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The Hon Justice Mordecai Bromberg,
Australian Law Reform Commission
Review of Surrogacy Laws
surrogacy@alrc.gov.au

Dear Justice Bromberg,

Review of Surrogacy Laws: ALRC Issues Paper 52 June 2025

Thank you for the invitation to submit to the ALRC review of Australian Surrogacy Laws. I am a Psychologist (Health Psychology endorsed), Family Therapist and Infertility Counsellor with more than 40 years of experience in counselling parties undergoing third party reproduction, which includes donor gametes and embryos as well as gestational and genetic surrogacy. I commenced pre-surrogacy counselling in the mid-1990s, even before the introduction of the NSW Surrogacy Act 2010, and have since seen very many people undertaking altruistic surrogacy in all jurisdictions of Australia, totalling perhaps 1000 people.

Overall, I have counselled parties to more than 350 surrogacy arrangements, including before and after a surrogacy birth. Since the introduction of the NSW Surrogacy Act 2010, as an independent counsellor, I have undertaken pre-surrogacy implications counselling, as required under Section 35(1) of the NSW Surrogacy Act. For these cases I have undertaken an assessment of the suitability of the parties to undertake surrogacy, and have written pre-surrogacy counselling reports as required by the Assisted Reproductive Technology Act 2007 Section 15A (5). I have also counselled parties post birth (with babies) in approximately 50 cases for the Section 17 Parentage Order counselling, and in total I have seen more than 60 birth mothers with partners for the required Section 35(2) post birth counselling, most of whom I had previously seen for the Section 35 (1) counselling prior to the surrogacy.

I have also made many conference presentations about surrogacy over the years, have presented a number of training seminars/webinars about surrogacy counselling and co-authored journal articles about surrogacy in Australia. With a colleague, I have recently completed some research on the assessment of interpersonal relationships in pre surrogacy counselling, and am currently working on a qualitative study of surrogates' attitudes and experience at the Section 35(2) post birth counselling. Further details of my qualifications and experience to undertake surrogacy related counselling as required by the NSW Surrogacy Regulations, are summarised in the attached Appendix.

[redacted]

ALRC Review of Surrogacy Laws: Questions in the Issues Paper

Insights from people with personal experience of surrogacy

Question 1	If you or someone close to you has had personal experience of surrogacy, please describe:

Response:

Whilst I do not have personal experience of being part of a surrogacy group undergoing a surrogacy arrangement, I do have more than 35 years' experience working with people undergoing altruistic surrogacy in Australia. It would be very surprising if I hadn't learnt from the many people with whom I worked. Overall, the feedback from people with whom I have worked has been positive of the value of counselling in surrogacy, with spontaneous statements such as "though we thought we had considered everything, this counselling has been really helpful." I have even had positive feedback of my work from parties where I had expressed some concerns regarding the timing of the surrogacy and/or the suitability of one or more parties to participate in a surrogacy arrangement.

Overall, the people whom I have been privileged to meet through my surrogacy work have been altruistic, respectful, considerate, and well-intentioned people coming together to bring into the world a child who would not otherwise be born. With their permission I was able, with helpful colleagues, to undertake research into domestic surrogacy, in 160 surrogacy arrangements involving 602 parties to the surrogacy arrangements.

The resulting paper was published in Fertility and Sterility, one of the top journals of assisted reproductive science: *"A comparison of sociodemographic and psychological characteristics among intended parents, surrogates and partners involved in altruistic surrogacy arrangements in Australia"* by Montrone M., Sherman K. A., Avery J., Rodino I.S., Fertility and Sterility® Vol. 113, No. 3, March 2020. This paper gives a comprehensive overview of the people whom I have met when undertaking their pre-surrogacy implications and assessment counselling, and I would suggest that the research reflects domestic surrogacy in Australia.

Reform principles

Question 2	What reform principles should guide this Inquiry?

Response:

I am making this submission out of a sense of responsibility because I have such extensive experience in working in the surrogacy area and probably a vain hope that substantial change may result. I am currently undertaking surrogacy related research as I transition to retirement so this will probably be my last surrogacy related submission. But it is definitely not my first surrogacy related submission, as I have made submissions and appeared before federal and multiple state (not only NSW) inquiries over the past 25 to 30 years. I was involved with recent federal surrogacy inquiries including the 2009 COAG "A Proposal to Harmonise Regulation of Surrogacy"; and the 2015 Federal Government Surrogacy Inquiry resulting in the 2016 report "Surrogacy Matters: Inquiry into the Regulatory and Legislative Aspects of International and

Domestic Surrogacy Arrangements". In my opinion the 2016 report was very good and came up with some excellent recommendations particularly regarding concerns related to overseas surrogacy. **And despite the inquiry involving multiple experienced people, nothing has happened!**

It is fascinating that it has taken 9 years for the Surrogacy Matters recommendation for the ALRC review to take place, and I find it most interesting in a negative way that the only time I can find the current ALRC Issues Paper referencing the Surrogacy Matters Report is Page 5, reference 9, related to the risks of human trafficking and exploitation in overseas commercial surrogacy. Unfortunately, the old cynic in me perceives this current review as the ALRC reinventing the wheel rather than focusing on what has been recommended, the changes that need to be made, and potential ways of implementing any changes.

Having said that, the general Reform Principles listed in the ALRC Issues Paper are obviously necessary basic principles. Though I do wonder what is being referenced with the comment "making the laws more consistent, so that the law is more certain, efficient and fair." Whilst there are some inequities such as the ban against same sex fathers undertaking surrogacy in WA, I know of no Australian jurisdiction which fits the quote above. And though there are differences in state legislation regarding whether or not it is a criminal offence to undertake commercial surrogacy overseas, it would depend on the viewpoint if law changes would mean increased fairness.

The elephant in the room is why intended parents may "feel the need to travel to jurisdictions that they **think** (emphasis added) may be less restrictive." This paper is presumably written based on the range and diversity of information being provided to intended parents, and without acknowledgement of the vested interests which may be part of such not necessarily objective advice.

Human rights

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

Response:

Children's Rights:

- The rights of children are paramount in all Australian legislation and should continue to be so. (The only occasion where there could potentially be a concern is if this right were to be different from the rights of the surrogate to make decisions related to her body)
- From my experience I do not believe that surrogacy involves the sale of children, particularly in altruistic surrogacy in Australia, where there is no payment above reimbursement of expenses to the surrogate mother. It is perhaps understandable why this view could be held with regard to overseas commercial surrogacy, particularly in some jurisdictions where the rights of children and surrogates do not seem to be considered very highly.

- In Australian altruistic surrogacy the few occasions where there have been post birth differences between parties to the surrogacy have been resolved with the children eventually living with the intended parents. (The exception to this is Baby Evelyn, where there was no counselling or legal advice, before conception or birth, but this happened many decades ago and the surrogacy world has changed).
- In Australian surrogacy there are state/territory registers with information about all third-party reproduction, including surrogate and details of gametes used for conception. The 2016 Surrogacy Matters report had some good suggestions regarding the importance of such information being required to be held by clinics and/or government authorities, so that it would be available for access by surrogacy offspring as it is in Australian jurisdictions. I know of no reason why a person or persons would be "prevented from accessing domestic surrogacy" and find it an interesting choice of words in the ALRC Issues Paper.
- From my more 35 years of surrogacy experience I have never heard of surrogacy offspring having experienced societal discrimination because of their birth. An aspect which is potentially discriminatory is when intended parents choose to undergo commercial surrogacy overseas, sometimes using donor gametes, and they do not obtain identifying details of the surrogate and donor for their child's later use.

Surrogate's Rights:

- How might a surrogacy arrangement perpetuate gender or racial inequality? At the risk of repeating myself I have never heard of such a thing in all my surrogacy experience.
- The 2016 Surrogacy Matters report, in recommending similar counselling and legal processes in overseas commercial surrogacy attempted to address the issue of "slavery and forced labor". Why is there no reference to such a recommendation in this Issues Paper. If there were to be a requirement for registration of a surrogacy birth overseas, for there to be evidence of pre surrogacy counselling and legal consultations for **all** parties to a surrogacy birth then overseas surrogates would perhaps be respected as they are in Australia.
- Ditto re "the right to autonomy".
- Surrogates in domestic surrogacy have absolute sovereignty regarding all decision making about their body. This is an issue which is addressed in pre surrogacy counselling and legal consultations in Australian domestic surrogacy. To my knowledge this issue is addressed in some but not all overseas surrogacy jurisdictions. And ditto re the 2016 Surrogacy Matters recommendation for overseas surrogacy to require similar counselling and legal advice as in domestic surrogacy which could help with concerns regarding exploitation of overseas surrogates and egg donors.

Intended Parent's Rights:

- From my experience with surrogacy in NSW there is no discrimination restricting domestic eligibility. The only situation with which I have experience is WA same sex

male intended parents whom I saw who had worked out a way of undertaking surrogacy under NSW legislation. Regarding overseas countries discrimination of intended parents, I do not know of any way in which the ALRC Review could have impact on overseas discrimination, unless international law changed radically. Perhaps better for intended parents to be encouraged to undertake surrogacy domestically.

- Intended parents' do have the right to privacy, but there is now significant evidence where this right has not been respected for their offspring of third-party reproduction, particularly related to information about their birth and genetic story. In this context the right of the child is paramount, and legal records of surrogacy birth should reflect this.

- As commercial surrogacy is illegal in NSW, and for citizens who travel overseas for commercial surrogacy, I am not permitted to give advice or counsel parties to such surrogacy plans. If I were to do so I would be aiding and abetting a crime. However, over my many years of attending consumer events I have observed people who do not seem to be concerned about this caveat. In fact, they do not seem to be concerned about risks of commercial surrogacy overseas, but rather promote such surrogacy ahead of domestic surrogacy.

- I do not know how so called "barriers to domestic surrogacy" could infringe on intended parents' expectation of benefitting in scientific advancement. If one thinks about it, the so called "barriers" are related to legal prohibition of overseas commercial surrogacy, rather than altruistic domestic surrogacy. Whilst I understand that intended parents may feel overwhelmed when they do not immediately have a surrogate, I have worked with many people who have navigated this dilemma, to the ultimate benefit of all parties to the surrogacy arrangement. To help intended parents, I have included on my website a page with information about "Finding an Altruistic Surrogate" and have had reports that it is has been helpful: https://counsellingplace.com.au/finding-an-altruistic-surrogate/

- Intended parents are vulnerable in their desperate need to have a child, and at risk of being seduced by those who advertise the so-called benefits of commercial surrogacy overseas. I would be very interested if there were to be research into the cost and time differentials in overseas and domestic surrogacy, and the so-called impediments to domestic surrogacy, such as counselling and legal requirements. From my experience domestic surrogacy moves quite smoothly and quickly nowadays, and the cost is significantly less than some jurisdictions overseas.

- I don't know how so called "barriers to accessing domestic surrogacy" could impact intended parents with disabilities. By definition, an intended mother is required to have a significant medical reason for her to be able to undertake surrogacy, many of which could be defined as "disability". I have seen a significant number of women with not insignificant "disabilities" and know of no impediment to them undertaking domestic surrogacy.

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 or facilitated?

Response:

I believe that offspring of third-party reproduction should have access to identifying information on their birth and genetic story. From many years of counselling donor gamete/embryos recipient parents and surrogacy intended parents my advice is that children should know from birth that they have different information about their birth. Ways of doing this are routinely discussed in third-party reproduction counselling and there is significant psychological research as to the benefit of such an approach.

It has not been raised in the ALRC Issues Paper but from my 40 years third party reproduction counselling experience I believe that there should be Australia wide legislation regarding the number of potential donor offspring from one donor. I would recommend that such information be required of all donor conception, including conception through online semen donor recruitment as well as medical clinics. If the ALRC were able to influence the development of Australia wide surrogacy legislation it would be very positive if the legislation were to incorporate conception through donor gametes or embryos.

Further as per Recommendation 29 of the FSANZ (Fertility Society of Australia and New Zealand) Fertility Roadmap released in September 2024 (https://www.fertilitysociety.com.au/public/267/system/newsAttachments/Recomendations%20and%20Framework%20for%20Australia's%2010%20Yr%20Fertility%20Roadmap%20vFF%20Nov.pdf) , I would recommend that information about donor and surrogacy conception and birth should be recorded in an Australia wide register to be held by ANZARD (Australia and New Zealand Reproductive Database) which is currently held at the University of NSW. And if I really were to achieve my wish list, it would be required on all Australian birth certificates, that there should be a section indicating that there is further information about the birth under Section XYZ of a government Act, though not necessarily indicating the details of the information available under such a section, as it is usual for identifying information on donors and surrogates to be made legally available when third party conception offspring achieve maturity.

Insights about the key issues and potential reform options

Barriers to domestic surrogacy

Question 5 What do you think are the main barriers that prevent people from entering surrogacy arrangements in Australia? How could these be overcome? You might want to consider the experiences of any groups who may face greater barriers to accessing domestic surrogacy than others, such as LGBTIQA+ people, people who are financially disadvantaged, or people from culturally and linguistically diverse backgrounds.

Response:

I have addressed the issue of "barriers" to domestic surrogacy in the section above related to Intended Parents. To comment on the specific instances in the ALRC Issues Paper:

- I have counselled WA same-sex male couples who have managed to circumvent the WA legislation, but I agree it is discriminatory and Australia wide legislation could help.
- The differing medical reasons for surrogacy are not a major impediment, and I have found that medical practitioners manage this quite well; in NSW there is a way for a younger than 25 year old woman to be part of a surrogacy arrangement, and I have included such a review of maturity in a number of pre surrogacy counselling reports. In one of these cases, the child ended up being born in a different jurisdiction and despite different legislation the Judge was accepting of the process. Regarding citizenship or residency requirements – I have counselled a number of parties to surrogacy arrangements where they lived in a different jurisdiction, and they seemed to manage this issue without much problem.
- There is a limit on the number of available surrogates in any jurisdiction, including overseas. (If one thinks about it, if there were to be no limit then this may perhaps indicate coercion of women to act as a surrogate – viz Crete/Greece not so long ago). In NSW there is no requirement for a potential surrogate to have given birth already, and I have counselled a number of such surrogates, who have ultimately had surrogacy births, which have included genetic as well as gestational surrogacy.

  But please do not see this as a trivial requirement that should be easily dismissed to increase the potential availability of surrogates either domestically or overseas. If one thinks about it, how can a woman decide to do something so very significant without having already experienced pregnancy and conception. And the same applies to surrogates under the age of 25 years, the age at which the frontal lobe of the brain fully matures.

  Being a surrogate is a BIG THING, as I said to the Medical Director at the IVF clinic where I worked in the mid-90s, when I commenced counselling parties to surrogacy arrangements. Having counselled approximately 1000 people undertaking surrogacy since that time, I have not changed my professional view at all.

Eligibility requirements for surrogacy

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

Response:

The only physical/medical requirement for surrogacy should be that the intended parent/s is/are either unable to gestate or birth a live baby, or there would be significant detrimental impact on their health and/or wellbeing if they were to do so. As a surrogacy counsellor I would also recommend that there be evidence of respect and consideration by all parties of the needs of others and their responsibility to the needs of others.

Question 7 Are there any eligibility requirements which should be introduced, changed, or removed?

Response:

Depends if it is possible to introduce and bring into effect Australia wide legislation, which my years of experience tells me probably won't ever happen. (This is because of state/territory vs federal political jostling in Australia, rather than anything related to surrogacy.) If it were to occur, then may I suggest that the NSW eligibility requirements be incorporated: related to minimum age, no requirement for previous gestation/birth by surrogate, and available to all including same-sex male intended parents, who are currently excluded in WA.

Surrogacy agreements — validity and enforceability

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

Response:

If there were to be Australia wide surrogacy legislation then I would suggest that there be consistent national requirements for a valid surrogacy agreement. As mentioned earlier I have undertaken pre surrogacy counselling for people from all states and territories, though latterly most of my work has related to NSW surrogacy cases and legislation.

Though I am a Psychologist, not a Lawyer, I am aware of the differing legal requirements throughout Australia. (I wrote the first draft, and have contributed to updates, of the ANZICA (Australia and New Zealand Infertility Counsellors' Association) Surrogacy Counselling Guidelines and the Addendum to the Surrogacy Guidelines, the latter of which details the differing legal requirements.)

In this context, I believe that the surrogacy related counselling required by the NSW Surrogacy Act 2010 and Regulation work well. Re the Section 35(1) pre-surrogacy implications counselling and the requirement under the related Assisted Reproductive Technology Act for there to be concomitant psychological assessment I believe works really well. And though the Section 17 Parentage Order counselling and report is usually fairly routine, I believe that it is a sensible last step before the final legal processes to organize the parentage order, and is a chance to sort out any concerns for any of the parties to the surrogacy.

I cannot claim credit for the inclusion in the NSW Surrogacy Act 2010 of the Section 35(2) routine post birth counselling of the birth mother and her partner, and in fact I argued against it at the beginning of the legislation. To my understanding this mandated requirement is not included in any other legislation. **However I would now highly recommend that this routine post birth counselling be included in any Australia wide legislation.** The counselling required under Section 35(2) acts as a debrief, relinquishment counselling session and "line in the sand" for the surrogate and her partner if she has one, before she makes the final decision to relinquish the child/ren she has conceived, carried and birthed for the intended parent/s.

Question 9 Should surrogacy agreements be enforceable? You might want to consider:
a. if all parts of the agreement should be enforceable;
b. who should be able to enforce the agreement; and
c. how agreements could be enforced.

Response: I believe that one of the reasons intended parents go overseas for commercial surrogacy is that they are uncomfortable with a perceived lack of certainty and control in a surrogacy agreement in domestic surrogacy, part of which is that agreements in Australia are unenforceable.

This need for control is, I believe, not only important regarding the surrogacy agreement, but also connected to decision making during a surrogacy pregnancy and birth. Many of these people have been through very difficult life and health issues, including reproductive loss, the need to have a child is very strong, and the sense of emotional pain can be overwhelming. Having a sense of control can be seen as alleviating the pain somewhat and bringing back psychological ownership to the intended parent/s.

Having said this, **I do not believe that a surrogate mother should ever be required to cede sovereignty over decision making to do with her body, or a baby she is carrying and or birthing. This is an inalienable right and I do not believe that any other person should ever be able to override this sovereignty.**

To me this is currently one of the major differences between commercial surrogacy and altruistic surrogacy. In commercial surrogacy the intended parent/s are purchasing a product, and making decisions about that product in the context of where it is offered. In altruistic surrogacy in Australia, the intended parent/s have a relationship with the surrogate and her partner if she has one. The relationship may be new, it may be short term, but it is still a relationship, and in this context the intended parent/s are not purchasing a product but are part of a surrogacy arrangement, that will result in the birth of a child.

This long introduction is my way of stating that I do not agree with legal enforceability of relinquishment of a child/ren born through a surrogacy arrangement. I do however agree with enforceability of reimbursement of costs incurred by the surrogate as part of the surrogacy. From experience this can sometimes be tricky for parties to negotiate. The costs of surrogacy are usually more than the intended parent/s anticipate, and for the surrogate, like all of us, it can be difficult to ask for money, particularly if it could be seen as somewhat trivial in the wider scale (eg. Parking costs, maternity clothes, pregnancy creams). From my experience I have found that it works quite well for intended parent/s to organize a dedicated debit card (which they load, and which the surrogate uses to pay costs) which is helpful and reduces tension.

Process requirements for surrogacy

Question 10 What process requirements should be in place for surrogacy arrangements? You might want to consider:
a. if counselling should also be available after the child's birth;
b. what should happen if legal advice and counselling are not provided before entering a surrogacy agreement; and
c. if parentage applications should require proof of legal advice and/or counselling.

Response: As outlined above I believe that the surrogacy related counselling processes in NSW work well, and I would recommend their incorporation into any Australia wide legislation. This is not because it would give me more work, as I am no longer undertaking clinical case work, or have a particular attachment to NSW legislation, but is because from many years of surrogacy related experience I believe the NSW counselling requirements work well. Thus, I would recommend the inclusion of counselling as follows:

> Pre Surrogacy (all parties to the surrogacy, including the partner of the surrogate if she has one): implications and assessment counselling with the same independent counsellor, including the provision of a detailed assessment report, which is seen by the parties to the surrogacy arrangement, prior to being sent to an external body.
>
> Post Birth (surrogate and partner if she has one): routine debrief/relinquishment counselling for the surrogate and her partner if she has one, prior to the final decision making.
>
> Parentage Order counselling (all parties to the surrogacy, and also any child/ren born of the surrogacy): counselling of all parties, including observation of the child/ren in the company of the parties to the surrogacy arrangement.

Currently in NSW, the pre surrogacy assessment report is sent to the IVF Ethics Committee or the Lawyer of the intended parent/s if the surrogacy involves home insemination conception. Whilst this has worked reasonably well, I believe that there should be a recommendation for an external approval body, such as currently is in place in Victoria and Western Australia. The recommendation is for two reasons. The first is because there have recently been illustrations which indicate concern as to clinical practice in some clinic situations, and surrogacy is too important to be left to chance.

The second reason is that related to occasions over the years, as the independent counsellor, required to assess the "suitability of the parties to undertake surrogacy." Over the years I have given qualified approval to a number of cases, with the qualification most often being for the intended mother to have therapeutic support to help manage the emotional challenges of a surrogacy pregnancy and birth. However there have been a small number of cases where I have been unable to approve the surrogacy to proceed, at the time, or in the form proposed. This has not occurred often. In perhaps 10 of 300 pre-surrogacy cases I wrote a report stating my professional concerns, including with recommendations for changes. However after this, I have on occasion been contacted a party to such a case, who advised me that surrogacy did go ahead regardless of my report, and that problems had occurred after the birth, they said words to the effect of "you were right."

It is my understanding that, following my report, the clinic/lawyer referred the parties to another independent counsellor, and the parties probably changed their words/behaviour to cover up what had been seen by me, and they then received a "suitable" to proceed report. I do not have a particular reason in wanting to be right, and nor would I wish for a child to have never been born, but I do believe it to be important that a negative, or wait a while, report, be considered as part of the approval process. Thus, I would recommend that all surrogacy

counsellors and lawyers be required to advise an independent body, even if there is recommendation against proceeding with the surrogacy at the time. Thus, if the parties to a surrogacy arrangement change their story, and say see another counsellor who sends a positive counselling report, reports from both will be available for consideration by the independent surrogacy approval body.

Professional services, including legal and counselling services

Question 11 What are the gaps in professional services for surrogacy in Australia? You might want to consider:
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.

Response:

There are currently online sites which connect intended parents and potential surrogates, through organizations which provide a basic screening service. Whilst I have some concerns with how these are managed, I believe they should be given legitimacy, and perhaps include guidelines as to what can and can't be provided by the service.

I cannot speak on legal advice processes, but can speak confidently on surrogacy counselling. As mentioned before in this submission, I wrote the first ANZICA Surrogacy Guidelines and the first Addendum to the Surrogacy Guidelines and have contributed to updates since then. These guidelines are comprehensive and thorough and I believe that if there were to be Australia wide legislation it would be appropriate to refer to these guidelines. The ANZICA Guidelines are available on the ANZICA Memberzone of the FSANZ website and for your information are as follows:

Surrogacy Guidelines: https://fertilitysociety-com-au.membes-ams.com/public/267/files/ANZICA/Policy%20Statements/ANZICA-SURROGACY-GUIDELINES-OCTOBER-2022.pdf

Addendum to Surrogacy Guidelines: https://fertilitysociety-com-au.membes-ams.com/public/267/files/ANZICA/Policy%20Statements/anzica-surrogacy-guidelines-addendum.pdf

This information plus other helpful information such as pro forma Surrogacy Plan, Surrogacy Hospital Plan, and Pre-Surrogacy Observation Scale are available to members of ANZICA, to help them in their professional surrogacy work.

Question 12 How should professional services operate in Australia? You might want to consider:
a. what their role should be;
b. if they should be for-profit or not-for-profit, or how they should be funded;
c. if different types of services should operate together or separately, for example, whether counselling services should be independent or integrated within agencies or fertility clinics; and
d. how they could best meet the diverse needs and experiences of people involved in a surrogacy arrangement.

Response:

I find it interesting to read that the ALRC has heard that there is a lack of professional legal and counselling services and that this could be seen as another "barrier" to people undertaking domestic surrogacy. Perhaps this has been posited as a reason for intended parents to travel overseas for commercial surrogacy, where there is perhaps no "inconvenience" of needing to have either counselling or legal advice. Regarding the provision of specialist surrogacy agencies, there is already some matching and support service available. If it were to be decided that this could be ramped up to a fully professional for-profit service, I see no reason to object. I do not however believe that it would make an appreciable difference to the uptake of surrogacy in Australia.

I see no reason to change the processes by which counsellors and lawyers provide their services in Australia. There are enough skilled counsellors and lawyers to provide surrogacy services in Australia, and geographical distance not a problem, as some (not all) of the work is being undertaken online, particularly since COVID.

Whilst counsellors in clinics provide information and support counselling for their patients, I believe it to be important that the role of separate independent counsellor remain in any legislation. From an infertility counselling perspective, it totally fits for support work to be done within a clinic, and for implications, decision making and assessment counselling to be undertaken separately.

Again, I am muddled as to why counselling provision could be seen as a "barrier" to domestic surrogacy. The only potential reason for this being a consideration is if intended parents or surrogates were to consider counselling to be unnecessary. From my many years of experience with many parties to many surrogacy arrangements I cannot understand why this view may be held. And when it comes down to cost and inconvenience the requirements of counselling are low in comparison to legal costs and minimal in comparison to the potential problems which could occur without such professional support. Remember surrogacy is a BIG THING! I could discuss the potential psychological reasons as to why people, particularly intended parents may wish to minimize psychological factors, but bluntly I don't have the energy, particularly as I believe little attention will be paid.

Limits on advertising

Question 13 How should surrogacy advertising be regulated? You might want to consider:
a. if advertising should be allowed;
b. who should be allowed to advertise;
c. what advertising content should be allowed; and
d. where advertising should be allowed, for example via newspapers, social media, or by establishing a surrogacy register.

Response:

If it were to be believed that paid advertising in diverse media would make a meaningful difference in uptake of domestic surrogacy then this should be permitted. However there is currently informal online advertising via not for profit groups, but I see no reason why paid

commercial advertising should not be permitted. The idea of a surrogacy register has been mooted before. Again, there are informal online services operating already, and I don't believe that a formal government register would make an appreciable change in the uptake of domestic surrogacy. I believe that neither of these aspects would significantly influence why intended parents choose to go overseas for commercial surrogacy. There may be an increase in availability of surrogates in Australia, but then there would need to be a system for vetting surrogates in addition to current pre surrogacy counselling and legal requirements.

Access to Medicare and parental leave

Question 14 What entitlements, if any, should be available to surrogates and intended parents? You might want to consider:
a. Medicare rebates for fertility treatments;
b. access by surrogates to paid or unpaid parental leave, including through enterprise agreement terms; and
c. if it is desirable to make surrogacy arrangements generally more affordable, and how this could be achieved.

Response:

I would recommend that Medicare rebates should be available to parties in surrogacy arrangements, along the lines of rebate reimbursement for those undertaking assisted reproductive treatment to use the embryos themselves. Some surrogates and intended parents do currently receive parental leave, and if there were to be legal changes to ensure this was available to all parties, then they could be recommended.

Reimbursing and compensating surrogates

Question 15 How could the process for reimbursing surrogates for reasonable expenses be improved? You might want to consider:
a. what expenses should be reimbursable;
b. how payment should be calculated;
c. if there should be limits on any amounts;
d. the process for reimbursement (for example, whether money should be kept in trust, whether there should be a requirement to produce receipts, etc); and
e. any jurisdictions (either within Australia or overseas) that have processes for reimbursement worth learning from.

Response:

From my extensive surrogacy counselling experience, I am aware that the process of reimbursement of surrogates for surrogacy related expenses can be tricky. Usually intended parents underestimate the costs of the surrogacy and as time goes by they can feel edgy at payment of costs for things that they may perceive to be trivial.

At the same time surrogates, like all of us, can feel uncomfortable in asking for money and so may hesitate to mention a cost that should be reimbursed. I recall one surrogate saying that it felt petty to ask for reimbursement for Bio Oil which she used to alleviate stretch marks, another who said that she didn't feel like she could ask for the lost penalty rates when she

wasn't working, and a third who said that she felt uncomfortable asking for money for a new maternity dress when she was going to a special function and wanted something different.

From discussing the reimbursement of expenses with parties during the pre surrogacy counselling I have come to recommend that the intended parents organize for a dedicated debit card, which they load regularly, and which the surrogate can use, even for trivial expenses, and the surrogate retains receipts to give to intended parents. Remember the intended parents are trusting the surrogate to do the right thing with the care of their child, it is perhaps not asking too much for them to trust the surrogate to spend money judiciously. I do not believe there should be a limit set, or money retained by an agency,

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.

Response:

I support the continuation of the requirement for the prohibition of commercial surrogacy in Australia. Whilst I support the continuation of the enforceability of reimbursement by intended parents of surrogate incurred expenses, I am unsure of what I believe regarding the proposal by some people that there be "compensated" surrogacy, with a certified rate payable to the surrogate to cover expenses plus.

On the one hand it may lead to an increase in the number of women offering to be surrogates, and it may reduce the difficulties for surrogates in discussing money. At the same time the few cases where there have been problems do not in my opinion necessarily warrant a change in the legislation, particularly as historically in Australia, we have an altruistic system, where there is token payment for blood donation, oocyte and sperm donation, as well as surrogacy.

If there were to be a change in the legislation to permit "compensated" altruistic surrogacy I believe such a change could perhaps act as a "PULL" towards factor to encourage intended parents to undertake surrogacy in Australia and local women to act as surrogates. This could potentially reduce the number of intended parents going overseas for commercial surrogacy. However, if there were to be such a change in domestic surrogacy compensation, I also believe that there should be concomitant enforcement of legislation as a "PUSH" away from factor, to reduce/stop contravening intended parents going overseas for commercial surrogacy.

Question 17 If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented? You might want to consider:
a. how compensation should be calculated;
b. if there should be a limit on the amount of compensation;
c. who should set the amount of compensation;
d. the process for compensation (for example, whether it should be paid in monthly instalments, whether the money should be kept in trust etc); and
e. any jurisdictions (either within Australia or overseas) that have processes for compensation worth learning from.

Response:

I would suggest that this issue be considered as part of the Regulations of any federal Surrogacy Act if such an Act were to be legislated in Australia. And the lawyers could organize this.

Legal parentage of children born through surrogacy

Question 18 What are the main problems with the requirements and processes for obtaining legal parentage for a child born through domestic and/or international surrogacy?

Response:

The situation for domestic surrogacy and overseas surrogacy are quite different. As I work in NSW and am unable to counsel intended parents who travel overseas for commercial surrogacy, I have little professional knowledge of the problems these people encounter when obtaining legal parentage for a child born through international surrogacy. As mentioned in my comments I would however strongly recommend the requirement of two things for the issuance of Australian citizenship/birth certificate for offspring of international surrogacy:

- A requirement that there be evidence of the provision of professional counselling and legal advice for all parties to the surrogacy before conception and after birth;
- A requirement for identifying information on who provided the genetic material for conception, and identifying information on the woman who acted as the surrogate to gestate and birth the child/ren. This information would then be held in an Australian Reproduction Register for potential access by offspring at maturity.

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:
a. timing (for example, if the process happens before or after the birth of the child);
b. who makes the decision (for example, if it is an administrative or judicial decision);
c. if recognition should be automatic;
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);
e. whether intended mothers are or should be treated differently to intended fathers in legal parentage determinations;
f. whether the granting of legal parentage should depend on compliance with process requirements;
g. the importance of prioritizing the best interests of the child; and
h. whether we can learn from the processes of any other countries.

Response:

To my knowledge the process for obtaining a parentage order in NSW requires unnecessary requirements and legal costs, and I believe the situation to be similar in other Australian jurisdictions. Provided there is evidence of completion of very comprehensive requirements for counselling and legal advice, I see no reason that the process of obtaining an amended birth certificate, after a surrogacy birth, could not be an administrative process involving appropriate government departments for the jurisdiction. This would reduce the legal and Court costs for the intended parents, and still ensure maintenance of appropriate records if the conception and birth of surrogacy offspring, including in a Reproductive Register.

I am aware that there is some interest, particularly from groups representing intended parents, for a parentage order birth certificate to be automatically provided from the date of the surrogacy birth. I do not support such a change because I believe that the birth mother needs time to process the birth, physiologically and emotionally, before the final decision, and I believe that in a paradoxical the freedom to decide is positive in the relinquishment process. If one accepts that the surrogate mother has sovereignty over decisions to do with her body, including the child/ren that she is carrying, how can she possibly maintain such sovereignty if she were to make a legal decision before giving birth. Remember surrogacy is a BIG THING!

A specific example should prove why this is so relevant: think of a surrogate who has not ever had a pregnancy or live birth, and she is undertaking genetic surrogacy. How can she possibly maintain her decision making sovereignty when she does not know what will happen at the birth? I also believe that there should be a legal recognition that the birth mother gave birth to the child/ren whom the intended parent/s were not able to gestate and birth. From more than 35 years of counselling parties to over 350 surrogacy arrangements I have not met a surrogate who wished to change her mind about relinquishing the child/ren, even in situations where relationships and medical issues may have been less than smooth.

Obviously intended fathers should be treated in the same legal manner as should intended mothers, and I see no reason for laws regarding genetic surrogacy to be different than those for gestational surrogacy. I do find it interesting that the “best interest of the child” should be included in this section, they are an infant, and for them the timing and details of their birth

certificate are irrelevant. The only possible issue is for parents to have authority for medical treatment, but from my experience the medical system manages this issue well. Like so much of this ALRC Issues Paper, the underlying focus appears to be on the best interests of intended parents rather than those of the surrogate or offspring of the surrogacy arrangement.

Citizenship, passports, and visas

Question 20 What, if any, are the main problems with obtaining the following documents for a child born through international surrogacy: a. Australian citizenship; b. an Australian passport; or c. an Australian visa.

Response:

As mentioned before, I am unable to counsel parties to international commercial surrogacy, though I have counselled some people who have undergone altruistic surrogacy overseas. They have reported to me that whilst it can be bureaucratic and cumbersome that government authorities have overall been helpful and supportive.

Question 21 How could the process for obtaining these documents be improved?

Response:

If one considers the "best interests of the child" then there should be requirements for identifying information about all genetic and birth parties to the surrogacy before the issuance of Australian documentation.

Oversight and harmonisation – Inconsistent laws

Question 22 What is the best way to approach differences in surrogacy regulation between or within jurisdictions? You might want to consider: a. the ways in which surrogacy regulation is inconsistent between jurisdictions; b. if these inconsistencies are problematic; c. any impacts of the differences between federal legal regimes (for example, citizenship law and family law); d. if a judicial process for transferring legal parentage is retained, whether applications for parentage should be determined in state courts, the Federal Circuit Court and Family Court of Australia, or both; e. how important it is that the approaches are harmonised or made more consistent; and f. how any harmonisation could be achieved (for example, by regulating surrogacy at a federal level or through uniform or substantively consistent state legislation).

Response:

This is an illustration of how this ALRC Issues Paper is much too detailed. If by some chance there is resulting Federal legislation introduced then these issues can be considered further with the development of the Regulations. Further given that I wrote a submission to a COAG "Harmonisation of Surrogacy" Inquiry in 2009, and nothing happened, I do not intend to waste

my time writing about it now. If there is Federal surrogacy legislation enacted then I will be pleased to contribute then.

Oversight and harmonisation – Oversight

Question 23 Is it appropriate for surrogacy arrangements to be subject to oversight? If so, what is the best approach? You might want to consider:
a. the need for a regulator or oversight body and what it could look like (for example, an administrative body or a tribunal);
b. if oversight should be national or state and territory based; and
c. which groups need oversight (for example, health professionals).

Response:

As discussed earlier in my submission I believe that there should be an external regulatory body, and that this body should be based at ANZARD, at the University of NSW. This organization has a history of record maintenance and it should be able to respond to any legislative requirements for an Australia wide approval panel, as also the national reproductive register of gamete/embryo donation and surrogacy which I and others believe to be essential.

Regarding oversight of health professionals – there is already a regulatory body overseeing health professionals, AHPRA (Australian Health Practitioner Regulation Agency) and it would seem unnecessary to consider any additional agency to oversee surrogacy professionals.

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:

I am not a lawyer and believe this issue should be addressed by lawyers. At the same time I am aware that the criminal law in NSW is regularly flouted by intended parents travelling overseas for commercial surrogacy, and Australian birth certificates are issued for the children. I can understand that this probably occurs because in the Court system the best interests of the child takes precedence (with which I agree). However I do not believe that this implicit support of a practice which is against the law should continue, and that any Federal legislation should consider this dilemma.

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:

From having worked in the area of surrogacy since the1990s I have been in the position where people have asked me about the area generally. From my experience many people are now aware that surrogacy is available and legal in Australia, though earlier on many people only knew what they had seen on television programs about problem surrogacy situations overseas.

Further from my experience potential intended parents often find out about surrogacy through their medical contacts, and nowadays there have been enough positive surrogacy stories in the media for potential surrogates to have some knowledge early on. With regard to counselling professionals obtaining experience in surrogacy work, this has been in the ambit of ANZICA since the 1990s, and as a member of ANZICA I can attest to the quality of training and information being provided to surrogacy counsellors.

- As mentioned previously I have on my website a page "Finding an Altruistic Surrogate" https://counsellingplace.com.au/finding-an-altruistic-surrogate/

I have had feedback that this has been found to be helpful. From my experience if/when intended parents know they need surrogacy, or are considering surrogacy, the way should approach finding a surrogate is to calmly look after their own intense emotions, organize embryos to be stored, and then tell everyone they know that they need a surrogate to help them. This is not something that one can request of a woman, but it is surprising how often, a friend, a friend of a friend, a family member, will say that they are happy to be a surrogate. Though reported feedback to surrogates is along the lines of "that's amazing, I couldn't do it", surrogates are comfortable with helping another family in this way.

Issues we consider to be out of scope

Question 26 Do you have any views about the issues we consider to be in or out of scope?

Question 27 Are there any important issues with regulating surrogacy that we have not identified in the Issues Paper? Do you have any other ideas for reforming how surrogacy is regulated?

Response:

It has not been raised in the ALRC Issues Paper but from my 40 years third party reproduction counselling experience I believe that there should be Australia wide legislation regarding the number of potential donor offspring from one donor. I would recommend that such information be required of all donor conception, including conception through online semen donor recruitment as well as medical clinics. If the ALRC were able to influence the

development of Australia wide surrogacy legislation it would be very positive if the legislation were to incorporate conception through donor gametes or embryos.

Further as per Recommendation 29 of the FSANZ (Fertility Society of Australia and New Zealand) Fertility Roadmap released in September 2024 (https://www.fertilitysociety.com.au/public/267/system/newsAttachments/Recomendations%20and%20Framework%20for%20Australia's%2010%20Yr%20Fertility%20Roadmap%20vFF%20Nov.pdf) , I would recommend that information about donor and surrogacy conception and birth should be recorded in an Australia wide register to be held by ANZARD (Australia and New Zealand Reproductive Database) which is currently held at the University of NSW. And if I really were to achieve my wish list, it would be required on all Australian birth certificates, that there should be a section indicating that there is further information about the birth under Section XYZ of a government Act, though not necessarily indicating the details of the information available under such a section, as it is usual for identifying information on donors and surrogates to be made legally available when third party conception offspring achieve maturity.

A comment:

Whilst there is regular mention in the ALRC Issues Paper of "best interest of the child" in fact much of the commentary and potential recommendations relate to the needs of the intended parents in surrogacy. Thus when intended parents travel overseas for commercial surrogacy, sometimes at dubious clinics, there is no focus on the need of offspring to know their genetic and birth story – where did the gametes come from, their parents, or perhaps an egg donor, who was the woman who gestated and nurtured them and gave birth to them. Children born through domestic surrogacy know these stories, mostly from when they can't remember, which is recorded in a Register. If they do not have contact with these people, at maturity they are able to obtain identifying information and make contact if they so wish. This is rarely available through surrogacy overseas, and if the focus were actually to be on the best interest of the child, then there should be laws in place to ensure that when a passport/birth certificate is issued for overseas born surrogacy offspring this information should be provided. Recommendations 4 and 7 in the 2016 report, Surrogacy Matters, would be a good place to start.

I thank you for the opportunity to make this submission to the ALRC Review of Surrogacy Laws in Australia.

Regards,

[redacted]

Miranda Montrone
Health Psychologist, Family Therapist, and Infertility Counsellor

[redacted]

11 July 2025

Appendix: **QUALIFICATIONS AND EXPERIENCE OF INDEPENDENT COUNSELLOR**

As required by the NSW Surrogacy Act 2010, I hereby state that I am a qualified counsellor with the experience and qualifications of a kind required by the Regulations to exercise the functions of a Counsellor under the Act. Having qualified with a B.A. (Macq.) in 1976, and a M.A. (Syd.) 1990, I have been registered as a psychologist since 1991 ([redacted]) (Health Psychology endorsed). I have relationship therapy (couple and family) training (1990, 1991) and I am a Clinical Member of the Australian Association of Family Therapists. I have been a member of the Fertility Society of Australia and New Zealand (FSANZ) since 1991, and of ANZICA (Australia and New Zealand Infertility Counsellors' Association), now a sub- group of FSANZ. I contributed to writing the ANZICA Surrogacy Guidelines updated 2022 and the ANZICA Addendum to the Surrogacy Guidelines 2022 and the NHMRC Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (2007).

I have worked in the areas of infertility and assisted reproduction for over thirty years, with nine years (1992-2001) as Infertility Counsellor at City West IVF (now IVF Australia, Western Sydney). Since 2001 I have worked solely in private practice in Glebe, Sydney, with at least 50% of my work being related to infertility and assisted reproduction. This has included the independent psychological assessment of altruistic surrogacy proposals even before the NSW Surrogacy Act, for assisted reproduction clinics (in Sydney and Canberra) as part of the pre surrogacy process. Since 2010 I have also done post surrogacy birth relinquishment counselling and the counselling and reports required for parentage order applications. Over more than 30 years I have worked on more than 250 altruistic surrogacy cases, including before surrogacy treatment and/or conception and after the birth of a child conceived through surrogacy.

As an illustration of my professional background, here is a sample of presentations/papers:

- Secrets in Families, Fertility Society of Australia Conference (FSA) Adelaide 1992
- Assisted Reproduction & Long-Term Family Issues. Family Court Judges' Conference, Sydney 2001
- A Voluntary Contact Register: Stakeholders, Values, Processes, Dilemmas. Fertility Society of Australia Conference, Perth 2003
- The Role of Assessment in Preparation for Surrogacy. ANZICA Workshop. Fertility Society of Australia Conference, Sydney 2006
- Gestational Surrogates. ANZICA Workshop, FSA Conference, Brisbane 2008
- Pre-Surrogacy Assessment, ANZICA Workshop, Sydney May 2011
- Information Dissemination as an integral part of assessment and decision making in surrogacy, APS Health Psychology Conference, Sydney April 2015
- Pre-Surrogacy Assessment Counselling – A Review of 120 cases; and Use of the PAI in Pre-Surrogacy Assessment, Fertility Society of Australia Conference, Canberra September 2015
- Altruistic Surrogacy Relationships and Values, ASPIRE Conference, Jakarta April 2016
- Pre-Surrogacy Assessment: Positive and Negative Indicators, Fertility Society of Australia Conference, Perth September 2016
- Experience of Surrogates, FSA Conference, Adelaide, October 2017
- What do we know about Altruistic Surrogates? FSA Conference, Hobart Oct 2019

- Podcast prepared by Bryant McKinnon Lawyers on Surrogacy, Donor and IVF, 12/2019 https://bryantmckinnon.com.au/family-matter/childrens-matters/surrogacy-ivf/
- A comparison of sociodemographic and psychological characteristics among intended parents, surrogates, and partners involved in Australian altruistic surrogacy arrangements. Vol 113, No 3, Fertility & Sterility March 2020
- Surrogacy in Australia. Journal für Reproduktionsmedizin und Endokrionologie (Reproductive Medicine and Endocrinology) Vol 17 (2020) No 5
- American Society for Reproductive Medicine MHPG Clinical Session: Testing: A therapeutic assessment model in the psychological screening of gestational carriers. October 19 2021

Recent presentations taught:

- Australian Psychological Society (APS) PIPIG Webinar Part 1: Infertility and Assisted Reproduction 5 April 2022
- Australian Psychological Society (APS) PIPIG Webinar Part 2: Third Party Reproduction 12 April 2022
- Australian Psychological Society (APS) Webinar: Surrogacy Implications and Assessment Counselling (Before Conception to After Birth) Presentation July 2021
- Pre FSANZ ANZICA Workshop: Presentation on Donor Recipient Counselling in the Early Years
- IVF Australia Education Day: Presentation on Infertility Counselling from the 70s to the Future, October 2023.
- ANZICA Surrogacy Master Class October 2024. Assessment of Interpersonal Relationships in pre-surrogacy implications and assessment counselling.

I made written submissions to the South Australia Legislative Council into Gestational Surrogacy (2007); to the Queensland Investigation into Altruistic Surrogacy Committee (2008), and to the NSW Investigation into Altruistic Surrogacy in NSW (2008), and was invited to appear before both the Queensland and New South Wales hearings. In 2009 I made a written response to the Proposal for a National Model to Harmonise Regulation of Surrogacy and in 2013 I wrote a submission to the NSW Inquiry into Managing Information related to Donor Conception and appeared before the Inquiry. In 2015 I co-wrote a submission of behalf of ANZICA (ANZ Infertility Counsellors' Association) to the Federal government Inquiry into Surrogacy and was invited to participate in the related Federal Standing Committee Roundtable on Surrogacy. More recently I was consulted on development of the 2022 Northern Territory surrogacy legislation and co-wrote the ANZICA submission to the Inquiry into the ACT Parentage (Surrogacy) Amendment Bill 2023 ACT. My submissions have been based on experience in supportive, implications and assessment counselling of patients firstly during donor and surrogacy treatment at City West IVF in the 1990s, before the introduction of the NSW Surrogacy Act in 2010. I also have very extensive experience in independent psychological assessment of patients before clinic consideration for altruistic surrogacy treatment, counselling during a surrogacy pregnancy, assessment counselling related to some planned home surrogacy insemination arrangements, and post surrogacy birth counselling required under Section 35(2), as well as counselling required for Section 17 of the NSW Surrogacy Act.