19 December 2025

Dear Australian Law Reform Commission (ALRC),

Thank you for the opportunity to make a submission in response to the *Review of Surrogacy Laws: Discussion Paper*. I am currently a research officer at The Kids Research Institute Australia and an affiliate of Monash University. The position I present in the following pages is my own, based on over six years of research related to assisted reproductive technologies, third-party reproduction, and preterm birth.

Overall, I support the proposals and the key reform principles that underpin them. In my view, the proposed reforms would help reduce barriers to accessing domestic surrogacy while also protecting and promoting the human rights of people born through surrogacy, surrogates, intended parents, and parents through surrogacy. In the sections that follow, I respond to selected proposals and questions where I consider that important issues or evidence warrants further consideration.

Proposal 7 – Agree

I support improving community awareness about surrogacy and addressing the current lack of awareness among relevant professionals, for the reasons outlined by the ALRC. An additional and important justification for this proposal that is not fully addressed in the Discussion Paper is that increased community awareness is likely to expand the pool of people willing to act as surrogates.

My interviews with Australian surrogates indicate that some are motivated to pursue surrogacy because of direct knowledge of surrogacy or infertility, such as working in the fertility sector or having close relationships with same-sex male friends (Kneebone et al. 2024). This finding is supported by international research. For example, a study of Canadian surrogates found that visible representation of surrogacy on social media influenced their decision to become surrogates (Fantus & Newman 2019). Together, this evidence suggests that greater public visibility and understanding of surrogacy can play a meaningful role in encouraging individuals to consider becoming surrogates.

This view is consistent with the perspectives of surrogates I interviewed, one of whom noted:

> *"If [surrogacy] was a more commonplace or less daunting prospect, then I think that Australia would have more surrogates come forward" (Kneebone et al. 2024 p. 10)*

Similar findings have been reported in research with Australian egg donors, who have also identified the need for increased public awareness to support participation in donation programs (Hogan et al. 2021). Improving community awareness of surrogacy may therefore not only address misinformation and increase the willingness of prospective intended parents to consider domestic surrogacy, but also help alleviate current shortages in domestic surrogates by encouraging greater participation.

Proposal 7(1)(c)

The accompanying text to Proposal 7(1)(c) explains that intended parents will be educated about the risks of exploitation in some overseas surrogacy destinations. I support this approach, but note that there are additional, significant harms associated with international surrogacy that are equally important to address through education and awareness-raising.

First, evidence suggests that IVF “add-ons” are used frequently in international surrogacy arrangements. Data from the United States indicates higher use of interventions such as intracytoplasmic sperm injection (ICSI) and preimplantation genetic testing (PGT) in surrogacy arrangements with foreign intended parents compared to domestic parents (Herweck et al. 2024). These techniques are not recommended for routine clinical use by the European Society of Human Reproduction and Embryology (ESHRE) due to the lack of high-quality evidence regarding their effectiveness in many cases (ESHRE Add-ons working group et al. 2023). Intended parents should be made aware of the limited evidence base for these add-ons, as well as their financial implications.

Second, the use of multiple embryo transfer remains a significant concern in international surrogacy. In 2021, I surveyed 320 Australian potential intended parents, intended parents, and parents through surrogacy, and 41% of those who completed international gestational surrogacy reported using multiple embryo transfer (n = 40/98) (Kneebone et al. 2023). In contrast, the National Health and Medical Research Council (NHMRC) prohibits multiple embryo transfer in Australian surrogacy arrangements to minimise the risk of multiple pregnancies, which is associated with substantially higher rates of preterm birth (2023). Preterm birth is the leading cause of death in children under five worldwide, and survivors face an increased risk of long-term disability (World Health Organization 2023).

Third, the use of anonymous egg donors in international surrogacy raises important child-centred concerns. My survey found that almost half of intended parents who completed international surrogacy with donor gametes relied on anonymous donors (47%, n = 36/77) (Kneebone et al. 2023). In Australia, anonymous gamete donation is prohibited under the NHMRC guidelines and state and federal legislation which protect a child’s right to know their genetic origins and preserve their sense of identity (NHMRC 2023). Intended parents may not fully appreciate the long-term implications of anonymity for children born through surrogacy unless these issues are clearly explained.

Taken together, these examples highlight the importance of education initiatives that extend beyond exploitation risks alone. Providing intended parents with clear, evidence-based information about clinical practices, health risks, and child-centred concerns in international surrogacy would ensure they understand all the risks in travelling to overseas for surrogacy.

Proposal 16 – Disagree

The Discussion Paper suggests that requiring a surrogate to have previously carried a pregnancy and given birth to a live child may reduce the risk of medical or psychological harm to the surrogate or the child. Two justifications are offered: first, that past pregnancy complications may be predictive of future complications; and second, that prior pregnancy experience supports informed consent by providing a reference point for the physical and psychological aspects of pregnancy and childbirth. For the following reasons, I find neither of these justifications convincing.

Determinants of pregnancy and birth outcomes are complex and multifactorial. While prior obstetric history is one relevant consideration, it is only one among many. For example, pregnancies in women aged 35 years and over, as well as pregnancies involving donor eggs, are associated with increased risks of adverse obstetric and perinatal outcomes (Lean et al. 2017; Vandekerckhove et al. 2021; McCoy et al.

2024). If the aim was to genuinely minimise medical risk through eligibility criteria, in my view, this logic could be extended to restricting surrogacy to women under 35 years of age or to traditional surrogacy arrangements. However, such restrictions are not proposed, rightly so, because they would severely limit the availability of surrogates – in Montrone et al.'s (2020) study of 160 surrogacy arrangements, the average age of surrogates was 37 years – and because gestational surrogacy is generally regarded as more socially acceptable, particularly to intended parents seeking a genetic connection to the child.

Further, while previous pregnancies may provide individuals with a reference point for the physical and psychological aspects of pregnancy and childbirth, the circumstances of a surrogacy pregnancy differ significantly from prior pregnancies. As such, prior experience may not meaningfully enhance informed decision-making. Moreover, prior experience of a procedure or condition is generally not considered a requirement for informed consent, which rests on trusting individuals, when provided with appropriate, unbiased information, to make a voluntary and educated decision.

Accordingly, mandating a prior live birth risks imposing unnecessary barriers on individuals who can provide informed consent and safely carry a surrogacy pregnancy. This approach does not align with the principles of least restriction and accessibility.

Proposal 18 – Disagree

It is my view that mandating psychological assessments would be more likely to cause harm than to prevent it. The ALRC suggests that psychological assessments would help ensure informed consent and mitigate the emotional, psychological, and social risks associated with surrogacy. However, these objectives are already addressed through mandatory implications counselling.

Evidence from well-regulated surrogacy jurisdictions indicates that most surrogacy participants report positive experiences (Yee et al. 2019; Horsey et al. 2023; Martínez-López and Munuera-Gómez 2024). In this context, there is limited justification for imposing an additional procedural requirement on surrogates and intended parents, particularly where there is no clear evidence that mandatory psychological assessments improve outcomes beyond those achieved through counselling.

Experience within Australia further supports this view. An independent review of Western Australia's surrogacy laws found that psychological assessments were described by stakeholders as "duplicative, unclear, stressful, costly, burdensome and misplaced" (Allen 2018 p. 75). This requirement has recently been removed, and no other Australian jurisdiction currently mandates such assessments. This suggests a growing recognition that mandatory psychological evaluation is neither necessary nor proportionate in a well-regulated surrogacy framework.

Question F

If legislation requires surrogates and intended parent(s) to undergo counselling before entering a surrogacy arrangement, it should also require the surrogate's partner (if any) to undertake counselling.

Research from the United States and Israel suggests that surrogates often understand surrogacy as a "family project", characterised as a joint undertaking between the surrogate and her partner, and as an opportunity to teach their children values such as helping and generosity (Teman & Berend 2021). In this

research, surrogates described their partners administering hormone injections and attending medical appointments and the birth.

In addition, research from the United Kingdom indicates that children of surrogates can experience challenges during a surrogacy arrangement, including receiving negative comments from others (Jadva & Imrie 2014).

Although this evidence base is limited and not domestic, it suggests that a surrogate's decision to enter a surrogacy arrangement can affect the entire family. Involving the surrogate's partner in counselling can help ensure that the partner is prepared for their role and can equip both parents with appropriate tools and knowledge to support their children throughout the arrangement.

Proposal 25 – Agree in principle

Although I support the Proposal's consistent, clear, and broad approach to surrogate reimbursement, I recommend several adjustments to further strengthen its objective of preventing surrogates from being financially disadvantaged because of their role. My research indicates that surrogates can be reluctant to seek reimbursement, either because they feel awkward discussing money, or because they perceive that surrogacy is "already expensive enough" for intended parents (Kneebone et al. 2024). For this reason, legislation should be as clear as possible to equip surrogates and intended parents with the knowledge and confidence to navigate reimbursement conversations and, in turn, ensure surrogates are not left out-of-pocket.

To achieve this, I suggest the following clarifications and additions:

1. Include post-partum-related items, such as maternity pads, as mandatory reimbursable costs.
2. Clarify what is encompassed under "medical and wellbeing costs," as it is currently unclear how this differs from "pregnancy-related items," "birth support," or "medical expenses."
3. Clarify whether allied health services, such as physiotherapy or acupuncture, are included as mandatory reimbursable costs.

Question L

No. Families incur different costs during surrogacy and setting a fixed cap risks leaving some surrogates financially disadvantaged. Surrogates should be able to recover reasonable and actual expenses incurred because of their role.

Proposal 26 – Agree in principle

I support Proposal 26, as payment in recognition of losses associated with surrogacy aligns with the altruistic paradigm that underpins surrogacy in Australia and ensures that surrogates are treated with respect and dignity. While such payments are distinct from financial reward, careful attention must be given to ensure that the amount does not act as a primary motivator, which would effectively turn the payment into a financial incentive.

I do not have a definitive view on the appropriate level of payment. Further empirical research is needed to address several key questions: How do Australian surrogates and their families experience non-financial losses associated with surrogacy? What are the perspectives of surrogacy teams and people born through surrogacy regarding a fair and appropriate amount? And to what extent might payment encourage individuals to become surrogates who would not otherwise consider it? Evidence addressing these questions is essential to inform decisions about what constitutes an appropriate level of payment.

Proposal 26(2)(a)

Although I support payment that recognises losses incurred because of the commonly experienced discomfort, pain, suffering, and assumption of risk involved in pregnancy and childbirth, I do not consider that this payment should be described as a "hardship" payment. International research indicates that many surrogates report positive pregnancy experiences and are, in part, motivated by a desire to re-experience pregnancy (Fantus & Newman 2019; Ziff 2019; Yee et al. 2020). As a result, framing the payment as compensation for "hardship" is unlikely to resonate with many potential surrogates.

Further, the use of the term "hardship" risks reinforcing stigma around surrogacy by implying that suffering is an inherent or defining feature of the process. In my view, a more neutral and respectful framing would better reflect the diverse experiences of surrogates and align with the broader aim of treating surrogates and the individuals born through surrogacy with dignity and respect.

To this end, I propose the term "impact" or "drawback" payment. This framing acknowledges that surrogacy may involve trade-offs and burdens that warrant recognition, without implying that the experience is intrinsically harmful.

Question M

I support payment for the surrogate's time, effort, and inconvenience, as this constitutes recognition of non-financial losses. As noted in my response to Proposal 26, careful attention must be given to ensure that the amount does not act as a primary motivator, which would shift the payment away from recognition of loss and undermine the altruistic paradigm that underpins surrogacy in Australia.

Question M also refers to payment for the surrogate's unique contribution. This is conceptually distinct from payments for time, effort, and inconvenience, as it would constitute a reward for the surrogate's role rather than recognition of a loss. Permitting such a financial reward would not align with the current altruistic framework and would represent a significant shift in regulatory approach. Whether such payments are appropriate is ultimately a matter of public opinion, particularly with those involved in surrogacy. However, I recommend that this issue be considered separately from payments that recognise the surrogate's time, effort, and inconvenience, to avoid conflating payment in recognition of loss with financial reward.

Proposal 27 – Agree in principle

I support the use of a trust account for reimbursement, as it would help ensure that surrogates are not left out-of-pocket because of the arrangement. However, requiring intended parents to pay the full

estimated cost of the surrogacy arrangement into the trust account prior to conception may significantly increase the upfront financial burden of surrogacy and create an additional barrier to access.

Proposal 30 – Agree

I support an administrative pathway to legal parentage because it aligns with the reform principles of legal clarity and certainty, and the principle of least restriction. In addition, it demonstrates Australian governments recognition of surrogacy as a legitimate family-building option.

Proposals 31 and 32 – Agree in principle

I support the recognition of legal parentage in unapproved surrogacy arrangements for the reasons outlined in the Discussion Paper. However, I am concerned that providing this recognition through a judicial pathway, rather than an administrative pathway, may inadvertently undermine a child's right to a secure legal family.

This risk is particularly evident in the context of unapproved international surrogacy arrangements where the intended parents are recorded as parents on a foreign birth certificate. For more than two decades, Australian parents through international surrogacy have lived with a lack of recognised legal parentage in Australia, often relying on the foreign birth certificate in day-to-day life. In these circumstances, there is little practical incentive for intended parents to pursue a judicial pathway, which is likely to be costly, time-consuming, and difficult to navigate while caring for a newborn child.

To ensure that all children born through surrogacy have secure legal recognition of their family relationships, I recommend that the same administrative pathway to legal parentage be available for both approved and unapproved surrogacy arrangements.

Proposal 37 – Disagree

While I support efforts to discourage intended parents from pursuing high-risk international surrogacy arrangements, I do not consider that a registration system is likely to achieve this goal. Australia's experience with international commercial surrogacy indicates that domestic laws have largely not prevented intended parents from entering overseas arrangements. It is therefore unlikely that a registration requirement, even if supported by civil penalties, would be an effective deterrent.

In practice, any civil penalty for failing to register an overseas surrogacy arrangement is likely to be absorbed into the overall cost of international surrogacy. Rather than preventing participation, this may simply increase the financial burden on intended parents. This burden would disproportionately affect families with fewer financial resources, especially if higher-cost destinations, such as the United States and Canada, are included as 'permitted destinations', as these options may be out of reach for many intended parents.

My research indicates that almost all Australian intended parents who pursued international surrogacy would have preferred to undertake domestic surrogacy if it had been possible (Kneebone et al. 2023). This suggests that reducing barriers to domestic surrogacy would be a more effective and proportionate response to the risks of exploitation than the introduction of a registration system.

Proposal 38 – Agree in principle

I support the proposal for a post-birth judicial process to recognise legal parentage in cases of international surrogacy. However, I do not understand the need for a three-month deadline. This timeframe could unfairly disadvantage children whose parents – due to financial or other constraints – are unable to make a court application within that period.

Proposal 39 – Agree in principle

I support the streamlined process because, as the Discussion Paper notes, it is consistent with the child's right to a nationality. However, I object to limiting this process to registered overseas surrogacy arrangements. Doing so would unfairly disadvantage children born from an unregistered arrangement.

Families excluded from the streamlined pathway would also be required to remain overseas for longer, increasing the overall costs of the surrogacy process. This added financial burden would disproportionately affect families with fewer financial resources – particularly given that they may be priced out of the 'permitted destinations'.

Kind regards,

Dr Ezra Kneebone

References

Allan, S. (2019). *The Review of the Western Australian Human Reproductive Technology Act 1991 and the Surrogacy Act 2008 (Report: Part 2)*. https://www.health.wa.gov.au/Reports-and-publications/The-Review-of-the-Western-Australian-Human-Reproductive-Technology-Act

ESHRE Add-ons working group, Lundin, K., Bentzen, J. G., Bozdag, G., Ebner, T., Harper, J., Le Clef, N., Moffett, A., Norcross, S., Polyzos, N. P., Rautakallio-Hokkanen, S., Sfontouris, I., Sermon, K., Vermeulen, N., & Pinborg, A. (2023). Good practice recommendations on add-ons in reproductive medicine. *Human Reproduction*, *38*(11), 2062–2104. https://doi.org/10.1093/humrep/dead184

Fantus, S., & Newman, P. A. (2019). Motivations to pursue surrogacy for gay fathers in Canada: A qualitative investigation. *Journal of GLBT Family Studies*, *15*(4), 342–356. https://doi.org/10.1080/1550428X.2018.1546156

Herweck, A., DeSantis, C., Shandley, L. M., Kawwass, J. F., & Hipp, H. S. (2024). International gestational surrogacy in the United States, 2014–2020. *Fertility and Sterility*, *121*(4), 622–630. https://doi.org/10.1016/j.fertnstert.2023.12.039

Hogan, R. G., Hammarberg, K., Wang, A. Y., & Sullivan, E. A. (2022). 'Battery hens' or 'nuggets of gold': A qualitative study on the barriers and enablers for altruistic egg donation. *Human Fertility*, *25*(4), 688–696. https://doi.org/10.1080/14647273.2021.1873430

Horsey, K., Arian-Schad, M., Macklon, N., & Ahuja, K. K. (2023). UK intended parents' characteristics, experiences, and views on surrogacy law reform. *International Journal of Law, Policy and the Family*, *37*(1), ebad004. https://doi.org/10.1093/lawfam/ebad004

Jadva, V., & Imrie, S. (2014). Children of surrogate mothers: Psychological well-being, family relationships and experiences of surrogacy. *Human Reproduction*, *29*(1), 90–96. https://doi.org/10.1093/humrep/det410

Kneebone, E., Hammarberg, K., & Beilby, K. (2024). Surrogates', intended parents', and professionals' perspectives on ways to improve access to surrogacy in Australia. *International Journal of Law, Policy and The Family*, *38*(1), ebae009. https://doi.org/10.1093/lawfam/ebae009

Lean, S. C., Derricott, H., Jones, R. L., & Heazell, A. E. P. (2017). Advanced maternal age and adverse pregnancy outcomes: A systematic review and meta-analysis. *PLOS ONE*, *12*(10), e0186287. https://doi.org/10.1371/journal.pone.0186287

Martínez-López, J. Á., & Munuera-Gómez, P. (2024). Surrogacy in the United States: Analysis of sociodemographic profiles and motivations of surrogates. *Reproductive BioMedicine Online*, *49*(4), 104302. https://doi.org/10.1016/j.rbmo.2024.104302

McCoy, D. E., Haig, D., & Kotler, J. (2024). Egg donation and gestational surrogacy: Pregnancy is riskier with an unrelated embryo. *Early Human Development*, *196*, 106072. https://doi.org/10.1016/j.earlhumdev.2024.106072

Montrone, M., Sherman, K. A., Avery, J., & Rodino, I. S. (2020). A comparison of sociodemographic and psychological characteristics among intended parents, surrogates, and partners involved in Australian altruistic surrogacy arrangements. *Fertility and Sterility*, *113*(3), 642–652. https://doi.org/10.1016/j.fertnstert.2019.10.035

Teman, E., & Berend, Z. (2021). Surrogacy as a Family Project: How Surrogates Articulate Familial Identity and Belonging. *Journal of Family Issues*, *42*(6), 1143–1165. https://doi.org/10.1177/0192513X20944527

Vandekerckhove, M., Guignard, M., Civadier, M.-S., Benachi, A., & Bouyer, J. (2021). Impact of maternal age on obstetric and neonatal morbidity: A retrospective cohort study. *BMC Pregnancy and Childbirth*, *21*(1), 732. https://doi.org/10.1186/s12884-021-04177-7

World Health Organization. (2023). *Preterm birth*. World Health Organization. https://www.who.int/news-room/fact-sheets/detail/preterm-birth

Yee, S., Goodman, C. V., & Librach, C. L. (2019). Determinants of gestational surrogates' satisfaction in relation to the characteristics of surrogacy cases. *Reproductive BioMedicine Online*, *39*(2), 249–261. https://doi.org/10.1016/j.rbmo.2019.04.001

Yee, S., Hemalal, S., & Librach, C. L. (2020). "Not my child to give away": A qualitative analysis of gestational surrogates' experiences. *Women and Birth*, *33*(3), e256–e265. https://doi.org/10.1016/j.wombi.2019.02.003

Ziff, E. (2019). “Honey, I Want to Be a Surrogate”: How Military Spouses Negotiate and Navigate Surrogacy With Their Service Member Husbands. *Journal of Family Issues*, *40*(18), 2774–2800. https://doi.org/10.1177/0192513X19862843