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The Hon. Justice Mark Moshinsky
Australian Law Reform Commission

Dear Commissioner,

Submission for the ALRC surrogacy review, July 2025

We refer to the invitation for public submissions to the Australian Law Reform Commission's review of Surrogacy Laws (the ALRC review). The following submission is a result of a facilitated workshop held by Professor Andrea Whittaker, Dr Anna Molas and Dr Cal Volks of Monash University with members of the legal profession, academics, non-government organisations and other experts who specialise in surrogacy or human rights/ bioethics matters, members of the medical and psychology/counselling profession who specialise in surrogacy matters, members of fertility industry bodies and those with lived experience of surrogacy including former surrogates and intended parents (IPs) who have undertaken surrogacy in various jurisdictions. The list of participants is attached in Appendix 1 all of whom agreed to having their names listed. The workshop was designed to address the terms of reference of the ALRC review and encourage participation in the review (see Appendix 2 for the methods employed). The introduction is based upon our own research experiences as anthropologists, and a psychologist working in the field of third-party assisted reproduction. Below we answer some of the questions posed from the Issues paper based upon the workshop discussions with participants listed. While consensus was not reached on all topics discussed in the workshop, this is a general summary of the majority views.

Introduction

We assert that the term 'surrogacy' is a misnomer for many different forms of *surrogacies*. We recognise that under poorly regulated contexts, with poor quality of medical care for the people and children involved, in situations lacking transparency, communication and adequate psychosocial care, various surrogacy arrangements may exploit or fail to care for those most vulnerable, being the children born through surrogacy, surrogates and intended parents. Conversely, in well-regulated contexts, with appropriate transparency in processes, quality psychosocial and medical care and due respect for the rights of all concerned, surrogacy may enhance the lives of those involved and provide an opportunity for family formation for those otherwise denied that possibility.

The current patchwork of legislation relating to surrogacy across Australia is unfair and confusing for those seeking to build families through surrogacy and can create disparity among people born through surrogacy. A coherent national approach is long overdue. As a result of our deliberations we suggest that domestic surrogacy arrangements are preferable to international surrogacy arrangements for a range of social, economic and ethical reasons and policies which encourage national self-sufficiency in third party reproduction should be encouraged. The development of a local surrogacy industry is considered as a harm reduction strategy that may provide alternatives for Australians seeking surrogacy overseas, but will not entirely stop the need for some people to travel overseas (especially those also requiring ova donations).

Domestic surrogates should be appropriately compensated for the time, effort and pain it involves (or the 'surrogate's unique contribution'), risk undertaken and loss of income. We appreciate the importance of

preventing the commodification of children conceived by surrogacy and believe there should be government oversight of a standardised capped compensation amount for surrogates, that does not represent a perverse incentive for women to undertake surrogacy solely for financial reasons. Rather, we recognise that in Australia surrogates undertake surrogacy as a social good and as a form of care-work, at huge personal (and family) sacrifices. The current ‘altruistic’ arrangements in Australia are unsustainable and we consider it untenable that all other parties involved in surrogacy arrangements may receive a wage from it while the women who provide the most crucial service in surrogacy arrangements may be left out-of-pocket, having to justify ‘reasonable expenses’ and not feel in a position to ask for compensation/reimbursement. We believe ensuring some form of compensation may make it possible for more women to offer to be surrogates and thereby reduce Australian’s dependency upon sourcing surrogacy overseas. Ideally, consideration could be given to incorporation of surrogacy care-work into existing carer’s pensions under social security schemes for the term of the surrogacy, recognising that like other forms of caring work it is undertaken altruistically, but requires economic and social support.

Access to domestic surrogacy remains an issue for many groups in Australia such as LGBTIQ+, single parents by choice, as well as those of lower socio-economic status. There remain difficulties in access to lower cost IVF services in general due to the largely privatised and concentrated fertility sector. Where possible, policies that improve access, equity and non-discrimination should be prioritised. Further research is required as to the needs and access among First Nations and people from culturally diverse backgrounds.

The criminalisation of international surrogacy arrangements for people resident in some state jurisdictions is not effective in discouraging overseas surrogacy arrangements and results in little professional support for those involved; increases vulnerabilities for intended parents and children born through these arrangements; increases the likelihood of anonymous arrangements and multiple births. The legal pursuit of such cases further encourages parents to avoid undergoing parenting orders in Australia, increasing legal vulnerability for the children concerned.

We would like to see consideration given to the formation of an independent statutory authority to regulate the provision of ART including all forms of surrogacy in Australia in accordance with national standards. This national regulator would replace the various state regulatory bodies such as (the now defunct) Victorian Assisted Reproductive Treatment Authority (VARTA) and the WA Reproductive Technology Council. Such a national authority would:

- Establish industry-wide best practice service and clinical standards and regulate practice in accordance with those standards.
- Incorporate some aspects of the current RTAC accreditation such as maintain the independent audit assessors, but consider whether the reporting should be to a national government body (with oversight) in addition to FSANZ.
- Oversee the accreditation and practices of not-for profit surrogacy agencies.
- Oversee and regulate technology innovation in the sector.
- Be a source of independent educational materials for (prospective) patients.
- Develop initiatives to encourage national self-sufficiency in surrogacy and ova donation.
- Engage with consumers and consumer advocacy groups to ensure that their voices and views are integrated into best practice where possible.

We recognise that the establishment of a national regulator may be more difficult than establishing state bodies but urge the need for harmonisation of legislation and regulations to support families seeking surrogacy arrangements.

Professor Andrea Whittaker, PhD., FASSA, Dr Cal Volks PhD., Dr Anna Molas, PhD.

Reform principles

Question 2 What reform principles should guide this Inquiry?

Response:

We agree with the reform principles stated in the ALRC Issues paper but would like to see the concept of reproductive justice included:

- A reproductive justice approach recognises the right to reproductive autonomy free from discrimination, and of reproductive rights to fertility treatments and the benefits of technologies to form a family. It also recognises that social, economic, and political factors significantly impact the enjoyment of these rights and it calls for addressing these systemic barriers.

Barriers to domestic surrogacy

Question 5 Barriers to domestic surrogacy arrangements: What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome?

Response:

The following barriers were identified by workshop participants and ranked in order of importance:

1. Reasonable Cost (and the lack of Medicare rebates) to some IPs and to the surrogate.
2. Lack of uniform laws across states/ lack of regulation.
3. The lack of surrogacy agencies and the 'DIY' model (in which IPs must find surrogates themselves) that is imposed due to legal restrictions combined with a lack of professional support and conflicting advice.
4. The 'messy' parentage model in Australia.
5. The limited surrogate pool (and shortage of ova donors).
6. Limited information, public awareness and stigma.
7. Ignorance of the law (it was noted that many IPs are unaware that surrogacy is available domestically)

Reimbursing and compensating surrogates

Question 16 *Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy?*

Response:

The broad principle is absolutely yes...[there should be compensation]. Why is the woman who makes it all happen not compensated and everyone else, like the doctors and lawyers are?

Workshop participants preferred a compensated surrogacy regime for Australia that reimbursed for costs but also recognised the value and effort involved in being a surrogate and compensated fairly for this but did not involve for-profit companies nor economic inducements to become a surrogate.

Question 17 *How could the process for reimbursing surrogates for reasonable expenses be improved?*

And I think \$10 000 doesn't sound like enough to me, but if someone's taking, like they're literally giving birth by carrying a child, to me, that's a very profoundly, almost priceless gift....the real challenge would be, because the way, you know, Australian law works, there's this real terror of, you know, this concept that you're buying and selling children, you know, whereas we're trying to balance needs and perspectives, and perhaps because we so badly want to prevent that we're erroring on the side of exploiting the labour of the surrogate. It's not, you know, we don't necessarily have the balance right with the current way our laws fall.

I agree that \$10,000 doesn't sound like enough, but I don't know what that looks like in terms of what is enough? Is there a cap on it? Is it linked to minimum wage? I think there's a fine line between offering compensation and incentives so that there are more surrogates, but not making surrogacy something that is out of reach...

The workshop discussion focused on reimbursement challenges for surrogacy, and considered systems used in Canada and the UK for compensated surrogacy which recognise the time and effort involved in third party assistance offer useful models for an Australian system. A two-tier approach was recommended:

- Identify the 'big-ticket' items that should be paid separately either upfront or reimbursed by IPs, such as IVF costs, lost wages, large travel costs if the surrogate has to travel interstate and legal, counselling and medical expenses including health insurance expenses, birth hospital and physio/birth classes.
- Other reasonable costs which would be expected to occur in a pregnancy can be calculated through information available from surrogates (such as through Surrogacy Australia) plus an additional "compensation" element to recognize the time and effort involved and can be an additional monthly payment to surrogates accessible through a debit card.
- A reasonable monthly stipend "compensation" amount was estimated by participants in the range of between \$1000-\$2000 /month [or between 20%-50% of the minimum wage of \$49,296.00] to cover day-to-day time and effort starting from medical preparations for embryo transfer to three months following the birth.
- It is recognised that depending on the number of embryo transfers required some surrogacy arrangements may last longer than others.
- It would be necessary to consider whether the compensation amount should be a set figure or variable based on factors like location.
- Implications counsellors and legal advisers should assist in making the financial aspects clear and can be part of the surrogacy agreement prior to conception.

- It was recommended that a third-party body or agency manages the financial aspects of surrogacy arrangements to prevent exploitation by ensuring escrow accounts for surrogates so they do not have to approach IPs to ensure or chase payments.
- An alternate possibility would be for the government to recognise altruistic surrogacy as a form of voluntary work for the social good and for it to be compensated as a form of care work through existing social security provisions for carer payments for the term of the surrogacy, similar to carers for disabled people or medically frail aged.
- IPs must have prepared contingent financial arrangements and insurance in case of unforeseen increased medical costs, lost wages, pregnancy related health issues such as post-natal depression, birth injuries, death etc.

The figure of around \$10 000-\$24 000 was debated as a possible base figure for the compensation for a surrogate (or a percentage of the National Minimum Wage) but it was also noted that in some cases, for example with difficult pregnancies, the need for extended bed rest, birth injury or long-term morbidity the impact and costs to the surrogate's family of lost wages, health costs and stress may be far greater. Given that currently domestic surrogacy arrangements were estimated to cost between \$35 000 to \$90 000, it was also recognised that additional fees and an agency fee (see discussion below about agencies) would be an additional financial burden upon IPs.

Participants emphasized the importance of avoiding surrogates being left out of pocket and suggested the need for a not-for-profit agency to manage compensation and conversations about money. This was also important for arrangements in which family members were undertaking surrogacy for relatives who may feel uncomfortable talking about fair compensation. Workshop participants did not support surrogates being made to produce receipts for every small expense.

It's [also] a lot of small expenses that are really hard to quantify and get a reimbursement for... it's unfair for them [surrogates] to have to tally it all up and it feels nitpicky to them... they are doing it because they have got a mostly altruistic motive. But we also want to reward them and increase the attractiveness of what they are doing so they feel valued.

An agency should be involved in it. I agree with that, and I think not-for-profit organizations being the coordinators of these things is important, but the protection of the surrogate and the child is the responsibility of everybody who's provided a professional service to that surrogacy arrangement from conception.

Process requirements for surrogacy

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

Response:

Independent legal advice and counselling should be a condition of a domestic surrogacy agreement, to ensure all parties interests are protected. Applications for Parentage orders should not be contingent upon fulfilment of these conditions given the variety of processes that apply in overseas clinics.

Professional services, including legal and counselling services

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

- a. *if surrogacy agencies should operate in Australia; and*
- b. *the availability, accessibility, and subject matter to be covered in legal advice and counselling sessions.*

I think there's also a lot of resistance amongst Australian surrogates, in general, in the community, against matching services. They feel that matching is, is, is invasion of their lives. I don't know- is making it too professional. They just want to interact online with the IPS and just do it themselves.

And I think about medicalization of the process. I don't think all surrogates want to be assessed for their health, risk factors, capacity.

I think having someone in the middle [a matching agency] that can, can help to manage that relationship is just really important and manage what's in the agreement. I also think having specialists that know all you know, end to end, what's required, yeah, helps both the surrogate who might be new to this, and also the intended parents who, again, don't know all the ins and outs.

a) Response:

Agencies

The workshop participants noted that surrogacy agencies can provide useful services in assisting surrogates and IPs such as : ensure counselling services are undertaken; be a point of contact to assist IPs contact potential surrogates; provide mediation services; provide independent advice and support; improve public information and transparency and assist equitable access and regulation.

Participants noted that while in the US agencies provide matching services, many surrogates in Australia dislike the prospect of matching as too invasive and prefer to have direct contact with IPs.

Various models from overseas were mooted as potentially applicable to Australia. For-profit commercial agencies were not considered desirable by participants and a wholly government-funded agency was not considered likely nor a priority. The model considered most feasible was to have a single or limited number of not-for-profit surrogacy agencies supported by existing organisations funded through agency fees set by government. Government would provide regulation and an accreditation process for surrogacy agencies to ensure proper oversight and standards.

..if an altruistic arrangement [currently] costs between 30 and \$50,000 for the IPs, you might increase that cost to say, another \$5,000 that is the agency fee.... I also think a not-for-profit organization, in addition to the fee they receive, might be permitted to fundraise and might be permitted to have volunteers, and anyone who has been through any kind of surrogacy journey, whether it results in children or not, would be motivated to volunteer...

Legal advice

In some states, current legal restrictions affect the access of IPs to legal, medical and counselling advice, especially for those IPs considering international surrogacy arrangements. The workshop participants

highlighted the risks associated with international surrogacy, including: the use of traveling surrogates and donors who are placed in positions with little legal protection; increased risk to surrogates and children due to multiple births (as overseas may not follow single embryo transfer (SET) policies for surrogacy); ethical concerns related to cultural, linguistic and economic differentials; and potential difficulties pursuing legal cases or parentage issues should something go wrong. It was also noted that many international arrangements may be anonymous denying children the ability to later find out about their surrogates (and donors).

- Legal advice was considered crucial before pursuing surrogacy, especially in politically sensitive countries.
- Recommended independent legal advice for IPS and surrogates and donors.
- Legal advice should include matters to do with: informed consent; legal risks; conditions around surrogacy; detailed written contracts; parentage; dispute management; expense management.
- Emphasised that legal responsibilities does not end with drafting of an agreement but includes maintaining communication with parties to ensure agreement is upheld

the protection of the surrogate and the child is the responsibility of everybody who's provided a professional service to that surrogacy arrangement from conception

Counselling:

Counselling was considered essential to surrogacy arrangements. Discussants noted the difference between information and implications counselling and the psychological implications of surrogacy (and donation) which requires trained psychologists, social workers and counsellors.

- Counselling should follow ANZICA best practice guidelines (currently developed for domestic arrangements), including informed consent, and clear communication about the medical, social, psychological risks and realities of surrogacy
- In international surrogacy arrangements cultural and linguistic considerations and the potential risks of anonymous donations need to be included.
- Current legislation in several states acts against access to counselling for IPs considering overseas arrangements by limiting referrals
- A minimum of four counselling sessions per party, with ongoing support during the pregnancy and post-birth/relinquishment session was presented as best practice. As state differ in their requirements, currently clinics differ with the number and length of mandatory counselling sessions (while all clinics undertake mandatory counselling session/s with the IPs and session/s with the surrogate prior to a joint session/s with both parties, the length of the session/s can vary according to the clinic and to the case, and not all clinics and states provide counselling to parties post birth (for eg relinquishment counselling in NSW and QLD is provided but not in other states).
- Post-birth counselling joint sessions between IPs and surrogate are recommended
- Counselling after embryo transfer failures should be offered to IPs and surrogates.

- The groups stressed that counsellors with prior knowledge of the couples and surrogate can be very helpful as points of contact for mediation should disputes occur, although it was also suggested that this could be within the role of an independent agency.

And if something does come up that they feel it's a bit niggly.. Sometimes it might be a case of just talking it through with the counsellors... Sometimes we need to take it to the next step and arrange kind of a mediation conversation.. Now, they may never choose to access it. They may not need it, but at least knowing that it's available and having that relationship with the party [counsellor]... is really important, because often people won't, and they will suppress it, and they'll think, I'm being silly, or I should just get off. And then it festers, manifests, and then something blows up down the track.

- Mandatory psychological screening [as required in Victoria for a report to the Patient Review Panel] was considered an unfair imposition upon IPs and discriminatory as similar psychological screening is not mandatory for other people able to fall pregnant without third party assistance. Nevertheless, given the complex relationships involved in surrogacy, people who were considered by their medical practitioners to require psychological assessment and counselling should be referred accordingly.

Other issues

- Currently there are frustrations over delays and waiting times for surrogacy counselling appointments;
- There is a need to explore options for providing more structured guidance and regulations around information delivery for international surrogacy arrangements;
- There is a need for further research and agreement on best practice and means for counselling for international arrangements;
- Systems are required for developing expanded training opportunities for counsellors on surrogacy;
- The role of organizations like Surrogacy Australia and Growing Families in the dissemination of information was noted but also the need for support for them to stay up-to-date on the implications for children of surrogacy arrangements.

Counselling issues in International Surrogacy:

Currently, parents arranging international surrogacy may have no pre-counselling, nor any counselling during the surrogacy, depending upon the country/ international clinics they attend. Participants agreed that ideally all intended parents considering overseas arrangements would undertake independent counselling measures beforehand but the groups were uncertain how to ensure this might occur.

Participants suggested that referrals through legal advisers, community organizations and medical practitioners should be encouraged. Difficulty arises due to the legal restrictions in some states (for eg WA) placed upon medical, legal or counselling professionals against providing assistance or referrals for parents intending to undertake surrogacy overseas.

- Possible measures discussed for counselling referral included: lawyers being able to refer parents to independent counsellors; the FSANZ site listing independent counsellors experienced in international surrogacy cases.
- 'Your IVF success', was also suggested as a site which could include advisories; or this being a role for a revised regulation and treatment authority.

Access to Medicare and parental leave

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

Response:

Participants noted the high cost of domestic surrogacy as an important factor limiting access and forcing people into cheaper destinations overseas. Many people undergoing surrogacy arrangements have already undergone extensive infertility/ medical treatment and are financially challenged. It is considered important to limit costs to IPs where possible without impinging upon the compensation for surrogates. Medicare rebates for fertility treatments associated with surrogacy should be recognised. Likewise, as with any person undergoing pregnancy or birth, surrogates should have access to national parental leave provisions and paid or unpaid leave through enterprise agreement terms to allow for appropriate rest and care post-birth, psychological support around relinquishment and to support lactation if the surrogate is providing breast milk.

One suggestion is that eligibility to Social Security ‘carer’s payments’ could potentially be extended to surrogates as a form of care for the period of the surrogacy, recognising surrogacy and assistance in forming families as a social good, ensuring a minimum income support for surrogates and easing some of the financial costs for IPs. Extension of access through health care plans to current provisions for psychology appointments for all parties (including the surrogate family members if needed) should be available. A schedule of capped legal fees for certain processes and shifting processes to an administrative body would also assist in making domestic arrangements more affordable and streamlined.

Process

Question 19 How could the process for intended parents to become the legal parents of children born through surrogacy be improved? You might want to consider:

Response:

a. timing (for example, if the process happens before or after the birth of the child);

A pre-conception statement of intention to parent drafted in consultation with the IPs and surrogate’s lawyers should be recognised. This can then be used as evidence to facilitate recognition of Parentage. Post-birth documentation from the clinic regarding the surrogacy arrangement, including a statement from the surrogate of their pregnancy and to protect against child trafficking then can verify that the surrogacy has taken place.

b. who makes the decision (for example, if it is an administrative or judicial decision);

For most cases, this should be an administrative responsibility. This will ensure the process is just, quick, economical and accessible and not take up judicial resources. Only in legal disputes/challenges between the parties to the arrangement should the judiciary be necessary.

c. if recognition should be automatic;

The best interests of the child takes precedence; the recognition of the IPs as the legal parents can be automatic if a pre-conception statement of intention is in place; unless there is a legal challenge to this by another party.

d. if the process should be different depending on the circumstances (for example, based on whether the surrogate has a genetic link to the child, the type of payment they received, and whether the surrogacy arrangement was in Australia or overseas);

The process should not differ regardless of the place, circumstances nor genetics involved; in the same manner that a child conceived and gestated through means not using third party assisted reproduction. Any legal infringements by parents should not cause a child to be left without the protections of legal parentage. In international arrangements, affidavits by surrogates will be required due to the difficulties in evidence where pre-conception statements of intent or other independent legal documentation is lacking.

e. whether intended mothers are or should be treated differently to intended fathers in legal parentage determinations;

Both parents should be treated equally in legal parentage determinations, regardless of genetic contributions.

f. whether the granting of legal parentage should depend on compliance with process requirements;

As above, recognition of the best interests of the child should be the default, however lack of a pre-conception statement of intent; or lack of documentation from a clinic or other evidence of trafficking would lead to further requirements and investigation to document the surrogacy arrangement and intent of parties.

Oversight and harmonisation – Inconsistent laws

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

Response:

Surrogacy regulation is inconsistent between jurisdictions in terms of the legislation, regulation authorities and processes. Workshop participants noted that currently state government processes were faster and more responsive to surrogacy cases and involved more ‘user friendly’ paperwork and documentation than Federal processes.

Participants stressed the need for equality between the jurisdictions and the need for nationally consistent approaches and funding, whether this is a state or federal-based system. This would prevent inequalities in access to surrogacy depending on in which state ones is domiciled / or pursued arrangements. It would also remove legal difficulties for families where applicants (IPs or surrogates) move mid-way during applications which may cause them to become legally non-compliant. It was noted legal harmonization would also remove people’s abilities to circumvent restrictions through utilizing jurisdictions that might have more preferable regulations.

Harmonization might be achieved through a national agreement between states ensuring substantively consistent state legislation and the development of a national regulatory body (such as played by the HFEA in the UK). Instituting a national statutory authority to work with and bring state-based legislation into practical and principled alignment with each other would be more efficient and more likely to succeed. A national authority would also enable consistent and independent monitoring and compliance powers, rather than reliance on an industry body to enforce the regulations.

Oversight and harmonisation – Oversight

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

Response:

Beyond the state regulatory frameworks, the ART and IVF sector is self-regulating through the FSANZ and RTAC. We would like to see consideration given to the formation of an independent statutory authority to regulate the provision of ART and all forms of surrogacy in Australia in accordance with national standards. The model organisation for this is the Human Fertilisation and Embryology Authority in the UK; or alternatively, a national regulator that replaces the various state regulatory bodies such as (the now defunct) VARTA and the WA Reproductive Technology Council. The role of such a national authority would include to:

- establish industry-wide best practice service and clinical standards and regulate practice in accordance with those standards.
- Incorporate the current accreditation and self-regulatory activities of RTAC.
- Oversee the accreditation and practices of not-for-profit surrogacy agency/ies
- Oversee and regulate technology innovation in the sector, culminating in position statements and recommendations for policy and practice.
- Be a source of independent educational materials for (prospective) patients.
- Develop initiatives to encourage national self-sufficiency in surrogacy and ova/sperm donation.
- Engage with consumers and consumer advocacy groups to ensure that their voices and views are integrated into best practice where possible.
- Promote the equitable access to the benefits of ART including surrogacy.

The role of the criminal law

Question 24 *Should the law have a role in discouraging or prohibiting certain forms of surrogacy? You may wish to consider: a. if engaging in or facilitating certain forms of surrogacy, whether in Australia or overseas, should be sanctioned or criminalised; b. the effect of using the criminal law to regulate certain forms of surrogacy; and c. whether there are regulatory approaches preferable to the criminal law.*

Response:

As noted above, participants did not feel there was a need for specific legal sanctions prohibiting certain forms of surrogacy, as noted in the ALRC Issues paper, current provisions in other areas of criminal law already provide protections against trafficking/abuse of children and women and modern slavery. It was discussed by participants that current sanctions specifically targeting overseas surrogacy in NSW, ACT, Qld and WA are:

- 1) not acting to discourage overseas surrogacy among Australians;
- 2) potentially criminalise parents of young children for their place and means of gestation;
- 3) are having perverse outcomes such as discouraging IPS from pursuing parentage for their children and forcing IPs to move interstate to pursue surrogacy;
- 4) fail to differentiate between well-regulated overseas arrangements and those involving no or little regulation and exploitation;
- 5) prevent medical and legal professional from giving information, advice or referrals and;
- 6) contribute to social stigma for all involved in surrogacy.

A range of potential regulatory options were discussed including:

- a national fertility roadmap/framework for Australia (or Australia and New Zealand) which includes pathways towards self-sufficiency in third party reproductive assistance;
- the development of medically assisted reproductive treatment and regulation authority/ies at state or federal levels which include: responsibility for oversight of third party assisted reproduction legal processes; accreditation of clinics and surrogacy agency/ies; referral services to appropriate legal services and counsellors specialising in the field; and provide public information and education.
- Not-for-profit organizations can also be employed to provide education to people considering surrogacy arrangements and alert IPs about unscrupulous practice and;
- professional organizations such as FSANZ can also use public outreach for information about standards of quality care, medical and psychological risks, and referrals to psychological counselling.

Lack of awareness and education

Question 25 Do you think there is a need to improve awareness and understanding of surrogacy laws, policies, and practices? You might think about how people currently find out about surrogacy, or the particular groups or professions who could benefit from improved education and information.

Response:

There is little public awareness about surrogacy laws, policies, and practices among the Australian public and particularly among culturally and linguistically diverse communities and First Nations peoples. There is a need for improved education among the general public to combat stigma around surrogacy and many are unaware that legal surrogacy options exist in Australia. Patients in infertility treatment are most likely to be made aware of surrogacy and seek information through their medical specialist/clinic. People not in infertility treatment such as LGBTIQ+ IPs may approach not-for-profit community organizations for information. Organisations such as Surrogacy Australia, Gays Dads WA, MRKH Australia and Growing Families play important roles in providing information through their websites and public information sessions. Ideally, information should be accessible in major community languages.

Internet sources and social media chats are heavily used by people seeking information about surrogacy options and these sources may be dominated by commercial interests, misinformation or out of date information. Social media forums of people with lived experience tend to be regarded as trusted sources of information, even though there may also be commercial vested interests or inaccuracies. The lack of recognised authoritative sources of information about the various legal, medical, financial, ethical and psychological considerations leads to many IPs undertaking surrogacy arrangements being insufficiently prepared despite their own lay attempts to undertake due diligence. The needs for information and counselling for people born through surrogacy should also be recognised; especially for people born through anonymous arrangements.

As noted above there is a need for more training for specialised counsellors and for legal and medical practitioners to understand the particular needs and pathways for people considering surrogacy.

Appendix One. List of Participants

Name	Organisation	State	Expertise
Sanjay Alapakkam	Equality Australia (EA)	NSW	Legal Policy adviser, EA.
Rita Alesi	Monash IVF & private practice	VIC	senior infertility counsellor.
Sarah Bevan	Sarah Bevan Family law & Surrogacy Australia (SA)	NSW	principal family lawyer; SA president.
Anna Brown	Equality Australia (EA)	NSW	CEO, EA; human rights lawyer.
A/Prof. Kiri Beiby	Monash University & FSANZ	VIC	academic, reproductive health; FSANZ board member.
Sally Catt	FSANZ		Board member FSANZ, embryologist
Julia Cernaz	Genea Fertility and private practice	VIC	Infertility counsellor.
Simone Cureton	Simone Cureton Surrogacy Law	SA	family lawyer; surrogate.
Sam Everingham	Growing Families & Surrogacy Australia (SA)	NSW	advocate; researcher; SA board member; parent.
Paul Hadfield	Gay Dads WA	WA	advocate; parent.
Dr Jaya Kearney	Univ of Melbourne	VIC	academic, anthropology & social science
Dr Ezra Kneebone	Kids Research Institute	WA	academic, public health.
Professor Catherine Mills	Monash University	VIC	academic, bioethics.
Dr. Anna Molas	Monash University	VIC	academic, anthropology.
Emma Moody	Life Fertility & private practice	VIC	infertility counsellor.
Dr. Sarah Nowoweiski	New Life IVF and private practice	VIC	senior infertility counsellor.
Rachel Oakeley	Rachel Oakley Barrister	WA	principal family lawyer, WA surrogacy law reform advisory board.
Stephen Page	Page Provan	QLD	principal family lawyer; parent.
Ben Sayer	Sayer Jones	VIC	principal family lawyer.
Ashley Scott	Rainbow Families	NSW	advocate; parent,
Dr. Cal Volks	Monash University	VIC	academic, social sciences & law; senior infertility counsellor
Professor Andrea Whittaker	Monash University	VIC	academic, anthropology & social sciences

Appendix 2. Monash Surrogacy Workshop Methods

Participants participated in a 5-hour workshop from 10 am -3pm 29 May 2025. The workshop involved a number of techniques to encourage deliberations including:

1) **A Listing and Ranking exercise** where participants were asked to write down barriers to domestic surrogacy arrangements in Australia and then rank those most important.

2) **Small group discussions** on

a. Reimbursement: How could domestic surrogates be adequately reimbursed for legal, medical and other expenses incurred as a consequence of the surrogacy? Identify options. Can we learn from elsewhere?

b. Regulation in Australia: What are the advantages and disadvantages of state-based regulation versus Federal regulators?

c. Professional matching/support services: What should be the role of professional support/matching services for surrogacy in Australia? Can we learn from elsewhere?

3. **Conversation café:** participants circulate through group discussions prompted by the following questions:

1. **Parentage:** How could parentage be recognised best for children born through these arrangements?
2. **Protections:** What protections are required for IPS, surrogates, children and facilitators to prevent exploitation of vulnerabilities? Any models elsewhere?
3. **Information/ Counselling needs:** What is best practice in terms of information and counselling needs for domestic surrogacy arrangements and for those considering international surrogacy? Who should do this?

Process of Analysis and Development of Recommendations

Discussions on these issues were taped and transcribed and notes taken and thematically analysed to identify the points of agreement, and disagreement. An initial draft report was then circulated back to participants for their feedback and comments. The resulting document was circulated for final approval.