Good morning, Chairperson and Committee members, my name is Claire O'Connell and I appear today on behalf of LGBT Ireland as a board member and also as someone who has researched this area extensively for my PhD. I am very grateful for the invitation to return to the Committee to discuss specifically the issues faced by same sex couples entering international surrogacy arrangements and in achieving parental recognition. I would however in order to avoid repetition, refer to my previous opening statement to the committee a number of weeks ago and would ask the Committee to consider the recommendations contained therein, as well as the recommendations set out in our briefing paper: Pathway to Parenting.

I believe the starting point to this discussion is to set the scene of how Irish parentage law has progressed over many decades. We have had a number of landmark pieces of legislation which deal with parentage, guardianship and associated rights and responsibilities in respect of children. These include the Guardianship of Infants Act 1964, the Status of Children Act 1987, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 and most recently, the Children and Family Relationships Act 2015 which was bolstered by the Irish vote in favour of marriage equality. Each of these pieces of legislation progressed the rights of children and their caregiving parents by being more inclusive than the preceding system. With each Act, we offered more and more protections, not less. We are a progressive country in terms of legislating for the rights and freedoms of children and individuals and we are now once more at the precipice of another major change in Irish family law. We are giving ourselves the opportunity to be even more inclusive through creating a legislative framework for assisted human reproduction, specifically surrogacy. It is imperative that we avail of that opportunity to ensure that the 2022 Bill includes a framework for the granting of parental orders in both the international and retrospective context.

Since 1964, the mother in Irish law was the primary rights holder, outside of marriage. The addition of marriage offered special protection, even to non-genetic fathers, as a result of the presumption of paternity. However, it was primarily and ultimately the biological link that bestowed the status of parent on caregivers in respect of their children. These principles operated until the Children and Family Relationships Act 2015 which, for the first time in Irish law, bestowed parentage knowingly on a non-genetically linked parent. This Act applied to all persons engaging in donor assisted human reproduction however, it was especially useful to those who could not benefit from the presumption of paternity, and this meant primarily, same sex female partners. Such partners would have to comply with a specific list of criteria that is arguably quite restrictive in nature, either retrospectively or prospectively, in order to access parentage. However, while female couples grappled with a restrictive system, male couples remained without any pathway to parentage in assisted human reproduction at all.

The 2015 Act also did nothing to remedy the presumption of paternity which continues to apply in the area of AHR, despite the gestational or genetic parent being in a loving and committed relationship with the other intending parent. To be clear, where the presumptions of paternity continue to apply, the exclusions under the 2015 Act, which were set out in detail in my previous

statement, disproportionately impact on same sex couples. This is because birth registration in Ireland is not based on DNA tests but rather, on the consent of the mother and also her marital connection of the presumed father. Yet, there is no mechanism for a mother to consent to have her female spouse and intending parent registered as the child's second parent under the 2015 Act. Therefore, the work of the Oireachtas would usefully include amendments to the 2015 Act to allow for inclusion for non-clinical DAHR, retrospective declarations of parentage where a known donor was used and DAHR where the child is conceived or born in another jurisdiction, in order to ensure that no child is being treated differently based on the sexual orientation of their parents and the method of their conception.

When considering a framework for surrogacy both domestically and internationally, it is important to consider the groups who will be excluded in its absence. You will have heard the stories of individuals who experience heart-breaking infertility, have to experience multiple miscarriages, have had to suffer through unthinkable illnesses, be aged out of adoption or have been excluded from adoption due to their disability. This is the first group to be excluded. The second group is the LGBTQI+ community, and particularly, in the context of surrogacy, gay men, who are individuals who like every other person in this country benefit from a constitutionally recognised right to procreate under Article 40, as well as Article 8 of the European Convention on Human Rights which protects the right to respect for private and family life and Article 14 which protects individuals from discrimination. These rights are not absolute however, their existence requires that any interference or restriction of these rights be justified by the State in serving a legitimate aim in a proportional manner. Such aims have been suggested as the vindication of the child's right to identity and the prevention of exploitation of women. I would respectfully suggest that both of these concerns can be comprehensively dealt with in legislation, and I have made specific proposals, on a section-by-section basis, setting out exactly how this can be done. I am grateful to LGBT Ireland for having endorsed these proposals.

- These proposals set out a process for vindicating the child's right to identity both retrospectively and prospectively. The 2015 Act and the current proposals in the 2022 Bill do not include any protection for the child's right to identity born through AHR prior to the commencement of each.
- These proposals also set out a court application process for retrospective parental orders as well as a preliminary pre-conception approval process by the AHHRA and a subsequent court approval process for prospective parental orders in the context of international surrogacy agreements.
- These proposals have a number of principles which should be applied in each set of proceedings and these focus on the rights of the child, surrogate and intending parents. It presumes autonomy yet requires informed consent, as well as setting out safeguards to ensure it achieves a balance of rights on a case-by-case basis.

A lack of regulation will not stop couples from travelling to other jurisdictions and engaging in surrogacy agreements however, it will result in less guidance in terms of safe and best practice for intending parents, it will leave a surrogate with responsibilities she does not want and will result in the child having no legal relationship to the person who assumes the parental role in their life for all intents and purposes. There are a number of workarounds for intending parents but nothing as yet that comprehensively offers that child the legal certainty and lifelong security of family that they deserve. Moreover, there is no insurmountable cause for why that should be the case.

I am once more obliged to the committee for the invitation and would be glad to answer any questions you might have.