

Rainbow Families Submission to the Australian Law Reform Commission

Review of Surrogacy Laws: Response to Discussion Paper 89 (December 2025)

Rainbow Families welcomes the opportunity to respond to the ALRC's Discussion Paper on the Review of Surrogacy Laws. We commend the ALRC for its comprehensive approach and for centering the rights of children born through surrogacy throughout this inquiry.

As the peak body for LGBTQ+ families in Australia, Rainbow Families has been actively advocating for surrogacy law reform for over ten years. For many in our community, particularly gay men and families where both parents were assigned male at birth, surrogacy represents one of the few pathways to biological parenthood. The current patchwork of restrictive laws across Australia continues to drive our community members overseas, separating families from support networks and leaving children without clear legal protections.

In our view, the proposals would:

- Promote the best interest of children born via surrogacy
- Encourage and increase domestic surrogacy, rather than current laws that drive families to go overseas
- Greatly improve the process of parental recognition, both for children born in Australia and overseas.

We strongly endorse the submissions of Equality Australia, with whom we have worked closely on surrogacy advocacy, and we support their detailed legal analysis and recommendations.

About Rainbow Families

Rainbow Families was formed in 2015 as the peak body for lesbian, gay, bisexual, transgender, and queer (LGBTQ+) families. Our mission is to build a community that fosters resiliency by connecting, supporting and empowering LGBTQ+ families. We have a growing community of members from across Australia who are creating families through diverse pathways including donor insemination, surrogacy, foster care, adoption, and co-parenting arrangements.

Over thirty years of peer-reviewed research into same-sex parented families shows that children from these families do as well as their peers from heterosexual-parented families. Our families are created through love, and all children deserve the emotional, financial and legal security that comes with having their parents recognised as their legal parents.

Response to Specific Proposals

PART 1: POTENTIAL REFORMS IN OVERVIEW

Rainbow Families strongly supports the overall framework proposed in the Discussion Paper. The shift from a reactive, post-birth court-based system to a proactive, safeguard-focused approach represents a fundamental improvement that will better protect the rights and interests of children, surrogates, and intended parents.

We particularly welcome:

- The recognition that the current prohibition-focused approach has failed to achieve its objectives
- The acknowledgment that lack of available surrogates drives intended parents overseas
- The proposal for hardship payments to recognise the full impact of pregnancy and childbirth on surrogates
- The administrative pathway to legal parentage for approved domestic arrangements

PART 2: APPROACH TO REFORM AND REFORM PRINCIPLES

Proposal Response: We strongly support the human rights approach and reform principles outlined.

Children's Rights (Paragraphs 34-37)

Rainbow Families agrees that the best interests of children born through surrogacy must be the primary consideration throughout this inquiry. Key rights that must be protected include:

- **Right to legal parentage from birth:** Delays in recognising intended parents as legal parents create legal limbo that is harmful to children and inconsistent with their right to family life
- **Right to identity:** Children must have access to information about their genetic and gestational origins
- **Freedom from discrimination:** Children born through surrogacy should not be treated differently than other children

From our community consultations:

"THE BEST INTEREST OF THE CHILD IS LIVING WITH THE PARENTS WHO WANTED TO CREATE IT!!!! Anyone who can have a child naturally aren't put through the courts to see if living with the parents is in the child's best interests so why should we?!?"

"Accurately reflecting a child's family structure and identity should be the primary consideration when recording parents on birth certificates."

Surrogates' Rights (Paragraphs 38-39)

We support the Discussion Paper's recognition that surrogates' rights to autonomy, bodily integrity, and informed consent must be protected through appropriate safeguards rather than blanket prohibitions.

Intended Parents' Rights (Paragraphs 40-41)

Rainbow Families particularly appreciates the acknowledgment that limits on eligibility based on sex may amount to discrimination. These restrictions are outdated, discriminatory, and drive gay men to overseas surrogacy as their only option to have genetic children.

Question A: Design Principles for Regulatory Bodies

Any regulatory body should be:

- **Accessible:** Available nationally with clear, user-friendly processes and resources
- **Efficient:** Streamlined decision-making with reasonable timeframes
- **Accountable:** Clear reporting mechanisms and oversight
- **Transparent:** Published guidelines, decisions (appropriately de-identified), and annual reports
- **Culturally competent:** Trained to work respectfully with diverse families including LGBTQ+ families
- **Well-resourced:** Adequately funded to fulfill its functions without creating financial barriers for parties

PART 3: A SUPPORTIVE INSTITUTIONAL FRAMEWORK

Proposal 1: National Harmonisation

Response: Strongly Support

Rainbow Families has long advocated for nationally consistent surrogacy laws. The current patchwork creates confusion, anxiety, and practical barriers for families.

From our community:

"It should be standardised across the country."

"The current situation in Australia, including the patchwork laws in different states, actively encourages shady behaviour by IPs and surrogates. The current approach is effectively, 'don't ask, don't tell' and this encourages surrogacy to remain hidden from broader society. Australia should have consistent, transparent, nationally consistent laws to protect all involved."

"People have to move interstate in order for this to happen legally."

We support **Option 1.1 (Referred legislation)** as the preferred approach, as it would provide the greatest level of consistency and efficiency. However, we recognise that any option that achieves substantial harmonisation would be preferable to the current fragmented system.

Proposal 2: National Regulator

Response: Support Option 2.1 (National Regulator)

A National Regulator could have an important role to:

- Provide consistent oversight and standards across jurisdictions
- Develop and maintain guidelines on cost recovery
- License and oversee Surrogacy Support Organisations
- Manage the national surrogacy register
- Provide public education and professional training

The regulatory body should be adequately resourced and staffed by people with expertise in surrogacy, assisted reproductive technology, family law, and LGBTQ+ family formation.

Proposal 3: Surrogacy Support Organisations

Response: Strongly Support

Currently, finding a surrogate is the single biggest barrier to domestic surrogacy.

From our community:

"The main barrier to people doing surrogacy in Australia is the lack of surrogates. "

"We did not have any family or friends who would be willing to be a surrogate for us, which is how most people in Australia match with their surrogate. We did not want to wait years to try and match as we didn't want to be too old before becoming parents."

"Services like SASS similar to what Canada and Argentina have would make that process better, but ideally would be state sponsored."

We support SSOs operating on either a capped-fee or for-profit basis, with robust licensing and oversight. The current volunteer-run model, while valuable, is insufficient to meet demand.

Question B: To minimise overlap with ART providers, SSOs should focus on:

- Matching services
- Coordinating required assessments and counselling
- Approval of surrogacy agreements

- Case management throughout the arrangement
- Trust account management for payments

ART providers should focus on medical aspects of achieving pregnancy. Clear protocols should delineate responsibilities and require communication between SSOs and ART providers.

Proposals 4-5: Approval Process

Response: Support with reservations

Pre-conception approval is essential to ensure safeguards are in place before pregnancy occurs.

Question C: SSOs may be well placed to approve compliant surrogacy agreements, with review available through the National Regulator for complex cases or where approval is denied. This balances accessibility with appropriate oversight.

However, we are concerned about the potential that there will be too few SSOs available - it may be a very small industry, with limited access in regional and remote areas of Australia. ART clinics currently approve surrogacy arrangements (aside from in WA and Victoria), but they are profitable because they provide mostly services other than surrogacy. Given this, there may need to be alternative pathways to SSOs or to the National Regulator.

Proposal 6: Compliance Enforcement for SSOs

Response: Support Option 6.1 (Civil Penalty Regime)

We agree with the Discussion Paper that civil penalties are more appropriate than criminal sanctions for SSO non-compliance. They are:

- More likely to be enforced
- Proportionate to the conduct
- Less likely to create chilling effects that might discourage legitimate SSO establishment.

Proposal 7: Education and Awareness

Response: Strongly Support

There is a critical need for improved awareness and education about surrogacy. From our community:

"People know nothing about surrogacy generally. They think women gave up their child for us until we explain. It is tiresome. Australia is quite backwards and traditional."

"Rigid government rules and not enough staff with knowledge and understanding of surrogacy within key institutions such as Services Australia."

"YES!!! Surrogacy in Australia is currently (I believe deliberately) kept relatively underground. It is time more light and transparency was shined on the process, policies and practices. This should be a multidimensional approach, including key government departments, health professionals, legal community, school and education providers, and others."

Key Priority: Education and training should specifically address working with LGBTQ+ families and include:

- Department of Home Affairs staff (citizenship, passports, visas)
- Australia Post staff processing passport applications
- Centrelink staff managing paid parental leave claims
- Healthcare providers including hospitals and medical professionals
- Legal practitioners
- School enrollment officers.

The National Regulator would need to work closely with rainbow families to ensure that any education package is inclusive and relevant to LGBTIQ+ parents.

PART 4: PARAMETERS OF LAWFUL SURROGACY

Proposal 8: Prohibited Domestic Surrogacy Arrangements

Response: Support

Rainbow Families supports replacing criminal sanctions with civil penalties for domestic surrogacy that involves impermissible profit or reward (beyond the amounts permitted in Proposals 25-26). Criminal sanctions:

- Create stigma for families and children born through surrogacy
- Are not being enforced under current laws
- Drive arrangements underground
- Are disproportionate to the conduct.

From our community:

"Make it legal, regulated and safe for everyone. Having a child should be an amazing experience everyone gets to experience."

Civil penalties, enforced by the National Regulator, will be more effective at ensuring compliance while avoiding the harms of criminalisation.

Proposal 9: Unregistered Overseas Surrogacy Arrangements

Response: Support

Rainbow Families supports replacing extraterritorial criminal prohibitions with a registration system and civil penalties. The current criminal prohibitions in ACT, NSW, and Queensland

have demonstrably failed to deter overseas surrogacy, while causing significant anxiety for families.

From our community:

"As NSW residents we risked prosecution for engaging in commercial surrogacy. This meant that we were very anxious throughout the entire process, particularly bringing our children back into Australia."

"We had to halt our hopes of having a sibling for our daughter after the law changed in 2010."

The registration system proposed in Proposal 37 is a more pragmatic and effective approach that can actually protect parties by steering them toward well-regulated destinations.

Proposal 10: Facilitation of Prohibited Arrangements

Response: Support Option 10.3 (Combination)

We support a combination of civil penalties and criminal sanctions, with the severity depending on the conduct and level of culpability:

- **Civil penalties** for less serious conduct (e.g., SSO failing to compliantly administer a trust account)
- **Criminal sanctions** for serious exploitation (e.g., coercion, fraud, trafficking-like behaviour)

This graduated approach is proportionate and focuses enforcement on the most harmful conduct.

PART 5: SUPPORT GETTING STARTED

Proposal 11: Advertising

Response: Strongly Support

The current bans on advertising are counterproductive and outdated. They make it nearly impossible for intended parents and surrogates who don't know each other to connect, forcing people to navigate unmoderated online spaces or go overseas.

From our community:

"The advertising restrictions need work."

"There's too many rules to worry about, and without much policing those who are breaking these laws benefit!"

"Not being able to ask and offer compensation to a potential surrogate made it hard."

Permitted advertising, with appropriate regulation, will:

- Increase opportunities for domestic matching of surrogates and parents
- Reduce reliance on unmoderated social media and matching websites
- Provide more information about lawful pathways.
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Proposal 12: Genetic Connection

Response: Strongly Support

There should be no legal distinction between traditional and gestational surrogacy, and no requirement for a genetic connection between the intended parents and the child. This position:

- Recognises that genetic connection is not essential to parent-child relationships - all quality psychological research from the past 30 years has found that children's wellbeing is not contingent on having a genetic relationship with one or both parents
- Avoids discrimination against intended parents who cannot provide viable gametes, or surrogates who require access to medical help through an ART clinic to conceive
- Provides choice and control for surrogates on decisions made about their own bodies - some may prefer the experience of traditional surrogacy.
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Proposal 13: Requirement for Reason

Response: Support with clarification

We support a requirement that intended parents demonstrate inability to conceive, gestate, or birth a child for medical, biological, or psychological reasons, provided these terms are defined broadly. An alternative approach is to not have a requirement to prove a reason, as is the case in the new Western Australian legislation, but we are aware that this can cause some controversy.

Any eligibility requirement, if retained, must explicitly include:

- Gay and single men (biological inability to gestate)
- People with tokophobia or psychological conditions preventing pregnancy
- Trans men who cannot or choose not to carry a pregnancy, or where a need to stop masculinising hormones or the dysphoria caused by changes to the body during pregnancy would have an adverse effect
- People with unexplained infertility or recurrent miscarriage/implantation failure.

After many years of advocacy, Western Australia, the last jurisdiction in Australia, has ended eligibility discrimination against gay men. The definition should not recreate the former "medical infertility" barriers that have been used to discriminate against LGBTQ+ intended parents.

Proposal 14: Age Requirements

Response: Support

The proposed minimum ages (25 for surrogates, with flexibility, 18 for intended parents) are reasonable and reflect the different levels of physical and emotional commitment involved.

Proposal 15: Citizenship and Residency

Response: Strongly Support

State-based residency requirements create unnecessary barriers and should be repealed. They:

- Force people to relocate or go overseas
- Reduce the pool of available surrogates
- Create administrative and legal complexity.

The requirement that at least one intended parent be an Australian citizen or permanent resident is appropriate to prevent reproductive tourism, with flexibility for exceptional cases.

Proposal 16: Previous Pregnancy Requirement

Response: Support with flexibility provisions

We support the requirement with the proposed flexibility for exceptional cases. The ability to waive this requirement after assessment by a medical practitioner or psychologist provides appropriate balance.

Proposal 17: Medical Screening

Response: Strongly Support

Medical screening is an important safeguard that most ART providers already require. The proposal appropriately focuses on assessing whether pregnancy can proceed safely.

Proposal 18: Psychological Screening

Response: Support with reservations

Question D: Both surrogates and intended parents should undergo psychological assessment, but the assessment must focus on capacity to participate safely and make informed decisions, **not** on judging parenting suitability.

Concerns:

- Assessments must be conducted by practitioners with expertise in LGBTQ+ family formation
- Standards must not replicate discriminatory assumptions about LGBTQ+ parents

- The assessment should identify risks (coercion, unrealistic expectations, mental health concerns) without creating gatekeeping based on lifestyle or relationship structure

Proposal 19: Criminal History Checks

Response: Support Option 19.1 (No requirement)

Question E:

Criminal history checks should not be a mandatory requirement because:

- They treat intended parents differently than people conceiving naturally or through donor insemination
- They are inconsistent with the principle that assessment should focus on capacity to make informed decisions, not worthiness to parent
- They add cost and administrative burden.

In practice, some SSOs may decide to incorporate checks into their regular practice, as is the case overseas. However, the starting point should not be a legislative *requirement*. Rather, there should be flexibility depending on the nature of the arrangement. Most surrogates in Australia are close relatives or friends. To require sisters or best friends to share criminal histories is nonsensical.

Proposal 20: Legal Advice

Response: Strongly Support

Independent legal advice is essential for informed consent. The proposed requirements for accreditation and written confirmation will help ensure quality and consistency.

Key Priority: Law societies should ensure sufficient lawyers are accredited in each jurisdiction, and accreditation should include training on LGBTQ+ family law issues.

Proposal 21: Implications Counselling

Response: Support with modifications

We support implications counselling as an important safeguard, but the requirements should be proportionate.

Question F: The surrogate's partner should undergo counselling if they will be involved in supporting the surrogacy, but this should not be mandatory in all cases. Rather than mandatory counselling, it should therefore be discretionary, depending on the circumstances.

Question G:

- Post-birth counselling should be **optional** and available at any party's election

- Intended parents should cover reasonable post-birth counselling costs for the surrogate for a defined period (e.g., 12 months post-birth)
- Counselling requirements should be streamlined to avoid the excessive burden described by some community members

If counselling remains mandatory, it must be covered by Medicare (see Proposal 29).

Proposals 22-24: Surrogacy Agreements

Response: Strongly Support

Clear requirements for compliant agreements will protect all parties and provide certainty.

Question H: The proposed content requirements are appropriate. Prohibited clauses should include any that:

- Restrict the surrogate's autonomy over medical decisions
- Attempt to control the surrogate's lifestyle beyond reasonable health recommendations
- Purport to prevent the surrogate from seeking independent legal or medical advice.

Question I:

- Compliant lawful agreements should be fully enforceable (except prohibited provisions)
- Non-compliant but lawful agreements should have cost recovery provisions enforceable
- Prohibited agreements should have cost recovery provisions enforceable as statutory entitlements to protect surrogates.

Question J: Only provisions prohibited by Proposal 23 or otherwise unlawful should be unenforceable.

Question K: Enforcement should be through an accessible tribunal or court process, with priority given to efficient resolution to avoid lengthy disputes while parties are caring for a child.

PART 6: SUPPORT THROUGH THE SURROGACY JOURNEY

Proposal 25: Reimbursing Surrogates for Expenses

Response: Strongly Support

The current system frequently leaves surrogates out of pocket, which is deeply unfair and discourages people from becoming surrogates. The proposed expansion of reimbursable expenses is essential.

From our community:

"The main barrier is the altruistic model. There are many stories of surrogates being left out of pocket which makes it difficult to attract more surrogates. "

"If surrogates were compensated this would encourage more people to consider being a surrogate. In the surrogacy journey everyone is paid except for the one person doing the most important job."

The proposed categories of expenses are comprehensive and appropriate.

Question L: The National Regulator should provide clear guidelines on reasonable amounts but should avoid rigid caps that might prevent recovery of legitimate expenses. Flexibility is important given varying circumstances.

Proposal 26: Hardship Payments

Response: Strongly Support

Rainbow Families strongly supports the proposed hardship payments. The current system fails to recognise the full impact of pregnancy and childbirth on surrogates.

From our community responses:

"I feel that not compensating a surrogate is in fact taking advantage of her."

"Compensated surrogacy should be legal."

"There are still a lot of processes in place to make sure surrogates are doing it for the right reason. Compensated surrogacy will help ensure surrogates don't feel like they are giving even more than they have to by ensuring they are not left out of pocket, and helping to justify the huge sacrifice they are making for their family and body."

"It would be more regulated and everyone would know their rights and obligations."

"Yes they need to change! Surrogates should be paid!"

"Why not a surrogate?!? An amazing woman that is giving up the best of an entire year to help create, grow, nurture, and protect a stranger's child."

The optional nature of these payments respects surrogates' autonomy while ensuring fair compensation is available.

Question M: Additional Support Payment

Response: Support

Rainbow Families supports allowing an additional support payment beyond expense reimbursement and hardship payments, to recognise the surrogate's time, effort, inconvenience, and unique contribution. This payment should:

- Be optional and agreed between parties
- Be capped at a reasonable level to prevent exploitation
- Be clearly distinguished from profit-driven commercial surrogacy

This approach:

- Recognises the extraordinary contribution surrogates make
- Is likely to increase surrogate availability in Australia
- Can be implemented with appropriate safeguards to prevent exploitation
- Aligns with compensated surrogacy models in well-regulated jurisdictions

One community member suggested a staged approach:

"Whilst I support compensated surrogacy in Australia, moving from the current model to compensated surrogacy would be a huge leap. I believe Australia should look to the Canadian model as a good balance of excellent surrogacy support and legal frameworks, within an altruistic model."

However, the majority of our community strongly supported fair compensation for surrogates, recognising that everyone else in the surrogacy process (lawyers, counsellors, doctors, clinics) is paid for their work.

Proposal 27: Trust Account

Response: Strongly Support

A trust account system will prevent disputes about reimbursement and ensure funds are available when needed. This removes a common source of tension between parties.

Proposal 28: Medicare for Fertility Treatment

Response: Strongly and Urgently Support

The current exclusion of surrogacy from Medicare rebates is discriminatory and creates a significant financial barrier to domestic surrogacy. This particularly impacts gay men and others who have no alternative to surrogacy for biological parenthood.

The exclusion was based on the historical illegality of surrogacy and should have been removed when surrogacy was legalised. The recent extension of Medicare access to single people and same-sex couples for IVF explicitly excluded surrogacy, which is discriminatory.

From our community:

"Medicare rebates should be available to everyone equally, regardless of whether the treatment is for a surrogacy journey or a traditional pregnancy."

"Women get IVF financial support, why not gay couples for fertility."

"100% parts should be covered. I pay a massive amount of tax as a high income earner and contribute to AU society, I then have to pay hundreds of thousands for the right to have a family. We should have the same rights as other Aussies and with an aging population, the government needs to encourage and update policies."

"Rebates should cover item numbers for pregnancy/surrogacy as they would any other pregnancy."

"Cost is massive. Lack of information. Everything is disjointed - do fertility on your own, find a surrogate privately, lawyer separately etc, Lack of government support."

Proposal 29: Medicare for Assessments and Counselling

Response: Strongly Support

If psychological assessments and counselling are required for surrogacy arrangements, they must be covered by Medicare. The current cost burden makes the process prohibitively expensive.

From our community:

"Counselling was very expensive, it needs to be subsidised."

PART 7: SUPPORT WHEN THE CHILD IS BORN

Proposals 30-32: Pathways to Legal Parentage

Response: Strongly Support

The proposed administrative pathway for approved domestic arrangements and judicial pathway for unapproved arrangements represent a fundamental and necessary reform. The current system:

- Leaves children in legal limbo for months
- Creates practical problems for parents making medical decisions
- Is stressful and expensive
- Inappropriately lists surrogates as legal parents against their wishes, placing an administration burden on them post-birth.

From our community about domestic surrogacy:

"Locally this timeline was appalling. We had ours submitted in a timely manner (the day after we had the original birth certificate) and it took 11 months and 20 days to get the updated parentage order. This was terribly inadequate."

"We were lucky that we moved to the same town as our surrogate and remained there for the whole year it took to update the parentage order. In the back of our minds was always the worry of what if bubs got sick, we needed to be close in case the surrogate had to be called in for any medical decisions etc. The surrogate was on the books at the daycare centre too as "parent", which I really did not like."

"We had to wait for the parentage order (12 month wait) to get a passport. We would have liked this much earlier to travel and see family."

From our community about international surrogacy:

"In NSW, legally I am not regarded as my children's legal parent, even though I am on the birth certificate in the country where they were born - in NSW I am considered the gamete donor. However, my overseas surrogate is considered the legal parent. In the country where my children were born I am considered the legal parent and the surrogate is not. This is an enormous disparity and is not in the best interest of my children, effectively they are parent-less. "

"My husband is not listed anywhere as a parent to our children. He is not on their birth certificates, passport applications, or anywhere. Because of the criminalisation risk in NSW we can not apply for a parentage order. This means that if I were to die it would be very difficult for him to prove he is a parent to our children."

"I am most worried about what will happen to my son should I be incapacitated or pass away, as he has no other relative in Australia, and his other Dad isn't even recognised legally as his dad. Will he become a ward of the state if I pass before his 18th birthday? This is all very concerning and a disgraceful deficiency of our legal system."

Question N: Yes, the surrogate should retain the right to seek a declaration of parentage for approved arrangements. This provides an important safeguard while maintaining the presumption that approved arrangements proceed on the administrative pathway.

Question O: When determining legal parentage applications (Proposals 30-32), judicial officers should consider:

- Best interests of the child as the paramount consideration
- Wishes of all parties, including the child if of sufficient age and maturity
- Existing parent-child relationships and attachments
- Whether threshold requirements were substantially met
- Any exploitation or coercion
- The child's right to identity and family relationships.

The assessment should not re-litigate parties' worthiness to parent, but should focus on the best interests of the child who is already born and being cared for. Any system must be designed to ensure that non-compliance with one requirement, such as counselling, does not prevent the transfer of parentage.

Question P: Yes, there should be a simpler pathway for registered overseas arrangements where intended parents are already recognised as legal parents in the birth country. These arrangements have already undergone oversight in the birth jurisdiction and registration in Australia. Automatic recognition, or a simple process that does not require a court hearing, would be consistent with the best interests of the child and reduce administrative burden.

Question Q: Parental Leave

Response: Comprehensive Reform Needed

For Surrogates:

Surrogates should have access to adequate paid leave to recover from pregnancy and childbirth. The New Zealand model of 26 weeks paid leave for surrogates provides a useful comparison. Current Australian leave entitlements for surrogates are inadequate.

From our community:

"It was frustrating the way both my sister's work and my work handed out the parental leave. In Essence, my sister could access paid parental for the 6 weeks prior to birth and I could access about 10 weeks after the birth - it was a bit unworkable and probably meant we both went back to work before we had both wanted too."

"Yes, to the extent they need time off to sort the pregnancy (i.e. in the lead up to the pregnancy or during the recovery after)."

For Intended Parents:

Intended parents should have access to the same parental leave entitlements as parents who conceive naturally. Current barriers include:

- Confusion about eligibility in enterprise agreements and modern awards
- Difficulty navigating Centrelink claims
- Lack of clarity about entitlements prior to legal parentage being recognised.

From our community:

"I am a medical practitioner and surrogacy is not included in our EBA. I had to involve the AMA in order for my employer to approve primary parental leave as a "non birthing parent". The process was discriminatory and showed a lack of empathy and understanding for our situation. The EBAs and laws need to be updated to reflect surrogacy."

"Yes, Health services and all employers should be more aware, as many people having a child through surrogacy face either unintended or overt discrimination when it comes to accessing parental leave."

Recommendations:

- Clarify that intended parents in approved domestic arrangements are entitled to parental leave from birth
- Streamline Centrelink processes for surrogacy-related claims
- Provide guidance to employers and HR professionals about surrogacy and parental leave
- Review and update modern awards and enterprise agreements to explicitly include surrogacy.

Proposals 33-36: Information and Surrogacy Register

Response: Strongly Support Option 33.1 and Option 35.1

Children born through surrogacy have a right to know their genetic and gestational origins. This information should be:

- Collected systematically for all surrogacy arrangements
- Stored in a national register for consistency and accessibility
- Available to people born through surrogacy from age 16
- Clearly indicated on birth certificates from birth (Option 33.1)

A national surrogacy register would provide consistency, accessibility, and better protection of information across state boundaries. If a national donor conception register is established, as recommended in Australia's 10 Year Fertility Roadmap, surrogacy information should be included in that register.

In rainbow families, most children are told from birth about being born via surrogacy, and some have ongoing relationships with their surrogates too. When the family is two dads and their child, it's not feasible to hide the fact of surrogacy from them.

Changes to birth certificate laws should be proportionate and responsive to the actual degree of risk that there are parents who are not honest with their children (in direct defiance of all advice provided during counselling).

Families should be supported and encouraged to share information with their children at developmentally appropriate times, and research on donor conception indicates that it is better if first discussions occur before 7 years of age. In our experience, these discussions on donor conception and surrogacy happen much earlier than that, often from when the child is able to speak.

We are not convinced that there is a demonstrable need for addendums. However, if they are deemed necessary, the privacy and security of the child and family must be paramount. Children born through surrogacy, donor conception, or into non-traditional families continue to face stigma. For that reason, any annotation must be sufficiently subtle to avoid drawing attention in everyday situations, such as when birth certificates are presented for processes like daycare enrollment.

Proposal 36: Sanctions for Non-Compliance

Response: Support Option 36.1 (Civil Penalties)

Civil penalties are more appropriate than criminal sanctions for failure to provide information to the register. The priority should be ensuring compliance rather than punishment, and civil penalties are more likely to be enforced.

However, penalties should be significant enough to ensure compliance given the importance of this information to people born through surrogacy.

PART 8: REGULATING OVERSEAS SURROGACY

Proposal 37: Registration System

Response: Support with clarifications

The registration system is a pragmatic approach that acknowledges the reality of overseas surrogacy while seeking to mitigate exploitation risks. This is preferable to the current criminal prohibitions which are not enforced and cause anxiety without protecting anyone.

Question 5 Responses:

Which entity should be responsible? The National Regulator (or alternative) is best placed to manage registration because:

- It will already maintain expertise in surrogacy regulation
- Centralised management ensures consistency
- It can coordinate with relevant federal departments (Home Affairs, Foreign Affairs).

What factors for "permitted destinations"? Permitted destinations should be jurisdictions where:

- Surrogacy is clearly legal
- Laws require surrogate's informed consent
- Laws provide for transparent gamete donation (if used)
- Children's citizenship/parentage rights are protected
- There are mechanisms to prevent trafficking and exploitation
- Australia has sufficient diplomatic relations to verify information.

Will it work in practice? Potential challenges include:

- Rapidly changing circumstances in destination countries
- Difficulty verifying compliance in some jurisdictions
- Enforcement of the civil penalty for non-registration

The system should include:

- Regular review of permitted destinations
- Clear public information
- Streamlined registration process
- Coordination with citizenship/passport processes.

Should domestic surrogacy be attempted first? No. Requiring proof of attempts at domestic surrogacy would:

- Create gatekeeping and delay
- Be difficult to verify objectively
- Disadvantage people in jurisdictions with fewer surrogates
- Be inconsistent with reproductive autonomy.

The focus should be on making domestic surrogacy more accessible (through the reforms in this Discussion Paper) while allowing people to make informed choices about overseas arrangements.

Proposal 38: Timeframe for Parentage Application

Response: Support

Requiring application within three months of returning to Australia is reasonable and ensures timely resolution of parentage.

Proposal 39: Streamlined Citizenship/Passport Process

Response: Strongly Support

Streamlining applications for children born through registered overseas arrangements is essential. Current processes are lengthy, complex, and anxiety-inducing.

From our community:

"It took very long and we had to leave the country and come back to stay legally in Australia."

"We also have to prove genetic relation in order to obtain Australian citizenship for the baby, even though IVF documentation clearly shows I am the genetic father of the baby. This also all occurs at additional cost to us."

"The citizenship process was a very lengthy four month process not helped by staff at the Australian Embassy who seemed to take pleasure in prolonging the process, creating unnecessary delays, losing documents and to a certain extent, questioning me with 'attitude'. They seemed to relish in the bureaucracy of it all."

Question T: Additional streamlining measures:

- Accept IVF documentation as proof of genetic relationship (where there is one) without requiring DNA testing
- Align documentation requirements across citizenship, passport, and visa applications
- Allow digital submission of all documents
- Provide single point of contact for families navigating multiple processes
- Fast-track processing for registered arrangements
- Improve training for embassy staff.

From our community:

"IVF documentation could be used to prove relation to the baby, rather than having to provide a postnatal genetic test which is expensive and wastes time."

Question U: Limiting the streamlined process to registered arrangements could create incentives to register even high-risk arrangements by claiming they are non-exploitative. However, this is an acceptable trade-off if:

- Assessment of non-exploitative claims is rigorous
- Children born through unregistered arrangements still have pathways to citizenship and parentage
- The focus remains on best interests of children already born.

Question V: Yes, citizenship by descent should be recognised for children born through overseas surrogacy to Australian Permanent Residents. The alternative leaves children at risk of statelessness, which is contrary to the Convention on the Rights of the Child.

Question W: Yes, there should be a retrospective process for stateless children, in the rare even that this might occur. A simple administrative process should be available where:

- The child has been living in Australia with intended parents
- The intended parents are Australian citizens or permanent residents
- No other country has granted citizenship.

Question X: Yes, a temporary visa allowing children to enter Australia while applications are processed would be valuable. Current requirements for permanent visa applications to be made offshore can separate families for extended periods and create hardship.

Proposals 40-41: Passport Applications and Renewals

Response: Strongly Support

The current requirement for surrogate consent for every passport application and renewal is burdensome, inappropriate, and causes significant anxiety for families.

From our community:

"Our son was born through surrogacy in Canada. Every time we extend his passport we have to face the reality of filling up consent forms from the surrogate carrier. His Canadian birth certificate clearly states both my name and

my partner's name as the parents. Why do we still need to fill up the consent form from the surrogate?"

"Extra form for the surrogate to complete the Aus passport is annoying, especially needing it every 5 years."

"Passport applications for children born through surrogacy are unnecessarily long and complex. Having to provide all surrogacy agreements and documentation at the first and second passport application is unnecessary. Passport applications are often referred to the complex case team in the passport office which adds additional processing time. Post office staff often do not understand what documentation or forms are required for applications for children born through surrogacy, adding a level of questioning and anxiety for parents."

"Renewal of passport without surrogate's help may be a problem and fear of prosecution under NSW law against international surrogacy."

"The only issue is passport renewal as we need surrogates approval till 18 which is a pain."

"On our children's passport applications, I apply as a single parent because there is no record of my husband as a parent to our children, and I don't want to delay the process or have any questions with the passport approvals team. Because of this I worry about him travelling abroad with the children without me and so we have not attempted this."

For domestic surrogacy:

"We had to wait for the parentage order (12 month wait) to get a passport. We would have liked this much earlier to travel and see family."

The proposed reforms - requiring surrogate consent only for initial application where there is no affidavit, and eliminating the need for renewal consent - are sensible and appropriate. Once the surrogate has confirmed relinquishment of the child, or intended parents have been recognised as legal parents, there is no justification for ongoing surrogate involvement in passport applications.

Additional recommendations for passport process:

- Eliminate automatic referral to complex cases team for surrogacy applications
- Standardise the process so it is the same for all children regardless of birth circumstances
- Provide clear guidance and training for Post Office staff
- Allow both parents to be listed on applications without documentary proof of legal parentage for non-biological parents (pending parentage recognition)
- Simplify documentation requirements.

From our community:

"A standard passport application process: the same for all children regardless of whether they were born through surrogacy or not."

"How does a child born in Australia get their documents? Maybe do it the same way?"

Conclusion

Rainbow Families strongly supports the comprehensive reforms proposed in Discussion Paper 89. These reforms represent a fundamental shift that will:

- **Better protect children's rights** including their right to legal parentage from birth and access to identity information
- **Increase access to domestic surrogacy** through compensated surrogacy, Medicare coverage, removal of discriminatory barriers, and support services
- **Recognise children born overseas and their families** through creating pathways for legal parentage, citizenship and passports
- **Remove harmful criminalisation** while maintaining appropriate safeguards
- **Create national consistency** ending the current confusing patchwork of state and territory laws.

We thank the ALRC for its thorough and rights-based approach to this inquiry. Rainbow Families remains committed to working with government, stakeholders, and community to achieve comprehensive surrogacy law reform that serves the best interests of children, respects the rights and dignity of surrogates, and supports all families in Australia.

Yours faithfully,



Rainbow Families

Date: 19 January 2026