SUBMISSION TO ALRC, in response to:

***REVIEW OF SURROGACY LAWS* (Issues Paper No 52, June 2025)**

11 July 2025

De-identified, but not confidential

1. I request that my Submission be de-identified, in the way described at p 2 of the Issues Paper.
2. In this Submission:

   (a) Unless otherwise indicated, I use the same terminology as used in the Issues Paper.

   (b) **ART** = assisted reproductive technology.

   (c) **the Cth Agency** = my proposed Commonwealth Agency whose statutory functions will be policy, operational, and regulatory, in relation to surrogacy in Australia in accordance with my National Law.

   (d) **my National Law** = my proposed legislation of the Commonwealth Parliament which is intended to "cover the field" of surrogacy in Australia (replacing the relevant legislation of the States and Territories).

   (e) **MARKER** = where, if I had a little more time beyond the ALRC's deadline for lodgments, I would have liked to have added further material to my Submission directly relevant to matters in the Issues Paper.

Contents

Question 1: Experience

3. My experience relevant to some of the matters in the Issues Paper falls under 2 headings:

   (a) First, as a legal practitioner in Australia for [redacted] years, in the course of which my work touched, to a small degree, on some of the issues raised in the Issues Paper. This limited experience is outlined further below.

   (b) Second, as the grandparent of 5 children, 3 of whom were born under surrogacy arrangements.

4. As to para (b) above, I choose to provide no further information about each of those 3 surrogacies because, in relation to these matters of surrogacy, I am only a grandparent and, more importantly, I do not want any of the many relevant parties (surrogates, spouses of surrogates, intended parents, children born) to be identified or their privacy infringed in any way.

5. That said, I say that the birth of each of the 3 children in question in my family has been of inestimable joy for the intended parents and their immediate and wider families. From my observation and from ongoing feedback from the intended parents, I say that each of the 3 surrogates would continue to say that she was privileged to have been able to provide such joy and that she was emotionally fulfilled.

6. As to **para 3(a)** above, I practised law in the private sector in Australia for [redacted] years until my retirement. During those [redacted] years:
   (a) For about 6 years (during the early years of practising), a significant component of my work was family law. This was undertaken, initially during the transition from the *Matrimonial Causes Act 1959* (Cth) to the *Family law Act 1974* (Cth), and then purely under the latter. That particular experience frames my response to Question 22.
   (b) During those 6 years, I did all the legal work in relation to a number of private adoptions, that is, where at least one of the applicants was a parent or relative of the child. This involved obtaining the consent (usually every person who was a parent or guardian of the child) to the adoption of the child, the obtaining of an order from the Supreme Court, and obtaining a new birth certificate.
   (c) For most of those [redacted] years, I have seen the material benefits of inconsistent State and Territory-based legislation dealing with the corporate and financial sectors, the industrial relations sector, and the healthcare sector, becoming uniform across all jurisdictions in Australia. This was achieved by cooperation involving mirror legislation (very poor as is it was never a true mirror, and not all jurisdictions did it) or cooperation by various jurisdictions adopting as their law the 'model law' passed by one of the States (less desirable as some jurisdictions when adopting the model law did so with changes and carve outs) or a referral of constitutional power to the Commonwealth Parliament (the much clearer and better result). In a similar manner, I have seen the material benefit of State and Territory-based regulators and institutions

being replaced by national ones. To a small degree, I was involved in some of those law reforms.

(d) For most of those [redacted] years, as a legal adviser I had an increasing involvement in healthcare services provided in Australia. This initially involved understanding and applying State and Territory-based legislation and then, as a result of a similar process to that in para (c) above, understanding and applying uniform national legislation. In addition, I was involved in understanding healthcare expenditure by the relevant parties.

(e) For about [redacted] years (during the later years of practising), I was the principal legal adviser to a company which was an assisted reproductive technology (**ART**) provider. That did not involve me in providing legal advice in relation to surrogacy arrangements. However, it did require a close understanding of not only the legislative issues surrounding ART, which differed across jurisdictions, but also the ethical, emotional, and financial, issues for those involved.

7. Further to para (d) above:

(a) In 2014–15 (the latest data before I retired), total healthcare expenditure in Australia was $161.6 billion. This was 10.03% of GDP. Such expenditure was $6,846 per person.

(b) That total healthcare expenditure was provided by: Commonwealth Government (41.0%), State and Territory Governments (26.0%), individuals (17.7%), Private Health Insurance Funds (8.7%), and CTP and Workers Compensation Insurers (6.7%).

(c) The fact that individuals spend so much on total healthcare, and that their proportion relative to Governments and large institutions has been steadily increasing across years, is relevant to the matter of surrogacy.

(d) The intended parents in any domestic surrogacy arrangement, from ART treatments through to the birth of a much-loved child, would quite rightly look at the average expenditure of $6,846 per person in each year in para (a) above and rhetorically ask:

> "How is it that this $6,846 is less than 5% of the huge amount that we have been out of pocket for our ART treatments and surrogacy arrangement?"

8. For the reasons set out later in this Submission, from a public policy perspective there is a strong case for the Commonwealth Government to be contributing at least 80% of the total cost of the intended parents in any domestic surrogacy arrangement, from ART treatments through to the birth of a much-loved child.

Ethical and moral issues

9. I have no conflicts of interest in relation to any the matters in the Issues Paper. I have the personal interest set out in **para 3(b)** above.
10. I was raised as a Roman Catholic and was educated in Catholic schools. My children were raised as Catholics. Throughout my life, I have taken an interest in both ethical and moral issues. In relation to, first, artificial contraception, then assisted reproductive technology, and then surrogacy, I have read much to keep abreast of the debate on the ethical and moral issues. I respect all those who hold views as to such ethical and moral

issues regardless of whether or not I agree with them. With all that in mind, I can comfortably say that, subject to the guardrails and structures I outline in this Submission:

(a) I support the immediate effecting of as many reforms as possible to facilitate and liberalise surrogacy in Australia.

(b) I support the immediate implementation of commercial surrogacy with a cap.

(c) I support a statutory regime which requires that, after 5 years' experience of commercial surrogacy with a cap under para (b) above, a statutory review must be undertaken by a Review Panel with the statutory requirement that commercial surrogacy either without a cap or with a much higher cap, as recommended by the Review Panel, be implemented – unless the Review Panel unanimously and clearly recommends against its implementation, in which case para (b) above continues to apply.

National policy concern with ongoing decline in birth rates

11. The Australian Bureau of Statistics (**ABS**) reported on 16 October 2024 that:

(a) Total births in Australia continue to decline: 308,065 (in 2013); 300,684 (in 2022); 286,998 (in 2023).

(b) Total fertility rate in Australia continues to decline: 1.88 (in 2013); 1.63 (in 2022); 1.5 (in 2023).

(c) Net reproduction rate in Australia continues to decline: 0.9 (in 2013); 0.79 (in 2022); 0.72 (in 2023). (ABS, 'Births, Australia' Release 16/10/2024).

12. For the above purpose, the ABS states:

(a) "Total fertility rate is the number of registered births per woman." This is further explained as: "The sum of age-specific fertility rates (live births at each age of mother per 1,000 females of the estimated resident population of that age) divided by 1,000. It represents the number of children a female would bear during her lifetime if she experienced current age-specific fertility rates at each age of her reproductive life (ages 15–49)." (ABS Glossary).

(b) "The net reproduction rate represents the average number of daughters that would be born to a group of females if they are subject to the fertility and mortality rates of a given year during their future life. It indicates the extent to which the population would reproduce itself." (ABS Glossary).

(c) "Replacement level fertility is the number of babies a female would need to have over her reproductive life span to replace herself and her partner, in the absence of overseas migration. Given the current mortality of females up to age 49 years, replacement fertility is estimated at around 2.1 babies per female." (ABS Glossary).

13. The Australian Institute of Family Studies (a statutory agency) summarised the problem by stating:

"**Key messages**

1.5 According to the total fertility rate in 2023, an Australian woman would have 1.5 babies over her lifetime, *the lowest fertility level ever recorded, well below the current level needed for population replacement (about 2.1)*.

Women aged 30 to 34 continue to have the highest fertility rate, followed by those aged 25 to 29. But fertility rates have fallen for all age groups under 35 over the last decade." ('Birth in Australia', *Australian Institute of Family Studies* (Web Page, December 2024) – available at www.aifs.gov.au) (emphasis added).

14. The Commonwealth Government stated in 2023 that the total fertility rate (**TFR**) in Australia peaked at 3.55 babies per woman in 1961 during the 'baby boom' years and that:

"Since then, the TFR has fallen almost continuously, reflecting Australian women gradually having children later in life, and having fewer children when they do.

The TFR was 1.66 in 2020–21 well below the replacement rate of 2.1 (the rate needed for a generation to replace itself). A fertility rate below the replacement rate means that, in the absence of overseas migration, the size of Australia's population would decline over time.

It can take a generation before changes in fertility rates fully affect the size, growth and age structure of the population." (Australian Government the Treasury, Centre for Population, 'Australia's Future Fertility: A Quick Guide to Potential Impacts on Future Population', 2023. 10pp – available at www.population.gov.au) (emphasis added).

15. Here is not the place to lay out the multidimensional reasons for the decline in the TFR. Suffice it to say they include:

(a) Costs and benefits of children. The costs of rearing children include not only direct costs but also indirect costs of housing, opportunity costs, and time costs.

(b) Broad economic factors. They include educational participation, income and career prospects, uncertainty about future income, and housing affordability.

(c) Social norms and lifestyles.

See Edith Gray, 'Impacts of Policies on Fertility Rates' (Australian National University, 2022, 202pp) – available at www.population.gov.au.

16. Australia's immigration policy and declining birth rates in Australia are connected. For FY 2024–5, the Commonwealth Government slightly reduced the number of places allocated to the permanent Migration Program to 185,000 (down from 190,000) with an approximate 71:28 split between the Skill and Family streams. The public pressure to reduce immigration numbers further, or at least to not increase them by much, is evident from the public discourse. This 'pause' is evidently based on an expectation that the pause should continue until more housing, more schools, more hospitals and

other health facilities, and more and better infrastructure, has all been put in place which can properly cater to the needs of the population. Despite this, it is likely that the Commonwealth Government, for reasons which are primarily to do with the short-term needs of the economy, will continue to set the annual immigration intake at between 160,000 and 220,000, with the number more likely to be 185,000 and heading up towards 200,000.

17. In favour of births within Australia, whether or not by surrogacy, compared to increase in population by immigration, is the big plus that all the children born within Australia do not cause any pressure on housing. Such children are born into households which already have housing.

National interest reasons to provide incentives for, and reduce barriers to, surrogacy

18. In the period from 2009 to 2020, the number of births under domestic surrogacy (in Australia) each year increased from 16 to only 75 births, and the number of births under international surrogacy increased from 10 to only 275 births. These numbers are extremely low. (Stephen Page, 'Surrogacy in Australia: The 'Failed Experiment'?' (2023) 174 *Precedent* 22 – available at www8.austlii.edu.au). Para 23 of the Issues Paper records that in 2023 the number of births under international surrogacy increased to 375 – a still extremely low number.

19. I submit that the opportunity be taken now, in the national interest, to use a more liberalised domestic surrogacy regime and increased financial contribution by the Commonwealth Government in such regime as one of the tools to use, over a period of 10 years under an Assisted Surrogacy Plan for Australia, to address the ongoing decline in births in Australia set out in **para 11(a)** above. The target should be to achieve 14,350 births by domestic surrogacy in the 5th year after the more liberalised domestic surrogacy arrangements have been implemented nationally. That ambitious target of 14,350 would be approaching 5% of all births in Australia in that year. The likelihood of achieving that sort of number in one year, the 5th year, is remote. The purpose of making the target so high is to provide, in my submission, the correct and justifiable frame for the approach and thinking that should now be taken by the ALRC and all those considering law reform and associated formulation of policy.

20. As to the preceding para, it is relevant that births arising from ART treatments came off a zero base, continued for some years at low numbers, and now is a material percentage of all births in Australia. The AIFS reports (relying on the AIHW):

> "Available data from Victoria, Queensland, Tasmania and the ACT indicate that the proportion of women giving birth as the result of ART has continued to increase over time and was 5.4% in 2021 for these 4 jurisdictions combined." ('Birth in Australia', *Australian Institute of Family Studies* (Web Page, December 2024) – available at www.aifs.gov.au).

21. In 2022, there were 17,963 babies born in Australia following ART treatments in Australian ART units (Jade E Newman et al, *Assisted Reproductive Technology in Australian and New Zealand 2022* (UNSW, September 2024, 90pp) viii). This number is 5.97% of all births in Australia in 2022. This is one in every 17 births.

22. The fact that births following ART treatments are now so common should be a useful guide for the policy approach to now take to liberalising domestic surrogacy arrangements.

23. If the result of setting the ambitious target at 14,350 births by domestic surrogacy in the 5th year of the 10-year Assisted Surrogacy Plan for Australia (see **para 19** above) is that, instead, there were actually 5,740 births in that 5th year, then that achievement of 2.0% of all births in that year will have set births by domestic surrogacy on the correct track. Such an outcome would:

    (a) Reflect the degree to which the present and ongoing demand from intended parents and from surrogates within Australia is being satisfied; and

    (b) Start to contribute, in a measurable way even if not yet at a material level, to turning around the declines in **para 11** above which are of national concern.

Minimal risks, and relatively low costs, to implementing new settings

24. There is strong anecdotal evidence and good empirical evidence that the numbers of those in Australia who wish to become intended parents and the numbers of those in Australia who wish to become surrogates far outstrip the extremely low numbers of births under domestic surrogacy and under international surrogacy combined (see **para 18** above). I submit that, in considering law and policy reform in relation to surrogacy in Australia, it does not matter what the actual numbers are for unmet demand in relation to surrogacy. That unmet demand falls into 2 categories:

    (a) Identifiable numbers of unmet demand. In the case of potential intended parents, these individuals may be have participated in ART treatments (or contemplate doing so) and have varying degrees of awareness of surrogacy. In the case of potential surrogates, these women may know someone who has undergone ART treatments or may have a separately sourced desire to be participate in something which is altruistic and emotionally fulfilling.

    (b) The further as yet unidentifiable numbers of latent demand. It is latent because of such things as lack of awareness, price, and availability.

25. The reasons that it does not matter what the total numbers of unmet demand in paras (a) and (b) above are is that – if the legislative, financial, and policy settings that I propose in this Submission (or like adaptations of those proposals) are maintained across a period of 5 to 10 years, then:

    (a) The actual numbers will emerge. As they come off an extremely low base, they will be easy to monitor and evaluate.

    (b) There are only minimal risks attached to such implementation to see whether the intended goals are being achieved at only a low level, at a medium level, or at a high level. Such risks include:

        (i) Political, social, and reputational risks. These are all minimal. By adopting my proposed 10-year Assisted Surrogacy Plan for Australia with my proposed Cth

Agency having oversight, such minimal risks can be monitored and action taken to address them.

(ii) Strategic risk for ART providers. For them, it may alter the competitive landscape, to a small degree. By introducing an "Assisted Surrogacy Plan" item to the Medicare Benefits Schedule (as to which see later), it will anchor to some degree the high fees which have hitherto been charged by most ART providers. While this will probably cause their prices to come down, it will also probably commensurately increase the demand for ART treatments related to surrogacy, so the position may have a neutral outcome for ART providers and only a minimal increase in outlay for the Commonwealth Government. The intended parents will have the benefit of a choice of reduced cost of ART treatments in relation to surrogacy.

(iii) Operational risk. ART providers will have to understand the new regulatory environment and adapt their exist procedures. This is a very small and short-term risk. The new regulatory environment will be a material relief from the burden of the present environment. The Fertility Society of Australia and New Zealand has long campaigned for uniform national laws. There will quickly be greater efficiencies and economic savings in having one national law and one national regulator (as to which see later), compared to the present position of having to deal with the laws of 8 jurisdictions in Australia, particularly where the laws are inconsistent and are not all found in the one piece of each jurisdiction's legislation.

(iv) Legal risk. This should be unchanged from the present position.

(b) The net financial cost to the Commonwealth Government is not significant and can be monitored as the implementation continues across 10 years. **MARKER to add as to what the future cost to the Commonwealth may be, and that some relieving of the existing costs of the States and Territories will occur and that this may require them contribute a small amount to the Commonwealth by way of offset in their overall financial arrangements.**

Question 2: Reform principles

26. I agree with the overarching principles to be used by the ALRC as a guide to making its recommendations, as set out in para 29 of the Issues Paper – subject to the following adjustments:

(a) "• Accessibility". Change the last line to read: "should aim to materially improve financial accessibility wherever reasonably possible."

(b) "• Harmonisation". Change the last sentence to read: "Laws which are consistent, practical, and responsive to Australian societal needs and expectations, may also mean that people may feel less likely to travel to jurisdictions outside Australia in relation to surrogacy arrangements."

(c) Add a bullet pointed principle which would read: "• National interest – Reforms to surrogacy laws, policies, and practices, whether taken individually or taken as a whole, should be in the national interest of Australia, or at least not contrary to the national interest of Australia. There should never be a need to justify or explain this principle or how it applies or does not apply to any such matters as it is intended only as a guide and reminder as to policy and the development of law."

(d) Add a bullet pointed principle, which is an adaptation of para 30 of the Issues Paper. It would read: "• Balance – With the exception of the principle that the best interests of the child are the most important consideration, the other principles, as between themselves, may not be equally important in every situation, and there may be a need to balance competing principles."

Question 3: Surrogates' rights

27. I agree with the matters in para 31 of the Issues Paper – subject to the following adjustments.

28. The para "• The right to autonomy" on p 9 of the Issues Paper should be changed to read:

> "• The right to autonomy – the right to make a free and informed choice about whether to be a surrogate".

29. As to the above change:

(a) The way in which the Issues Paper expressed "the right to autonomy", by qualifying it with the phrase "free from pressure or inducement", is problematic. The qualifying words not only unnecessarily cut down the right to autonomy but also run counter to one of the very things which the ALRC states in the Issues Paper it is considering, namely, "compensated surrogacy" or "commercial surrogacy", which are just 2 examples of "inducement".

(b) From the point of view of the delivery of healthcare in Australia, which definitely takes into account all of Australia's legislative obligations and treaty obligations, the phrase "informed consent" is used, and what this involves is then laid out, in the code of conduct applicable to all doctors in Australia and in the code of conduct shared by 12 other healthcare national boards in Australia regulated by AHPRA. For example,

> "Informed consent is a person's voluntary decision about medical care that is made with knowledge and understanding of the benefits and risks involved. Good medical practice involves: …" (Clause 4.5, *Good Medical Practice: A Code of Conduct for Doctors in Australia* (October 2020) issued by the Medical Board of Australia under s 39 of the *Health Practitioner Regulation National Law*, as in force in each State and Territory).

(c) It should be noted from the above that in informed consent "the benefits" are weighed in the balance. That is equally true of surrogacy, even in an extreme case of an altruistic surrogacy where she wants no reimbursements (let alone compensation of any sort). She is genuinely induced, by non-financial considerations, to enter into the purely

altruistic surrogacy arrangement. At the very least, the surrogate wishes to confer an extraordinary benefit on the intended parents and that very conferral may be very emotionally fulfilling for the surrogate.

(d) The decision by a potential surrogate to enter into a surrogacy arrangement goes beyond just delivery of healthcare services, which is addressed in para (b) above. In the circumstances of a surrogacy arrangement, my proposed phrase "free and informed choice" does address the reality of the decision whether to enter into the surrogacy arrangement. My phrase captures not only "risks" but also "burdens" for the potential surrogate. It would encompass all medical issues, legal matters, and personal sacrifices that might be entailed for the surrogate. The use of the word "free" in my phrase addresses and overcomes the need to use problematic words like "coercion", "outside pressure", and "inducements". While those problematic words might be thought useful, they are perhaps too narrow. The interpretation of what constitutes a "free" choice or a "free" consent must be left to particular contexts and individual circumstances, and what is free should not be constrained by words which undercut or skew the interpretation.

See also Francois Shenfield et al, 'Ethical Considerations on Surrogacy' (2025) 40 (3) *Human Reproduction*, 420-5. It was published by Oxford University Press on behalf of European Society of Human Reproduction and Embryology.

30. The para "• Work rights" on p 9 of the Issues Paper should be changed by replacing its first line with:

> "– some argue that that surrogates, in addition to their statutory entitlement in Australia to be reimbursed for reasonable expenses, should be".

Question 5: Barriers to domestic surrogacy

31. Para 34 of the Issue Paper, comprising just 2 sentences across 4 lines, does not address this important question. For that reason, I set out below my answer to Question 5 by reference to the Kneebone article which is cited in footnote 33 of the Issues Paper.

Reasons intended parents choose domestic surrogacy or international surrogacy

32. In a context where empirical evidence of motivations of intended parents in choosing domestic surrogacy over international surrogacy, or vice versa, a 2023 research article about a survey that was conducted is useful. There were 319 qualified respondents to the survey, with a couple being counted as one respondent (only 11% were pursuing surrogacy as a single person). See Ezra Kneebone et al, 'Australian Intended Parents' Decision-Making and Characteristics and Outcomes of Surrogacy Arrangements Completed in Australia and Overseas' (2023) 26 (6) *Human Fertility* 1448–58.
33. The Kneebone article deserves to be read, not the least to assist in the interpretation of its Tables. The choice by 46% of respondents of international surrogacy, and the choice by another 18% of respondents of surrogacy in Australia *and* overseas, is telling in itself. More significant is that, of this 62% who chose an international-only or part-

international surrogacy, 92% "stated that they would rather pursued surrogacy in Australia had it been possible" (Kneebone 1451).

34. The 62% who chose either 'surrogacy overseas' or 'surrogacy in Australia *and* overseas' were asked to select the reasons for this choice from a list of 8 fixed responses. In relation to the need to reform the laws and procedures in Australia, it is very telling that the responses were:

    (a) 69%: Surrogacy in Australia looked like too long/or complicated a process.

    (b) 56%: I could not find a surrogate in Australia.

    (c) 46%: I wanted a professional surrogacy provider to screen potential surrogates and facilitate my arrangement.

    (d) 43%: In Australia, the surrogate has the right to keep the child if she changes her mind.

    (e) 35%: I wanted to be able to compensate a surrogate for carrying my child.

    (f) 15%: I was not eligible to pursue surrogacy in my State or Territory.

    (g) 14%: I wanted a greater choice of egg donors.

    (h) 11%: I did not want any/much contact with my surrogate. (Kneebone, Table 2, 1452).

35. The 48% who chose either 'surrogacy in Australia' or 'surrogacy in Australia *and* overseas' were asked to select the reasons for this choice from a list of 7 fixed responses, which were:

    (a) 50%: Wanting to be involved in the pregnancy.

    (b) 49%: Wanting an ongoing relationship with the surrogate.

    (c) 47%: Australian woman offered to become my/our surrogate.

    (d) 43%: Difficulties in navigating another country's legal and medical system.

    (e) 35%: More affordable.

    (f) 34%: Concerns of surrogate treatment overseas.

36. The Kneebone article concludes with a 3-page discussion of the findings. It deserves to be read. It is not cherry-picking to say that the discussion there is supportive of important factors which should frame the matter of what law reforms should now be undertaken in Australia:

    (a) First, "most intended Australian parents would prefer to pursue surrogacy in their home country if it more accessible".

    (b) Second, the health and welfare of all participants under domestic surrogacy are usually superior to that under international surrogacy.

(c) Third, there are "barriers to domestic surrogacy. International surrogacy with its greater legal certainty, availability of surrogates and professional surrogacy providers, is often a more accessible option." (Kneebone 1453–5).

Questions 6 and 7: Eligibility requirements for surrogacy

37. I strongly support the enactment by the Commonwealth Parliament of a new National Law which deals with all aspects of surrogacy. That law would replace the existing legislation of the 8 State and Territory jurisdictions. My National Law would also, to the extent necessary, be coordinated with existing national legislation dealing with healthcare in Australia. How that is put in place, why it should be done, and related matters, are discussed in **paras 62 to 72** below.

38. Under my National Law:

(a) The surrogate must be at least 21 years old when she enters into the surrogacy arrangement.

(b) Each intended parent must be at least 21 years old when they enter into the surrogacy arrangement.

(c) If there are 2 intended parents:

(i) They must be a couple (spouse or de facto partner) at the time of entering into the surrogacy arrangement.

(ii) They may a same-sex couple or an opposite-sex couple.

(d) If there is only one intended parent, they may be of any sex.

(e) For the purposes of paras (c) and (d) above, the word "sex" includes the wider meanings of a person's sexual orientation and a person's gender identity.

(f) At the time of entering into the surrogacy arrangement:

(i) The surrogate must be either a resident of Australia or a citizen of Australia.

(ii) At least one of the intended parents must be either a resident of Australia or a citizen of Australia.

(g) For the purposes of para (f) above, it does not matter if a person holds dual citizenship, so long as one of the citizenships held is Australian citizenship.

(h) There is no requirement that there be any "medical or social need" for the surrogacy arrangement. My National Law is to be silent as to any such matter.

(i) There is no requirement that a surrogate has already given birth before she becomes a surrogate. My National Law is to be silent as to any such matter.

39. As to para (h) above, those existing State and Territory legislative requirements directed to such an eligibility issue are discriminatory and in any event otiose:

(a) A single intended parent who is a man, and intended parents who are a male same-sex couple, are deemed by the existing State and Territory legislation to have satisfied their legislated "medical or social need" requirement.

(b) In contrast, a single intended parent who is a woman, and intended parents who are either a female same-sex couple or an opposite-sex couple, have to satisfy the "medical or social need" requirement.

(c) On public policy grounds, that discrimination in favour of the males in para (a) above is not justified.

(d) In any event, the "medical or social need" requirement serves no practical purpose. Even if all the proposed reforms that I propose were implemented, the barriers to surrogacy in Australia, for all intended parents in para (b) above, will continue to be significant. First, you should ask "why would the intended parents in para (b) above ever consider undertaking a surrogacy arrangement given all the concomitant processes which entail for the intended parents, at a minimum, counselling and independent legal advice, significant financial costs, significant time, and significant emotions?" Answer, the intended parents would only do so if there was a clear "medical or social need". Anything else makes no sense. Then you should ask, "why would a surrogate ever consider undertaking a surrogacy arrangement, with all that it entails as discussed in the Issues Paper, if she were not satisfied that the intended parents had a "medical or social need"?" Answer she would not. The very process of a surrogacy arrangement and all that it entails is a self-evident "medical or social need" on the part of the woman in the intended parents. The existing requirement to demonstrate "medical or social need" is an unnecessary step and involves further expense for the intended parents.

Questions 8 and 9: Surrogacy agreements – validity and enforceability

Immediately enforceable

40. Under my National Law, it would provide that the surrogacy arrangement must be presumed to be *immediately enforceable*, that is, it would immediately enforceable once executed by all the "affected parties", if both the First Requirement and the Second Requirement set out below are satisfied (which the Cth Agency has checked).

41. **The First Requirement**:

(a) Each of the "affected parties" (the surrogate, each intended parent, and their respective spouses or de facto partners) must have received counselling from a qualified counsellor about the surrogacy arrangement and its social and psychological implications before entering into the surrogacy arrangement.

(b) Each of the "affected parties" must have received legal advice from an Australian legal practitioner about the surrogacy arrangement and its implications before entering into the surrogacy arrangement.

(c) The surrogacy arrangement must be in the form of an agreement in writing and must be executed by all the "affected parties".

42. **The Second Requirement**: The surrogacy arrangement must contain, at a minimum, each of the following terms:

(a) The surrogate must:

(i) Undergo pre-embryo transfer and attempt to carry and give birth to the child; and

(ii) Surrender custody of the child to the intended parents immediately upon the child's birth.

(b) The surrogate has the right to medical care for the pregnancy, labour, delivery, and postpartum recovery, provided by a medical practitioner, nurse, or midwife, of her choice. Such choices must be made either in advance or as soon as practicable after the relevant need arises. Such choices must be notified, in writing, by or on behalf of the surrogate to the intended parents as soon as practicable in the circumstances.

(c) If the surrogate has a spouse or de facto partner, then the spouse or de facto partner agrees to the obligations imposed on the surrogate pursuant to the terms of the surrogacy arrangement and agrees to surrender custody of the child to the intended parents immediately upon the child's birth.

(d) The intended parents must:

(i) Accept custody of the child immediately upon the child's birth; and

(ii) Assume sole responsibility for the support of the child immediately upon the child's birth.

Surrogate's reasonable expenses

(e) The intended parents must pay or reimburse the surrogate's surrogacy expenses, being the reasonable expenses associated with any of the following matters:

(i) becoming or trying to become pregnant;

(ii) a pregnancy or birth;

(iii) entering into and giving effect to the surrogacy arrangement.

The obligation is subject to the right of the surrogate to at any time expressly waive, in whole or in part, the right to receive such payment or reimbursement. Such waivers must be in writing by the surrogate to the intended parents.

43. Under my National Law, "reasonable expenses" for the purposes of the obligation in para (e) above is defined as

"Reasonable expenses" means:

(a) medical, hospital, counselling or other similar expenses incurred in connection with the surrogacy arrangement;

(b) reasonable legal fees and costs for legal services in connection with the surrogacy arrangement;

(c) reasonable accommodation, travel, tolls and parking costs directly associated with the pregnancy or birth, including attendances for the purposes of para (a);

(d) reasonable living expenses of the surrogate during her pregnancy, including payments for reasonable food, where those expenses would not have been

incurred had the surrogacy arrangement not been entered into, in an amount not exceeding that prescribed;

(e) reasonable clothing expenses, where those expenses would not have been incurred had the surrogacy arrangement not been entered into, in an amount not exceeding that prescribed;

(f) any reasonable premium paid for health, disability or life insurance that would not have been obtained by the surrogate, had the surrogacy arrangement not been entered into;

(g) reasonable religious, psychological, vocational, or similar counselling services during the period of the pregnancy and during the period of postpartum recovery.

These payments may be made directly to the surrogate or on her behalf to the supplier of the goods or services pursuant to the surrogacy arrangement.

44. Under my National Law, regulations may prescribe tin more detail what constitutes "reasonable expenses", and the extent to which some categories in paras (a) to (f) above are capped or how they are to be calculated. For example, the "reasonable living expenses" under para (d) above might be described as only those which relate to special foods that the surrogate needs, with the expense capped at say $15 per day. The same might be true of para (e) above when referring to maternity clothes and changes in the surrogate's body during the pregnancy.

Capped financial compensation

45. My National Law would provide that the surrogacy arrangement may include provisions setting out the other financial responsibilities of the parties. This may include the provision of a fee, reward, or other material benefit or advantage to a person for the person or another person:

(a) agreeing to enter into, or entering into, the surrogacy arrangement; or

(b) giving up a child of the surrogacy arrangement to be raised by the intended parents; or

(c) consenting to the making of a parentage order in relation to a child of the surrogacy arrangement; or

(d) compensating the surrogate to recognise her unique contribution to the surrogacy arrangement; or

(e) compensating the surrogate for her effort that goes into being pregnant or giving birth, including her time and exposure to risk; or

(f) compensating the spouse or de facto partner of the surrogate for their support for the surrogacy arrangement and disruption to life; or

(g) compensating the surrogate for potential loss of opportunities, including career and travel, in connection with the surrogacy arrangement; or

(h) compensating the surrogate for sacrificing annual leave entitlements or other leave entitlements, in connection with the surrogacy arrangement; or

(i) compensating the surrogate for loss of superannuation contributions in connection with the surrogacy arrangement.

For this purpose:

(A) The fee, reward, or other material benefit under each individual para in paras (a) to (i), or combinations of such individual paras, must not exceed the amount or amounts as may be determined by the Cth Agency under section ## of my National Law. The total of such amount or amounts must not exceed the total applicable under para (B) below.

(B) The total fee, reward, or other material benefit for all of paras (a) to (i) must not exceed the total amount of $50,000, or such higher sum as may be determined by the Cth Agency under section ## of my National Law.

(C) The intended parents are taken to have satisfied their obligation, if any, under the surrogacy arrangement to pay or provide the relevant fee, reward, or other material benefit to the extent that a Grant by the Cth Agency to the surrogate is in respect of the whole or any part of the matters in paras (a) to (i). Para (B) applies to the combination of the Grant and what the intended parents pay or provide. This is a "capped co-payment of compensation".

46. The Grant that might be made by the Cth Agency to the surrogate under para (C) above involves the following:

(a) The surrogate, if she chooses to not be a purely altruistic surrogate and instead opts to receive compensation (beyond reasonable expenses) may become entitled under the terms of the surrogacy arrangement, to an amount as negotiated between the surrogate and the intended parents but that total amount, by law, is capped at $50,000.

(b) The intended parents would be eligible to have a Grant paid by the Cth Agency to the surrogate if the intended parents met the taxable income thresholds specified in my National Law. They would be evidenced by the most recent tax returns lodged with the ATO, providing the returns had been ones lodged with the ATO within the previous 18 months. The taxable income thresholds would be:

(i) For a single intended parent (i.e., there is no couple), $180,000.

(ii) For intended parents (i.e., there is a couple), $270,000.

(c) The intended parents would be entitled to obtain pre-approval from the Cth Agency of a Grant before entering into a surrogacy arrangement.

(d) The amount of the Grant to the surrogate can never exceed 50% of the total amount actually paid by the intended parents to the surrogate in respect of compensation (beyond reasonable expenses). Thus, if the intended parents agreed under the surrogacy arrangement to pay the surrogate compensation of $40,000 and the intended parents were eligible to have a Grant made to the surrogate, then the result is that the Cth

Agency pays the surrogate $20,000 and the intended parents pay the surrogate the other $20,000.

(e) The making of such Grants only during the first 5 years of the operation of the Cth Agency. It is designed to provide some impetus for surrogacy in Australia. **MARKER to add the prior history of the Commonwealth Government making payments in support of families with children, and the prior history of differential treatment for income tax purpose of those with children.**

47. All compensation (beyond reasonable expenses) payable to the surrogate, whether paid by the intended parents or by way a Grant by the Cth Agency, should be treated as non-assessable income and should not be included in the tax return of the surrogate. It would be useful if the preliminary view of the ATO was obtained by the ALRC to confirm this before the ALRC proceeds to its Discussion Paper stage.

Lodgment of the surrogacy arrangement with the Cth Agency

48. Under my National Law:

(a) The surrogacy arrangement must be lodged with the Cth Agency. Lodgment must be made at any time between the date of the surrogacy arrangement and the birth of the child under that surrogacy arrangement. Lodgment may be made by either the surrogate or the intended parents.

(b) Such lodgment under para (a) above must be accompanied by such supporting Statutory Declarations and other documents as may be prescribed by regulations under my National Law. Such additional documents would go to satisfying the First Requirement in **paras 41 (a), (b), and (c)** above concerning counselling and legal advice.

(c) The Cth Agency must then review the surrogacy arrangement to satisfy itself that the Second Requirement in **paras 42 (a) to (e)** above has been met with respect to the surrogacy arrangement.

(d) If the Cth Agency has any material concerns as to the First Requirement or the Second Requirement having been satisfied, then the Cth Agency must notify the parties of those concerns with a view to amendments to the surrogacy arrangement being made or further counselling or legal advice being obtained or lodgment of additional documents.

(e) If the Cth Agency is satisfied that the First Requirement and the Second Requirement have been met with respect to the surrogacy arrangement, it must issue to each of the surrogate and to the intended parents a Certificate of Enforceability that the surrogacy arrangement has become enforceable in accordance with the relevant section of my National Law.

(f) Within 14 days after issuing the Certificate of Enforceability, the Cth Agency must transmit a copy of the surrogacy arrangement, a copy of the Certificate of Enforceability, the Statutory Declarations lodged under para (b) above, and any other documents prescribed by regulations, to the Family Court of Australia.

(g) The Cth Agency must act expeditiously in relation to each of its obligations under paras (c) to (f) above.

Family Court of Australia Judicial Registrar makes pre-birth parentage order

49. Under my National Law:

(a) The Statutory Declarations received from the Cth Agency are deemed to be Affidavits filed in the Family Court of Australia and the other documents received from the Cth Agency are deemed to be evidence in proceedings for an application by the intended parents and the surrogate for a parentage order.

(b) A Judicial Registrar of the Family Court of Australia must, if satisfied that the surrogacy arrangement has become enforceable and that any other requirements specified in my National Law have been satisfied, make a parentage order. Such matters must be done "on the papers" in chambers without the appearance by or on behalf of any of the parties to the surrogacy arrangement.

(c) If the Judicial Registrar has any material concerns in relation to the making of the parentage order, then the Judicial Registrar must notify those concerns to the parties with a view to further materials or evidence being provided to the Judicial Registrar. The need to appear in court should be avoided.

(d) The parentage order made by the Judicial Registrar is a pre-birth parentage order which has the effect of confirming the intended parents as the parents of the unnamed yet-to-be-born child born under the surrogacy arrangement.

(e) The Judicial Registrar must act expeditiously in relation to each of his or her obligations under paras (b) and (c) above.

Birth certificate

50. Under my National Law:

(a) After the birth of the child, a certified copy of the parentage order and an application for the child's birth certificate must be lodged with relevant State or Territory authority concerned with registering births. Such lodgment must be made by the intended parents. If they fail to do so within 40 days after the birth, such lodgment may be made by the surrogate.

(b) Such State or Territory authority must issue the child's birth certificate naming the intended parents as the parents of the child. Such birth certificate must make no reference to the surrogate, or to the fact that it was issued in accordance with my National Law, or to the parentage order.

Confidentiality

51. Under my National Law:

(a) All records and filings in connection with the surrogacy arrangement must remain confidential and unavailable to the public.

(b) The exception to para (a) above is that such records and filings may be made available to a child born as a result of a valid surrogacy arrangement if that child has attained at least 18 years of age.

Question 10: Process requirements for surrogacy

52. As to Question 10, please refer to **paras 40 to 50** above. They include the process requirements that I submit should be put in place under my National Law. I submit that, compared to the existing surrogacy laws, practices and procedures in Australia, the processes under my National Law simplify matters, are less expensive to implement, are less intrusive, reduce the emotional burden on parties, and provide much greater certainty for both the surrogate and the intended parents.
53. Yes, counselling should also be available after the child's birth.

Questions 11 and 12: Professional services, including legal and counselling services

54. As to Questions 10 and 11:

(a) The addition of professional surrogacy agencies, to meet the needs of those wishing to engage in domestic surrogacy in Australia, would be an important and positive step forward. Please refer to **paras 34 (a), (b) and (c)** above as to the significance of the existing lack of professional surrogacy agencies (of the sort operating overseas) in Australia.

(b) Such professional surrogacy agencies should be able to offer in Australia all the same types of services that are currently offered in jurisdictions found in western advanced nations.

(c) Such professional surrogacy agencies should be entitled to be either for-profit or not-for-profit.

(d) All such professional surrogacy agencies should initially be required to register with the Cth Agency, and only be able to offer services in the categories for which it is registered. It may be that, in the first few years, the market in Australia is insufficient to support more than a small number of professional surrogacy agencies. With that in mind, as part of its statutory regulatory function under my National Law, the Cth Agency might have a program in place to require them to meet some general standards, breach of which might lead to suspension or de-registration. If the market deepens and more agencies are registered, the Cth Agency might require each professional surrogacy agency to meet and continually comply with specified accreditation standards.

55. As to the matter of a perceived shortage of lawyers and counsellors with specialist knowledge of the surrogacy environment in Australia:

(a) It may be that the 'shortage' is only an inability on the part of surrogates and intended parents to find the names, contact details, and summary of the past relevant experience, of such people. On the other hand, it may genuinely be the case that there is a shortage.

(b) Whatever the true position is, the Cth Agency under its statutory education function could have a small program of conducting or sponsoring seminars (online or in person) for lawyers and counsellors. As those in such professions have continuing education obligations, it would be relatively easy to have any such seminar held on at least an annual basis as part of a bigger series of unrelated seminars.

(c) In addition to para (b) above, the Cth Agency might maintain a system under which lawyers and counsellors are entitled, for a fee, to 'register' with the Cth Agency as persons interested in providing such services and having their contact details displayed on the website of the Cth Agency. Obviously, the Cth Agency would have a statutory disclaimer of any responsibility for those people, and make it clear that the names have not been vetted as suitable. An alternative is to have the Cth Agency do a very limited vetting by requiring any such people to qualify for their names to be displayed on the website. The qualification might be production of evidence of specialist accreditation of a relevant type or attendance at so many hours' seminars of a directly relevant nature.

Question 13: Limits on advertising

56. Advertising in Australia in relation to potential surrogates and matters in relation to surrogacy arrangements, whether altruistic or commercial, should be liberalised, in all respects. As to this:

(a) Such liberalisation is for good policy reasons mentioned **paras 11 to 17, 24 and 25** above, and in other places in this Submission. Liberalising should be viewed as part of a 10-year plan with respect to surrogacy in Australia. During those 10 years, the Cth Agency can monitor advertising, changes in the market, changes in practices, and consider any complaints. As part of its statutory policy function, the Cth Agency can advise the Commonwealth Government from time to time as to what further liberalisation of the advertising law should be tried or what tightening of it might be appropriate.

(b) Initially, the limits on advertising would be specified in regulations made under my National Law. They would reflect not just a fair compromise of the position taken in the laws of the 8 jurisdictions across Australia. The clear preference should be exercised in favour of adopting the most liberal provisions, in respect of relevant subject matters, found across the 8 jurisdictions.

(c) As to the 'most liberal' position in para (b) above, there is no evidence that existing State and Territory legislative requirements, whether the most liberal or not, have been a problem in terms of exploitation of surrogates (the issue most commonly mentioned) or otherwise. The question that should be asked is "what policy purpose do the existing particular legislative provisions about advertising serve, particularly in a context where intended parents want to be able to find potential surrogates, and potential surrogates want to be able to find intended parents?" As to this, see in particular **para 34(b)** above.

(d) The regulations under para (b) above would only be a holding position while an Advertising Code, which would become an Instrument made under a section of my National Law, was developed by the Cth Agency

(e) The development of that Advertising Code and having it become law would be a priority for the Cth Agency. The terms of that Advertising Code would be developed by the Cth Agency after consultation and consideration of rules as to advertising applicable in a selective number of jurisdictions in the western advanced nations. Those selected should only be those which are materially more liberal as to advertising than the most liberal of Australia's 8 jurisdictions (all of which are far too restrictive).

Questions 15, 16 and 17: Reimbursing and compensating surrogates

57. I have set out in **paras 40 to 50** above matters which respond in a substantive way to most of what Questions 15 to 17 ask about.
58. As stated in **para 10(b)** above, "I support the immediate implementation of commercial surrogacy with a cap." This is subject to the statutory review after 5 years as described in **para 10(c)** above.
59. The fees, benefits and rewards components that may be paid to a surrogate under my National Law which I set out in **paras 45 (a) to (i)** above, both individually and taken as a whole, align with the ALRC's definition/description of "compensated surrogacy" in para 54 of the Issues Paper. Despite that, I have some reservations about the use of the term "compensated surrogacy" as follows:

    (a) A lot of dictionary meanings could be used to understand what "compensate" means. It may be argued by some that any component of a fee paid to the surrogate which goes beyond making good an identifiable and clearly measurable loss on her part – economic loss – is not really compensation. Those making that argument may not be interested in the fact that under the laws in Australia it is quite common for people to be paid for non-economic loss which is not measurable.

    (b) I think there is an argument that it may be more realistic to use the umbrella term "commercial". I appreciate the political and social sensitivity of moving from having "altruistic only" to also permitting "commercial" surrogacy arrangements in Australia. However, I think that in the public discourse of this issue of reform there is an argument that it might be better to be more straightforward and use "commercial" instead of "compensated". The media will probably jump straight to using "commercial" despite the best efforts of the ALRC to say it is only "compensated".

    (c) Those opposed to anything but altruistic surrogacy, or opposed to any form of surrogacy whatsoever, may likewise seek to muddy the water and mislead by using "commercial" as if it were a free-for-all. If the ALRC were, from the outset, to take the position that it is "commercial with a cap" or "capped commercial" or "restricted commercial" or "constrained commercial" surrogacy arrangements (or like terms), it might arguably be better.

    (d) Having said that in paras (a) to (e) above, I can also see the argument and benefits of the ALRC insisting that it is "compensated surrogacy" that is being recommended if

what the ALRC is referring to matches its own definition/description in para 54 of the Issues Paper. That then gives those responding to the use of "commercial" the opportunity to address the matter and identify the distinguishing characteristics, caps, and guardrails of the "compensated" surrogacy arrangement.

Questions 18 and 19: Legal parentage of children born through surrogacy

60. I have set out in **paras 40 to 51** above matters which respond in a substantive way to most of what Questions 18 and 19 ask about. **Paras 40 to 51** above set out, in a cohesive and largely chronological order, the steps in the process that would take place under my National Law.
61. **MARKER.**

Questions 22 and 23: Inconsistent laws, oversight

62. Arguably, the Commonwealth Parliament may have the necessary power to enact a law which deals with surrogacy under the combination of placitums (xxii) and (xxiiiA) of s 51 of the *Constitution*. Even it did have that power, it may not have the constitutional power to enact all that is necessary to come up with a federal law which addresses all aspects of surrogacy (let alone all the inconsistencies across the 8 jurisdictions) and it would not "cover the field". This may lead to one or 2 court cases. In any event, it would leave us with having to deal with the legislation of now 9 jurisdictions.
63. It is essential that in Australia there be only one law dealing with surrogacy and that it be enacted both with the agreement of all the States and be correct from a constitutional point of view. I am strongly of the view that the most appropriate way for this to happen is for the matter of surrogacy (and in relation to that the matters the subject of my National Law) to be referred to the Commonwealth Parliament by the States under placitum (xxxvii) of s 51 of the *Constitution*. I am strongly of the view that the matter of inconsistency of laws raised throughout the Issues Paper (not just in its paras 68 to 75) should be dealt with by way of such a referral of power with federal legislation then enacted. That is the best outcome and the easiest method by which to achieve it as well.
64. My reasons for these views are based on what happened and what I experienced as a legal practitioner in the 4 sectors in Australia as are summarised in **para 6(c)** above. In most of those [redacted] years I experienced the poor outcomes, the average outcomes, and the best outcomes, of the different ways undertaken to overcome inconsistency of laws across Australia in 4 distinct sectors. In most of those sectors, one method was tried and found wanting before, many years later, the better outcome was tried, and then some years later again the final and best outcome was achieved. The major factors in play in these attempts was the reluctance of one or more States to give up legislative control of a sector because its regulation was a source of revenue to the State and because the number of individuals, trade unions, and companies, in the sector were influential or otherwise important to the State.
65. That best outcome in such sectors was achieved as a result of either a final recognition that it was the correct thing to do and any adjustment of money between the States and the Commonwealth arising from lost State revenue was agreed, or there was a change

in the law concerning the constitutional power of the Commonwealth Parliament arising from a new High Court of Australia judgment.

66. In contrast to the above, the narrow subject matter of surrogacy, the relatively small number of people who are likely to be the subject of the federal legislation enacted, and that no revenue to the States is involved, all make it ideal for such a referral by the States. Further, the States may in making that referral have the safety valve that the referral is for a period of 10 years, enabling any State to revoke its referral and continue to thereafter legislate with its own standalone State legislation with respect to surrogacy. A 10-year referral by the States might be viewed as part of the 10-year Assisted Surrogacy Plan for Australia.

The Cth Agency

67. The Cth Agency should be a statutory agency. It would start out as a micro agency (less than 20 employees) but during its 10-year plan it may grow to become an extra small agency (20 to 100 employees).
68. The Cth Agency should be within the portfolio of the Commonwealth Department of Health, Disability and Ageing. The functions of the Cth Agency are similar in some respects to some of those other agencies in that portfolio.
69. A significant element of what is part of the 10-year plan of the Cth Agency would be the formulation of, monitoring of, and payment of, Medicare benefits under my proposed new "Assisted Surrogacy Plan" item to be added to the Medical Benefits Schedule under the *Health Insurance Act 1973* (Cth). See **para 25(b)(ii)** above.
70. **MARKER to describe my proposed "Assisted Surrogacy Plan" item in the MBS Schedule.**
71. Under my National Law, the Cth Agency would have statutory functions that would be policy, operational, and regulatory, in relation to surrogacy in Australia, in accordance with my National Law. A number of those functions have been outlined in various places in this Submission.
72. While it is at this stage a minor matter, it is useful when considering reforms to laws, policies and procedures to think in terms of the Cth Agency having a name which is not confronting and is sensitive to the nature of surrogacy. A name such as "Assisted Surrogacy Agency" might be one. The use of "Agency" is better than a name which contains the word "Authority" or "Office" or "Commission", which many government agencies across Australia have.
73. **MARKER.**

Question 24: The role of the criminal law

74. **MARKER.**

Question 25: Lack of awareness and education

75. The Cth Agency should itself undertake the statutory education and awareness functions outlined in **para 55(b)** above.

76. The Cth Agency should also be funded to make annual grants to the few not-for-profit entities currently in the surrogacy sector in Australia. These might be general purpose grants not only to enable the entities to survive but also to enable the entities to better achieve their objects of increasing awareness and understanding of surrogacy laws, policies and practices. Such general grants might be differential having regard to the financial position of each entity, its field of operations, and so on, with the quantum as determined by the Cth Agency in its discretion. Less desirable, but nevertheless still useful, would be specific purpose grants: it is a real burden for those in voluntary and unpaid positions to have to deal with the increased associated paperwork and it all becomes too hard.
77. I also favour the Cth Agency providing general funding to the not-for-profit entities in the sector in Australia as those entities will likely continue – before the Cth Agency achieves any material development in the area – to be the best means of potential surrogates becoming aware of all that surrogacy entails, wanting to undertake surrogacy, and most importantly being able to be found and matched with suitable intended parents.
78. The Cth Agency should also be funded and enabled to pay:

    (a) A fee to particular persons (individual or company) outside the Cth Agency who may from time to time undertake a speaking engagement, presentation, or the like.

    (b) A fee from time to time, or as part of an ongoing arrangement, to persons outside the Cth Agency who generally undertake the planning and implementation of communications through social media and the like.

79. **MARKER.**