Submission

Federal inquiry into surrogacy

February 2016
Executive Summary


The report notes that children born under commercial surrogacy arrangements overseas “are at risk of having no secure legal relationship to the people who are raising them.” We contend that under the current process, that risk is a reality, creating an underclass of children without the legal protections available to others.

The current approach creates discrepancies across state and territory jurisdictions and the ban on commercial surrogacy forces the practice underground, exposing children, surrogates and intending parents to risk.

Our key concerns are that:

● State laws – including same-sex adoption, fostering and altruistic surrogacy – limit the choices available to LGBTIQ people to make a family;
● State regulation of altruistic surrogacy is unnecessarily restrictive, including:
  o Denying access to IVF treatments for surrogacy arrangements;
  o Disallowing intending parents from advertising for a surrogate;
  o The over-complicated process to obtain adoption and parenting orders.
● The ban on commercial surrogacy in Australia drives those who wish to engage surrogates to make arrangements overseas, where less regulation and oversight is possible;
● The criminalisation of overseas arrangements in NSW has not deterred intending parents, but rather spurred issues when families return, including:
  o Children without parenting orders;
  o A reluctance by parents to access services lest they be prosecuted;
  o Secrecy and fear of stigmatization.

We urge the Committee to:

1. Work with state and territory ministers to create a consistent approach to legal parentage, adoption and fostering, assisted reproductive medicine, altruistic and commercial surrogacy and gamete donation, with the view to expanding options for LGBTIQ parents (and parents experiencing infertility); and
2. **Lift the ban on commercial surrogacy;** and
3. Form a **new framework**, led by a Government regulatory agency or NGO to monitor surrogacy arrangements, with the view to protect children, surrogates and intending parents, potentially within the context of a highly regulated local market.
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I. About Rainbow Families

Rainbow Families NSW was formed in 2015 as the peak body for lesbian, gay, bisexual, transgender, intersex and questioning (LGBTIQ) families in NSW.

The mission of Rainbow Families is to build a community that fosters resiliency by connecting, supporting and empowering LGBTIQ families.

Rainbow Families has a growing membership and includes people from across NSW. Its volunteer Board consists of committed LGBTIQ members who share the common experience of raising families.

Rainbow Families is in the final stages of registering as a charity under the Australian Charities and Not-for-Profits Commission Act 2012.

What is a rainbow family?

In a rainbow family, one or both parents identify as lesbian, gay, bisexual, transgender, intersex or questioning. For the purpose of this submission, rainbow families will be referred to as LGBTIQ families so as to distinguish from Rainbow Families NSW, the organization.

LGBTIQ Families are made in many ways - through surrogacy, adoption and fostering, co-parenting arrangements, gamete donation, because parent/s have a child or children from a previous relationship, or by parent/s transitioning gender.

All families have value: families with two mums, two dads, families led by single parents or by grandparents, and families with no children at all. Family diversity - understanding and respecting that families come in all shapes and sizes - is at the core of Rainbow Families’ work.

Why is the work of Rainbow Families important?

While there have always been LGBTIQ families, there has been a growth over the past two decades due to:

- Increased visibility and acceptance of LGBTIQ people and communities;
- A greater visibility and acceptance of non-nuclear family structures;
• Advances in legislation promoting equality and inclusion, including in adoption and fostering law; and
• Improvements in Assisted Reproductive Technology (ART);

According to the Australian Bureau of Statistics (2011), 12 percent of LGBTIQ couples have children living with them in Australia and over 6,120 children lived in same-sex parent families. The number is undoubtedly higher five-years later.

Still, even in our most diverse communities, LGBTIQ families face discrimination. As the 2015 *Gayby Baby* furore in NSW demonstrated, LGBTIQ families continue to face prejudice and are susceptible to negative portrayals in the media. Importantly, LGBTIQ families can require support accessing basic services, including the health system or participating in school communities. Families can feel isolated from their communities. They can feel alone.

Rainbow Families offers support by:

• Organising LGBTIQ family community events;
• Advocating and 'being a voice' for LGBTIQ member families;
• The creation and distribution of educational materials, research, information (including advocacy) and support material in respect of LGBTIQ families;
• Facilitating participation of financially disadvantaged, and geographically and socially isolated, LGBTIQ family members in community events organised by Rainbow Families;
• Facilitating participation in wider LGBTIQ and other community events; and
• Supporting other related LGBTIQ parenting and family diversity initiatives, and organisations, consistent with the above.

Our work impacts others indirectly: One assumption many LGBTIQ people face is that they will not be able to parent or make a family. This can be particularly harmful for those young LGBTIQ Australians who have been rejected by their families of origin. By creating visibility of diverse families, Rainbow Families reminds them that if they choose, they too may experience the joy and fulfillment that comes from raising children.

Promoting family diversity also strengthens acceptance of all non-traditional family structures, including single parent families, grandparent carers, blended families and families formed through the multitude of technologies available to assist with fertility.
This has a knock-on effect of promoting social harmony, equity and strengthening the self-esteem of kids who might otherwise feel different.

**Our submission**

We believe it is the right of all LGBTIQ Australians to create a family if they choose to do so, yet unnecessary and discriminatory laws limit the options to make this a reality.

Laws around same-sex parent adoption are inconsistent from state to state and adoption and fostering is limited in practice. Altruistic surrogacy and co-parenting are socially complex. The field of gamete (sperm and ova) donation is confused and legally ambiguous. With limited options, for many, commercial surrogacy is the only viable option to create a family.

Stuhmcke (2011) notes that surrogacy has grown in popularity over the past thirty years due to declining numbers of children available for adoption, globalization, a lack of other options, an increase in infertility, technological advances and greater acceptance of ART technology.

ART technologies have been pivotal in allowing more LGBTIQ people to have children. Many LGBTIQ families are formed through surrogacy; women choose to carry embryos formed from their partner’s ova; women act as surrogates for gay men; More commonly, gay men opt to engage an altruistic surrogate or to pay a surrogate overseas, despite the possibility of criminal conviction.

According to Wilmott (2006), historically, Australia has taken a reactive approach to ART technologies:

“The fact that ART and rapid advances in scientific knowledge give rise to difficult ethical and moral dilemmas has not meant that we, as a community, have sought to deny infertile couples access to ART.”

Stuhmcke (2011) agrees, contending Australia:

“respond(s) to biomedical developments (such as embryo freezing, cloning, xenotransplantation and surrogacy) by initially applying the heavy-handed legal regulatory model of the criminal law and then subsequently to adopt more nuanced and flexible regulatory frameworks.”

This regulation has often excluded LGBTIQ people, either directly – as in the case of barring lesbian women from accessing IVF – or indirectly,
disproportionately impacting LGBTIQ people more than the general population. We believe the laws around commercial surrogacy fall into the second category.

With a significant number of our members holding direct experience with the process of surrogacy, Rainbow Families has chosen to contribute to the Inquiry and to detail the discriminatory impact of existing laws on LGBTIQ parents and children born through surrogacy: These children are often denied the permanency and certainty of legal parenthood; can experience difficulty accessing basic services; and can grow up feeling their parents and stories of origin render them illegitimate or illegal.

This submission acknowledges the breadth of opinion in the LGBTIQ community concerning surrogacy, explaining the concerns of members for the safety and wellbeing of children, surrogates and intending parents.

However, on balance, we contend that the ban on commercial surrogacy forces the practice underground, exposing children, surrogates and intending parents to greater risk, and that the current system is not in the best interests of children or families.

**Our submission process**

Our Committee, including members whose families were created through altruistic and commercial surrogacy, wrote this submission. The Board comprises both women and men, including representatives working in law, advocacy and public policy.

The Board sought submissions, stories and recollections from community members, which are included anonymously (by request) in:

- Appendix A - those who have accessed or are in the process of accessing surrogacy);
- Appendix B – other community members and contributions;
- Appendix C – submission from Gay Dads NSW, a social organization with whom we have a substantial crossover of membership.

Community submissions were sought using social and electronic media, as well as by posting to LGBTIQ media in Sydney.

Additional informal conversations form the basis of some observations, with reference made to some academic research.
A draft was made available by request to community members for comment, with a final consultation session before the Committee approved this final draft.
II. Perspectives on commercial surrogacy

As in the wider community, there are a diversity of opinions on commercial surrogacy within the LGBTIQ and Rainbow Families communities, with concerns about the risk to children, surrogates and intending parents.

Understandably, members come to discussions around issues of family law with strongly held views formed by unique sets of experiences and particular sensitivities. Unfortunately, the debate has created divisions and conflict within the community at times, reflecting the complexity of the issue.

While we understand that the facts and arguments around surrogacy are contested, when engaging in community debate, Rainbow Families believes in:

- Holding the interests of children as paramount; and
- Respecting families and the deeply personal choices of parents;
- Ensuring the rights and well-being of women choosing to be surrogates are protected; and
- Promoting healthy, considerate debate that strengthens the community.

Importantly, most of the arguments posited against the practice of commercial surrogacy are not specifically targeted at the LGBTIQ community itself, but apply to straight couples, too.

Undeniably, though, there are some that condemn surrogacy because it facilitates LGBTIQ parents to have children and because they are opposed to LGBTIQ families. We outright reject objections to surrogacy on this basis.

No formal contributions were received supporting the current laws around commercial surrogacy, however, concerns raised in discussions include the following:

**The commodification of reproduction**

Concerns were raised that commercial surrogacy amounts to paying for a baby, a commodification of human reproduction. The premise of capitalism extending into every aspect of human relationships and lives forms a strong basis for opposing the practice.

These arguments also call into question whether it is actually a right for all people to be able to biologically reproduce and contests why parents need a
biological connection to their children at all, pointing to the large number of children in the foster-care system as an argument against surrogacy.

Wrapped in this concern is the notion of “designer babies,” although there is absolutely no evidence to suggest this occurs, including in the community submissions we received.

As a counterpoint to this argument, Gaffney (2009) argues that the transaction between intending parents and surrogates pertains to the exchange of parental rights, not of the baby itself. This carries an important distinction as it locates the practice of surrogacy in ART. Certainly, it is widely understood that in IVF treatments, intending parents pay for the service of impregnation (sometimes using donor sperm, ova and gametes), not the baby itself.

Stuhmcke (2011) notes that:

“commerce is now intimately integrated with the provision of fertility treatment in Australia and such treatment is seen as a social good in alleviating the harm of infertility.”

**The risk of exploitation of women**

A principal concern is that the practice of commercial surrogacy exploits women, with academic and community disagreement as to whether women – particularly those in developing nations – have full agency to decide to be a surrogate or are rather influenced and restricted by structural pressures such as poverty and patriarchy.

Some critics amount the practice to “wombs for rent” and note that the transactional nature of commercial surrogacy exploits a surrogate both for her labour (in Marxist terms) and her socio-economic circumstances.

A central question is to whether a woman who makes an educated decision to carry and freely surrender that child to others is harmed by the experience. As Stuhmcke (2011) notes, the “empirical evidence as to harm caused to the surrogate mother, the intending parents or the children born from surrogacy is ambiguous.”

Our community submissions suggest positive relationships with surrogates that extend in various forms beyond the pregnancy:
Submission 2: “Holding the surrogates hand throughout the delivery of our twins and then spending 6 weeks with her and her family following the birth gave us all priceless memories and an eternal bond. We remain in contact with our surrogate and plan one day to take the kids to meet her.”

Submission 4: “In Thailand I met my second child’s surrogate twice. We were both overcome with emotion. I was able to get some lovely photos of my baby with the surrogate. We keep in contact via social media and I value the contact we have.”

Submission 6: “Since our boys’ birth we have been able to make direct contact by mutual agreement with our egg donor in South Africa. We now correspond regularly, exchange photos and are Facebook friends. Our boys love seeing photos of her and her own children, and love knowing that they have half brothers and sisters halfway around the world in Capetown. In fact we have all agreed to meet in South Africa the year after next. It’s amazing to see their similarities and common traits, and it is reassuring to know who the biological egg donor is, and that she and her family also come from a stable, functional and loving environment.”

“Our surrogates were wonderful ladies from a small village who said that because of their surrogacy arrangements they would now be able to build a house in their village, something that would otherwise never have been possible as their husbands were labourers.”

Submission 8: “Upon arrival, we were in the care of the agency. We had meetings with the doctor and her team, and they explained and mapped out the process for us and answered all of our questions. We felt confident that the doctor we had chosen and her agency were focused on the wellbeing of everyone involved including the surrogate and the egg donor. The next meeting was when the doctor introduced the surrogate she had matched us with and the surrogate’s husband. They were both genuinely happy to meet us and appeared to be quite informed on the process. They shared their story with us and that they had three lovely daughters. Our surrogate was 23 and her husband was 25 and the money that they were receiving to help us would be used to
improve the quality of lives for their whole family. Within a few days, we got back together with the surrogate and her husband and the doctor to sign the contact and discuss next steps.”

While the community submissions detail positive experiences, mediated by professional clinics, the extent of exploitation of women is hard to ascertain and is more likely in foreign markets where there is less regulation. While not all such arrangements are harmful or exploitative, it remains true that the likelihood of this is higher in less regulated environments.

Overseas commercial surrogacy can be viewed in the context of globalisation, with richer infertile couples and gay men chartering the wombs of poorer women. Still, it is possible that the practice allows women to invest in their families and communities. This is a complex and nuanced debate, captured well in the following submissions:

Submission B: “I am concerned about international commercial surrogacy, as it is hard to be confident about the treatment of women and children, due to difference in financial and social privilege with many of the developing countries offering this option... It is hard to generalise about the treatment of women choosing to be surrogates in developing countries. Being a surrogate in some developing countries does offer a woman legitimate income. Labelling all surrogates in developing countries as being exploited is simplistic, patronising, and ignores the more complex issues. There are ethical issues about the work done by people in developing countries which benefit the west, but this is a wider concern in many areas. I have these concerns when I purchase clothing made overseas, or holiday and am served by a locally employed woman who I know earns so much less than I do here.”

Submission C: “I am worried that women in developing nations are susceptible to exploitation because they live in poverty or live in patriarchal societies that struggle to value women beyond their capacity to produce children... On the other hand, we know that the best way to improve the quality of life in developing nations is to invest in women because women are more likely to invest in their families and communities than men. If it is the women, and not clinics or
husbands, who benefit financially from surrogacy, than I think it is a positive investment.”

Certainly, the submissions suggest that intending parents hold the protection of surrogates to be of utmost importance and take this into account when engaging in the process:

Submission 12: “We were very very concerned with the ethical standards of the agencies and clinics and needed to be sure our surrogate and potential children would be looked after in the highest standards of care. We were confident about this in our choice of agency and clinic in India. We were also very concerned about the financial circumstances of our our situation and those of our surrogate. We needed to be certain our surrogate would be adequately compensated and we were also initially concerned the potential for financial strain should something go wrong.”

Submission 15: “We engaged in commercial surrogacy in a country where it has been legal for many years, the industry is mature and where Australian couples had a solid history of successful outcomes. We chose a clinic that employed world’s best medical practice, strictly observed strong ethical standards and guidelines established by the national medical research council. Our surrogate was there of her own volition (the clinic did no recruitment) and was appropriately cared for by the clinic, as well as she would have been in any western country. She entered into commercial surrogacy because she could give her skill of starting a family as a gift to another family who were not able to do so themselves, and in doing so helped her own family. We were pleased to pay her for doing a job for us and she was pleased to do a job for us for which we paid her. Our Indian surrogate is no different than an American surrogate who chooses to enter a commercial surrogacy arrangement through contract.”

Others are critical of surrogacy because they believe it represents further regulation and commodification of women’s bodies, in-step with a long history of patriarchal and capitalist oppression. For some, this takes on an additional focus when speaking about two men engaging a female surrogate in a developing country.
As a counterpoint, Millbank (2015) notes that from a

“feminist perspective that values autonomy and ‘resonant choice’ for
women in family formation and reproductive work practices... surrogacy is
not a harmful practice when a birth mother makes an informed decision to
undertake surrogacy and to relinquish the baby.”

The concern for the wellbeing of surrogates must be a central concern of laws
pertaining to surrogacy, a principle all the intending parents who contributed to
this submission would agree with.

A critical assessment of how best to protect the women involved must include
powerful regulation to ensure women have full agency to make a decision to
participate and be adequately supported and protected by agencies or others
involved in the process.

**The risk of child exploitation**

A congruent concern is that the transactional basis of commercial surrogacy –
particularly in international arrangements - increases the risk of child trafficking,
although there is no evidence that any Australian children or citizens have been
involved in cases of trafficking through surrogacy.

While surrogacy and child trafficking are sometimes conflated, Gaffney (2009)
draws a distinction between paying for an *abstract* child in the case of
commercial surrogacy and for an *actual* child, as in the case of paid adoption.
Gaffney draws a distinction between the two, arguing only the latter can be
described as child trafficking.

Still, the unregulated nature of surrogacy in some markets raises perceptions of
risk, with concerns about the transparency and legitimacy of agreements. News
stories such as that of baby Gammy seek to exacerbate these perceptions.
Indeed, there are community concerns that children who are born with
disabilities or other complications may be abandoned or left in a legal limbo.
Stronger regulation is needed to ensure the protection of all children born
through surrogacy.

Another concern is that children born of commercial surrogacy are denied the
right to live with their birth parents. It must be noted that this view denies the fact
many LGBTIQ families involve children not being raised by parents they have a
biological link to, and that for many LGBTIQ families, this biological prerogative is unimportant and oppressive.

In fact, the vast majority of surrogacy arrangements involves at least one parent who is the biological parent. Most surrogacy arrangements involving gay men involve the use of an egg donor and one of the gay dads. In straight relationships it might involve genetic material of both parents. The role of birth parent becomes blurred as usually they are not biologically related.

In this vein, some in the community expressed concerns that commercial surrogacy acts against the interests of children by restricting information about their origins. This includes access to medical and genetic information, which is critical to their health and well-being, but also to their stories of origin, so important in a child developing their sense of self.

Many of the community submissions show that surrogacy is openly discussed with children and that efforts are made to connect children with their surrogates to help maintain those links to their stories of origin:

Submission 8: “We have been open with our son about how he came to be in our family since he was early enough to understand. He understands that all families are different and that he has two dads and no mom. He understands that men can’t carry babies and that we were blessed to have a wonderful women to help us by carrying him. We call her by name with him. We have been back to India to see our surrogate and her husband, and to show him where he was born. He knows the people who helped him be born into our family. We made him an age appropriate photo storybook that details his story. It contains pictures and words that detail how he was born into our family. It contains photos of our surrogate and the doctor we choose. These wonderful people were the ones that make our dream possible. We will build on this storybook with more detail, as he gets older. I will continue to keep an age appropriate open dialogue with our son as he grows so that he know the truth of how be came to be born into our family. Our son has expressed an interest in India and we are very supportive of his curiosity and will continue enabling him to learn as much as he likes about the country where he was born.”
The nature of overseas arrangements means that this has not always been possible:

Submission 4: “In India I was not given the option of meeting the surrogate who gave birth to my daughter. This saddens me no end for my sake and more so for my daughter’s sake. She will never know the woman that carried her, and gave birth to her.”

Importantly, the fear of prosecution faced by parents who have illegally accessed surrogacy overseas can be a deterrent to sharing the full details of the process with a child or other care-givers.

The ban on commercial surrogacy also means there is a dearth of social support for families formed in this way, with negative ramifications for how a child interprets the information about their birth that they have been given, increasing the risk of how children develop their sense of self.

Inconsistencies in state and territory regulation that deny children born through surrogacy a legal relationship with the parents who are raising them is not in the best interests of the child and is potentially the greatest risk to their wellbeing and welfare.

The Human Rights Law Centre (2015) notes that:

“The conflicting laws on surrogacy between different countries can lead to confusion in determining who a child’s legal parents are. Depending on the nationality of the intended parents, the surrogate, and those providing the genetic material, the resulting child may end up:

- with no nationality (“stateless”) and no parents recognised by law (“parentless”) (for example, this is the situation in India);
- parentless (e.g. California);
- parentless but with the citizenship of the birth country (e.g. United States); or
- being the child of the surrogate only with the citizenship of the birth country (e.g. Thailand).”
The clearest way to protect the interests of children would be with stronger regulation - a system akin to that used in international adoption - with a government or government-sponsored regulator empowered to work with accredited clinics both overseas and here in Australia, where legal and medical protections can be assured.

A regulator would be able to ensure the integrity of surrogacy arrangements, but also manage the storage of information pertaining to surrogacy arrangements. This would most effectively ensure protections for children.

**The risks for intending parents**

The choice to engage a surrogate either in Australia or overseas is a long and protracted one, which places unique stress on individuals, couples and support networks. For those engaging in commercial surrogacy, it is fraught with financial and emotional risk. For parents in NSW and other states and territories where accessing a surrogate overseas is illegal, there is the additional legal risk of a criminal record, fines and a prison sentence.

Engaging a surrogate is expensive and in many instances (as Appendix 1 shows), intending parents often engage in extraordinary financial risk, not knowing whether their payments will eventuate in a child.

Other than the possibility of working with a disreputable clinic in a foreign country – without the support of government or NGO regulation or advice here in Australia – there is also the emotional risks of pregnancy through IVF treatments, including waiting to find out whether the embryo implanted or setbacks including miscarriages. It is not guaranteed that an intending parent will have a child.

These pressures – emotional and financial – form a potent mix, particularly given the vacuum of support for intending parents due to the ban in Australia.

Submission 12: “Every report and ultrasound scan we received was so exciting. We were overjoyed. Before long the pregnancy had reached 22 weeks! Then one afternoon we received a call from our doctor. It was devastating news! Our surrogate had gone into premature labour and the twins were lost. It was an awful time. Our immediate concerns were for our surrogate and her wellbeing as well as an intense sense of loss, all at a distance. We were back in Australia and felt so
far away and removed from what was happening. We financially supported our surrogate during her period of recovery from the pregnancy and we learnt that our fortnightly disbursements to her afforded her a new home and has been engaged as a surrogate once since that time.”

Much of the journey is undertaken in countries where they have little or no contacts and support, making the experience isolating, confusing and stressful.

There are the additional concerns around establishing Australian citizenship, immigration and obtaining exit visas. Regulations in foreign countries around commercial surrogacy are in flux, creating immense uncertainty for intending parents, some of whom get caught out in the process.

Submission 15: “Added to this was the uncertainty of not knowing whether we would be able to get our child out of India easily, or at all, owing to our not having the correct visa class. There was a dearth of information available from the Indian government and the “information” in online forums was most unhelpful, if not destructive. Rumours circulating online of having to pay massive fines or bribes to Indian officials to get an exit visa kept us awake at night. These two factors on the Indian side of the equation put enormous strain on our relationship, almost to the point of breaking.”

The recent shutdown of commercial surrogacy in Nepal left families and Australian babies stranded for an extended period of time, with babies unable to access exit visas despite being Australian citizens, until the different Nepalese government departments (Health and Immigration) resolved their internal communication.

As well as shutting down the practice altogether, other countries (including India) limit access to same-sex couples. For a time, same-sex couples might falsely declare themselves as singles in order to access the service. Now, single parents can’t access India either, restricting access to only heterosexual couples married for 2 years.

The impact of shutting down the ‘mature market’ in India meant that intending parents had to go elsewhere, to markets that were far less developed, or new, with far less providers, significantly increasing the risk for all parties.
These risk the wellbeing of intending parents, as the following submissions show:

Submission 4: "The surrogacy journey is a very difficult experience for many reasons. Emotionally it is a rollercoaster ride full of ups and down. It is a process that requires trust from everyone. Trust that the intending parents will pay the required money and take the baby home at the end of the process. Trust that the surrogate will be cared for by the agency. Trust that the surrogate will give the baby to the intending parents after the birth. Trust that the surrogate will receive the money the agency says she will. Without trust the surrogacy journey is even more difficult than necessary. Sending thousands of dollars to India and Thailand with no guarantee of a baby at the end is very scary."

Submission 5: "Being on the other side of the world, in a foreign country made this process difficult. If compensated surrogacy was an option in NSW I would have felt much more comfortable starting my family."

Submission 10: "As it turned out we were involved in the sudden law change in Thailand and went through a very uncertain period during the pregnancy where we did not know if we would be able to leave the country with our child. Fortunately an amnesty period was agreed for all Australian involved and we were able to exit the country with our baby. Nevertheless this was a very stressful period as we were one of the last Australian parents to have a child born by commercial surrogacy in Thailand."

Submission 15: "These two factors on the Indian side of the equation put enormous strain on our relationship, almost to the point of breaking."

It is clear that the ban on commercial surrogacy in Australia does drive intending parents to make arrangements overseas (Stuhmcke 2011) and that the risk and harm to intending parents would be minimised by lifting the ban here in Australia, encouraging couples to access services locally.
Values

The above concerns are deeply felt and speak to important values we share in the LGBTIQ community:

- Protecting the rights of children;
- Advancing the rights of marginalized people, including women;
- Understanding that love is a human right and exists outside of traditional notions of relationships and how a family is made.

On the evidence, we believe the current set of laws governing commercial and altruistic surrogacy is out of step with these values in that they fail to represent the best approach to protecting children, women and intending parents.

The next chapter will detail some of the ways current laws negatively impact these three groups.
III. ISSUES AND RECOMMENDATIONS

Using the community submissions as a basis, it is clear that Australia’s state-based approach creates discrepancies and confusion across jurisdictions and that the ban on commercial surrogacy forces the practice underground, exposing children, surrogates and intending parents to risk.

Key concerns are that:

- State laws – including around same-sex adoption, fostering and altruistic surrogacy – limit the choices available to LGBTIQ people hoping to make a family; and
- State regulation of altruistic surrogacy is unnecessarily restrictive, including:
  - Denying access to IVF treatments for surrogacy arrangements;
  - Disallowing intending parents from advertising for a surrogate;
  - The over-complicated process to obtain adoption and parenting orders.
- The ban on commercial surrogacy in Australia drives those who are unable to find surrogacy arrangements in Australia to make arrangements overseas, where less regulation and oversight is possible;
- The criminalisation of extra-territorial arrangements in some states including NSW has not deterred intending parents, but rather spurred issues when families return, including:
  - Children without parenting orders;
  - A reluctance by parents to access services lest they be prosecuted;
  - Secrecy and fear of stigmatization.

We urge the Committee to:

1. Work with state and territory ministers to create a consistent approach to legal parentage, assisted reproductive medicine, altruistic and commercial surrogacy and gamete donation, with the view to expanding options for LGBTIQ parents (and parents experiencing infertility); and
2. Lift the ban on commercial surrogacy; and
3. Form a new framework, led by an independent regulatory agency or NGO to monitor surrogacy arrangements, with the view to protecting children, surrogates and intending parents, potentially within the context of a highly regulated local market.
EXPAND AVAILABLE AVENUES TO CREATE A FAMILY

The lack of federal regulation of surrogacy leaves a hotchpotch of regimes across the country, creating confusion and inequalities with residents of some states having access to family-making avenues that are denied to those in others (Stuhmcke 2011).

The Federal Government should work with state and territory ministers to create a consistent approach to laws shaping how families are formed - including laws around surrogacy – with a view to maximising the choice of parents as to how they make their family.

Choosing how to create a family is a deeply personal and complex decision. There are many reasons why members of our community choose surrogacy:

- Some wish to have a biological link to their children;
- Others fear their families will further reject them and their children without biology to connect them;
- Others wish to create a closer bond with a known surrogate in the case of altruistic arrangements.

For many, surrogacy represents the only choice:

- Not all Australian states permit same-sex adoption, and in those that do, adoption remains limited in practice;
- Fostering entails unique challenges and doesn’t provide the permanency many parents long for;
- Co-parenting can be socially complex and beyond a parent or couple’s capacities.
- The small pool of women prepared to be a surrogate is a significant hurdle to choosing altruistic surrogacy, as are regulations that limit intending parents from advertising for a surrogate in most states.

With their options limited, many turn to commercial surrogacy and are only able to do so overseas due to the domestic ban. Surrogates are engaged via overseas clinics and agencies, predominantly in India, Thailand, the United States and Canada, and until recently, Nepal.

Often, intending parents are left to navigate unwieldy and unfamiliar bureaucracies – all with the uncertainty of prosecution at home and with little support.
Key statements from the community submissions that speak to the reasons why LGBTIQ people may choose surrogacy include:

Submission 4: While researching international commercial surrogacy I also hoped and waited for an altruistic surrogate in Australia to hopefully carry a child for me. This did not eventuate, so I entered into a commercial surrogacy agreement in India.

Submission 5: I attempted to do altruistic surrogacy in Australia and found it to be too difficult. Commercial surrogacy is not an option in Australia so I had no choice but to pursue international commercial surrogacy.

Submission 6: We initially considered adoption, but quickly abandoned that idea once we learned of the obstacles and long lead-time current regulations would pose. We then considered an altruistic surrogacy arrangement, as our good female friends were very supportive and amenable to donating eggs and acting as a surrogate. However after investigating further we decided against the altruistic route when we learned that under NSW law both the egg donor and the surrogate would have the right to claim the child at any time after birth, and could refuse to hand over our child. We could even be prevented from moving interstate if either of them objected.

Submission 7: Unfortunately, complicated and unfavourable Australian Law regarding same sex surrogacy and adoption make us turn to other countries to fulfil our dreams.

Submission 9: Regrettably, due to the surrogacy laws in Australia, my partner and I had to look overseas for alternatives. Our journey of dealing with overseas agencies was nothing less than stressful and at times traumatic however this was the only way that we could find to make our dream of starting a family a reality.

Expanding the choices available to parents is an important facet in delivering LGBTIQ equality. Rainbow Families believes it is the right of every Australian to have a family if they so choose and that the Government should not limit choices when there is no evidence of harm done to others.
A good example is that those who choose altruistic surrogacy are denied access to traditional IVF treatments. This is clearly discriminatory and an example of the reactive regulation of ART technologies described earlier.

Submission 1: “The law in NSW states that a traditional surrogacy arrangement cannot use IVF. This means that we have to go through the motions of attempting at home conception using suitable equipment… As both myself and our surrogate have potential fertility issues, this has made the process drawn out and emotionally draining. Being able to conceive through IVF may not be any easier but it would have a better chance for early success.”

Similarly, lifting State restrictions on advertising for surrogates would go a long way to expand the appeal of altruistic surrogacy. These restrictions deny the possibility of connecting interested and consenting parties and appear to be rooted in a mindset that altruistic surrogacy is to be discouraged, even though it’s legal.

These regulations also show the discrepancies between states and territories. Page and Harland (2011) detail the variations in state and territory laws regarding surrogacy and highlight both their arbitrariness and unfairness. Differences exist between whether oral or written contracts are acceptable, through to when a contract is enforceable and when court orders are to be submitted.

In some states, intending parents can advertise for a surrogate, in others not. In some states, parents can use surrogates overseas, while in others, they would face stiff fines and the possibility of jail time.

The absurdity of the discrepancies in law is captured by Millbank (2015), who notes that:

“The nadir of fine distinctions was reached in NSW by a law that renders an unpaid advertisement for an unpaid surrogacy arrangement lawful, but a paid advertisement for an unpaid surrogacy arrangement a criminal offence.”

A consistent federal approach would clear up much of the confusion, unfairness and misunderstanding in ART and surrogacy law.

A consistent federal approach – including granting equal access to ART technologies and the avenues of having a child – also offers an opportunity to
show leadership in delivering equality, affording all LGBTIQ people with the possibility of making a family, irrespective of which state or territory they reside in.

LIFT THE BAN ON COMMERCIAL SURROGACY

The ban on commercial surrogacy forces the practice underground and increases the risk to children, women and intending parents.

As Milbank (2014) argues;

“The domestic and extra-territorial criminalisation of paid surrogacy is a blunt and useless instrument if the goal is to protect the rights and interests of all parties involved in surrogacy arrangements.”

The ban is useless because it has failed to deter intending parents from pursuing it. As Page and Harland (2011) put succinctly, “even when surrogacy has been banned, it has happened.”

It is a widely held view amongst parents who have access surrogacy that laws criminalising commercial surrogacy are “made in the absence of evidence” (Stuhmcke 2011) and the feeling amongst this group is that the laws are unnecessary and in need of reform:

Submission 3: “Furthermore, we are acutely aware that seeking the services of commercial surrogacy is illegal in NSW and has serious ramifications. It would not be our choice to break the law (and indeed resorting to altruistic surrogacy in Canada is not illegal), but the consequences are not necessarily a deterrent for us either. We feel strongly about our right to father a child and indeed any children we bring into this world will be loved and thoroughly cared for, not only by us, but by our extended family and friends.”

Submission 4: “I was forced to break the law to fulfill my dream of being a father. As a law abiding citizen this took a long time for me to justify within myself. Eventually I realized if I did not break this ridiculous law I would never have a child. I was not prepared to let a law that was rushed through the parliament, and passed without community consultation stop me from becoming a father.”
Submission 10:  “For although we are aware of the potential Criminalisation in NSW, we try not to let this affect our family life. Our burning desire to be parents overrode the potential risks of prosecution. We were willing to take that risk.”

As Stuhmcke (2011), notes:

“Empirical regulatory research into whether compliance with rules is shaped by harsh penalties shows the use of threat and legal-authority (particularly when viewed as unreasonable) can produce the opposite behaviour from that sought … History demonstrates that any restrictions placed upon the practice of surrogacy will be circumvented by individuals for whom surrogacy may be their only chance to create a family.”

 Rather than deter intending parents, the only effect has been to create problems once families returned and to amplify the stress of the process on all involved, particularly in states like NSW where extra-territorial surrogacy arrangements are illegal:

Submission 4:  “Throughout the entire process until I arrived at home with my new baby there was an underlying fear of prosecution for engaging in a commercial surrogacy contract. This combined with the stress of a new baby, the exit process from the country the baby is born in, and international travel is not a good way for a new parent to start.”

Submission 5:  “Like any parent the first time I met my children I was amazed, frightened and in awe. I was then overcome with the fear of trying to get back into Australia considering I had entered into a commercial surrogacy contract knowing it was illegal.”

Submission 12:  “Not long after we signed our contract with our chosen agency the NSW Government announced it would be changing the laws in relation to commercial surrogacy arrangements. This again caused a great deal of stress and concern. Even though we had signed our contracts and began our process before the scheduled change of law, we worried how our surrogacy arrangement and our potential children would then be perceived by our community (our friends, family, our colleagues colleagues at work). The thought that we would be judged as if we had undertaken
something unlawful and criminal when we had not."

The threat of criminal conviction in some states creates three distinct risks for children born through surrogacy:

1. the risk of stigmatization on account of the circumstances of their birth;
2. the risks associated with their parent’s being denied parentage orders; and
3. the risk of being excluded from access to basic services afforded to them as Australian citizens.

We believe the ban creates an under-class of children who are discriminated against on the basis of being born through surrogacy, and who miss out on the valuable protections enjoyed by other kids.

**Stigmatization**

We hold deep concerns as to the effects of children learning that their parents participated in criminal activities to bring them into the world. This has an impact on a child’s self-esteem and sense of being and unnecessarily complicates their understanding of their story of origin.

Submission 8: "Since the criminalisation of surrogacy came into effect in NSW, I have been concerned. Concerned that when our son is older, he will learn more about the law and feel ashamed of who he is and how he was born. Concerned that other children may make fun of him and that he will be bullied because of the law that related to how he was born."

Submission 9: "I don't want my children growing up feeling as though we are not equal to any other family unit, regardless of their structure.

Submission B: "What does it say to these children if the way they were conceived is illegal and there is a view that their parents have committed a crime in Australia. It tells them that there is something not right about their family, and maybe about them... Being illegal creates a stigma around their very existence. These children have been very much wanted children. Their parents planned for them, and invested a lot of time navigating sometimes complex and difficult processes to make them. I know most of those parents that
chose to go overseas and engaged in commercial surrogacy did so because of the lack of options in Australia.”

Lifting the ban on commercial surrogacy in Australia and working towards a new regime devoid of criminality will end stigmatisation of kids born through surrogacy, much like kids born through IVF no longer face misunderstanding or prejudice.

Importantly, the risk of stigmatisation can drive parents to withhold information from children about their birth stories, which is not in the best interests of the child, and can encourage parents not to access services or for the most fundamental of legal documents – parentage orders.

**Lack of parentage orders**

The Family Law Council (2013) notes that:

> There have been only 19 reported cases dealing with overseas surrogacy arrangements in the family courts, while there have been many hundreds of children born to Australian couples through overseas surrogacy arrangements. This means that the great majority of children born as a result of surrogacy arrangements overseas do not have the legal protection of having a legally recognised parent in Australia.

While the Australian Government, through DFAT, facilitates the granting of citizenship to children born overseas through surrogacy, it is the responsibility of parents to seek parentage orders. The orders are determined according to the different criteria and processes of individual states, meaning that there is little consistency or certainty in the process.

The result is that children are denied their right to have their legally recognised parents be those they live with.

Stuhmcke (2011) notes that:

> Adults who have successfully pursued commercial surrogacy internationally or within Australia will not risk stigmatization to their children through attracting media attention or possible prosecution of themselves.” (Stuhmcke 2011).
The threat of criminal prosecution in states including NSW is a deterrent to them doing so, creating unacceptable problems and risks for families and children.

Submission 5

“I am frightened to take out a parenting order in NSW to become the legal parent of my children – for fear of being prosecuted for engaging in commercial surrogacy. So far there has been no test case, and I do not want to be an example to other families, and thrown in gaol… Because of the criminalization of commercial surrogacy technically I have no legal rights over my children. I fear they will feel less Australian because I am not their legal parent.”

Submission 10

“We have not applied for a parenting order for our child because we have been warned not to alert the authorities to the fact that we have engaged in commercial surrogacy overseas. We are very wary of the consequences.”

Children without parenting orders are effectively stripped of the permanency and security of family that is a basic human right. Parents worry that if something happens to them, their children will be left in legal limbo.

Parents often go to extraordinary lengths to ensure their children are legally protected in wills and that guardianship orders are in place. The legal ambiguity is compounded by the absence of marriage equality. Submission 15 details the fears and concerns of parents in relation to the lack of legal certainty afforded to children born through surrogacy.

For many couples, Australian law means that the surrogate is listed on a child’s birth certificate, along with the husband of the surrogate if they are married. This creates an absurdity where effective strangers effectively have legal rights that supersede those of parents.

Submission 6:

“It is terribly disconcerting to know that I am the legal guardian of only one son and not the other. Yet we are one family, we look upon both sons equally and make no distinction in our minds as to which partner fathered which son. They are both our sons, and we pray that one day NSW law will also see our situation in the same light as we do.”

Submission 8:

“I think about what might happen if the one of us who is the biological dad dies. What would happen to our son since the
other is not his legal parent in Australia? Would he be able to stay with his family?"

This is clearly not in the best interests of the child, with the potential for far-reaching consequences. As noted in the submissions above, it creates legal uncertainty, which may not have an impact in the day-to-day lives of families, but can have serious implications in the event of an emergency, as the recent Bulmer-Rizzi case in South Australia demonstrated.

In the case, a British-born visitor to Australia was declared to have been "not married" when in fact he was on his honeymoon following his marriage to his same-sex partner. The tragic circumstances of his death were compounded for his husband and family by the heartlessness of the South Australian Government failing to recognise their same-sex marriage.

Without the certainty of legal relationships afforded to other families, LGBTIQ parents and children live in fear of events such as those in the Bulmer-Rizzi case. What will happen to our children if we are in accident? If as the legal parent of my child, will my partner be denied parenthood if I were to die, given that he is not recognised as my child’s other parent?

Submission 15: “Darling, we need to tell you something. Even though we were the ones who brought you into this world, who planned and saved and dreamed of having you, and that without us you would not be here, we are not your parents according to the law in Australia where you are a citizen. Your surrogate and her husband are legally your parents. That’s right, even though you’re not genetically related to them at all. Instead, your dads are viewed as your guardians or principal carers. But don’t worry, your dads have entered into complicated wills and testamentary arrangements with one another to ensure that if questions are ever raised about who your legal parents are that we have done everything we can to make the case before a judge that your best interests is to be with us. We hope we never have to prove our standing as your parents but we will fight for our family with every ounce of our being.”

A lack of parenting orders can impact enrolment for Medicare and health funds, medical treatment, clarity of wills and inheritances, and applications for passports, school documents etc. that require parent signatures.
The lack of parentage orders takes on another dimension in the context of the marriage equality debate in Australia, with same-sex couples denied the legal certainty of marriage. It is not hard to deduct that there are families in Australia where the parents do not have the legal certainty of marriage between them and are also not legally the parents of their children.

This is unacceptable and discriminatory.

We support the Family Law Council’s assertion that “it is in the best interests of children born from international surrogacy arrangements that a child has at least one parent in Australia who is legally recognised as a parent,” however, believe this does not go far enough. Children have the right to have both parents legally recognised when both parents live together, take responsibility for children, and love and care for them as parents in traditional family relationships would.

The ability for courts to retrospectively authorise commercial arrangements with surrogates – as is the case in the UK – would provide children born through surrogacy arrangements an opportunity to obtain parentage orders that accurately reflect the legal, financial and emotional circumstances of their family.

**Lack of access to services**

The community submissions we received suggest that in most cases, children are not denied access to basic services such as the health system or to enrolling in public schools.

The submissions also point to the fact that in the majority of cases, the wider community has embraced families formed through surrogacy:

**Submission 4:** “Since returning home my children have been welcomed by Australia with open arms… They are Australians after all. I have had no issues with acceptance of my children being born through commercial surrogacy. People have questions and are interested, but at the end of the day very supportive of me having a family.”

**Submission 8:** “The community in Australia has been overwhelmingly accepting of our son and our family. He went to a local non-profit childcare centre and we were accepted the same as any other family. He has attended music classes and sports programs and everyone has treated us just like any other family. To this day, I have not experienced any
discrimination from people that I knew or have meet since we became dads."

This suggests that the community view has advanced ahead of that of legislators.

Some parents reported having easy access to the health system and to parental leave schemes (Submission 8 and 15), however, it was reported that at least one parent was denied access to the NSW Government’s employee parental leave scheme, a workplace entitlement afforded to others. This discrimination is not in the best interests of the child. When other parents of newborn infants are provided with employee benefits to care for their children at this critical stage, but other parents are not.

Children born through surrogacy risk isolation and being denied access to services both directly and indirectly – directly as in the case when they apply for a driver’s license or other form of identification and experience difficulty because their parents’ names do not appear on their birth certificates or when they need to prove their relationship with their parents for any reason.

They risk missing out on services indirectly because they or their parents fear stigmatisation or prosecution and also because of the uncertainty around their lack of parentage orders.

Submission 4: “Day to day there is no issue with the fact that I am not the legal parent of my child. I have had no trouble accessing health care, or enrolling my child into school. There is however an element of uncertainty in my mind because in the eyes of the law I am not the legal parent of my child. I have done everything possible to ensure that I am perceived as their legal parent even in the event of my death. However, I would sleep better at night if I were able to seek a parenting order without the fear of being convicted of entering into commercial surrogacy agreement.”

Submission 15: “We constantly have to take precautions such as keeping a low public profile for our family to ensure we keep below the radar of the NSW DPP. Hence this submission is anonymous. To think that we are potentially criminals for starting a family through commercial surrogacy is as frightening as it is absurd. That we cannot celebrate our families more publicly in NSW is shameful.”
Social isolation is one of the most difficult things for young people to face and many children of LGBTIQ parents already face misunderstanding and prejudice on account of their unique family composition.

**A NEW REGIME**

The most appropriate way to counter the risks is to lift the ban on commercial surrogacy and replace it with a new regime, led by an independent government or NGO regulator, empowered to oversee surrogacy arrangements in the best interests of children, surrogates and intending parents both within Australia and for Australians accessing overseas jurisdictions.

Millbank (2015) and almost all our community submissions call for a highly regulated domestic market. This would be a harm-minimisation approach in the context of decreasing international arrangements, expanding access for LGBTIQ and infertile Australians; protecting women by allowing them to access Medicare, the welfare system and our legal structures; and protect kids by more closely connecting them to their stories of origin.

The Gay Dads NSW submission included as Appendix C argues the benefits and composition of such market, noting that it is the best means to protect the rights and welfare of all those involved. Amongst the benefits the list are that:

- Children profit from protections under Australian law and simplified parentage orders that better reflect the reality of their family circumstances;
- Surrogates benefit from access to the Australian health-care system and a guarantee of fair compensation;
- Intending parents are released from the threat of criminal conviction and prosecution, as well as the assurance that the surrogate is being fairly compensated and treated safely and well.

Millbank (2015) notes that

“The body of empirical studies does provide compelling evidence for surrogacy as an elected practice that has provided satisfaction to the great majority of women who have undertaken it in the domestic national context.”

“The established Australian context of overarching health care regulation and family law as well as specific surrogacy laws would prevent risky reproductive treatments and contracts that purport to inhibit women’s
reproductive autonomy or determine the parental status or physical custody of resulting children.”

Community submissions overwhelmingly support the notion of a domestic market and indicate that members of the community would be likely to support and access such a scheme:

Submission B: “Many women in Australia, me included, would consider being a surrogate for a couple who would otherwise not be able to have their own children. But being a surrogate is a huge commitment and impacts on your life, and your body. I support commercial surrogacy as I strongly feel that this effort, time and impact on someone's life and body should be compensated.”

“Children have a right to know their identity and their life story. And I would feel confident that a local system would be able to accredited and regulated. I imagine that Australia could learn from countries where this is done well, and which have a child focused approach to legal and policy matters.”

Submission 3: “It is a shame that the Australian Government places such obstacles in the way of intended parents who clearly want children and would like to do this in a well-regulated and supported context.”

Submission 4: “I would like to see commercial surrogacy legalized in NSW. I would like to see a compensated surrogacy market introduced in NSW. This could be based on the US system which is considered best practice internationally... If compensated surrogacy were legal in Australia, both of my children would know their surrogates, and they could have a lot more impact on their lives. This would have been my preference.”

Submission 5: “Being on the other side of the world, in a foreign country made this process difficult. If compensated surrogacy was an option in NSW I would have felt much more comfortable starting my family.”

Submission 7: “If only Australian Law is more favourable toward same sex couple, we do not need to travel half the globe to fulfil our
dream. Those hours researching and money spent on surrogacy expenses overseas can be spent here in Australia to increase our GDP.”

Submission 8: “In line with this, it would be wonderful to see Australia move closer to the model in California where a woman is allowed to choose to give back and assist a family by being a surrogate while being compensated for her help. If Australia had this system, all parties could be regulated to ensure that there is ethical treatment of all parties involved.”

Submission 14: “I do believe that there should be more regulation and possibly accreditation of international surrogacy agencies to ensure that no women are ever exploited.”

Submission 15: “We hope that the Australian government would lead a COAG process to effect these changes and to align commercial surrogacy legislation in most/all jurisdictions.”

Submission 16: “The illogicality of altruistic surrogacy can be de facto discrimination against the surrogate: why is everyone in the altruistic surrogacy journey allowed to get paid for doing their job – the specialists, the nurses, the physios, the nutritionists, the radiographers, the hospitals, and so on – except the surrogate? A regulated commercial surrogacy market in Australia should be considered:

- An agency would monitor and keep accountable surrogacy clinics
- the commercial aspects of surrogate contracts could be limited to, say, paying the surrogate no more than the minimum weekly wage in line with primary carer allowance.
- The NH&MRC could establish clinical protocols
- Medicare subsidies for IVF should extend to surrogacy
- Coordination of health and family departments across jurisdictions
- A federal surrogacy advocacy office should be established to assist and support intending parents and intending surrogates.”
Submission C: “Australia has over-regulated when it comes to assisted reproductive medicine in the past and this is a short-sighted regulation. The best way to ensure the agency of women is to create a local market, overseen by a government agency or health NGO in the field of ARM, that can protect the interests of all involved.”

Submission D: “While initially my views and thoughts were completed adverse to any form of commercial/compensated surrogacy, I now do feel more inclined to support a compensated model due to the unseen and unexpected costs as well as the rather large physical and emotional toll experienced through surrogacy. If this is an additional incentive to be a surrogate in Australia, then this is hugely beneficial, particularly for the child as it would ensure a much greater possibility of an ongoing relationship with their birth mother/donors as well as strong relationships between all parties which is participatory throughout the pregnancy, birth and post-birth.”
V. CONCLUSION

Submission 8: “Our son was born in a way that brought joy to everyone who was involved and this law stigmatises him and our family. It would be nice to not have the concern that has come into our lives since the criminalisation of surrogacy anymore. This law is not in the best interest of families or children.”

We contend that a harm-minimisation approach offers the best protections to all those involved in surrogacy arrangements. Such an approach would:

- decriminalise commercial surrogacy
- adopt a new framework led by a government or NGO regulator, incorporating a highly regulated local market, as called for by the vast majority of community submissions we received, including Gay Dads NSW;
- include a more-highly regulated overseas market.

What is clear is that:

- LGBTIQ people will continue to make loving and diverse families, and the Government should support them to do so, only intervening when there is clear evidence of harm to others;
- A common federal approach is necessary to restore certainty and integrity to the system;
- Criminalising commercial surrogacy has not deterred LGBTIQ intending parents from engaging surrogates overseas;
- Children born through overseas surrogacy arrangements are failed by existing laws, with the vast majority denied parentage orders that reflect their family structures, and with significant long-term ramifications;
- The threat of criminal convictions has negative consequences for children and parents that are not in the best interests of children;
- There is the greater potential for risk to children, women and intending parents in overseas markets with less regulation and oversight.

We urge the Committee to:

- Work with State and territory ministers to create a consistent approach to legal parentage, assisted reproductive medicine, altruistic and commercial
surrogacy and gamete donation, with the view to **expanding options for LGBTQ parents**;

- **Lift the ban on commercial surrogacy**; and
- Form a **new framework**, led by a regulatory Government agency or NGO to monitor surrogacy arrangements, with the view to protecting children, surrogates and intending parents, potentially including a highly regulated local market.
VI. APPENDIX A:

SUBMISSIONS FROM LGBTIQ FATHERS THROUGH SURROGACY (Collected in collaboration with Gay Dads NSW).

Submission 1

We are fortunate that we have a very close friend who offered to be both a donor and surrogate. While this definitely eases one part of the process, the law in NSW states that a traditional surrogacy arrangement cannot use IVF. This means that we have to go through the motions of attempting at home conception using suitable equipment.

As both myself and our surrogate have potential fertility issues, this has made the process drawn out and emotionally draining. Being able to conceive through IVF may not be any easier but it would have a better chance for early success.

In addition, we have found the process of requiring counselling pre and post conception to be quite daunting and discriminatory, with even our counsellor agreeing that it was bullshit we need to go through this when anyone else can go and get themselves pregnant without any requirement for counselling or lessons.

Finally, the legal agreements, while understandably necessary are quite long and involved and the process is not well understood by all solicitors, our regular lawyer had to obtain advice from a barrister to ensure that he was doing it right.

We are still actively trying at present, but we started over 6 months ago, so are feeling quite down about it. I hope that the review makes it easier for any parents needing a surrogate to fulfil their dream of having a family.

Submission 2

My partner and I had been in a relationship for 10yrs when we became fathers. A family had always been a dream of ours and we were finally in a position to make it a possibility. Following the lengthy research and big conversations we chose to undertake a commercial surrogacy relationship through the USA. Our
reason we’re numerous inc; establishing a relationship with the surrogate, legal confidence and experienced leading IVF physician.

We were eventually blessed with twins who were born healthy at full term. Being present at the delivery and cutting the umbilical cord were truly breathtaking. Holding the surrogates hand throughout the delivery of our twins and then spending 6 weeks with her and her family following the birth gave us all priceless memories and an eternal bond. We remain in contact with our surrogate and plan one day to take the kids to meet her.

Submission 3

My partner and I reside in Sydney, NSW and were married in France last year. We had been entertaining the idea of having children for a while and since returning from France, we have started looking seriously into our options. We prefer the idea of having a biological link with our children. Therefore we have decided that surrogacy is a better fit for us than adoption, especially considering the long time-frame in Australia to be deemed suitable as adoptive parents. The possibility for us as a gay couple to access surrogacy is now limited to the USA and Canada. We have considered both countries, but we are definitely leaning towards Canada. We like the altruistic approach taken there and the common links that exist between our two countries as part of the Commonwealth appeal to us, such as a similar health care system. Having the right to be named on the birth certificate and to bring our children home to Australia in complete legality are also high priorities.

Nevertheless, we recognise that the USA (some states) offers more flexibility due to their relaxed laws on commercial surrogacy and this is tempting. The prohibitive costs however must be taken into consideration. Furthermore, we are acutely aware that seeking the services of commercial surrogacy is illegal in NSW and has serious ramifications. It would not be our choice to break the law (and indeed resorting to altruistic surrogacy in Canada is not illegal), but the consequences are not necessarily a deterrent for us either. We feel strongly about our right to father a child and indeed any children we bring into this world will be loved and thoroughly cared for, not only by us, but by our extended family and friends. This is certainly not the case for a significant number of children and unfortunately so. As high school teachers, we can both speak with some authority on the matter.

We are both excited, yet nervous in pursuing parenthood through surrogacy, especially in Canada. The distance and costs involved are significant, but
thankfully there are agencies with whom we can liaise to facilitate the process, and this is clearly missing in Australia. It is a shame that the Australian Government places such obstacles in the way of intended parents who clearly want children and would like to do this in a well-regulated and supported context. The desire to have children will make law-abiding citizens seek other options regardless and so we thoroughly endorse any move to make this process legal and thus protecting both parents and children.

Submission 4

As a child I assumed I would be a parent. However when I came out I realized that I would not be able to be a parent, as I did not know of any gay dads. I thought I could have a life of decadence – holidays, champagne, and nice restaurants. This was great for a while, but eventually I realized there was something missing from my life. That something was children. Since having children my life has become more rewarding, richer and more enjoyable.

I initially spoke with some friends about being a “donor dad.” This arrangement has gone ahead and works well. I felt that a donor situation was not going to fulfill my desire to have a child, so looked into adoption and fostering. At the time this was very difficult and practically unheard of for gay men, so I looking into surrogacy. While researching international commercial surrogacy I also hoped and waited for an altruistic surrogate in Australia to hopefully carry a child for me. This did not eventuate, so I entered into a commercial surrogacy agreement in India. A few years later we wanted a sibling for our child, and so entered into another commercial surrogacy agreement. This time in Thailand as India was no longer an option for gay men.

I have been very lucky and both times I received a positive result on the first attempt.

It is disappointing that my children had to be conceived in different countries, using different egg donors, and different surrogates.

Meeting both of my children for the first time was obviously exciting and life changing. On both occasions I also felt a huge sense of relief that the surrogacy journey was just about over. Throughout the entire process until I arrived at home with my new baby there was an underlying fear of prosecution for engaging in a commercial surrogacy contract. This combined with the stress of a new baby, the exit process from the country the baby is born in, and international
travel is not a good way for a new parent to start.

The surrogacy journey is a very difficult experience for many reasons. Emotionally it is a rollercoaster ride full of ups and down.

It is a process that requires trust from everyone. Trust that the intending parents will pay the required money and take the baby home at the end of the process. Trust that the surrogate will be cared for by the agency. Trust that the surrogate will give the baby to the intending parents after the birth. Trust that the surrogate will receive the money the agency says she will. Without trust the surrogacy journey is even more difficult than necessary.

Sending thousands of dollars to India and Thailand with no guarantee of a baby at the end is very scary.

Our second baby was caught up in the shutdown of the Thailand surrogacy industry. She was the second last Australian born through surrogacy in Thailand. This was an horrific experience for me. The daily uncertainty was nearly unbearable. The only thing that kept me going was the positive pregnancy tests that kept coming through each month.

Thankfully the Australian government was fantastic helping with the exit process in Thailand. The process was streamlined and as simple as possible. The embassy staff were very helpful and genuinely interested in us going home as soon as possible. Having said that the process in India was much quicker and a little simpler.

Since returning home my children have been welcomed by Australia with open arms..... They are Australians after all. I have had no issues with acceptance of my children being born through commercial surrogacy. People have questions and are interested, but at the end of the day very supportive of me having a family.

The law changed regarding commercial surrogacy as I began looking into starting my family. I was forced to break the law to fulfill my dream of being a father. As a law abiding citizen this took a long time for me to justify within myself. Eventually I realized if I did not break this ridiculous law I would never have a child. I was not prepared to let a law that was rushed through the parliament, and passed without community consultation stop me from becoming a father.

Day to day there is no issue with the fact that I am not the legal parent of my child. I have had no trouble accessing health care, or enrolling my child into
school. There is however an element of uncertainty in my mind because in the
eyes of the law I am not the legal parent of my child. I have done everything
possible to ensure that I am perceived as their legal parent even in the event of
my death. However, I would sleep better at night if I were able to seek a
parenting order without the fear of being convicted of entering into commercial
surrogacy agreement.

My family has not been too affected by the NSW policy or commercial surrogacy
being illegal. However countless other families have not been created because
of the laws deterring people like me from pursuing their dreams to create
families.

I would like to see commercial surrogacy legalized in NSW. I would like to see a
compensated surrogacy market introduced in NSW. This could be based on the
US system which is considered best practice internationally.

I would also like to be confident in obtaining a parenting order without the fear of
prosecution for engaging in commercial surrogacy.

Being a parent has changed my life in such a positive way it is impossible to
explain. I have a sense of purpose and direction, and a general happiness I
could never have imagined.

Due to the current laws in NSW I am fearful of having another child through
commercial surrogacy. I would love a large family, however for now I will have to
stop, and be happy with what I have.

I have had the help of two wonderful surrogates to create my family.

Both of the surrogates were found using agencies in their relevant countries.

In India I was not given the option of meeting the surrogate who gave birth to my
daughter. This saddens me no end for my sake and more so for my daughter’s
sake. She will never know the woman that carried her, and gave birth to her.

In Thailand I met my second child’s surrogate twice. We were both overcome
with emotion. I was able to get some lovely photos of my baby with the
surrogate. We keep in contact via social media and I value the contact we have.

The fact that the story is not the same for both of my children is very upsetting.
Due to circumstance one child can have contact with their surrogate, and one
will never know the woman that gave birth to her. This is something that I
struggle with at times, and I simply must accept.
If compensated surrogacy were legal in Australia, both of my children would know their surrogates, and they could have a lot more impact on their lives. This would have been my preference.

Both of my children know the story of how they were born. The wonderful women that helped bring them into my life. I hope one day they will understand that I went down the only path available to me at the time to create a family. It was not a perfect journey, however the result is nothing short of perfection.

**Submission 5**

Having grown up in a large family and always having children around me becoming a father was something that was the next natural progression in my life.

To fulfill this dream I entered into a commercial international surrogacy agreement.

I attempted to do altruistic surrogacy in Australia and found it to be too difficult. Commercial surrogacy is not an option in Australia so I had no choice but to pursue international commercial surrogacy.

As a 40 year old, from my research I understood that the adoption process was a lengthy one, and I was concerned about being too old to be a father.

My partner had donated genetic material to a lesbian couple and that sparked our conversation to being fathers, and led us to looking into surrogacy to create our family.

Like any parent the first time I met my children I was amazed, frightened and in awe. I was then overcome with the fear of trying to get back into Australia considering I had entered into a commercial surrogacy contract knowing it was illegal.

Being on the other side of the world, in a foreign country made this process difficult. If compensated surrogacy was an option in NSW I would have felt much more comfortable starting my family.

The Australian embassy in Delhi and Bangkok were very helpful throughout the process.

The response to my family in Australia has been amazing. A lot of people do not understand surrogacy. Most people assume I have adopted my children because
they were born overseas.

I am frightened to take out a parenting order in NSW to become the legal parent of my children – for fear of being prosecuted for engaging in commercial surrogacy. So far there has been no test case, and I do not want to be an example to other families, and thrown in gaol.

I have been discriminated against by the NSW policy because I am not considered the legal parent of my child.

Because of the criminalization of commercial surrogacy technically I have no legal rights over my children. I fear they will feel less Australian because I am not their legal parent.

Commercial surrogacy should be decriminalized, so I can take out a parenting order over my children and become a full legal guardian.

I love being a parent so I can watch my children grow and develop in a loving family.

At this stage I do not feel comfortable breaking the law again to bring a sibling into my family for my children.

I feel incredible lucky to become a parent by a complete stranger in another country. And in return I feel completely humbled by the fact that (through a commercial agreement with them) I have been able to change their life forever through the financial windfall of being a surrogate.

Submission 6

My partner and I had been in a stable relationship for 13 years and had often talked about how wonderful it would be if we could have a family. We were well established, had good incomes but most importantly we had a functional, stable home environment with a lot of love to offer.

Finally, after several years of talking about it we decided to take concrete steps to make our dream a reality. We initially considered adoption, but quickly abandoned that idea once we learned of the obstacles and long lead-time current regulations would pose. We then considered an altruistic surrogacy arrangement, as our good female friends were very supportive and amenable to donating eggs and acting as a surrogate. However after investigating further we decided against the altruistic route when we learned that under NSW law both
the egg donor and the surrogate would have the right to claim the child at any
time after birth, and could refuse to hand over our child. We could even be
prevented from moving interstate if either of them objected.

As we could not live with the constant fear that such a situation might occur, we
decided to pursue the commercial surrogacy route. I learned that at the time
India had very clear surrogacy laws that defined and protected the roles of each
party, i.e. the egg donor, the surrogate and the father. In addition, under Indian
surrogacy laws in effect at the time, only the father’s name would appear on the
birth certificate, which provided an added safeguard that no one could ever
attempt to take our child away.

Upon recommendation of a friend, we decided to proceed with a clinic in New
Delhi. I must say that we were not disappointed as the facilities were spotlessly
clean and we were very impressed with the professionalism, care and attention
we received through the entire process, including the thorough updates we
received during our surrogate’s’ pregnancy.

I use the plural for surrogate as in our case we were fortunate in that our egg
donor provided enough sufficiently healthy eggs to enable both my partner and I
to each father a biological child. We therefore put in place contractual
arrangements with 2 surrogates, and although each embryo had it’s own
surrogate, there was only one egg donor. Hence the 2 beautiful boys we were
fortunate enough to receive are actually half brothers. We realise that we were
very privileged to be blessed with 2 adorable sons who are also genetically
related via the same egg donor. This has also bound us more closely together
and enhanced the strong sense of family we all feel.

I believe it is appropriate to comment that our 2 surrogates were well looked after
by the Delhi clinic. An integral part of our arrangement with them was that we
would provide the surrogates, their husbands and families supervised
accommodation in Delhi, with on-site medical staff, balanced meals and regular
doctor’s visits. Our surrogates were wonderful ladies from a small village who
said that because of their surrogacy arrangements they would now be able to
build a house in their village, something that would otherwise never have been
possible as their husbands were labourers. We did meet the surrogate’s
husbands, and know that they were very supportive.

Our boys are now almost 5 years old, and are still the most gorgeous, pleasant
children any parent can ever wish for. They are the joy of our lives, and just
writing about it now brings tears back to my eyes as this journey of parenthood
has been, and still is, so gratifying and fulfilling. We love our boys dearly and cherish every minute we spend with them.

Both my partner’s family and my family have been very supportive throughout, and adore our boys just as any other grandparent would. Although we are not a traditional family, we are, more importantly, a functional family. There is no yelling or screaming at our home, no drugs, alcohol or child abuse – only love and tranquility.

Since our boys’ birth we have been able to make direct contact by mutual agreement with our egg donor in South Africa. We now correspond regularly, exchange photos and are Facebook friends. Our boys love seeing photos of her and her own children, and love knowing that they have half brothers and sisters halfway around the world in Capetown. In fact we have all agreed to meet in South Africa the year after next. It’s amazing to see their similarities and common traits, and it is reassuring to know who the biological egg donor is, and that she and her family also come from a stable, functional and loving environment. It is also worth mentioning she had no issue knowing that her eggs were donated to a same sex couple; she was thrilled to know that her gesture brought 2 beautiful boys into the world to a family that loves them.

Despite our idyllic family situation, when one considers our circumstances from the legal perspective, it becomes quickly apparent that the situation is less than ideal. For example, under current law if something were to happen to my partner, I would have no legal custody rights over the child born through his surrogate, and vice versa if something were to happen to me. Yet we are a cohesive family that could theoretically be broken apart under existing laws. We are fortunate that neither of us come from litigative families so do not expect anyone to claim legal custody of one of our sons should either of us pass away. However until same-sex marriage is legalised, or until surrogacy laws are changed there will always this lingering doubt that causes us concern. It is terribly disconcerting to know that I am the legal guardian of only one son and not the other. Yet we are one family, we look upon both sons equally and make no distinction in our minds as to which partner fathered which son. They are both our sons, and we pray that one day NSW law will also see our situation in the same light as we do.

I do not understand the rationale behind existing surrogacy laws. How and why should the power be vested in a state to decide whether my partner and I are suitable for parenthood? Why throw obstacles in our way at every juncture to stymie it? Yet it pains me to see and read about so many children coming into, supposedly “traditional” families that are often unloved, unwanted and abused by
parents with multiple partners and/or drug problems. It is tragic how these unloved children suffer throughout their lives, and often perpetuate the problem because they never experienced love in a functional family environment.

As our boys prepare for their first year of school, we look back on the first five years as a family of four and can say that they have been the happiest years of our lives. Our friends have been very supportive, and we are amazed at the level of understanding and support we have received from pre-school and from the schools we are applying to for entry this year.

We are grateful that we were able to do what we did before the surrogacy laws in NSW were changed to prohibit commercial surrogacy. We only hope that the laws will be relaxed to allow other couples to experience the joys of parenthood as we have. We could not imagine life without our 2 beautiful boys born through surrogacy.

Submission 7

We are a gay couple from Sydney, Australia. B, 35yo, is a Software Developer for a small boutique software company in North Sydney. L is a 40yo Accountant for a Not for Profit Organization that deals with HIV Prevention and Care/Support for people living with HIV/AIDS. We are both Australian Citizen for more than 10 years.

We have been together for 12 years. We are both out and proud to our family, friends and workplace.

Having a baby is something that we both wanted for a while. As B has two sisters who have 3 small babies, sometimes looking at his three nieces and nephew makes him really sad. Knowing it is rather impossible to have a child on his own because he is gay. L has brought up two stepbrothers when he was young and always thinking about getting his own child.

We believe we can be a good responsible parent. Now, in our mid 30s and early 40s, we both are finally ready (financially stable and mentally tough) to overcome any challenges that may come with raising a child.

Unfortunately, complicated and unfavourable Australian Law regarding same sex surrogacy and adoption make us turn to other countries to fulfil our dreams. I know some states
We have spent numerous hours researching the best options, financially and legally, to make sure we will not be prosecuted when one day we arrive back in Australia with the baby. We look at options in Asia, US, Mexico, Ukraine and Canada.

Eventually we are settled to put our focus to Canada. We have to save enough money and take an extra mortgage to fund this surrogacy journey. We are quoted around $100K CAD.

If only Australian Law is more favourable toward same sex couple, we do not need to travel half the globe to fulfil our dream. Those hours researching and money spent on surrogacy expenses overseas can be spent here in Australia to increase our GDP.

I believe having children is human rights especially for people who are ready and keen to become a good parent. The current Australian Law has not been reviewed for years; therefore they don’t reflect the current situation.

This unfavourable law has put the life of parents thru surrogacy in misery and some might face prosecution overseas because some are willing to breach the law to fulfil their dreams.

An example based from my experience:

I know currently some states allow altruistic surrogacy, however future intended parents are not allowed to advertise. In that case you only depend on the caring hearts of your immediate family to step in to become your surrogate.

Unfortunately for us, most of our families are in Indonesia, as we are both born in Indonesia. Therefore we need to find a stranger in Australia to help us; however this is impossible if advertising is prohibited.

So please change the current law to reflect our current social environment to bring Australia in par with other developed countries.

Submission 8

My spouse and I are parents to one son who is under the age of 8. He was born overseas with the assistance of a surrogate and an egg donor, both of whom were compensated. We signed our agreements with the agency, surrogate and egg donor before the criminalisation of commercial surrogacy in NSW.
I have wanted to be a parent since I was around 13. My younger sister was born when I was 11 and I thought having a baby sister was the best thing possible. I was very involved in caring for her since she came home from the hospital and happily became the default babysitter for my parents. Since this time, I knew I wanted to be a parent. My hope of becoming a parent diminished when I came out as a gay man. At that time, I did not know how it could be possible. Fast forward many years, and I started running into gay men and lesbian women who were parents, and this gave me hope again that one day I too could be a parent.

My spouse and I have been together for just over 10 years and we were married almost 5 years ago in the USA. From the beginning of our relationship, we talked about having kids. We both were very interested in being parents independently, so when our relationship started, this became a common goal for us. We knew the timing was right as we both felt so happy together and we had the stability that children need.

We investigated the options that were available to us at the time. Unfortunately adoption for gay couples was illegal so this was not a viable option. We were also aware that there was a very low number of children that were available for adoption in Australia and that in most cases children were left in foster care. We considered being foster parents. I was born overseas and each year, we travel to visit family overseas multiple times. The condition of needing approval from an agency and others to travel with foster kids and the inability to be able to actually adopt the child we were fostering, were both red flags so we ruled out being foster parents.

We then thought about friends in Australia that could help us. We had two female friends who were interested in carrying a child for us, but unfortunately both of them had not had children before and were pushing the upper end of the age range to be able to carry a child. Both of these factors made their offer of help something we could not accept. At the time, there were no laws in NSW regarding altruistic surrogacy and even finding an agency in NSW to speak to us about the possibility of either of our friends being a surrogate was challenging. Beyond these two friends, who would have not met the medical criteria, we had no other options.

After spending time investigating adoption, fostering, and altruistic surrogacy we started researching commercial surrogacy overseas. I had met many gay men in the USA and Australia who had a family with the help of a compensated surrogate and egg donor. I have spent quite a bit of time in the USA and I was aware that the process was quite common there. This gave me confidence in the commercial surrogacy process. After researching two different countries, and
multiple agencies in both countries, we decided on an agency in India. From the first phone conversation with the owner of the agency, who was also a London trained fertility doctor; we had trust and confidence in how she ran her agency and cared for the intended parents, surrogates and egg donors. We checked references from couples in Australia and the United States who had made their family with the help of this doctor. These conversations with other families increased our confidence in her, and from this point, we made the decision to head over to India and start the process to build our family.

Upon arrival, we were in the care of the agency. We had meetings with the doctor and her team, and they explained and mapped out the process for us and answered all of our questions. We felt confident that the doctor we had chosen and her agency were focused on the wellbeing of everyone involved including the surrogate and the egg donor. The next meeting was when the doctor introduced the surrogate she had matched us with and the surrogate's husband. They were both genuinely happy to meet us and appeared to be quite informed on the process. They shared their story with us and that they had three lovely daughters. Our surrogate was 23 and her husband was 25 and the money that they were receiving to help us would be used to improve the quality of lives for their whole family. Within a few days, we got back together with the surrogate and her husband and the doctor to sign the contact and discuss next steps.

From that point, the timeline was followed and our surrogate was pregnant within 3 months. We were quite nervous during the pregnancy, but I imagine, no more nervous that any intended parent. That being said, we were also very happy and excited. We went through each day knowing that soon things would be different. Our dream of being parents would soon be a reality. We would finally have a child to love and care for. The agency kept us updated on progress and how our surrogate was feeling. There were no major problems during the pregnancy and our son was born at 37.5 weeks.

Expecting our baby to arrive early, we flew back in India a few days before he was born. This meant he was placed in our arms just after he was born. It was the most amazing feeling to finally be holding our son. I could not stop smiling and holding him close. After spending a few hours with him, my spouse went and saw our surrogate again to say thank you. The surrogate's husband was always popping in at the hospital to see our newborn son and us. He was so happy for us. He stayed with us for a while and just could not stop smiling. A few days later, after recovering from the birth, we met with our surrogate and her husband again at the agency. They had time with our son and us. They both seemed truly happy for us.
While we were waiting for our son’s Australian citizenship paperwork to be processed, we enjoyed focused time in India with our son. We had time with him without the interruption of family and friends, which meant we had time to really bond with him. I would spend hours staring at him. I quickly learned his signals for what he needed. We easily fell into the routine of caring for a newborn and by the time we arrived home, had become quite confident parents. When we arrived home, all of our friends and family were thrilled to meet our son. Our son’s grandparents, great grand parents, aunts, uncles, cousins, godparents and friends were so happy for us.

Before we left to fly over for our son’s birth, I spoke to the Early Childhood Health Clinic for our area and they provided me with the phone number to get our son his blue book and also said to call when we returned so a nurse could come and see us. They were quite helpful. A few days after returning home, the Early Childhood nurse came around for his check-up. She said everything was fine and also let me know about their work in organising local parents groups. I was assigned to a local group and started attending meetings a few weeks later. Attending formal meetings and informal catch-ups with other parents in my area, who I met through my parent's group, was wonderful. I am still quite close to many of the parents and children I met through this group. We also received assistance from the government by way of the Parental Leave scheme that was introduced in 2011.

The community in Australia has been overwhelmingly accepting of our son and our family. He went to a local non-profit childcare centre and we were accepted the same as any other family. He has attended music classis and sports programs and everyone has treated us just like any other family. To this day, I have not experienced any discrimination from people that I knew or have meet since we became dads. We have had many questions on the process of commercial surrogacy from friends and acquaintances, but have not had any negative feedback or comments. The questions seemed to come from genuine curiosity. Our family may look different in that we are same sex parents, but our family is exactly the same as others in that our family was made from love. We have an amazing network of family, friends and parents so our son is surrounded by love and support.

We have been open with our son about how he came to be in our family since he was early enough to understand. He understands that all families are different and that he has two dads and no mom. He understands that men can’t carry babies and that we were blessed to have a wonderful women to help us by carrying him. We call her by name with him. We have been back to India to see our surrogate and her husband, and to show him where he was born. He knows...
the people who helped him be born into our family. We made him an age appropriate photo storybook that details his story. It contains pictures and words that detail how he was born into our family. It contains photos of our surrogate and the doctor we choose. These wonderful people were the ones that make our dream possible. We will build on this storybook with more detail, as he gets older. I will continue to keep an age appropriate open dialogue with our son as he grows so that he know the truth of how he came to be born into our family. Our son has expressed an interest in India and we are very supportive of his curiosity and will continue enabling him to learn as much as he likes about the country where he was born. We have many friends who have also had children via commercial surrogacy so our son has a community of support from other families that were created in the same way. If compensated surrogacy had been legal in Australia, we would have explored this option.

Since the criminalisation of surrogacy came into effect in NSW, I have been concerned. Concerned that when our son is older, he will learn more about the law and feel ashamed of who he is and how he was born. Concerned that other children may make fun of him and that he will be bullied because of the law that related to how he was born. Concerned that neither my spouse nor myself are the legal parent on our son according to the law in Australia. I think about what might happen if the one of us who is the biological dad dies. What would happen to our son since the other is not his legal parent in Australia? Would he be able to stay with his family? Our son was born in a way that brought joy to everyone who was involved and this law stigmatises him and our family. It would be nice to not have the concern that has come into our lives since the criminalisation of surrogacy anymore. This law is not in the best interest of families or children.

In my opinion, I believe that Australia should decriminalise surrogacy. I also believe that there should be a mechanism that allows children that have been born through surrogacy to become the legal children of their parents. These are the parents who take care of them, love them and support them. In line with this, it would be wonderful to see Australia move closer to the model in California where a women is allowed to choose to give back and assist a family by being a surrogate while being compensation for her help. If Australia had this system, all parties could be regulated to ensure that there is ethical treatment of all parties involved. The current law is quite interesting in that is allows all parties involved to be compensated with the exception of the person doing the hardest work, the surrogate. The IVF clinic is compensated, the physiologist is compensated, and the lawyer is compensated. Everyone is compensated with the exception of the surrogate.
At this point, we do not plan on having any more children. As much as I would love for my son to have a sibling, I do not want to navigate the process required to make this happen again. If the law were to change and it was easier for us to access surrogacy here in Australia, we might rethink this.

Submission 9

I chose to access commercial/altruistic surrogacy because my partner and I wanted to start our own family. We previously looked at other options including adoption and co-parenting but realised after much thought and conversation that surrogacy was our best option. Regrettably, due to the surrogacy laws in Australia, my partner and I had to look overseas for alternatives. Our journey of dealing with overseas agencies was nothing less than stressful and at times traumatic however this was the only way that we could find to make our dream of starting a family a reality.

Criminalisation in NSW has affected my family in that it shines a dark light on the legitimacy of our family, and is a constant reminder that in the eyes of the law we are perceived as criminals and second-class citizens. I don't want my children growing up feeling as though we are not equal to any other family unit, regardless of their structure.

Being a father is important to me because I want to create a lasting legacy that started with my grand parents when they immigrated from Russia to Australia in the 1940s. Additionally, I want to share my love and life with others and becoming a father has allowed me to do that.

I have not applied for parenting order for my child because I feel unsafe to do so considering the current surrogacy legislation in NSW. Also, talking with other parents, the time and cost associated with this is long and exorbitant.

It's time that these laws are revisited so we can start respecting the many families that have been forced to undertake the overseas commercial surrogacy route.

Submission 10

We are a gay couple with an 11 month old baby girl living in Sydney. Aged 44 and 39, legally married in France we have been together for 8 years.
In 2014 we chose to access commercial surrogacy in Thailand because it had proven to be very difficult to find someone to carry a child for us here in Australia.

Over the last 5 years we had tried a number of times to be parents. Initially with a lesbian couple in a shared custody situation with no success. Then with a single woman who wanted to have a child with us who then changed her mind. We then tried to meet an altruistic surrogate again with no success. Time was running out for us and we felt our ages were becoming an issue so we decided to engage in commercial surrogacy overseas as our last resort.

We had heard that countries where surrogacy was allowed such as India, Thailand, Nepal were beginning to tighten their laws regarding commercial surrogacy and we needed to move fast. We were also aware of the potential risk of seeking surrogacy in a potentially volatile/ unpredictable country like Thailand with very different laws and regulations.

As it turned out we were involved in the sudden law change in Thailand and went through a very uncertain period during the pregnancy where we did not know if we would be able to leave the country with our child. Fortunately an amnesty period was agreed for all Australian involved and we were able to exit the country with our baby. Nevertheless this was a very stressful period as we were one of the last Australian parents to have a child born by commercial surrogacy in Thailand.

For although we are aware of the potential Criminalisation in NSW, we try not to let this affect our family life. Our burning desire to be parents overrode the potential risks of prosecution. We were willing to take that risk.

Being fathers is important to us because we feel that we are complete and have the child we always dreamt of. She has brought us so much joy and fulfilment. Our lives are enriched by her and we look forward to watching her grow up.

We have not applied for a parenting order for our child because we have been warned not to alert the authorities to the fact that we have engaged in commercial surrogacy overseas. We are very wary of the consequences.

Submission 11
I chose to access commercial/altruistic surrogacy because I have a chronic genetic defect as well as being gay, so its the only way for me to have a child, and this has always been a dream of mine to be a parent.

Criminalisation in NSW has affected my family in that it created stress and debate within my family during the whole birth process. It has meant I needed to take many risks overseas.

Furthermore, although we communicate regularly over the internet, my surrogate is overseas and lives far away and cannot be a close part of our family in the way a local Australian surrogate could. If surrogacy was easier here it would have solved many problems for us.

Submission 12

In September 2012 my partner and I were blessed with the birth of our twin boy and girl and at the time of writing this submission they are now 3 years old. Our children were born in India with the assistance of a wonderful surrogate. It was a very long journey to parenthood for us. My partner and I have been together for 22 years, we are gay men in a same sex relationship. We didn’t really think parenthood might be an option for us until we tried for several years to assist some Lesbian friends create their family. During this time we began looking into options to become parents and to form our own family. We looked into co-parenting and adoption and neither of these options were accessible to us. Some time after that we met another couple of gay men who had become parents via a commercial surrogacy arrangement in Canada. They were the first people we had met who had actually undertaken a surrogacy journey to parenthood. Their positive story inspired us. We’d always thought commercial surrogacy to be inaccessible to us as well due to the cost and availability in Australia. They told us how they used equity in their home in order to fund their surrogacy journey, something we hadn’t thought of being possible. We came away from that meeting thinking that nothing mattered more to us than the possibility that we might be able to create our own family.

We took a long, long time to commit to the surrogacy process. There were so many worries and questions, let alone questions about becoming parents as gay men. Parenting and surrogacy is not something to go into lightly and not for the light-hearted. We did lots and lots and lots of research. We talked to many other people about it, others who had undertaken surrogacy, lawyers, doctors, friends and family. We made a lot of friends to this day along the way. We did a lot of online research online and calls with agencies and clinics over the phone. We
had to build trust in the right clinic, agency and surrogates. We decided to undertake a surrogacy arrangement in India as many other people we had met had undertaken a surrogacy arrangement in India with a positive experience. We were very very concerned with the ethical standards of the agencies and clinics and needed to be sure our surrogate and potential children would be looked after in the highest standards of care. We were confident about this in our choice of agency and clinic in India. We were also very concerned about the financial circumstances of our own situation and those of our surrogate. We needed to be certain our surrogate would be adequately compensated and we were also initially concerned the potential for financial strain should something go wrong.

We also had to develop trust going into an arrangement at a distance internationally. All of these factors at times were extremely challenging and stressful. One of the most challenging aspects of our journey was choosing an egg donor, it seemed like so much responsibility and it took a long time!! Being intended gay dads we knew our family would be different and our children might feel this. We had options of either Caucasian egg donors or Indian egg donors offered to us for selection by our agency. Racial likeness was never an issue for us in fact and Indian donor was preferable to us but we were originally concerned about introducing so many factors of difference to our family. So we engaged an egg donor from Georgia near the Ukraine. So more international phone calls and time differences and establishments of trust. We chose a lovely Egg Donor who we later met in Mumbai, India when we travelled to begin the surrogacy process.

Not long after we signed our contract with our chosen agency the NSW Government announced it would be changing the laws in relation to commercial surrogacy arrangements. This again caused a great deal of stress and concern. Even though we had signed our contracts and began our process before the scheduled change of law, we worried how our surrogacy arrangement and our potential children would then be perceived by our community (our friends, family, our colleagues colleagues at work). The thought that we would be judged as if we had undertaken something unlawful and criminal when we had not. During this time there was also some extremely negative media and comments by misinformed politicians such as Linda Burney suggesting that surrogacy arrangements were creating another “stolen generation”. Something I personally found double discriminatory since I am of aboriginal descent myself. You can’t imagine how this made us feel!

We travelled to India to begin our surrogacy journey. It was the most wonderful experience and really put our minds to rest seeing first hand what to expect. We
became confident in the clinic, the agency and hospital. At this stage we had not met our surrogate.

We were overjoyed to learn that our surrogate had fallen pregnant with twins on the first attempt and so we began to plan for our new life with children. Every report and ultrasound scan we received was so exciting. We were overjoyed. Before long the pregnancy had reached 22 weeks! Then one afternoon we received a call from our doctor. It was devastating news! Our surrogate had gone into premature labour and the twins were lost. It was an awful time. Our immediate concerns were for our surrogate and her wellbeing as well as an intense sense of loss, all at a distance. We were back in Australia and felt so far away and removed from what was happening. We financially supported our surrogate during her period of recovery from the pregnancy and we learnt that our fortnightly disbursements to her afforded her a new home and has been engaged as a surrogate once since that time.

Also during that time we did a lot of crying. It seemed like we'd come so far and everything was over now. It took a really long to recover from. We talked a lot about whether to continue or not.

We eventually decided to try again. We had to once again choose a new egg donor and surrogate. On our first attempt we were unsuccessful. On the second attempt our surrogate fell pregnant with twins. This time even though with each update and ultrasound scan we were excited we were also worried. The whole process seemed so fragile. We worried again we could get so far and then loose them again. It was nerve-racking. We sighed a small sigh of relief when the twins reached beyond 22 weeks. Because of the twin pregnancy we expected them to be born early!

One afternoon as I was walking home from work I received a call from our doctor that the twins (a boy 1.5kg and girl 1.2kg) had been born early at 30 weeks and 5 days! Panic stations!!! Much earlier than we expected. It was so worrying. They were born very premmie and in the Neonatal Intensive Care Unit (NICU) at Hiranandani Hospital Mumbai. We madly packed and booked flights. It was disappointing that we were not present for their birth as we planned to be. We spent every spare moment until the flight trying to get updates from the Hospital and worrying. It was only one week earlier when we told our family, friends and work we were expecting twins! It was like a second coming out.

Seeing our children for the first time was overwhelming! Overjoyed at last and our time in India while the children where in NICU was enriching and bonded us
to India forever. It gave us an extended opportunity to meet with our surrogate and thank her for gift in helping us become a family.

There were many hoops legally and administratively to jump through both before and after the birth. We had to register with the Department of Foreign Affairs for out intentions to lodge a citizenship by descent application before the birth of the children as well as Genetic tests in Australia and in India. Numerous Affadivits and submissions from our Australian and Indian Solicitors.

Our family has been more than positively accepted by family, friends, colleagues and community to our great surprise. Everyone we have shared our personal story with has been accepting and encouraging. Our family 3 years on continues to thrive with the support of our parents group, our childcare and local community. We also share a bond and continuing relationship with our friends in the Gay Dads Community.

Our experience however has been difficult and fraught with the inconsistent and discriminatory approach our government takes with surrogacy, commercial surrogacy and the concept of parenting.

Neither myself of my partner are considered parents under current Australian Law to be the legal parents of our children. Only one of us can be on the birth certificate of the children, even though both of us planned every step of the way to conceive these loved and precious children together and even though one of use is the biologically related to the children. This is ironic in that in Australia two Lesbians in NSW can conceive donor assisted children via IVF and they can BOTH be listed on the children’s birth certificate as legal parent! This is frustrating and unfair. Especially since neither of them including all parents in Australia have to go through the legal and administrative scrutiny to become parents such as biological testing and legal procedures.

In order to become “legal parents” of our children we would have to go through a costly ($25,000 and up) and lengthily legal process to gain legal “parenting orders”. This is a cruel and uncertain outcome where we and our children would be subjected to further scrutiny in court appearance as to our “appropriateness to be parents” something the rest of society never has to do and has never had to do unless they have been accused of being negligent parents.

We appeal to the Commonwealth Government Inquiry to make the following changes:
1. Change the law to make parents such as ourselves the legal parents of our children in line with the altruistic surrogacy arrangements in Australia. Making our children equal to those born via altruistic surrogacy in Australia.

2. Decriminalise and legalise commercial surrogacy in Australia.

3. Ensure that the laws created in Australia in relation to surrogacy are realistic, accepting that altruism and financial reward are inherently interlinked.

4. Ensure that surrogacy arrangements: Altruistic, pseudo-altruistic or commercial consider that the right of the child is to feel as part of a family as any other family is not compromised and governed by parenting orders, biological concepts.

Hoping our children have the same acceptance of family, rights and protection as any other Australian child no matter what conception was used.

Submission 13

I chose to access commercial surrogacy because it offered me the best chance of having the family I always wanted. Prior to undertaking commercial surrogacy I tried to have a family through co-parenting arrangements however these were not successful. Going through the process of co-parenting made me realise that I wanted to be a full time dad.

Criminalisation in NSW has affected my family in that my children were born after the laws were changed and thus I am unable to protect my children by applying for a parenting order as to do so would result in me being criminally prosecuted.

Being a father is important to me because it brings so much happiness and joy into my life. Caring for, guiding and watching our 3 girls grow is the most rewarding experience of my life.

I have not applied for a parenting order for my children because of the legal situation in NSW.

Submission 14
My name is R. I am 43 years old and work as a dentist with my own dental practice in Sydney City.

I knew I was gay when I was 6 years old. I was about 11 when it clicked that it was going to be pretty difficult for me to have kids of my own. Despite knowing this, I never stopped hoping that one day I'd be a dad. Luckily for me, in 2009 I met and fell in love with a man who shared my dream of starting a family.

In 2010 we were disheartened by the changes in the NSW State laws regarding surrogacy. It was only when a friend informed us that there was a small window of opportunity for us to sign contracts with an international surrogacy agency prior to the State laws coming into effect in March 2011 that we realised we hadn't lost our chance to legally start a family.

Since this time we have been blessed with two beautiful, healthy and happy children. M is now 4 and J 3. Our children are the most important thing in my life. Since they were born I feel more connected with the wider community. I feel my relationship with my parents and siblings has grown stronger as we now have more shared experiences. I identify first and foremost as a 'father' rather than a Dentist or as a 'Gay Man'.

We have not applied for parenting orders for our children because, from what we've heard, this is an expensive and intrusive process. We don't feel we need to have a court- provided piece of paper to validate our family. We share the same surname. We love each other unconditionally. We are a Family.

I would really like to hope that other gay men can have the life-changing experience we have had. I think the laws need to change to allow this to happen.
I believe that if a woman is, of their own choice, prepared to carry someone else's child that they should receive appropriate remuneration for the gift they provide.

The two incredible women in India who helped us create our family both bought houses with the payment they received. I believe that they were not exploited, instead that they made a decision to provide a better life for themselves and their families.

I do believe that there should be more regulation and possibly accreditation of international surrogacy agencies to ensure that no women are ever exploited.

I also believe that there are benefits for the wider community when gays and
lesbians have families. It lets people see that we are no different from anyone else. That we don't just parade down Oxford St at Mardi Gras.

It shows that we share the same hopes and dreams as any parent, regardless of race and culture, that our children are safe, happy and given the same rights and opportunities as any other child in Australia.

Thank you for taking the time to read this submission.

Submission 15

Executive Summary:

This anonymous submission is from a NSW gay couple in a ten-year de facto relationship with a two-year old child born in India through commercial surrogacy. Our child is genetically related to one of her fathers and an Indian egg donor. This is the story of bringing our child into our family and Australia. We are very proudly a two-dad family and welcome the Australian government inquiry into surrogacy.

Overall, and based on our experience, we are pleased to make the following recommendations to the Inquiry:

Recommendation 1. Legalise commercial surrogacy in Australia. That a regulated commercial surrogacy market should be legislated and established in Australia, through coordination of federal and participating state health departments, with clinical protocols established by the NHMRC, and with appropriate guidelines established for commercial aspects.

Recommendation 2. Recognise commercial surrogacy overseas. That, given the continuance of Australian law to recognise citizenship by descent, all relevant federal legislation and regulations should be reviewed and synchronised to recognise and support overseas commercial surrogacy.

Recommendation 3. Establish a federal surrogacy advocacy office. That a surrogacy office be established by the Australian government to advise intending parents or intending surrogates about all aspects of surrogacy in Australia, as well as provide up-to-date information on commercial surrogacy overseas with recommendations similar to DFAT travel advice.
Recommendation 4. Decriminalise commercial surrogacy overseas under NSW legislation. That NSW legislation criminalising commercial surrogacy be retrospectively overturned from 1 March 2011 and that commercial surrogacy be at least decriminalised, if not made legal, here and overseas.

Recommendation 5. Recognise “intending” parents as the legal parents under Australian law. That Australian legislation be amended to recognise the “intending” or “commissioning” parents as the legal parents, not woman who gives birth, and her partner, provided neither of the latter have any genetic relationship to the child.


Recommendation 7. Fund objective peer-reviewed research into all aspects of surrogacy. That objective peer-reviewed research (through ARC and NH&MRC) be funded to better understand commercial surrogacy in an Australian context, to understand challenges facing and success achieved of existing families through surrogacy, as well as to better inform surrogacy decisions of future intending parents.

Recommendation 8. Pass marriage equality legislation. Although beyond the terms of reference of this Inquiry, we wish to put on the record the need for legislative changes to recognise marriage equality in Australia, as this is an important symbol supporting the diversity of families.

We hope that the Australian government would lead a COAG process to effect these changes and to align commercial surrogacy legislation in most/all jurisdictions.

Throughout this submission, we use the term surrogacy, which intend to mean commercial surrogacy unless otherwise specified. We use “we” and “us” throughout this submission even though only the biological father entered into contractual arrangements. The decision for us to begin a family through surrogacy was made jointly.

Part 1: Our Journey to Surrogacy
What made us want to be parents?

We both come from families that celebrate and embrace being a family. The privileges we enjoy in our lives have overwhelming come from the opportunities given to us by our loving families. The family is a very important social institution, although we respectfully disagree with the narrow conservative, religious definition we often hear of what constitutes a family. From well before our relationship commenced, we separately each had long held desires to be a loving parent of our own child, and which only strengthened once we were together. The question for us was “how?”

2005. Early in our relationship, we had two opportunities to become parents. In both cases, a lesbian couple approached us seeking a sperm donor with the promise to us of having some parental rights. In one of the cases, the couple split some three months after we had started discussing how things would work. In the other case it was clear the couple was being disingenuous about our having any parenting rights at all with any children born with our genetic material.

Over the years we have witnessed many examples of our gay friends donating sperm to lesbian couples to fulfil their desire of becoming fathers. But by and large these situations have not worked out with our gay friends often having to fight in court for their legal rights for access to their genetic offspring.

We had known of surrogacy for many years being available in California in the United States. We also knew of the prohibitive costs (for us) associated with it.

2010. Fortunately dear friends of ours – a gay couple – had decided to start a family through commercial surrogacy and had commenced their research at the time Surrogacy Australia was forming back in 2010. On a weekend away with them, they told us what they had learned, including helpful details about surrogacy in India. When we learned of the reasonable cost and the maturity of the commercial surrogacy industry in India, for the first time we saw surrogacy could be a real option for us to start a family. Our friends strongly encouraged us to learn more and suggested several people with whom to discuss Indian surrogacy.

The journey to commence commercial surrogacy

Based on our research, we identified and entered into an agreement with a reputable clinic in India in 2011. We were impressed by the maturity of their operation having many years of successful outcomes for all types of intending
parents – straight, gay, single, married, de facto – into Australia and other countries. Today they have created nearly a thousand families through surrogacy worldwide, including hundreds here in Australia.

In our due diligence we considered the following factors and determined to proceed with commercial surrogacy in India.

Legal situation in India

To understand the situation in India, we read widely, sought information from our clinic and discussions with experts and determined:

- Commercial surrogacy was deemed legal by the Indian Supreme Court in 2002 which upheld the contract between “intending parents” and the woman (surrogate) who carried their child recognising the surrogate could extinguish her parental rights through a commercial arrangement, provided she had no genetic link to the children.
- There was (and is) draft legislation before the Indian parliament to legislate commercial surrogacy – the Assisted Reproductive Technology (Regulation) Bill 2008 which aims to establish a regulatory framework for commercial surrogacy in India. This legislation recognised the rights of all intending parents – straight, single, and gay – to access commercial surrogacy in India. A legislated regulatory framework would be established ensuring the long-term viability of the industry.
- In absence of a legislated regulatory framework, the ICMR (Indian Council for Medical Research) had produced best practice guidelines in 2005. The clinic we chose followed these guidelines.
- The birth certificate of the surrogate child would contain the name of the intending/commissioning parent only, and not the surrogate.
- In our surrogate waiving her parenting rights, our child/ren would be born stateless meaning there would be no confusion/conflict with their Australian nationality by descent.
- As India does not recognise same-sex relationships, we entered into all surrogacy contracts with the biological father as a “single parent”.

Legal situation in Australia

We learned through Surrogacy Australia, expert family lawyers in Australia, academics and our own research that:
- under Australian law the legal “parents” of our child would be the woman who gave birth (our surrogate) and her husband/de facto partner, even though there is no genetic link to our child
- our child would be eligible for Australian citizenship by descent
- NSW law criminalised commercial surrogacy anywhere in the world but that we would only “come before” NSW law if we sought a parenting order through the NSW Supreme Court. We determined that a parenting order was not necessary as it does not provide us with any practical rights (e.g. Medicare, child care rebate, etc) to which we do not already have access.
- We engaged a family law firm in NSW to advise us how we would need to set up a legal arrangement to determine the custody of our child should either or both of us not survive. As intending parents, we also wished to document the narrative of our child’s story that would be taken into account by any court in considering the best interests of our child.
- Our wills and testament involve both our families in joint determination of the best interests of our child should we not survive our child before adulthood.

**Country, clinic reputation, service and duty of care to the surrogate**

We spoke at length to several couples who had engaged in commercial surrogacy arrangements with our chosen clinic in India to determine their experience – good, bad, unexpected. On balance we were comforted that people spoke well of our clinic. Not everyone experienced a smooth journey. But given the complex and complicated nature of commercial surrogacy, where emotions run high, where intending parents are novices on very steep learning curves, not to mention transacting across a vast cultural and geographic divide, it was remarkable that it worked so well.

We went to two annual Surrogacy Australia conferences in Melbourne to meet with the clinic’s director and appraised ourselves as best we could about surrogacy in India – the advantages, risks, unknowns.

The best of India’s primary care – clinical and hospital services – are as good as the care available anywhere in the western world. We chose a clinic that employed the latest technology with western trained specialists.

While we had never been to India, we have travelled extensively through Asia over the years, including living there. We were well prepared to expect standards...
of customer service that might not meet western expectations and were able to appreciate how things get done from an Asian perspective.

We were impressed with the “one-stop-shop” service available from the clinic, meaning it helped clients with every component of the surrogacy lifecycle: egg donor selection, surrogate selection, IVF, all obstetrics and gynaecology, clinical care, emotional and psychological support of the surrogate, food and boarding for the surrogate, insurances, legal advice, etc.

The certainty of a fixed price for the whole surrogacy journey, broken down into sequential phases, was an important consideration for us. We did not pay everything upfront but progressive payments were made based on clear success markers as the pregnancy reached the next stage.

**Alignment of incentives of both parties in commercial surrogacy**

The commercial arrangement through contract between us and our surrogate gave us great comfort that the incentives of both parties were aligned to ensure the desired outcome. Our surrogate and her husband already had three children of their own, meaning three things:

- she was not becoming pregnant for maternal reasons
- she was entering a commercial surrogacy arrangement to ensure the future of her children’s future. The average annual salary in India is around $2k, meaning the payment would give her family, which is from a poor background, a “leg up” and quality of life they had never before enjoyed. (Some experts believe this amount is too extravagant and distorts the market. However, we believe this was fair recompense for our surrogate for not working for 9 months, to live away from her family and community, and to perform a job that was not widely accepted or understood in her culture, in addition to significant burden of pregnancy.)
- she was biologically capable of giving birth to healthy children

The phased progressive payments in effect meant she was getting paid for doing work with a salary at regular stages. We did not pay her a “bonus” at the end but instead opted to give her and her children gifts. We spoke to several people and determined that paying a bonus could create unhelpful expectations of future surrogates and distort the surrogacy market.
Clinical protocols – egg donor and surrogate

As a couple we determined that the most important outcome for us was to have a family. Therefore, once we had done sufficient due diligence on our choice of clinic, care of the surrogate, legal considerations, risks, etc we then left it to the clinical experts to advise us of the highest probability choice at each decision point along the surrogacy journey.

We decided to choose an Indian egg donor because the clinic had greater control over the quality of the donor as opposed to using an overseas agency. A secondary consideration was that we wanted our child/ren to be connected to their surrogacy journey and being born in India.

We were given the profiles of some 100+ egg donors of Indian background, of differing educational attainments. As a couple, we drew up a scoring rubric that objectively assessed each donor. Most important for us was to select an egg donor who had successfully donated previously, as measured in terms average number of eggs collected in a cycle, that successful pregnancies had arisen from these cycles, and also whether the egg donor had children of her own. It did not matter to us that somewhere on the planet our child has half-siblings. We knew from the outset that under Indian law the egg donor would always remain anonymous and that our child would not be able to meet her.

While some couples wanted to choose their surrogate because they wanted to have a continuing relationship with her as their child’s “tummy mummy”, we learned from other couples’ experiences that this was not always the best decision as often their choice of ideal surrogate was not clinically ideal. We therefore allowed our clinic to determine based on their objective assessment the most ideal woman to be our surrogate at the time we had intended to do a fresh fertilisation and embryo transfer. We were introduced to her before entering into a contractual arrangement.

We met with the clinic’s in-country representatives seeking statistical information on success rates for the clinic, as well as understanding the clinic’s protocols for the IVF process. We agreed to do a four-embryo transfer into our surrogate per the clinic’s protocols. Statistically this meant a 73% chance of a successful pregnancy at the first attempt, with a 25% chance of twins and a 3% chance of a triplet pregnancy. We were completely aware of the possibility of twins given the four-embryo transfer and would have continued with a twin pregnancy without reduction. We also knew under Indian law that a triplet pregnancy required a
reduction to twins. Knowing the probability was around 3%, we were comfortable in proceeding knowing this would not be a likely outcome.

We did a fresh transfer of four embryos in late 2012 and had confirmation of a single heartbeat – a singleton pregnancy – in January 2013.

**Cost of surrogacy**

The total cost of bringing our child into our lives was around AUD $70,000. This included fees for the egg donor (~$1,500), fees for our surrogate (~$7,000), clinical and hospital fees (~$15,000), legal costs (~$5,000), citizenship tests and fees (~$2,000), 2 people travel and accommodation costs for fresh embryo transfer (~$10,000), 2 people travel and living in India for 4 weeks for birth of our child (~$20,000). Fortunately for us, the AUD was at parity with the USD at the time, being the currency used by the clinic for pricing.

There was one small variation to clinic’s fee schedule with an unexpected infection about 6 months into the pregnancy, costing an extra $1,500.

We financed all of the surrogacy costs through accrued savings but paid for flights and accommodation through debt.

**Pregnancy progress**

We were regularly kept abreast of the progress of the pregnancy receiving weekly specialist reports for the first trimester, including scans, measurements, and vital signs. Reports dropped to fortnightly for the second trimester and then monthly for the last trimester. At all times did we feel fully informed within reason, given the circumstance of being some 10,000 km away and given cultural differences.

The pregnancy was in “the middle of average” for every vital sign and foetal growth measurements the entire way through, and went full term with our child being born by C-section, of very healthy weight.

**Phases and time taken**

Overall it took just over 3 years from when we decided to pursue commercial surrogacy to the time our child was born. We would break down the phases as follows:
Phase 1: clinic selection (6 months)
Phase 2: egg donor selection, saving money (18 months)
Phase 3: IVF, surrogate selection and fresh embryo transfer (2 months)
Phase 4: pregnancy (9 months)
Phase 5: exit India (1 month)

Assistance from government

We received excellent support from the Australian High Commission in New Delhi in the lead up to our child’s birth, in obtaining Australian citizenship and emergency passport. We engaged a local lawyer who had worked previously with the Indian FMRO and held our hand through the 3 weeks it took to:

- Australian citizenship by descent
- Emergency Australian Passport
- Secure an exit visa
- Leave India

Back in Australia, we were grateful for being able to access the parental leave allowance through Centrelink for dad #1 whose work did not have a parental leave policy. Dad #2’s work did provide primary carer leave on full pay for 3 months.

Part 2: the Joy

Meeting our child for the first time

It is a cliché because it is true: meeting our child for the first time is an overwhelming feeling of joy – and relief – that words cannot describe. One of our mothers and one of our sisters were there in India for the birth. The birth came a little bit unexpectedly as we had expected the pregnancy to go the full 40 weeks.

At 39 weeks, the clinic had arranged for us to be at the final ultrasound and to see our surrogate. It was wonderful to see her with her very big belly and to thank her for doing such a wonderful job and to let her know we were thinking of her for the remaining week and birth. But overnight there was some leaking of
amniotic fluid so there was concern of risk of infection for the surrogate so it was determined to do a C-section the following day.

For some reason the clinic could not reach our mobiles when the decision had been made and so we went about planning our day. Our driver eventually contacted us: “Cancel shopping, your baby is being born in 45 minutes. We go to hospital!” Our excitement levels went off the Richter scale as we rushed around thinking about what we’d need to take to the hospital.

We quickly arrived and were taken up to the delivery ward and sat down in the waiting room. The intern kindly put on a DVD of the movie Madagascar (!) for us to watch while we waited eagerly. How wonderfully surreal it was. After some 20 minutes a nurse came into the room and asked us the name of our baby. (In India it is illegal to determine the gender of any child before birth so the question caught us by surprise.) Seeing our confusion, she quickly realised we were there to meet our child for the first time. She corrected herself: “oh, you’re here for your new baby – it’s a….” and she proceeded to tell us the gender. Of course one of us was sure it was going to be a boy while the other was expecting a girl. The bet between us was finally settled!

“Come with me”, she said. All four of us went to the viewing room and saw about six humidicribs each containing a very little human. We saw the first baby which was rather pale in complexion and thought “that’s not ours, we didn’t use a western egg donor”, so proceeded to scan the room at the other children looking for an unnamed baby. Only two of us could go in, so we dads (!) put on our gowns and masks, entered the neonatal intensive care room and the nurse took us to the first pale-complexioned baby. “Please meet your new baby!” The tears running down our faces became rivulets in the grooves our enormous smiles had created. Finally after such a long journey, we were a family! Our lives changed in that moment forever.

We each took turns holding and kissing our healthy baby and presenting it to grandma and auntie through the viewing glass.

There were some minor breathing difficulties as is often the case for babies born through C-section, so it was determined that our baby would spend about 48 hours in hospital. We went back the next day a viewing and for grandma and auntie to hold our baby. We were then told to return the following morning for “baby pickup”!
The photos show two very proud dads, grandma and auntie holding our little treasure out the front of the hospital on a very busy dusty Indian city road. Our family journey started in earnest at that moment.

A week later we had arranged to see our surrogate again to introduce her to our baby, to thank her for the amazing and courageous job she did and to let her know that the little human she had grown and cared for over the last 9 months was going to a family full of love. Our surrogate picked up our baby, cuddled and smiled and gave a beautiful kiss on our baby’s forehead. What a perfect moment.

We have endeavoured to maintain contact with our surrogate because we would like our child to meet her again in a few years’ time, as well as the wonderful people who helped us at the clinic. Contact with our surrogate has been through the clinic because she does not have Internet access and does not speak English. We have sent a few emails with family pictures to the clinic which translates and shows them to our surrogate when she is able to visit the clinic. However, our surrogate recently moved and the clinic has lost contact. We sincerely hope we can again reconnect. Through her courage and generosity, our surrogate gave us the most amazing gift.

**Part 3: the Stress**

*India closes down commercial surrogacy before we are pregnant*

India changed its visa regulations relating to commercial surrogacy, around November 2012. We were due in India for IVF and fresh embryo transfer in December. Unbeknown to anyone in the surrogacy industry India, the Indian government unexpectedly changed the visa regulations for foreigners seeking to enter into commercial surrogacy arrangements with clinics in India. In effect, if a couple was not heterosexual and married for at least two years, the appropriate visa class (medical visa, subclass surrogacy) could not be granted. Up until this time tourist visas had been tolerated.

There was incredible confusion at this time. Our clinic told us to ignore the directive saying they had no idea why or from where it had been made. They were certain it was an administrative mistake and that it would soon be overturned. They told us to proceed as planned and that our egg donor had started her hormone treatment for the donation cycle. Fortunately, in our case many parts of the Indian bureaucracy were equally confused. We were told other Indian agencies could not confirm this change, so we proceeded with the correct
visa applications for surrogacy. Such a visa was necessary to ensure we could get an exit visa for our child from India.

The Indian consulate in Sydney was taking some time to determine our respective visa applications. After several unhelpful phone calls, the consulate called in one of us to discuss the applications. There was complete confusion as to whether or not we could be granted the surrogacy visa. We now had only days before our flight. All this time we were getting conflicting information from Surrogacy Australia saying we needed the surrogacy visa yet our clinic told us to just come on a tourist visa. As the consulate meeting dragged on it was becoming increasingly clear that the visa application would not be approved in its current form so we asked to take back the application to “make some amendments”. In reality we wanted to remove our applications before a determination was made and a rejection recorded in their system. In the end, we decided it was better to have the problem of trying to get our child out of India than us trying to get in.

The change in Indian visa regulations and the uncertainty it created took a big toll on us. We became pregnant about 6 weeks into the 3-month moratorium imposed by the Indian government on clinics who had entered into commercial surrogacy arrangements with foreigners post visa changes. Had our pregnancy failed at any point it was likely we would not have had another opportunity. We really only had this one shot at starting our family. The stakes and stress on us could not have been higher.

Added to this was the uncertainty of not knowing whether we would be able to get our child out of India easily, or at all, owing to our not having the correct visa class. There was a dearth of information available from the Indian government and the “information” in online forums was most unhelpful, if not destructive. Rumours circulating online of having to pay massive fines or bribes to Indian officials to get an exit visa kept us awake at night.

These two factors on the Indian side of the equation put enormous strain on our relationship, almost to the point of breaking.

**NSW legislation makes us criminals for starting a family**

NSW legislation making commercial surrogacy a criminal offence commenced operation 1 March 2011. The amendment was an eleventh-hour variation by The Hon Linda Burney MP to legislation proposing to legalise altruistic surrogacy. The parliamentary committee did not consider commercial surrogacy in its terms.
of reference for altruistic surrogacy and despite being blindsided the parliament accepted this amendment for fear the bipartisan-supported legislation for altruistic surrogacy might fail.

In anticipation of the impending changes, we entered into a service agreement with our clinic before this legislation came into effect. However, because we did not have enough money saved at the time we were not able to commence our surrogacy journey until December 2012. Hence the contract with our surrogate postdates the effect of the NSW legislation. We feel as if we are in a legal limbo with respect to NSW legislation.

**Part 4: Ongoing impact of existing surrogacy and related legislation in Australia on our family**

**NSW criminalisation and discrimination**

That commercial surrogacy is illegal in NSW does not have a measurable impact on us on a daily basis. But it does mean we constantly have to take precautions such as keeping a low public profile for our family to ensure we keep below the radar of the NSW DPP. Hence this submission is anonymous. To think that we are potentially criminals for starting a family through commercial surrogacy is as frightening as it is absurd. That we cannot celebrate our families more publicly in NSW is shameful.

There is a perceived stigmatism in the media and in public debate that commercial surrogacy in developing countries is akin to child trafficking. We accept that surrogacy practices at some clinics in developing countries are well below acceptable standards and should not be allowed to operate. The unfortunate closure of commercial surrogacy in India and Thailand to Australians is a terrible outcome for many latent families. This travesty owes itself to the alleged abhorrent behaviour of two unscrupulous married Australian couples, one in each country, and each leaving behind a twin sibling they did not want. To think that anyone, no matter their circumstance, could leave behind a child, for whom they have sole responsibility for bringing into the world, is sickening. The media was right to shine a light on these repugnant episodes. But it was not and has not been balanced with the hundreds of good news stories of commercial surrogacy in developing countries. Instead the same brush has tarred all families through surrogacy.

Part of the motivation for our submission is to record our family story. We engaged in commercial surrogacy in a country where it has been legal for many
years, the industry is mature and where Australian couples had a solid history of successful outcomes. We chose a clinic that employed world’s best medical practice, strictly observed strong ethical standards and guidelines established by the national medical research council. Our surrogate was there of her own volition (the clinic did no recruitment) and was appropriately cared for by the clinic, as well as she would have been in any western country. She entered into commercial surrogacy because she could give her skill of starting a family as a gift to another family who were not able to do so themselves, and in doing so helped her own family. We were pleased to pay her for doing a job for us and she was pleased to do a job for us for which we paid her. Our Indian surrogate is no different than an American surrogate who chooses to enter a commercial surrogacy arrangement through contract.

The dozens of couples we have met who were seeking a family through commercial surrogacy, all have done so in absolute good faith, with the right intentions and utmost concern for the welfare of the surrogate and children born. For many, commercial surrogacy is the absolute last resort. We have dozens of love-filled two-dad family friends in a growing community here in Sydney. We likewise know dozens of straight families through surrogacy who adore their surrogate children.

The criminality of residents of NSW who demand world’s best practice in commercial surrogacy, in which the welfare of the surrogate is paramount, is an injustice.

**In Australia, we are not our child’s parents**

“Darling, we need to tell you something. Even though we were the ones who brought you into this world, who planned and saved and dreamed of having you, and that without us you would not be here, we are not your parents according to the law in Australian where you are a citizen. Your surrogate and her husband are legally your parents. That’s right, even though you’re not genetically related to them at all. Instead, your dads are viewed as your guardians or principal carers. But don’t worry, your dads have entered into complicated wills and testamentary arrangements with one another to ensure that if questions are ever raised about who your legal parents are that we have done everything we can to make the case before a judge that your best interests is to be with us. We hope we never have to prove our standing as your parents but we will fight for our family with every ounce of our being.”
We have an Indian birth certificate in which the bio-dad is listed as our child’s only parent. But this has not legally recognised in Australia. In lieu of formal recognition and to make international travel easier we have hyphenated our child’s last name with our two surnames.

Australian law must be changed to recognise commissioning/intending parents as the legal parents of children born through commercial surrogacy overseas.

Part 5: More Peer-Reviewed Evidence to Inform Our Decisions on Surrogacy

Professor Susan Golombok of Cambridge University in the UK is one of the world’s leading experts on non-traditional families and has been building a significant body of research into looking at the growing numbers of children conceived through assistive reproductive technology and what these developments mean for the parents and children involved.

In her 2015 book *Modern Families: Parents and Children in New Family Forms* Professor Golombok brings together for the first time the growing body of research into the wide range of family forms, undertaken in the UK, the USA and around the world. According to her research, “most strikingly, these studies show, again and again, that it is the quality of relationships that matters most to the well-being of families, not the number, gender, sexual orientation or genetic relatedness of the parents, or whether the child was conceived with the assistance of reproductive technology”.

“It’s stigmatisation outside the family, rather than relationships within it, that creates difficulties for children in new family forms.”

http://www.cam.ac.uk/research/features/families-with-a-difference-the-reality-behind-the-hype#sthash.b6g1xmfl.dpuf

While there is no equivalent research on surrogate families here in Australia, a paper published by the Australian Institute of Family Studies has looked into same-sex families and the impact on the emotional, social and educational outcomes for children raised by lesbian and gay parents. A key positive finding is that “research to date considerably challenges the point of view that same-sex parented families are harmful to children. Children in such families do as well emotionally, socially and educationally as their peers from heterosexual couple
We need to fund further independent and objective peer-reviewed research to better understand commercial surrogacy in an Australian context. With thousands of families through commercial surrogacy already in Australia this research should be about better informing our decisions, not about whether or not commercial surrogacy should be allowed. It would not only be absurd but also discriminatory to deny the reality/existence of thousands of Australian families. Like us, others should be allowed the opportunity of having a family.

**Part 6: our family in Australia**

How has the community in Australia responded to our family? Amazingly positive! Being a two-dad family we thought we might encounter some discrimination, prejudice or disapproval, but in all honesty in the 2.5 years of our child being in Australia, we have not once experienced anything we might deem as being negative. Even in rural and regional centres of Australia people have come up to us and congratulated us on our family. It has been most heartening. We are not naïve to think that everyone is this way, however, in our experience the humanity and kindness we have encountered across Australia do not accord with the conservative debate in the media and public forums. These negative views seem to be disproportionate to the hundreds of positive personal interactions we have had with complete strangers of all backgrounds.

What do we love most about being a parent? It is not an easy task finding words to describe the tremendous joy, fulfilment and privilege that comes with being a parent. Since our child was born, we have loved and embraced the sense of honour and responsibility that is involved in raising our child. Life presents us all with various challenges but, as people, we grow through learning and overcoming. Being parents presents us with new challenges that enrich our lives and allows us to continually grow as individuals, as a couple, as parents, and as a family. It is immensely rewarding.

Not only has our relationship as a couple evolved and strengthened but so too have our other relationships. From our immediate family to broader friendship circles, new dimensions have emerged; our child has been something of a binding element in many new relationships. Particularly with friends who also have young children, our relationships have evolved to form dimensions that we
had not previously experienced. Becoming parents has offered us a sense of community and family that we would not have otherwise have experienced.

We cherish and embrace our role in revealing the world to our child and preparing him/her to become a 21st century, global citizen. By imparting our world view and values to our child, we hope to empower him/her to understand the world is rich for its diversity and that there is enormous fun and opportunity available to them throughout their life. And we are learning so much through our child’s eyes too!

Do we plan to add to your family? When we began our surrogacy journey, it was our intention – and hope – to try for two children. We had arranged to engage our Indian egg donor in two cycles; one of us would fertilise the first collection of eggs, while the other of us would fertilise the second cycle’s collection. A personal choice, we felt it would be nice for each of us to be the biological father of our children while maintaining a genetic sibling link.

We proceeded with our first cycle which resulted in the successful fertilisation of 12 eggs, a pregnancy and the successful birth of our child. At the same time as our first cycle and fertilisation, the other of us left a sperm deposit that was frozen, to be used at our egg donor’s next cycle/collection. As events transpired with the changed visa regulations in India, a second cycle/collection became impossible. Our clinic informed us they could not proceed with the second cycle/collection due to the uncertainty around the industry for international patients so we decided to put our plans for a second child on hold until such time as there was clarity and structure again.

As it turns out, some 3 or so years later, there is now less clarity and structure around this process. The opportunity for us to have a second child in India is no longer a viable option. Nor is it a viable option for us in several countries around the world with Thailand and Nepal stopping commercial surrogacy.

Even if it were still possible in India, we have decided not to add to our family. Our first pregnancy contributed to a great deal of emotional anxiety for us both owing to the uncertainty, inconsistency and lack of legal frameworks – locally and abroad. Going through all of this again is not in our family’s best interests. We count our blessings on a daily basis to have our beautiful family and cherish its current structure.
We are also surrounded by a large mix of traditional and non-traditional families, all of whom we consider extended family members.

Part 7: Some comments for the Inquiry

**Australian government guidelines for commercial surrogacy overseas.** For as long as Australian law will recognise citizenship by descent, commercial surrogacy in foreign jurisdictions will continue. The law needs to reflect this reality. Surrogacy is not black and white where anything foreign is bad and anything in Australia is good. Just as we found a way to start a family through surrogacy despite the almost insurmountable hurdles and personal risks, so too will others in the future who equally have a burning desire to start a family with no other means.

**Regulated commercial surrogacy in Australia** We fully support altruistic surrogacy and commend such wonderful and selfless women who wish to gift a couple with a family. But the reality is that demand far exceeds supply. The illogicality of altruistic surrogacy can be de facto discrimination against the surrogate: why is everyone in the altruistic surrogacy journey allowed to get paid for doing their job – the specialists, the nurses, the physios, the nutritionists, the radiographers, the hospitals, and so on – except the surrogate? A regulated commercial surrogacy market in Australia should be considered:

- An agency would monitor and keep accountable surrogacy clinics
- the commercial aspects of surrogate contracts could be limited to, say, paying the surrogate no more than the minimum weekly wage in line with primary carer allowance.
- The NH&MRC could establish clinical protocols
- Medicare subsidies for IVF should extend to surrogacy
- Coordination of health and family departments across jurisdictions
- A federal surrogacy advocacy office should be established to assist and support intending parents and intending surrogates

**Submission 16**
We chose Commercial Surrogacy because at the time this was our only option for us to be able to start a family. At the time we started this journey we had been in a stable same sex relationship for 18 years and longed to have a family of our own. We looked at other options like adoption and fostering, but the process and the length of time was an issue for us. We also looked to friends and family for help, but this was awkward as we wanted contracts drawn up etc to ensure that everything was done lawfully and correctly. After years of discussion and thought we heartbreakingly resigned ourselves to the fact that we would not be parents, until, we where made aware of Commercial Surrogacy. We looked into this in great detail and found a suitable clinic in India that was professional and looked after the surrogates well and was also affordable for us. It is also worth noting that at the time we started this process surrogacy was still legal in NSW. Once we started the process we were extremely lucky and 16 months later we were blessed by the arrival of 2 healthy girls. During this time the clinic in India was extremely professional, keeping us up to date monthly with all the scans etc and also ensuring the wellbeing of the surrogate. We were also in touch with other families (gay & straight) who were going through the same journey and their situation was the same as ours, this was their last stop on a long journey to have a family. Also through this journey, through conversation with other families, it became apparent that they would have much rather have been able to do this in Australia, but through pure desperation had to look overseas.

Whilst we were in India for the birth our children, the law changed in Australia criminalizing commercial surrogacy, this was an extremely stressful time as we where unsure if we were going to be prosecuted upon our return. This action has affected us greatly, we wanted to expand our family and now can not, and also as the girls get older we have to add to an already difficult situation that daddies effectively broke the law in having them……..not great for their self esteem!

Finally, as a parent, I can remember my feelings of desperation of wanting to have children and not being allowed to, and also the joy and continued joy we have now that we are parents. I can only feel extreme sadness for those couples (straight or gay) who are affected by this law and will never be allowed to have this beautiful experience. I can remember when I was at my lowest point through this journey, a friend once said to me “you will be a parent one day, but the process may not be the way you expect” this has stayed with me throughout and I believe as an ever changing progressive society, we need to look at every individual situation in this case and make informed decisions from there, as this doesn’t only affect future children born through surrogacy but also those who have gone before.
Submission 17

I am uncomfortable with the knowledge that my conduct might or could be considered a breach of the state law. As a result I don’t talk about the process with people I don’t know and refrain from asking Family Court for parental rights for the moment which makes some formal common family assistance requests more complicated.

At the time that I decided to have a child through surrogacy, there have been too many negative stories of men’s experiences were they were tricked by the mother/mothers into an agreement that was not upheld. Those were painful stories where the father’s relationship to their child was compromised due to the mother’s rights. I wanted to have the responsibility of raising my child in an environment where no one would interfere with his development let alone trick me into giving my genetic material in false promises.

I contacted an international clinic and signed a contract with a surrogate through them. I followed the pregnancy development mainly through medical reports and scans that were sent to me. I went to meet the surrogate half way through the process and participated in an ultrasound with her which was amazing. The pregnancy was not easy and my son was born week 35. The surrogate was unwell and had to stay in hospital for a few days. I went to visit her in her private room and was happy to see that she is receiving great medical service. After my son she had another baby daughter. We are in regular contact.

I am the legal parent of my child. I am listed as the father and the Surrogate is listed as the mother which is according to the law in Thailand.

Meeting my son for the first time was an event I am unable to put into words. It is like nothing I have ever experienced before. The bond and connection was almost immediate. I felt that my life/family life has finally begun it was an amazing blissful feeling. I just wanted to be with him and take him home with me as soon as possible.

Not having surrogacy in Australia means that I had to travel overseas and remain there for nearly 5 weeks. It is a nerve racking process when you are in a foreign country and relay on the local government and their laws. The cost of the stay and the cost of the process were high. I would have preferred to do this in Australia close to friends and relatives and spend that money on my son. Saying that, I would have gone to any length and done anything I can in order to have
my beautiful son. I am planning to increase my family so that my son has another sibling (same genetic material). It worries me that I might come across great difficulties in going down that path this time.

On a positive note, the Australian embassy in Thailand were fantastic they helped me through the process in an efficient non-judgmental way which was a pleasure to experience. My work colleagues were excited for me. They sent us flours to Thailand. I received a 6 month parental leave which I could have extended to a year if I wanted to. I received only positive responses to my family. I never came across any negative remarks or attitude. My parents and siblings were beside themselves with joy. They never thought they would live to see the day.

Criminalization Surrogacy means that I would not be able to extend my family. It would also raise the ugly head of those that are against surrogacy arrangements. It can potentially confuse my son about his existence I suppose. Hopefully we would not need to deal with this in the future.

As a gay man I feel that my family is being discriminated against due to the NSW law there is no question in my mind that as a dad I do not have the rights over my child as a mother.

I strongly believe that commercial/ ultraistic surrogacy should be regulated so that all parties are protected in the process. These would prevent horror stories such as those that we have heard of over the last few year and ensure that people like me can have a family of their own.

I love being a parent I love watching my son grow and in a way growing with him.. Understanding his needs, creating a nurturing environment for my son is a joyful task.

Submission 18

I am writing to disclose our personal journey for surrogacy with the view to increase your understanding of people like us.

My (same-sex) partner and I have been together for 12 years and we have a wonderful son, E. E was born with a lovely surrogate in India in 2012.
Our journey with E has been totally incredible and we are extremely grateful for surrogacy to fulfill our dreams of having a family. Being a family has brought my partner and I closer together and we are creating shared memories every day with our wonderful little man.

Having said that, going via India, Thailand or any international location to achieve our dream is difficult and expensive. We were lucky but many are not.

We believe everyone should have access to surrogacy with terms laid out to benefit everyone involved. We believe there is an opportunity for Australia to create an effective and regulated program around surrogacy that facilitates families and provides support and protection for the surrogate.

We are hoping to do surrogacy again but due to legal restrictions, we need to do this in USA. We dearly want E to have a sibling. We would have loved to do this in Australia where we can establish a long-term relationship and bond with the surrogate in our homeland. I hope that we can soon celebrate a change in legislation to favour commercial surrogacy in Australia.

Submission 19

We are writing to you in response to the Commonwealth parliamentary inquiry into surrogacy as parents of a daughter born through commercial surrogacy in California in 2006.

We would like to share our incredibly positive life changing experience with the Committee, and detail the many benefits surrogacy has had for both us and for our surrogate, S. In addition, as you consider changing the current surrogacy laws, we want to urge you to think about how your policies impact the many Australian children who have already been born via surrogacy.

Ever since meeting one another in 2001 we talked about having children. It was one of our worldviews that drew us together. Being a gay couple we knew that the “traditional” way of having a child was not an option. We thought about adoption, fostering, and surrogacy. At that time, we were living in California where commercial surrogacy is legal and commonly used. We settled on the option of surrogacy as it would allow us to have a genetic link to our child. We were introduced to our surrogate, S, through a commercial surrogacy agency. We hit it off immediately. S and her partner had two children via IVF. S loved being pregnant and understood needing someone else’s help to have children. She was looking for a way to make a bit of extra money while she continued to
be a stay-at-home mum; commercial surrogacy was the perfect fit. She could make some money while helping others and still be at home for her kids.

We had an incredible experience during S’s pregnancy, and it was an overwhelmingly joyful day when our daughter SH was born in March 2006. We still remember vividly how happy we all were in hospital that night. We have stayed in touch with S and her family. S often says that helping us have a child is one of her proudest accomplishments. We of course are forever grateful for the part she played in helping us have our beautiful daughter.

In 2006 obtaining SH’s Australian citizenship by descent and passport were not an issue.

In fact, her Australian passport arrived before her American passport. We were proud that even though we were living in the USA, the Australian government recognised the heritage of our daughter. When we moved home to Australia in 2012 we were taken aback by how the surrogacy laws had changed. We were devastated to hear that the New South Wales government was now saying that the beautiful relationship we shared with our surrogate was not only illegal but punishable by 3 years in jail. We were horrified that even though only our names appear on SH’s birth certificate that our government doesn’t consider us her parents. We were confused by what to do and how to respond.

Imagine having a daughter for 6 years and then all of the sudden being told by your government that even though only your names are on her birth certificate; even though you have a biological connection to the child; even though only you have raised and cared for this child since the first moment of her birth YOU ARE NOT THE PARENTS. We can not fathom how it is in the best interest of our daughter to be told this. How can the government ignore all rational facts and default to the parents being the surrogate and her partner?

Imagine what a devastating impact this logic has, not only on the parents, but more importantly, to the children born through surrogacy. The government is telling these children that their creation is wrong, bad and illegal.

We urge you to consider what is in the best interest of the many Australian children born through commercial surrogacy overseas. Please think about the message you are sending to them about their parents and their existence.

We recognize that others can point to rare negative experiences that occur in commercial surrogacy arrangements around the globe. Of course we support laws that are aimed at stopping this abuse, but feel the current set of laws go much further than necessary. We feel by regulating and allowing commercial
surrogacy in Australia, the government could stem the potently unethical arrangements in some countries overseas.

Please remember that the overwhelming majority of commercial surrogacy arrangements are like ours. A woman wants to help a couple start a family. She makes her own choice to use her womb to help fulfil another couple’s dream. She is paid for her efforts, but the financial compensation is just a small part of her reward. Allowing women to make that choice in Australia would be a wonderful step forward.

Our lives have been immeasurably bettered because S helped us have our beautiful daughter. As you work through the new regulations we hope you will remember surrogates like S and families like ours.

Submission 20

We are a same-sex couple who have been in a committed relationship since 2009, with a commitment ceremony in 2011.

In November 2015 we became parents to our daughter as a result of a traditional altruistic surrogacy arrangement in Australia. In our situation, our surrogate is a close family friend who will have an ongoing relationship with our daughter.

The intention of our submission is to share our experiences of altruistic surrogacy in Australia.

Domestic surrogacy is not overly common in Australia. Perhaps as a result of this, our experience was that apart from relying on information from the not for profit Surrogacy Australia organisation, and the experience of other people who had been involved in surrogacy, we had to navigate ourselves the range of medical and legal issues that arise in surrogacy situations.

The main issues we identified include:

- **Legalities** - Laws and requirements vary by State with discrimination against same-sex couples in ACT, VIC, SA and WA.

- **IVF** - No Medicare rebates for IVF use for Surrogacy. This is discrimination for couples whose only option to create a family is through surrogacy.
• **Surrogacy Agreements** - are not enforceable by law, resulting in uncertainty for Intended Parents.

• **Health / Hospital** - Lack of hospital and health department policies and guidelines in relation to surrogacy situations. Whilst we met many individual health workers who were incredibly supportive of our situation, they were badly let down by the lack of clear guidelines and policies.

• **Counselling** - the required counselling is, in our opinion, insufficient to fully address the social and psychological issues that exist in surrogacy situations.

• **Birth certificate** - had our surrogate been in a relationship, her partner would have been placed on the birth certificate as the baby’s father, despite not being the genetic father.

Given the lack of a national, consistent framework for surrogacy in Australia, it is not surprising that so many people choose to look to internationally options for surrogacy.

We strongly believe that a national model should be implemented in Australia that supports and encourages domestic surrogacy as a means of family creation, in the process protecting the interests for all involved, including of course the child.

There are many potential benefits to having regulated, compensated surrogacy model in Australia, including the ability for Intended Parents to be actively involved in the pregnancy journey and birth, as well as the opportunity for an ongoing relationship between children and surrogates (and their families).

Our specific recommendations include:

• Compensated surrogacy to be introduced into Australia to provide a greater incentive for surrogates.

• Legal recognition of Intended Parents prior to the birth of the child.

• Laws that are consistent nationally, and that remove discrimination of same-sex couples.

• Consistent and adequate counselling that not only addresses the legal requirements but also provides the parties involved with the appropriate level of support.
• Recognition of, and clear policies for dealing with, surrogacy arrangements within the health system and government departments such as Centrelink.

• Improvements in the quality and availability of information for people interested in surrogacy.
APPENDIX B:  
SUBMISSIONS FROM OTHER COMMUNITY MEMBERS.

Submission A

I am an active member of the rainbow community and although issues surrounding surrogacy do not directly affect me, they do greatly impact members of my community.

Of utmost concern are the implications that loving parents could face criminal charges that could diminish their abilities to provide for their children. This is not in the best interest of these children.

Parents biological or un-biological should have immediate parental status of their children. This is a question of providing children with the same legitimacy and security they experience daily in their homes, within the society and country they call home.

Submission B

I live in the inner west of Sydney and have my own children. Whilst attending a local playgroup I have come to meet children who have gay parents, and have been born through surrogacy, namely international commercial surrogacy. I also know of a heterosexual woman who has a daughter through surrogacy. These children have become friends with my own children, and I write this submission with them in mind.

I am concerned that children born from surrogacy may be socially isolated, or at risk of experiencing discrimination and stigma about their family, may have limited information about their biological identity, that their birth certificate does have the names of both parents that care and love them, and their parents live with a fear of criminal prosecution.

What does it say to these children if the way they were conceived is illegal and there is a view that their parents have committed a crime in Australia. It tells them that there is something not right about their family, and maybe about them. But from knowing these children, I know that they have loving parents.
Decriminalising surrogacy will mean that these children and their parents do not have to live in fear of prosecution, that they can be open about their family structure, and that their parents are legally recognised in all aspects of their care, things like enrolling children in schools, consenting to medical procedures, signing a permission note, things that parents have to do everyday.

Being illegal creates a stigma around their very existence. These children have been very much wanted children. Their parents planned for them, and invested a lot of time navigating sometimes complex and difficult processes to make them. I know most of those parents that chose to go overseas and engaged in commercial surrogacy did so because of the lack of options in Australia.

Making commercial surrogacy illegal has forced many prospective parents overseas, where there are genuine concerns about the treatment of women, commercialisation of fertility as a money making business, and limited information and support post conception for children later seeking information about their origins.

Many women in Australia, me included, would consider being a surrogate for a couple who would otherwise not be able to have their own children. But being a surrogate is a huge commitment and impacts on your life, and your body. I support commercial surrogacy as I strongly feel that this effort, time and impact on someone’s life and body should be compensated.

I am concerned about international commercial surrogacy, as it is hard to be confident about the treatment of women and children, due to difference in financial and social privilege with many of the developing countries offering this option. The problem is that it varies and these things are essential in ensuring security for the prospective parents, and the rights of children.

It is hard to generalise about the treatment of women choosing to be surrogates in developing countries. Being a surrogate in some developing countries does offer a woman legitimate income. Labelling all surrogates in developing countries as being exploited is simplistic, patronising, and ignores the more complex issues. There are ethical issues about the work done by people in developing countries which benefit the west, but this is a wider concern in many areas. I have these concerns when I purchase clothing made overseas, or holiday and am served by a locally employed woman who I know earns so much less than I do here.
There are some countries that have well developed systems and regulations, and take care with the rights of children and woman. Canada and some states in America are known to have established surrogacy programs for example.

The real concern for me about international surrogacy is the varied regulations where potential prospective parents, children, and Australian governments have limited information and say about laws and regulations.

It is for this reason that I would support altruistic and commercial surrogacy within Australia, where it is fully regulated and there are considerations for screening, education, counselling and support for both prospective parents and surrogates. And where there are regulations about information kept about the surrogate, and the egg donor and means to make this available to children.

Children have a right to know their identity and their life story. And I would feel confident that a local system would be able to accredited and regulated. I imagine that Australia could learn from countries where this is done well, and which have a child focused approach to legal and policy matters.

Submission C

As a gay man, I have never felt the need to have a biological connection to my children. I grew up in an accepting family in regional Australia, however, still felt a degree of rejection on account of my sexuality. I know a lot of people have it worse and I am grateful for the love and care of my family. Still, as a young gay man, I felt the weight of social prejudice and it was difficult thing to accept.

I had always wanted to be a parent, but like so many other LGBTIQ men, accepted that it wouldn’t be possible: I couldn’t live my truth as a gay man and also be apparent. The two were simply incompatible.

Having a family has always been important to me; I have younger brothers and sisters and am by nature a nurturing and loving person. I focused my energies on being the perfect uncle, but was lucky enough to meet my husband and to subsequently make a life with him, including adopting our children.

It never occurred to me to choose surrogacy: I could never afford it and I simply felt no need to be connected by biology with my children.
Everything about my life had taught me that the people you choose to love are just as important as the people you share genetics with. For me, water has always been just as thick as blood.

Ultimately, though, what I believe to be the right choice is of little consequence. What is right? What is just?

I have met many men who have chosen to use surrogacy to create their families and I respect them and their choice. It was not the choice I made, but I understand the reasons behind the choice are complex and personal and I love and respect their families.

I do hold concerns for the treatment of surrogates in developing nations, however, can see that in the majority of cases they are protected and supported. I still hold concerns for kids, because I think it’s important to know where you came from, however, I’m convinced that the majority of dads do their level best to explain the process to their kids and to connect children with those who have played a part in bringing them into the world.

Because I have concerns for women and for kids, I have held reservations about commercial surrogacy. I am still not entirely convinced. I am worried that women in developing nations are susceptible to exploitation because they live in poverty or live in patriarchal societies that struggle to value women beyond their capacity to produce children. I am worried that while surrogacy may provide a short-term boost to the family’s financial capacity, it does little to build the capacity of women, such as providing education.

On the other hand, we know that the best way to improve the quality of life in developing nations is to invest in women because women are more likely to invest in their families and communities than men. If it is the women, and not clinics or husbands, who benefit financially from surrogacy, than I think it is a positive investment. I also understand that there is significant condescension in we westerners determining what is an appropriate investment for women in developing nations.

But, just as I am concerned about the conditions of workers who make the clothes or other items I buy, I am concerned that globalization exploits these women. I am worried that Westerners are benefiting from the poverty of those living in developing nations.

But over the past year, I have met many more parents that have used surrogates and realize that for many, this was their only shot at parenthood. They enter the
process with the best of intentions and with little support. They take huge risks to be parents and move well outside their comfort zone.

I realize that my discomfort is strongly related to the fact that these parents are forced to go overseas to create their families because they can’t do so here. I am frustrated that adoption is so restrictive in Australia. I am frustrated that altruistic surrogacy is regulated in such a counter intuitive way.

The laws around commercial surrogacy are well-intentioned – to protect kids and women – but they fail on each count. Kids face stigmatization and discrimination because their parents have engaged in illegal acts and face prosecution. Women overseas are less protected, because the rate at which intending parents access their services increases, without the assurances that might be afforded to them in other jurisdictions.

It is wrong that kids born through surrogacy don’t have the legal certainty of parentage orders, because in most cases, their parents are too afraid to seek parentage orders because of fear of prosecution.

It is wrong that kids grow up fearing that their parents will be sent to jail because of the circumstances of how they were born, or that their birth certificate lists a surrogate and a stranger as their legal parents.

It is wrong that these kids may face challenges getting enrolled for schools, being admitted to hospitals or applying for a license because the names on their birth certificates don’t match the names of the parents they live with or whom countersign their forms.

It is disgusting that if a parent was to die, these kids may be left in a legal limbo or be isolated and left alone because another parent wasn’t included on a birth certificate. As was seen recently with the Bulmer-Rizzi case in South Australia, these things matter. They really matter.

The best option when it comes to offering a harm-minimization approach that protects the rights of kids, women and intending parents, is a local domestic market.

Women in Australia, with proper oversight and regulations, are more able to safely act as surrogates with the protections of Australia’s family law, Medicare and other protections.
We need a regulated domestic market – perhaps with a capped surrogacy fee lower than the cost of overseas markets – to both encourage intending parents to access local markets and to provide the protections of Australian society.

Australia has over-regulated when it comes to assisted reproductive medicine in the past and this is a short-sighted regulation. The best way to ensure the agency of women is to create a local market, overseen by a government agency or health NGO in the field of ARM, that can protect the interests if all involved.

Similarly, Australia should do more to assist the practice of altruistic surrogacy. It is a wonderful and beautiful gift and no different to other ways that gay families are made, including sperm donation.

I firmly see surrogacy as another branch of assisted reproductive medicine and believe it should be regulated fairly and justly to protect all those involved.

Making commercial surrogacy illegal just forces people overseas.

A harm-minimisation approach is best.

Submission D

I was a traditional surrogate in an altruistic surrogacy arrangement for two close friends (in a male same-sex committed long-term relationship) in 2015 which resulted in the birth of a baby girl in late 2015. This surrogacy arrangement occurred in Sydney, Australia.

I would like to contribute to the current Inquiry into Surrogacy as I feel it’s important to encourage not only domestic arrangements in Australia (over the use of international surrogacy, particularly in developing countries or where a child has limited or no contact with his/her genetic links) but also to assist in identifying the current challenges with the current model being used and possible positive changes which could be made.

The main issues/challenges and recommendations I wish to identify for change through this experience includes:-

- Differences in legislation across Australian States and Territories. This is particularly difficult for a variety of reasons such as it being unlawful or illegal for a traditional surrogacy (over a gestational surrogacy) to occur in
3 states in Australia. It is also unlawful and illegal for surrogacy to be offered to same sex couples in some states which is incredibly discriminatory and is adverse to our human rights laws. The difficulty also for other surrogates I befriended through the journey, was when the intended parents lived in another state to the surrogate. There is no clarity currently on which legislation the surrogacy would then be governed by or the lines get blurred easily. Because of no national legislation, there also seems to be confusion with Government departments (such as Centrelink who provide paid parental leave; Medicare cards etc.) over the legal guardianship of a baby born through surrogacy, despite having written guidelines around surrogacy. **There needs to be a national framework.**

- **Psychological and emotional support.** Currently the law requires intensive counselling sessions with both parties, the intended parents and the surrogate and her partner if coupled, prior to actual pregnancy. Post-pregnancy there is also the ‘relinquishment counselling’ session which is a requirement for the parentage order, rather than necessarily being a mechanism of support. It is essential, that there be incorporated into any future framework, **mandatory counselling support** during pregnancy (a minimum of once per trimester with all parties, both separately and together) and post pregnancy which is unrelated to the parentage order. Surrogacy is an extremely emotionally turbulent experience, even when the experience is a positive one. Currently the support mechanisms in place are simply not adequate enough. Also, there are very limited options in each state for psychologists who specialise in the area of surrogacy.

- **Education in Australia.** Surrogacy is still very taboo in Australia with inadequate information available. This may be due to the fact it is uncommon or because there State regulated model of surrogacy rather than national. While we had wonderful people in the medical arena, the system is still very flawed with no consistency in policies across different hospitals and medical practices. In our experience, many medical people (Obs, Midwives, Social Workers) simply didn’t know what to do with us.
which was not very assuring. **More knowledge and experience in this area from medical personnel, as well as availability of information and support, is crucial.** Also, **education to the wider community is also essential** to broaden the prospects of successful surrogacy experiences without the burden of isolation/ignorance as well as increasing the possibilities of more surrogacies taking place in Australia.

- Incurred costs and compensation. Again, the laws are still very inconsistent across States and Territories around what is considered to be ‘pregnancy-related’ costs. Many surrogates do tend to be out of pocket as often there is no intermediary party to ensure reimbursement of costs or some surrogates feel awkward or negative around the financial aspect. There are also costs which may not have been identified initially, which come up through the experience (such as particular medical condition which impacts work etc). There are many experiences around this I have heard through being connected in with a surrogate group Australia wide. While initially my views and thoughts were completed adverse to any form of commercial/compensated surrogacy, I now do feel more inclined to support a compensated model due to the unseen and unexpected costs as well as the rather large physical and emotional toll experienced through surrogacy. If this is an additional incentive to be a surrogate in Australia, then this is hugely beneficial, particularly for the child as it would ensure a much greater possibility of an ongoing relationship with their birth mother/donors as well as strong relationships between all parties which is participatory throughout the pregnancy, birth and post-birth. More domestic arrangements would also assist in alleviating possible exploitation in the overseas surrogacy arena.
APPENDIX C: 

SUBMISSION FROM GAY DADS NSW.

What is Gay Dads NSW?

Gay Dads NSW, which is part of the Gay Dads Australia network, is a community and social group for gay men who are already fathers or those seeking to become fathers. It includes fathers through surrogacy, co-parenting, children from prior relationships, fostering and adoption. Social gatherings for kids and parents take place several times each year, in addition to parent education.

Through the years, many creative events have been run to support Gay Dads in New South Wales including seminars on pathways to parenthood, Gay Dad legal issues, and Daddy Boot Camp which supported expecting fathers with practical advice from an early childhood nurse on how to care for their newborns. Gay Dads NSW provides a platform for dads to ask questions, seek advice and share experiences with gay dads statewide.

Our submission

In NSW, a large number of gay dads create their families through altruistic surrogacy in Australia and through commercial surrogacy arrangements overseas.

We have collaborated with Rainbow Families NSW, an organisation that has considerable overlap in membership, to collect stories, experiences and perspectives. Our stories are included with this submission and also appear in the appendices of the Rainbow Families’ submission.

We contend that the current regime of laws governing altruistic and commercial surrogacy:

• Make it difficult for gay men to have families;
• Disadvantage children born through surrogacy; and
• Fail to achieve their aim of protecting children, women and intending parents.
We posit that the Committee should:

- Lift the ban on commercial surrogacy;
- Alter legislation to allow children born overseas through commercial surrogacy to be subject to parentage orders that reflect their family circumstances;
- Legislate for a highly-regulated domestic surrogacy market, overseen by a government agency or NGO, characterized by either commercial payment or compensation for “reasonable costs.”

A domestic market represents the most effective option with respect to protecting children, women and intending parents, and reflecting the diversity of ways modern families are made.

Similar protections must also be available to intending parents who opt to go overseas to make their family. A Government regulatory agency or NGO - empowered to monitor, accredit and pursue non-complying agencies both here in Australia and overseas could ensure protections for all participants.

**Gay dads and surrogacy**

In NSW, even though same-sex parent adoption and fostering is legal, very few children are made available for adoption, making it an unfeasible approach for many dads looking to make a family. Many gay dads won’t foster due to the lack of permanency arrangements.

Similarly, opportunities for altruistic arrangements are scarce, meaning that many gay dads see commercial surrogacy as their only option.

Because it is illegal in NSW to pay a surrogate, gay dads are put in the insidious position of having to break the law and engage a surrogate overseas if they wish to fulfill their dreams of being a father.

The ban on extra-terrestrial commercial surrogacy creates a number of problems for our children:

- There is a discrepancy between NSW law and the Commonwealth law, meaning that while our kids are able to return to Australia as Australian citizens, we cannot seek parentage orders that recognise the legal and emotional relationship between us;
- Many parents feel frightened to pursue parentage orders because they fear they will be prosecuted, leaving their children without legal parents;
The lack of parentage orders may make it difficult for our children to enroll at school, to be admitted to hospital, to sign up to Medicare or health funds, to claim an inheritance or to act on their property rights as spelled out in wills, or to engage in anything that requires parental consent, including applying for a driver’s license or passport.

We worry that our children will feel ashamed or stigmatised because they were born through surrogacy. Our kids already manage other people’s prejudices and misconceptions. This further stigmatisation makes our kids feel that they are illegitimate and they live with the fear that the circumstances of their existence may get their parents into trouble.

Most dads who have used surrogacy work very hard to talk openly about surrogacy and where our children came from. This includes building relationships with surrogates where possible, sharing photographs and memories, or reiterating birth stories. The fact commercial surrogacy is illegal deters parents from sharing information with their kids, or with other community members. This can be isolating for families.

The aim of family law in NSW is to protect the interests of the child, however, the law prohibiting commercial surrogacy does not support that aim. It has unintended consequences that place our children at risk. It denies their right to the permanence and certainty of having legally recognised parents. It fails to minimise the possible harm to all participants in commercial surrogacy, including intending parents.

**A domestic market**

The establishment of a domestic market would have benefits for all parties, including:

**Surrogates:** Local surrogates would have access to Medicare and Australia’s world-class health care system; to protections under Australian law; support from Australia’s welfare system and parental leave entitlements; and improved access to children if they wish to maintain access; and to fair and just compensation for their work.

**Children:** Children would benefit from birth in Australian medical facilities; protections under Australian family law; simplified parentage orders and no need for immigration papers; improved access to their surrogate and story of origin if desired; better access to medical information, stored in Australian facilities.
Intending parents: Parents would benefit from a simplified, local process not requiring international travel, immigration etc; the piece of mind knowing their surrogate and child had access to Medicare and Australia’s world-class medical system; the assurance that surrogates were being treated well and fairly compensated; simplified parentage orders and protections under Australian law; improved access between children and surrogates, if desired; greater support throughout the process and a lessened sense of isolation that comes from remaining in your city; no fear of prosecution and ramifications including a criminal record, fines and jail time.

A domestic market would require a Government agency or government-sponsored NGO to regulate and oversee surrogacy arrangements, akin to that which oversees international adoptions.

Clinics would apply to the regulator for accreditation based on rigorous standards to protect surrogates, children and intending parents. Clinics and surrogacy arrangements would be regularly inspected and investigated to ensure compliance.

This could be coordinated in much the same way as international adoption agencies and provide oversight until such a time as there is clearer direction from international bodies as to how to regulate international commercial surrogacy and an international regime that Australia’s system could then integrate with.

In addition to delivering the benefits above, arguments for a domestic market are that it would:

- Encourage intending parents to access local surrogacy services, drawing people away from the less regulated and more ambiguous international markets;
- all participants in the process except the surrogate can be compensated for her work – is rectified;
- Reduce the stigma around surrogacy, much as the advance of assisted reproductive technologies reduced stigmatisation of children born through IVF;
- Provide gay men and infertile couples with a safe and legal means to have a family, progressing our laws to better reflect the common practice of how modern families are formed.
A compensated market

A distinction exists between a fully-commercial market (as exists in some states in the USA) and a compensated market, where surrogates are able to be paid for reasonable expenses, plus a set amount above to compensate for their labour, time and care.

A compensated market has the benefit of ensuring that the surrogate is paid for her effort, a far cry from the current system in Australia, where she remains the only person not paid.

Harm-minimisation

A harm-minimisation approach that protects the interests of children, surrogates and intending parents offers the best potential for reform.

We posit that the Committee should:

- Lift the ban on commercial surrogacy;
- Alter legislation to allow children born overseas through commercial surrogacy to be subject to parentage orders that reflect their family circumstances;
- Legislate for a highly-regulated domestic surrogacy market, overseen by a government agency or NGO, characterized by either commercial payment or compensation for “reasonable costs.”
- Empower the regulator to monitor, accredit and pursue non-complying overseas clinics and agencies.

A regulatory system could involve:

- Intending parents register with the regulator, select from a range of accredited clinics and agencies that offer services, are registered, meet standards and are audited.
- Accredited agencies would also need to work with immigration and manage risks.

Establishing a domestic market will help mitigate the risks involved in overseas markets, however, would not deter intending parents from looking overseas to start their family, and doesn’t manage the risk most effectively if pursued in isolation.
Establishing a body to regulate both domestic and overseas arrangements offers the best approach in the interests of protecting children, surrogates and intending parents.
VII: BIBLIOGRAPHY


