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The Commissioner
Australian Law Reform Commission
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Dear Commissioner,

**SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION – REVIEW OF AUSTRALIA'S SURROGACY LAWS**

I am making this submission to contribute to the Australian Law Reform Commission's review of Australia's surrogacy laws. I am a Reproductive Psychologist and registered infertility Counsellor and Approved Supervisor with the Australian Infertility Counsellor's Association (ANZICA), a professional group within the Fertility Society of Australia and New Zealand (FSANZ).

I have been working in the fertility space for the past 5 years, and have personal experience with infertility, although not surrogacy. During my time working in this area, I have worked with families pursuing both traditional surrogacy and gestational surrogacy through a fertility clinic.

I have read the Issues Paper and have responded to the relevant questions posed in the paper below, based on my knowledge and experience within the fertility industry as a Reproductive Psychologist & Infertility Counsellor.

I seek that my submission be published as part of the final report and discussion papers over the next 12 months.

**Questions & Responses**

**PART 2 – Reform Principles**

*Question 3: What do you think are the key human rights issues raised by domestic and/or international surrogacy arrangements and how should these be addressed?*

Key human rights issues which are likely to present within the space of surrogacy include the rights of the child, the rights of the surrogate to be free from exploitation, and the rights of the intended parents to have a child/ren.

While there is the potential for all of these human rights to be violated without quality legislation, by implementing consistent national legislation within Australia with reduce the likelihood of violation of these human rights to all parties involved.

While there are protections in place in many countries, recent and historical events surrounding surrogacy on an international basis show we have little capacity to ensure these are being met from an Australian perspective. By strengthening our surrogacy laws within Australia, and placing equitable access around surrogacy, as well as protections for surrogate and children born through surrogacy in Australia with reduce the risks of human rights violations within out own country.

*Question 4: What information about the circumstances of their birth do you think children born through surrogacy should have access to? How should this be provided / facilitated?*

Children have the right to know about the circumstances surrounding their birth; however, families also have a right to privacy around birth, and family building. Long term psycho-social research into third party reproduction, indicates children and highly capable of taking in and on-board information, in age-appropriate ways regarding their conception, birth and family links, both social and genetic. Furthermore, research has also shown generally favourable outcomes for both families and in particular children when open communication has been present from an early age regarding these matters. (See UK researcher Prof Susan Golombok, https://www.psychol.cam.ac.uk/staff/professor-susan-golombok).

Facilitation of information sharing about surrogacy with children, should be addressed within pre-surrogacy counselling sessions with a mental health professional (psychologist, social worker, counsellor etc.) who is an ANZICA member, and also well versed and trained in third party reproduction and in particular surrogacy processes, and disclosure and discussion of surrogacy pathways for family building.

Additionally, sounds resources in a centralized location, which is easily accessible by all people considering surrogacy as a means of family building, on why disclosure, discussion and openness with their children regarding surrogacy process and their birth. A centralised service which governs, legislates and manages surrogacy across Australia would be beneficial and be able to hold this information.

This service would function in a similar way as the Victorian Assisted Reproduction Treatment Authority (VARTA) functioned regarding donor treatment and births, prior to its disbanding at the end of 2024 due to legislation changes in Victoria (despite significant concerns regarding this from many people and professionals in the community).

While some states and territories have considered implementing direct notation on birth certificates around third part reproduction, this does not protect the privacy of families, and in particular the person born through third party reproduction, including surrogacy in the future. Considerations regarding notations of additional information being available with regards to birth certificates issued, could be one way of navigating encouragement within families to discuss conception, pregnancy, birth and family building stories within the immediate family structure.

**PART 3 – Insights about key issues and potential reform**

*Question 5: What do you think are the main barriers that prevent people from entering into surrogacy arrangements in Australia, and how could these be overcome?*

There are currently a number of barriers to accessing surrogacy within Australia, including country wide aspects through to individual state issues and restrictions built into legislation.

These barriers include:

- Mis-information regarding surrogacy being illegal in Australia, and more so traditional surrogacy
- Inability for many clinics to support, or being unwilling to support Traditional surrogacy agreements
- Implications due to lack of consistent, unbiased and factual information regarding becoming a surrogate or engaging in surrogacy as a potential intended parent
- Lack of Medicare rebates on surrogacy, particularly when it is available on other infertility and third-party reproductive treatments, thus leading to significantly higher financial costs to intended parents
- Potential financial implications for the surrogate, in the event she has complicated pregnancy, illness or difficult post birth recovery
- Restrictions on same-sex males couples and single men in WA being able to engage in surrogacy (noted to be discriminatory under our federal legislation)
- Differing processes from state to state, meaning complexities arising if intended parents and the surrogate reside in different states and territories
- Complexity in navigating legislation between states for all parties involved, including legal, medical and psycho-social counselling
- Inability to advertise willingness or openness to be a surrogate or the need for a surrogate as intended parents
- Confusion regarding what constitutes a medical reason for surrogacy. Is "social" infertility counted (this has been changed in the national definition of infertility to reflect social infertility as an impact), recurrent pregnancy loss or recurrent implantation failure, versus clear medical inability to conceive (MRKH- or complete absence of the uterus from birth).

Creation of national legislation governing surrogacy within Australia would reduce many of the above barriers to surrogacy being undertaken in Australia rather than intended parents going overseas for care and treatment.

Through the establishment of national legislation and a centralized frame work for surrogacy across Australia, combined with education resources, and changes to the Medicare frame work, surrogacy would become more accessible for the Australian population.

*Question 6: Should there be eligibility criteria for surrogacy? If so, what should those requirements be?*

*Question 7: Are there any current requirements which should be changed or removed?*

There should be no restrictions based on gender or sexual orientation to access surrogacy within Australia, this is discriminatory and everyone has the right to be able to build a family.

Currently many states have restrictions regarding surrogates needing to have previously birthed a child. Consideration of changes to this would be appropriate, as informed consent does not need to come from previously having been through a process, under spontaneous conception, no previous birth has occurred. Potential surrogates should be able to have the autonomy to make an informed decision, with appropriately provided information regarding potential risks related to a pregnancy, irrespective of previously having given birth or not.

Considerations as to rationale for accessing surrogacy including medical need due to chronic health issues, reproductive limitations, and social factors (in the case of males) should be in place, with caution taken regarding individuals accessing surrogacy due to “not wanting to be pregnant themselves” (although is generally a rare rationale for accessing surrogacy.

*Question 8: Are there any requirements for a valid surrogacy agreement you think should be added, removed or changed?*

A valid surrogacy agreement should include medical review of the surrogate to ensure health to carry a pregnancy, as well as provision of information regarding pregnancy, birth etc., for informed consent to be obtained. Intended parents similarly should meet the medical or social criteria for accessing surrogacy treatment.

All parties should complete independent legal advice regarding the surrogacy process, with a lawyer who has a surrogacy accreditation and evidence knowledge of the nuance of family law and family building through surrogacy.

Additionally, all parties within the surrogacy agreement (surrogate, partner and Intended parent/s) should all attended INDEPENDENT counselling with accredited ANZICA Counsellor who has knowledge and expertise within the space of surrogacy, with consideration of an accreditation within a broader surrogacy framework for endorsement in this area (similar to that of lawyers). Counselling should be independent from the clinic, with the parties being free to choose the accredited counsellor of the wish. There should be a minimum of 4 hours per group, as well as further 2 hours of joint counselling completed in order to ensure counselling and implications have been thoroughly explored before a report is finalized and provided to the parties.

There should be an independent surrogacy panel (similar in function to that of Victora's Patient Review Panel) where all surrogacy applications and provided, and heard for discussion, and subsequent approval.

Consideration should also be provided for a more streamlined approach for families who are returning with the same subsequent for a subsequent pregnancy.

*Question 9: Should surrogacy agreements be enforceable?*

No, surrogacy agreements should not be enforceable. By enforcing agreements there is an increased risk of exploitation for all parties involved.

However, there mandates for medical assessment, psychological assessment and implications counselling, as well as legal advice should all be a component part of progressing with surrogacy, as should submission and review of application to a centralised surrogacy board within Australia.

*Question 10: What process requirements should be in place for surrogacy arrangements?*

There are multiple process requirements which should be in place for surrogacy arrangement within Australia, these include:

- Establishment of federal legislation
- Establishment of an independent Surrogacy Commission for management of surrogacy both in Australia, and applications also for international surrogacy to streamline accessing citizenship for individuals' session surrogacy overseas
- Establishment of a surrogacy linking or matching service, or allowance for advertising. If a matching service is established, this should be a not-for-profit entity to reduce financial exploitation
- Establishment of a national patient review panel specifically for all surrogacy applications and cases
- Establishment of a national register and application process for both national and international surrogacy agreements, where information regarding intended parent, surrogates and any third-party gamete donation is recorded
- Establishment of a management fund for financial compensation with strict guidelines and reimbursement requirements and compensation for surrogacy
- Establishing a national register of lawyers, under the Surrogacy Commission, who are skilled and well versed in both family law, and specifically third part reproduction
- Establishing a national register of counsellors, under the Surrogacy Commission, who are also endorsed ANZICA members, who are skilled and well versed in third part reproduction assessment and implications counselling, as well as ongoing support and psycho-social support and interventions as needed.

- Independent medical assessment of the surrogate and intended parents with a licensed OBGYN/Fertility Specialist prior to commencing surrogacy process
- Independent legal advice from a choice lawyer from the national register
- Independent counselling from a ANZICA and national register endorsed counselling, both individual and joint appointments, totaling a minimum of 10 hours of counselling
- Establishment of a pre-birth parentage order application, to ease transition, and reduce the load for new parents in the post-partum period

*Question 11: What are the gaps in professional services for surrogacy in Australia?*

Gaps in professional services within Australia include:

- Lack of a robust registry of lawyers who are well versed in family law, and specifically within the space of third-party reproduction
- Lack of a robust registry of counsellors and mental health professionals who are well versed in third-party reproduction implications and support, While ANZICA memberships does partially cover this, not all ANZICA members have surrogacy knowledge
- Professional training for medical, legal and mental health in surrogacy implications and process
- A national register of surrogacy and birth from surrogacy, both nationally and internationally
- Surrogacy linking or agencies to support surrogates and IP's to connect with one another

*Question 12: What is the best way for professional services for surrogacy to operate?*

All professional services for surrogacy should be regulated within Australia, and be accountable to a national surrogacy commission, to be providing services which reduce exploitation for all involved in surrogacy (Surrogates, IP's and the children born).

Service should be transparent with clear guidance on financial costs associated with service which provides part of the surrogacy process (linking, medical, mental health and legal).

A surrogacy commission should be established for reviewing and approval of surrogacy arrangements, and a well as regulation of professional involved in this space, so those accessing surrogacy know there is professional transparency and thus reducing exploitation.

*Question 13: How should surrogacy advertising be regulated?*

Surrogacy advertising should be regulated through a national surrogacy commission; it should also however be permissible with guidelines of what can be included in advertisement for those who wish to seek their own surrogate-IP relationships.

Consideration for establishment of not-for-profit surrogacy linking agencies to aid with surrogates and intended parents to connect and be introduced, for those who wish to have a more supported process.

*Question 14: What entitlements, if any, should be available to surrogates and intended parents?*

Surrogates and intended parents should both be able to access Paid Parental Leave, both through the Federal Government, Scheme, as well as any paid parental leave provided by their employers directly.

Surrogacy treatment should have Medicare funding associated with it, in the same was all other aspects of infertility treatment currently has.

*Question 15: How could the process for reimbursing surrogates for reasonable expenses be improved?*

Clear documentation regarding what are expected expenses through a pregnancy, and how these are to be compensated. The current Victorian legislation, has generally clear guidance on what are reasonable expenses to be covered by the intended parents.

Consideration of an independent financial management service, or trust, which is government run could also be considered, where funds are paid into by the intended parents, and drawn up by the surrogate. If funds are not used, then reimbursement to the intended parents would occur 6-8 weeks post-partum. Inclusion of post-partum supports including mental health and physio should also be taken into account as part of expenses.

Discussion with those who have previously been surrogates, should be paramount to have a thorough understanding what are typical expenses which occur through surrogacy, and also what are some of the more unique or unusual expenses which may occur, and not routinely considered.

*Question 16: Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy? You might want to consider whether you agree with how we have described compensated and 'commercial' surrogacy?*

I support a compensated surrogacy service within Australia. No surrogate or their partner should be out of pocket for any expenses associated with the surrogacy process, and costs should be covered by the intended parent/s.

Consideration of a set additional funded for being a surrogate within Australia should also be considered, this may look like a % of minimum wages, or lump sum payments through the process of surrogacy and pregnancy, this should be in additional to compensation of costs. Any model of compensation provided to surrogates in addition to costs should be regulated by the national authorities or a national surrogacy board, to ensure there is no exploitation of intended parents, and also that surrogacy does not become commercial in nature within Australia By setting a national compensation amount there is increased transparency for all involved, and the surrogates work through pregnancy does not go unpaid, similar to all other parties involved in surrogacy (lawyers, medical doctors and counsellor's). A similar system to the HFEA in the UK setting compensation limits for egg donors could be considered (i.e. An egg donor will receive £750 per donation cycle irrespective of clinic they donate to or through in the UK).

*Question 17: If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented?*

A national surrogacy commission should be established, which would oversee all surrogacy arrangements, including the management of compensation. Clear requirements for compensation regarding reasonable costs accrued for the surrogate (clothing, health insurance, medical costs, sick leave, and partner leave etc).

Additionally, a commission agreed financial compensation above repayment of costs, which would be provided to the surrogate as installments through the pregnancy and post-partum phase. Management of this could be through a trust-based payment system managed through the surrogacy commission, to reduce financial exploitation of surrogacy matching and management services.  as well as the identification of a compensation model for time and effort related to the process of the surrogacy.

*Question 22: What is the best way to approach differences in surrogacy regulation between or within jurisdictions?*

Through a centralised national regulation, the need to approach differences between jurisdictions would be removed.

With regards to how to integrate and identify which facets of current individual jurisdictional differences are best to be integrated, and the ones which need to be removed from national legislation, focus on ethical and legal practices, which place ALL individuals, including, and particularly, the child to be born through surrogacy at the centre of all regulations. Placing person and patient centred care, with equal access to services, access to knowledgeable, and accredited professionals, with freedom from financial exploitation.

Through the implementation of a national surrogacy commission, who oversee the accreditation of independent professionals who offer surrogacy services, who oversea and manage financial reimbursement and compensation, as well as reviewing and approving surrogacy plans, exploitation of surrogates, intended parents, and the children born through surrogacy is likely to be significantly reduced. Additionally, management and oversight of surrogate and intended linking services would be beneficial.

While Australia is unable to legislate with regards to how international countries manage surrogacy, by the commission also having a team which manages applications for international surrogacy applications to streamline citizenship applications for the child born though surrogacy, as well as providing advice with regards to safer countries to access surrogacy through, this again would reduce exploitation, and increase the speed at which families can return to Australia with their child.

*Question 23: Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach?*

Surrogacy arrangements should be overseen by an independent Surrogacy Commission, with all surrogacy arrangements being required under law to access counselling, legal advice, and application to a Surrogacy review board prior to proceeding. This should occur irrespective of surrogacy being gestational or traditional, and within a clinic or outside of a clinic. Capacity to apply for parentage

orders prior to the birth of a child, with all parties being then placed on a centralised surrogacy register, including the child details once they are born.

*Question 24: Should the law have a role in discouraging or prohibiting certain forms of surrogacy?*

No, the law should not be discouraging or prohibiting certain forms of surrogacy. The law should be there to support equitable, and non-financially exploitative access to surrogacy, for both surrogates and intended parents. This should be both domestic an international surrogacy.

*Question 25: Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices?*

There is a significant need to improve awareness and understanding of surrogacy laws, policies and practices. The current framework in Australia, on legislation being state based, leads to high levels of misunderstanding of surrogacy being completely illegal in Australia. Furthermore, there is discrimination within the capacity to access surrogacy within different states (WA and same-sex or singles males being banned), as well and confusion regarding the differences between traditional and gestational surrogacy.

By having a string federal legislation, a surrogacy commission, and clear pathways for connecting surrogates with intended parents as well as medical, mental health, and legal professionals who are well versed and trained in surrogacy we will be able to reduce exploitation of individuals as well as financial exploitation, and hopefully open up safer, and more broadly understood and accepted surrogacy within Australia. Thus, safe guarding our citizens who require surrogacy as part o their family building plans.

Thank you for considering my submission.
Yours Faithfully,

Lisa Ransome

Reproductive Psychologist & ANZICA Registered Infertility Counsellor & Supervisor