*19.12.2025*

# Submission to the Australian Law Reform Commission

*Response to Discussion Paper 89 – Review of Australia's Surrogacy Laws*

## Introduction

I thank the Australian Law Reform Commission for the opportunity to provide feedback on the Discussion Paper: Review of Australia's Surrogacy Laws. This submission supports many of the reform directions proposed by the Commission and focuses on ensuring that any changes are clear, fair, child-centred, and genuinely workable for the people who rely on them.

## About Me

I am a two-time gestational surrogate and have firsthand experience navigating Australia's surrogacy laws, systems, and practical realities. I have supported families through the surrogacy journey from both a personal and community perspective.

I am also the founder of the Queensland Surrogacy Community (QSC), established in 2016. QSC supports surrogates, intended parents, and families formed through surrogacy by providing peer support, education, and guidance. Through this role, I have engaged with hundreds of individuals across Australia and have a strong understanding of the systemic barriers, inconsistencies, and harms created by the current legal framework.

My submission is informed by lived experience, long-term community advocacy, and close collaboration with experienced surrogacy practitioners.

I strongly support reform that reduces harm, improves access to ethical domestic surrogacy, and protects children, surrogates, and intended parents equally.

## Proposals I Support Without Change

I support the following proposals as drafted and do not raise additional concerns in relation to them:

- Removing bans on advertising for surrogacy
- Allowing flexibility around genetic connection
- Minimum age requirements
- Citizenship and residency requirements

- Medical screening requirements
- Requirements for written surrogacy agreements
- Prohibited clauses in agreements
- Medicare access for fertility treatment, counselling, and assessments
- National records, registers, and information-sharing
- Streamlining passports and citizenship processes for children born through surrogacy
- These proposals collectively modernise surrogacy law and reflect how surrogacy already operates in practice

**A National, Consistent Framework Is Essential**

National laws, not state-by-state patchwork

Australia's current state-based system is confusing, inconsistent, and unfair. People are treated differently depending on where they live, and this uncertainty drives some families overseas.

I strongly support surrogacy being regulated at a national level, with one consistent legal framework across Australia. This is the only way to achieve clarity, fairness, and equal protection for children and families.

If full federal regulation is not possible, then genuinely uniform laws across all states and territories are the next best option.

**A National Regulator Is Critical**

I strongly support the creation of a National Surrogacy Regulator.

**A national body should:**

- Be independent from government and commercial interests
- Include expert practitioners and people with lived experience
- Be transparent, accountable, and easy to access
- Regulate surrogacy, assisted reproductive technology (ART), and donor conception together, as these areas are inseparable in practice

Many surrogacy arrangements — particularly for single men and gay male couples — involve donor eggs. Regulating surrogacy without donor conception would leave serious gaps.

Existing bodies are often opaque, difficult to understand, and disconnected from the community they serve. This must not be repeated.

**Surrogacy Support Organisations (SSOs)**

Regulation matters more than profit status

I support the licensing and regulation of Surrogacy Support Organisations (SSOs). Matching services already exist, but they currently operate with little oversight, and in spite of the law.

Whether an SSO is not-for-profit or for-profit is not the real issue. What matters is:

- Strong licensing
- Clear standards
- Accountability
- Oversight by a national regulator

Not-for-profit status does not guarantee ethical behaviour, good governance, or financial integrity. Likewise, for-profit models can be ethical and professional if properly regulated.

**Financial safeguards are essential**

I have concerns about allowing SSOs to hold money in escrow unless they are subject to strict financial regulation, including:

- Qualified trust accounting
- Independent audits
- Clear accountability

International examples show that poor regulation can lead to serious financial harm for intended parents.

**Approval of Surrogacy Agreements**

I support the principle of pre-approval of surrogacy arrangements before treatment begins. This is an important safeguard for everyone involved.

*However, approval must:*

- Be independent from those providing medical, legal, or counselling services

- Be carried out by people with appropriate qualifications and experience
- If SSOs are involved in approval, they must employ suitably qualified professionals. Approval should not be left to people without legal, medical, or psychosocial expertise, even if they have lived experience.
- There should also be a pathway for practitioners to refer complex or concerning matters directly to the National Regulator.

**Community trust matters**

Some people find approval processes intimidating or "onerous". In my view, this is often due to poor communication, lack of transparency, and a failure to engage respectfully with the community.

A well-regulated, professional SSO that is inclusive, culturally sensitive, and LGBTQIA+ affirming is more likely to be trusted than existing opaque systems.

**Compliance and Accountability**

I strongly support real consequences for breaches of surrogacy laws.

Loss of licence, civil penalties, and criminal sanctions (where appropriate) are all important tools. Accountability should fall on organisations and industry actors, not primarily on parents or children.

**Education and Awareness**

Education is one of the most effective ways to prevent harm and exploitation.

***I support:***

**National education initiatives**

Training requirements for lawyers, counsellors, and health practitioners

**Clear, accessible public information**

Surrogacy is a developing field. Ongoing training is essential to maintain ethical, informed practice.

**Prohibited and Overseas Surrogacy**

Move away from criminalising parents

I welcome the shift away from criminalising intended parents and towards regulating industry behaviour instead.

Criminal penalties discourage honesty, silence lived experience, and risk harming children. Civil penalties are a more proportionate and effective response.

**Listening to affected families**

Many intended parents have engaged in overseas surrogacy due to confusion, misinformation, or lack of access in Australia — not recklessness or bad faith.

The consultation process must allow these families to speak without fear of prosecution. Otherwise, the voices of those most affected will be excluded.

**Psychological Screening and Equality Between Parties**

If psychological assessments are required, they must apply equally to all parties.

Requiring assessments only for surrogates reinforces harmful power imbalances and implies that surrogates are uniquely suspect or vulnerable. Intended parents and surrogates must be treated as equals.

**Criminal History Checks**

I do not support mandatory criminal history checks as a blanket legal requirement.

However, SSOs should be allowed to require them as part of their own safeguarding frameworks, provided:

- All parties are treated equally
- Information is shared transparently
- Decisions remain with the parties
- Informed consent, not blanket exclusion, should guide these decisions.

**Legal Advice**

I support the requirement for independent legal advice before entering into a surrogacy arrangement.

Concerns about lawyers acting for “multiple parties” often misunderstand how surrogacy law operates in practice. Independent advice is required at the agreement stage, and representation later in court is a separate matter.

**Conclusion**

Overall, I strongly support reform that:

- Reduces harm and confusion
- Keeps children's best interests at the centre
- Treats surrogates and intended parents with equal dignity
- Regulates industry conduct rather than criminalising families
- Encourages ethical domestic surrogacy and reduces reliance on overseas arrangements

With clear national laws, strong oversight, and a focus on education and ethical practice, Australia can create a surrogacy framework that protects children, respects surrogates, supports intended parents, and reduces reliance on overseas arrangements.

Kind Regards,

Melissa Eason