

This doesn't need to be an open cheque book, but it should be fair, transparent, and consistent. A base compensation range, agreed nationally, would provide clarity and equality across arrangements.

#### **b. Should there be a limit on the amount of compensation?**

Yes, there can be **reasonable upper limits**, but they must not be so restrictive that they force surrogates to bear financial burden. Caps should be set by an independent advisory body, reviewed regularly, and adjusted for inflation and individual circumstances.

#### **c. Who should set the amount of compensation?**

An independent **national surrogacy oversight body** should provide guidelines and review disputes. Within those bounds, the intended parents and surrogate should be free to negotiate a compensation plan that meets everyone's needs, with clear legal advice on both sides.

#### **d. What should the process for compensation look like?**

- **Written agreement** signed by all parties, including legal advice and counselling
- **Funds held in trust** and disbursed through a third party or agency
- **Installments** paid monthly or tied to specific milestones (e.g. start of pregnancy, trimester milestones, postpartum)
- Surrogates must never be left chasing money or feeling awkward about asking for agreed support

This was how our arrangement worked overseas, and it made the process feel fair and emotionally safe.

#### **e. Any jurisdictions worth learning from?**

Yes, Boise Idaho in the USA has a strong model. Compensation is permitted, but the system is tightly regulated. Surrogates have independent legal advice, and compensation is handled

through licensed professionals. The law protects both surrogate and intended parents, and, most importantly, the child.

If we want more Australians to pursue surrogacy here at home, we must create a system that honours and supports the people who make it possible. Compensated surrogacy can reflect Australian values, care, equality, fairness, if we build it with integrity from the ground up.

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**Question 18: What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?**

**Response:**

One of the most distressing parts of our surrogacy journey was the legal limbo we experienced after the birth of our children. Despite having gone through a legally sound, ethical, and loving surrogacy process overseas, we were not recognised as the legal parents of our own children in Australia when we returned home.

For our first child, only my name is on the birth certificate, and both our names are on our second child's birth certificate. However, since we conducted commercial surrogacy, we are unable to obtain a parentage agreement, giving us both equal legal rights/responsibility for our children. We do not have equal legal authority to make medical or travel decisions for our children. We had to undergo lengthy, expensive, and emotionally exhausting processes, just to have our children registered in Australia, however we are not legally recognised as equal parents. At a time when we should have been bonding with our newborns, we were instead focused on providing documents, immigration letters, and foreign birth documents to authorities in order to have our children enrolled in the system. For the first few months they did not have access to Medicare until these processes were complete.

This is not just a bureaucratic problem, it's a human one. No parent should have to justify their right to raise their own child. No child should be left without legal protection because of where they were born.

**Key problems with the current process:**

- **Delayed recognition of parentage:**  
Legal parentage is not automatic. Intended parents must apply post-birth, often through the courts, even when there is a surrogacy agreement and full consent.
- **Inconsistent state laws and federal recognition:**  
Parentage processes vary widely between jurisdictions. Children born through international surrogacy face additional hurdles, with no national framework to guide recognition.
- **Discrimination against same-sex male couples and families formed overseas:**  
Because my husband and I are a gay couple who pursued surrogacy overseas, we were treated as second-class parents. Had we been heterosexual and used IVF locally, none of these delays would have applied.
- **Stress and trauma during the early parenting period:**  
Instead of being present with our newborns, we were managing legal uncertainty, which impacts the wellbeing of the child and the mental health of the parents.
- **Lack of automatic recognition for ethical, documented international arrangements:**  
Even when the surrogate has no intention to parent and there is a clear, court-approved

agreement in the country of birth, Australia still does not automatically recognise legal parentage.

Our children are Australian. They deserve to be protected by Australian law from the moment they enter this world, not after a long, complex legal and administrative battle. Intended parents like us shouldn't have to prove ourselves after birth. We should be recognised from the beginning, as any loving, prepared, and committed parent would be.

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**Question 19: How could the process for intended parents to become the legal parents of children born through surrogacy be improved?**

**Response:**

The most important improvement is also the most obvious: **Intended parents should be recognised as legal parents from birth**, provided the surrogacy arrangement was ethical, consensual, and well-documented.

When [REDACTED] and [REDACTED] was born overseas, we were present at every scan, involved in every decision, and deeply connected to the pregnancies from day one. Their births were the most life-changing moment of our lives. But in the eyes of Australian law, we were strangers to them. We are still not both equally recognised as their parents. Following the birth of [REDACTED] I had a cancer scare. I suddenly realised that if I died [REDACTED] could end up in the care system because my husband is not legally recognised as her parent. This risk is the most frightening thing when you want to provide all the protections that you can for your child, yet the government does not.

**a. Timing – Before or after the birth?**

Legal parentage should be **determined before birth**, with confirmation post-birth only if necessary. Pre-birth orders (similar to those used in some U.S. states) offer clarity, minimise conflict, and give the child immediate legal protection from the moment they are born. It also reduced the emotional stress on our surrogate by not having to face a court post birth.

**b. Who makes the decision – Judicial or administrative?**

An **administrative process** would be faster, less adversarial, and less traumatic for families. Judicial oversight could remain in complex cases or disputes, but for most arrangements, an administrative approach would be more appropriate and efficient.

**c. Should recognition be automatic?**

Yes, **automatic recognition** should occur when a surrogacy arrangement meets legal and ethical requirements (e.g. proper consent, counselling, legal advice, and medical eligibility). For international arrangements, Australia should **automatically recognise foreign court orders or birth certificates** from approved jurisdictions with regulated surrogacy systems.

**d. Should the process differ based on circumstances?**

Some flexibility may be needed (e.g. if the surrogate has a genetic link to the child or there are disputes), but the **default should be recognition of intended parents**. Whether the surrogate received compensation, or the arrangement was local or international, should not disqualify the child from legal certainty or protection.

**e. Are intended mothers and fathers treated differently?**

Yes, particularly for same-sex male couples, there's a presumption that we are "lesser" parents because we lack a biological or birthing connection. That's discriminatory and wrong. All intended parents should be treated equally, regardless of gender or biology.

**f. Should parentage be dependent on compliance with process requirements?**

Basic safeguards (e.g. counselling, legal advice, consent) are important, but we must **avoid punishing the child** if a paperwork error occurs. The focus must remain on the child's best interests, not bureaucratic perfection.

**g. Prioritising the child's best interests:**

There is no greater interest for a child than being raised by the parents who brought them into being with love and intention. Legal recognition should reflect that from the beginning.

**h. Can we learn from other countries?**

Yes, countries like Canada, the UK (currently under reform), and parts of the U.S. have models that allow pre-birth recognition and automatic parentage under specific conditions. Australia should follow suit.

The bottom line: children should not be born into legal uncertainty. Intended parents should not be treated like legal strangers. A fair, timely, and child-centred parentage process is not too much to ask, it's what every Australian family deserves.

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**Question 20: 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**
- c. An Australian visa**

**Response:**

Bringing our children home to Australia, after planning every detail of their birth with care and love, was one of the most stressful experiences of our lives. The legal and immigration processes were long, inconsistent, and at times felt almost punitive.

We weren't criminals or smugglers. We were two loving, prepared parents trying to bring our babies home. But because our children were born through international surrogacy, the path to citizenship and a passport was full of delays, invasive questioning, and complex paperwork that seemed designed to discourage rather than support.

**a. Australian Citizenship:**

The process of obtaining citizenship by descent is **slow, unclear, and inconsistent**. We had to submit extensive documentation, statutory declarations, and evidence of the surrogacy

arrangement. This was even though we were the legal parents under U.S. law and had a court order confirming that.

Each case officer seemed to have a different interpretation of the requirements, which created fear and uncertainty, especially when trying to plan travel with a newborn. There is **no special consideration** given to the urgency of reuniting a baby with their family.

In the case of many international surrogacy journeys, many parents bring their children into the country on a visit visa and then apply for the citizenship once in the country. There is the concern that border control may reject entry of the baby into the country. This adds considerable stress and uncertainty for those pursuing international surrogacy journeys.

**b. Australian Passport:**

Without citizenship, we couldn't get a passport. The process was unnecessarily convoluted and required multiple documents that were already part of the citizenship application. Even once we were approved, there were **delays due to confusion over who could sign forms**, who was recognised as the legal parent, and how quickly the document could be issued. It is a known fact that even after securing a passport, each renewal of the passport has to go through the same process, with extensive documentation and permission being given by the surrogate to allow a passport to be given. This is challenging, particularly if we were to lose contact with our surrogate. It also means that our children's passport applications are treated differently to other Australian children, again another example of inequality in Australia.

**c. Australian Visa:**

While waiting for citizenship, we had to apply for a visit visas for our newborns. This involved navigating complex immigration categories that are not designed with surrogacy in mind. We were treated like people trying to sponsor a skilled migrant, not parents bringing home a baby. It was emotionally exhausting and **created a limbo period where our child's legal status in Australia was unclear.**

**Conclusion:**

The current system is not fit for purpose. It creates trauma for new parents, undermines the wellbeing of children, and unfairly targets families who go through international surrogacy, not because they want to, but because Australian law gave them no other option.

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**Question 21: How could the process for obtaining these documents be improved?**

**Response:**

The process for obtaining citizenship, passports, and visas for children born through international surrogacy must be **streamlined, compassionate, and tailored to the reality of modern families**. No Australian family should have to beg to bring their child home.

We didn't choose international surrogacy lightly. We were forced into it because domestic laws excluded us. But once our child was born, we were met with suspicion instead of support, treated more like a case to manage than a family to welcome.

That must change.

**Key improvements should include:**

- 1. Create a dedicated surrogacy pathway within immigration and citizenship processes:**

The Department of Home Affairs should establish a **specific, streamlined process** for children born through international surrogacy. This would include:

  - Clear documentation checklists
  - Priority processing timeframes
  - Case officers trained in surrogacy, not general immigration
- 2. Allow recognition of overseas court orders and birth certificates:**

Where a child is born through a legal, ethical surrogacy arrangement overseas, and the intended parents are recognised under a foreign court order, Australia should **automatically recognise that parentage** for citizenship and passport purposes. This would prevent duplicate, unnecessary assessments.
- 3. Provide emergency travel documents or fast-tracked visas for newborns:**

There should be a **fast-track visa or emergency travel option** available for families stuck overseas with a newborn. No child should be stranded without status because of bureaucracy. I was stranded in the USA for the birth of our first child during Covid, as my partner was not permitted to travel. We had no support from the Australian government to return, despite my pleading and concerns that my daughter could be exposed to Covid and die.
- 4. Improve inter-agency communication and accountability:**

Surrogacy cases often require interaction between the Department of Home Affairs, Department of Foreign Affairs and Trade, and state governments. These agencies should work under a **national surrogacy framework**, with shared definitions and timelines to ensure smoother processes. During my interaction with the Department of Foreign Affairs and Trade during Covid, I was told that there were 30,000 Australian's trying to get back to Australia and that everyone "has a story". I was also told that they were too busy relocating and finding accommodation for over 6,000 Afghan nationals into Australia. I was not filled with trust or respect for the department following that interaction.
- 5. Treat families with respect and dignity:**

The tone and approach of government communications matter. We need to move from suspicion and delay to support and trust. Intended parents aren't trying to "get around the system", we're doing everything we can to follow the rules. The system needs to work with us, not against us.

Bringing home your child should be a moment of joy, not one of fear, delay, and isolation. Our laws and systems must reflect the love, care, and preparation that goes into every ethical surrogacy journey. It's time Australia caught up.

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

**Response:**

The current patchwork of surrogacy laws across Australian states and territories is confusing, unjust, and deeply harmful. It creates a postcode lottery that determines who can become a

parent, how families are recognised, and whether a child is legally protected. That is not acceptable in a country that prides itself on fairness and equality.

When my husband and I were ready to start our family, we discovered that because we lived in Western Australia, at the time, one of the only jurisdictions that excluded gay male couples from surrogacy, we were **legally banned** from becoming parents through domestic surrogacy. Had we lived just a few hours away in South Australia or Victoria, our path would have been open. This arbitrary legal barrier forced us overseas, placing huge financial, legal, and emotional strain on our family. I am since aware that other male couples have moved states to have their children, but this removed them from their established support networks of families and friends.

**a. Ways in which surrogacy regulation is inconsistent:**

- Who is eligible to access surrogacy (e.g. restrictions based on sexual orientation, gender, or relationship status)
- How and when parentage is transferred
- What expenses can be reimbursed
- Whether advertising or matching is allowed
- Access to counselling, legal services, and fertility support

**b. Are these inconsistencies problematic?**

Yes, **deeply so**. They result in:

- Discrimination based on geography
- Legal uncertainty for children and parents
- Unequal access to support and services
- More families being forced into overseas surrogacy
- Emotional distress and financial hardship

**c. Impacts of differences between federal and state laws:**

There is a **disconnect between federal family, immigration, and citizenship laws and state-based surrogacy laws**. For example, the federal government may not recognise an intended parent listed on a U.S. birth certificate if the state they live in wouldn't have allowed them to pursue surrogacy locally. That contradiction is harmful and confusing.

**d. Where should parentage applications be determined?**

There should be a **national administrative process** for transferring legal parentage, supported by uniform legislation. State courts should only be involved in complex or disputed matters. The current reliance on court orders is slow, expensive, and unnecessary in most cases.

**e. How important is harmonisation?**

**It is critical.** Every child born through surrogacy deserves equal protection under the law. Every intended parent should have access to the same rights and responsibilities, regardless of where

they live. A unified approach would also reduce pressure on courts, streamline services, and ensure clearer expectations for surrogates and parents alike.

#### **f. How can harmonisation be achieved?**

- Develop a **national surrogacy framework** through federal legislation
- Or, pass **uniform laws** through COAG or intergovernmental agreement, as was done with the national child protection standards and family violence reforms
- Establish a **federal oversight body** to ensure consistency in advice, support, and legal outcomes

Families are built on love, not state borders. It's time our laws reflected that.

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#### **Question 23: Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach?**

##### **Response:**

Yes, surrogacy should absolutely be subject to oversight. But that oversight must be **supportive, ethical, and consistent**, not punitive or unnecessarily bureaucratic.

When we pursued surrogacy in the United States, there was a structured, respectful process that involved licensed professionals, legal agreements, and ethical reviews. We felt safe, understood, and protected, so did our surrogate. In Australia, there is no consistent oversight, and the systems that do exist often feel fragmented or inaccessible.

We don't need surveillance, we need **guidance, safeguards, and support**.

##### **a. Is there a need for a regulator or oversight body? What could it look like?**

Yes, Australia needs a **national surrogacy body** that acts as:

- A regulator for consistent policy and law across jurisdictions
- A coordinator of professional services (legal, counselling, administrative)
- A hub for ethical guidelines, matching services, and dispute resolution
- A source of support for surrogates, intended parents, and children
- A repository of research and best practice

This body could operate similarly to the National Health and Medical Research Council (NHMRC), but focused on family formation and assisted reproduction.

##### **b. Should oversight be national or state/territory based?**

**National oversight is essential.** While implementation could still involve local services, the core legislation, standards, and support mechanisms must come from a single, unified framework. This would prevent discrimination and inconsistency between states and territories, and allow for one clear set of expectations for all parties.

### **c. Which groups need oversight?**

Oversight should apply to:

- **Surrogacy agencies or coordinators**, to ensure ethical conduct and transparency
- **Medical and fertility professionals**, so they are trained in inclusive, patient-centred care
- **Legal and counselling providers**, to ensure services are consistent and informed
- **Intended parents and surrogates**, only to the extent of ensuring informed consent, legal compliance, and ongoing support

Oversight should always protect, not restrict. It should create confidence and clarity, not fear or red tape.

Families like mine didn't need policing, we needed guidance, connection, and legal certainty. A compassionate, well-structured national oversight system would help all families feel seen, supported, and safe on their journey to parenthood.

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### **Question 24: Should the law have a role in discouraging or prohibiting certain forms of surrogacy?**

**Response:**

The law absolutely has a role to play in **preventing exploitation**, but it should not be used to punish or criminalise loving families. Right now, Australian criminal law is being misapplied to restrict or shame people who have turned to international surrogacy not out of choice, but out of necessity. That's not justice, it's cruelty.

My husband and I pursued surrogacy overseas because we were excluded from domestic surrogacy in Western Australia. We followed every ethical and legal step, built a beautiful relationship with our surrogate, and did everything in the best interests of our child. Yet we came home to laws that threatened us with stigma, legal limbo, and, in some states, even criminal sanctions.

### **a. Should engaging in or facilitating certain forms of surrogacy be sanctioned or criminalised?**

Only in **very limited cases**, such as:

- Where surrogacy is exploitative, coercive, or conducted without informed consent
- Where children are trafficked or commodified
- Where arrangements bypass the surrogate's rights or safety

But when families engage in **ethical, documented surrogacy overseas**, especially due to discrimination at home, they should not be punished. Criminalising these arrangements harms children, breaks up families, and drives the process underground.

**b. What is the effect of using criminal law to regulate surrogacy?**

Criminal law creates **fear, stigma, and inequality**. It makes intended parents feel like criminals. It pushes people away from legal advice and support out of fear. And it places children in legal uncertainty through no fault of their own.

In jurisdictions where criminal laws exist (like WA and QLD), they have not prevented international surrogacy, they've just made it riskier and more traumatic.

**c. Are there better regulatory approaches?**

Yes, surrogacy should be regulated through:

- **Ethical oversight bodies**
- **Licensing of agencies and clinics**
- **Mandatory counselling and legal advice**
- **National standards and education campaigns**

When surrogacy is guided by clear, supportive regulation, not criminal law, it becomes safer for everyone: the surrogate, the child, and the parents.

We need to stop criminalising family formation and start focusing on the real issue: building a surrogacy system in Australia that is ethical, inclusive, and compassionate, so people don't have to go overseas in the first place.

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**Question 25: Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices?**

**Response:**

Absolutely. Right now, understanding of surrogacy in Australia is limited, inconsistent, and often shaped by outdated stereotypes or fear-based narratives. When my husband and I began exploring surrogacy, we were shocked by how little reliable information was available, especially for same-sex male couples. We had to become our own legal researchers, social workers, and advocates just to figure out where we stood.

That lack of awareness creates confusion, fear, and unnecessary barriers, for intended parents, surrogates, medical professionals, and the broader public.

**Where education is needed most:**

**1. Among the general public**

There is still stigma attached to surrogacy, especially for LGBTQIA+ families. Many people assume it is illegal, exploitative, or only for the wealthy. Improved education would reduce stigma and encourage more open, inclusive conversations about family formation.

**2. Among healthcare providers and fertility clinics**

We've heard stories of intended parents being turned away or treated unfairly by professionals who don't understand surrogacy pathways, or who impose their own

biases. All frontline professionals should receive **training on inclusive care and surrogacy literacy**.

**3. Among intended parents and surrogates**

Many people have no idea how to start their surrogacy journey, or what their rights and responsibilities are. A national information hub with plain-English guides, checklists, and ethical guidance would empower people and reduce the risk of misinformed decisions.

**4. Among government agencies**

Too often, government staff involved in immigration, birth registration, or family services do not understand surrogacy law. This results in conflicting advice, delays, and distress. Agencies must be trained to respond with compassion, accuracy, and consistency.

**How to improve awareness:**

- Create a **national surrogacy education portal**, hosted by a federal oversight body
- Fund **public awareness campaigns** that reflect the diversity of families formed through surrogacy
- Develop **mandatory training modules** for health, legal, and social service professionals
- Support **community organisations** to deliver peer-led education and outreach

People shouldn't need a law degree, or thousands of dollars, to understand how to create a family. We need to make surrogacy understandable, approachable, and human. Because it is.

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**Question 26: Do you have any views about the issues we consider to be in or out of scope?**

**Response:**

I'm grateful that the ALRC has taken such a comprehensive and thoughtful approach to this Inquiry. Many of the key issues that affect families like mine, legal parentage, access, equity, and regulation, have been addressed in meaningful ways.

That said, I believe there are some issues currently treated as "out of scope" that should still inform the broader context of reform, even if not directly legislated through this review.

**1. Discrimination in fertility access and Medicare support**

The ALRC notes that assisted reproductive technology (ART) and Medicare access are technically out of scope, but this is inseparable from the surrogacy journey for many, especially same-sex male couples. We are still excluded from Medicare-funded IVF services, even when we require it to create embryos with an egg donor and a surrogate. That exclusion compounds financial inequity and undermines equal access to family formation.

Any reform of surrogacy should work in tandem with broader reproductive justice measures to ensure **all people, regardless of gender or sexuality, have equal access to fertility care**.

**2. Support for donor-conceived and surrogacy-born children beyond infancy**

While much of the focus is on legal parentage and birth registration, more attention should be

given to the long-term identity, wellbeing, and rights of children born through surrogacy. This includes:

- Ongoing **access to counselling**
- Support in **accessing donor and birth records**
- **Community networks** and affirming spaces for donor-conceived people

This is vital in ensuring surrogacy is not just legal, but also ethical and emotionally sustainable across generations.

### **3. Intersectionality and cultural barriers**

Although the paper touches on cultural and linguistic diversity, more could be done to examine how racism, migration status, and economic inequality affect access to surrogacy. For example, families from migrant communities may face additional hurdles when seeking legal advice, navigating systems, or accessing support, especially if their family formation is not understood or accepted within their own cultural context.

In short, I respect the ALRC's scope, but I urge decision-makers to see surrogacy law reform **not in isolation**, but as part of a wider ecosystem of inclusion, reproductive rights, and family equity.

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**Question 27: Are there any important issues with regulating surrogacy that we have not identified in the Issues Paper? Do you have any other ideas for reforming how surrogacy is regulated?**

**Response:**

Yes. I want to end by emphasising a few crucial ideas that cut across the entire surrogacy experience, especially for people like me who have walked this journey with love, determination, and no shortage of barriers.

**1. Surrogacy law reform is about families, not just frameworks**

At the heart of every reform should be the child, and the people who dream of holding them in their arms. Too often, surrogacy is reduced to paperwork or politics. But for us, it was about becoming fathers. It was about creating a home full of love and laughter. The law must reflect the deeply human reality of what's at stake: family, belonging, and dignity.

**2. International surrogacy must be acknowledged and supported, not ignored or punished**

Thousands of Australian children have already been born through international surrogacy. That's a reality, not a loophole. These children and their families must be recognised, protected, and treated with the same respect as families formed through domestic arrangements.

I've sat in hospital rooms overseas, signing paperwork, while my children's home country treated me like a stranger. I've stood in government offices, filing for legal parentage, when I was already changing nappies and comforting my baby through sleepless nights. That disconnect must end.

### **3. Australia should become a global leader in ethical, inclusive surrogacy**

Rather than pushing families overseas, we have the opportunity to create a **world-class, ethical, and supportive domestic surrogacy system**. One that:

- Is inclusive of all genders, sexualities, and family types
- Provides national consistency and legal certainty
- Offers support, counselling, and legal advice to surrogates and intended parents
- Recognises the emotional journey, not just the legal one
- Makes surrogacy accessible, not just for the wealthy or well-connected

### **4. Listen to those with lived experience**

This review has opened the door to listening, and I urge lawmakers to keep it open. Surrogates, intended parents, and children born through surrogacy have powerful stories and practical insight. We're not asking to be exceptional, we're asking to be treated fairly.

#### **Final thought:**

My children were born through surrogacy, but they were also born through love. They are Australian. They deserve to have their family recognised with the same certainty, joy, and pride as any other. So do thousands of families like mine.

Let's please build a system that reflects that love.