Submission to the ALRC: Review of Surrogacy Laws (Discussion Paper 89)

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Introduction

I appreciate the opportunity to contribute to the Australian Law Reform Commission's Review of Surrogacy Laws. This submission supports a nationally consistent, rights-based framework that prioritises health, autonomy, and equitable access. It reflects current practice insights and evidence from well-regulated contexts, and focuses on practical reforms to improve care pathways, legal clarity, and support for all parties involved in surrogacy.

Core principles

- Equity and inclusivity for all family types and structures.
- Surrogate autonomy and informed consent throughout pregnancy, labour, and birth.
- Health and wellbeing across the whole journey, including consistent, funded postnatal care for all parties.
- National consistency, legal clarity, and least-restrictive, pragmatic regulation.
- Education and awareness as foundational safeguards for compliance and child rights.

Key positions on proposals

Proposal 2 – National Regulator

Support an independent National Regulator (or appropriately coordinated alternative) with standard-setting, licensing and audit of Surrogacy Support Organisations (SSOs), review of complex approvals, and a strong mandate for professional education and public information.

Proposal 3 – Surrogacy Support Organisations (SSOs)

Oppose privately operated SSOs. SSOs should be government-operated or government-accredited bodies at the national or state level to prevent commercialisation and protect against predatory practices. ART providers may opt-in under strict licensing and conflict-of-interest rules, with clear separation between clinical care and agreement approval, and transparent cost policies.

Proposal 7 – Increasing awareness and education

Strongly support. Education is critical to reduce misinformation, support ethical decision-making, and prevent risky overseas arrangements. The regulator should lead comprehensive public campaigns; develop clinical guidance for surrogacy-related pregnancy and birth; and provide training for clinicians, lawyers, and counsellors. Education should clearly explain parentage recognition at birth, surrogate autonomy in pregnancy and labour, and practical overseas processes (citizenship, passport, visas).

Proposal 18 / Question D – Psychological assessments

Do not support mandatory psychological screening for surrogates and intended parents. Evidence from well-regulated jurisdictions (e.g., Australia, Canada, UK) shows most surrogates report positive and rewarding experiences when supported by quality implications counselling and clear processes. Instead of screening, strengthen mandatory pre-surrogacy implications counselling and introduce a consistent, funded postnatal follow-up program for all parties (surrogates, intended parents, and, where relevant, partners). Current postnatal services are inconsistent or absent; follow-up should include physical recovery, mental health, and practical support referrals over an appropriate period.[1, 2]

Proposal 21 – Implications counselling

Support strengthened, specific implications counselling delivered by qualified providers, including individual and joint sessions, participation of the surrogate's partner (if any), and clear referral pathways. Make post-birth counselling and check-ins available and funded at meaningful intervals (e.g., 6 weeks, 3 months, 6–12 months).

Proposal 30 / Question N – Administrative pathway to legal parentage

Support an administrative pathway with legal parentage vesting at the point of birth (not pre-birth). This ensures intended parents can make decisions about the baby and assume responsibility immediately from birth, while the surrogate's bodily autonomy and clinical decision-making authority are fully protected throughout pregnancy and labour. Clear national education and clinical guidelines are needed so health practitioners and the public understand these boundaries in practice.

Proposals 25–27 – Payments and reimbursement

Support full reimbursement of all reasonable, surrogacy-related expenses (including travel, accommodation, loss of earnings, insurance, childcare, and postpartum care). Replace the term 'hardship payment' with a neutral, respectful framing such as 'time and effort recognition payment' (or 'recognition of contribution'). Many surrogates do not experience pregnancy as a hardship; the current terminology risks stigma and opt-out pressure. An optional recognition payment can fairly acknowledge time, effort, and inconvenience without commercialising arrangements, alongside a monthly allowance for incidental costs. Caps should apply only to common incidental allowances, not to specific costs that vary widely (e.g., loss of earnings).

Proposals 28–29 – Medicare rebates

Strongly support amending the Health Insurance (GMST) Regulations to allow Medicare rebates for assisted reproductive services and for implications counselling undertaken for surrogacy arrangements. The current exclusion is historical and inconsistent, creating inequity whereby intended parents can often create embryos but cannot receive rebates when treatment is for surrogacy. Extending rebates reduces financial barriers and promotes domestic, well-regulated arrangements.

Proposal 37 / Question S – Overseas surrogacy registration and penalties

Do not support framing intended parents as 'reckless' for engaging overseas. Many proceed without Australian legal advice because accessible, authoritative information is scarce. Focus reform on robust public education, clear guidance on jurisdictional risks, and practical pathways back to Australia (citizenship, passport, visa), rather than punitive measures that may disproportionately impact families with fewer resources.

Responses to selected questions

Question A – Regulator design principles

Independence, transparency, accessibility, proportional enforcement, national consistency, and strong health-and-wellbeing standards. Duties should include professional education and public information.

Question B – Minimising overlap with ART providers

SSOs should not be private businesses. They should be government-operated or government-accredited entities at the national or state level to prevent commercialization and protect against exploitation. While ART providers may opt-in under strict licensing, the core governance and accountability must remain with public bodies.

Question C – Should SSOs approve surrogacy agreements?

Yes, if licensed, audited, and staffed by designated officers with legal/health/psychosocial expertise. Decisions should be reviewable by the regulator to ensure fairness and consistency.

Question D – Psychological assessment requirement

Oppose mandatory psychological assessments; require high-quality implications counselling delivered by ANZICA-accredited providers, plus funded postnatal follow-up for all parties.

Question F & G – Additional counselling requirements

Include the surrogate's partner (if any) in implications counselling. Mandate **post-birth counselling and check-ins for surrogates and intended parents at clinically meaningful intervals (e.g., 6 weeks, 3 months, 6–12 months), with referral pathways.**

Question H – Surrogacy agreements: inclusions/prohibitions

Include explicit affirmation of the surrogate's autonomy and bodily integrity; require clauses on reimbursement, optional recognition payment, ongoing counselling access, dispute resolution, and postnatal follow-up. Prohibit any clause that infringes autonomy or compels medical decisions.

Question I–K – Enforceability and method

Enforce compliant agreements (excluding prohibited clauses) via courts or a designated tribunal list. Allow enforcement of reimbursement/recognition payment clauses even where other elements are non-compliant, to avoid disadvantage to surrogates.

Question L – Caps

Set caps only for monthly incidental allowances. Do not cap specific, variable costs (e.g., loss of earnings, travel) to prevent financial disadvantage.

Question M – Additional support payment

Support an optional 'time and effort recognition payment' acknowledging contribution, distinct from reimbursement of costs/losses.

Question O – Factors in determining parentage

Paramountcy of the child's best interests; respect for surrogate autonomy and informed consent; compliance with safeguards; and timely certainty for the child's identity and care.

Question P – Simpler pathway for registered overseas surrogacy

Do not support automatic recognition without oversight. While streamlining is important, any recognition should include a review to ensure the arrangement meets ethical and human rights standards and protects the child's best interests.

Question Q – Leave and entitlements

Mandate equitable surrogacy leave for surrogates to recover from pregnancy and birth, and ensure intended parents have access to fair parental leave. Clarify Centrelink pathways; encourage employer policy alignment.

Question R – Surrogacy register content/responsibility

Register should include surrogate identifying details and arrangement type; SSOs (or ART providers) should be responsible for timely lodgement, with sanctions for non-compliance.

Questions S–X – Overseas processes, citizenship, visas, passports

Prioritise child rights (identity, nationality) and practical streamlining: pre-birth front-loading for documentation; temporary visa options where needed; affidavit-based passport consent processes; retrospective pathways for stateless children; and removing punitive framing in favour of guidance and support (focus on education and information to communities).

References

1. Goli M, Kohan S, Oloonabadi SMA, Farajzadegan Z, Heidari Z. A reproductive health-care program for surrogate mothers: A mixed methods study. Journal of Education and Health Promotion. 2022;11(1).
2. Salera-Vieira J. Gaps in Postnatal Support for Intended Parents. MCN The American journal of maternal child nursing. 2023;48(5):238-43.