Submission to the Australian Law Reform Commission (ALRF) enquiry into surrogacy from the perspective of the Australian and New Zealand Society for Reproductive Endocrinology and Infertility

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From: The Australian and New Zealand Society for Reproductive Endocrinology and Infertility (ANZSREI)

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The Australian and New Zealand Society for Reproductive Endocrinology and Infertility (ANZSREI) welcomes the opportunity to provide a submission to the Australian Law Reform Commission (ALRC) in response to its Discussion Paper on surrogacy law reform.

This submission builds upon ANZSREI's previous submission to the ALRC and responds specifically to proposals raised in the Discussion Paper and matters canvassed during the ALRC Roundtable of 4 December 2025 where several ANZSREI members attended.

Surrogacy involves complex medical, psychological, ethical, and legal dimensions. Any reform must carefully balance the rights, safety, and wellbeing of surrogates, intended parents, and—most critically—the best interests of children born through surrogacy.

ANZSREI supports the ALRC's guiding principles of:

- respect for autonomy and dignity;
- harm minimisation;
- prevention of exploitation; and
- prioritisation of the best interests of the child.

We strongly support the development of a nationally consistent regulatory framework for surrogacy. The current patchwork of state and territory laws creates uncertainty, inequity of access, and unintended incentives for Australians to pursue surrogacy overseas, often in jurisdictions with lower safeguards.

Our commentary in relation to the specific proposals in the paper are set out below

Proposal 4 – Approval of Surrogacy Agreements Prior to Pregnancy

ANZSREI supports, in principle, the requirement that surrogacy agreements be approved prior to attempting pregnancy and that ART providers only facilitate treatment where an approved arrangement exists.

However, we note important practical concerns:

- **Fertility preservation:** The proposal does not adequately address situations where fertility preservation is clinically indicated before a surrogate is identified (for example, a woman with MRKH syndrome or a patient facing age-related fertility decline). We recommend the legislation provide a clear, regulated pathway allowing fertility preservation in such circumstances without requiring a fully approved surrogacy agreement.
- **Cost and delay:** Mandatory pre-approval risks becoming onerous, adding financial and administrative burden and potentially delaying treatment. We recommend:
    - legislated timeframes for approval decisions; and
    - consideration of cost caps or fee regulation to prevent undue barriers to access.

Proposal 9 – Overseas Surrogacy and Civil Penalties

ANZSREI has significant concerns regarding the approach to overseas surrogacy.

While we acknowledge the intent to discourage exploitative practices, we caution that:

- penalising intended parents may be ineffective and risks further stigmatising surrogacy and children born through such arrangements;
- attempts to regulate or indirectly control overseas legal frameworks from Australia may be unworkable in practice; and
- there is potential inconsistency between Proposal 9 and Proposal 37 regarding registration and 'permitted destinations'.

We recommend a regulatory approach focused on transparency, information provision, and harm reduction rather than punitive measures.

Proposal 17 – Medical Certification

ANZSREI supports the requirement for medical certification but recommends clarity regarding the qualifications of the practitioner providing certification. Given the nature of pregnancy and childbirth, it may be appropriate to specify that certification be provided by a medical practitioner with relevant expertise, such as a specialist obstetrician or fertility specialist, consistent with current clinical practice.

Proposal 18 – Psychological Assessment

ANZSREI supports psychological assessment for both surrogates and intended parents, recognising the significant emotional and psychosocial complexities involved in surrogacy.

We note, however, that extending mandatory assessments will increase costs. We recommend consideration of funding mechanisms or Medicare support to ensure these essential safeguards do not become cost prohibitive.

Proposal 19 – Criminal History Checks

ANZSREI supports Option 19.1: that there should not be a mandatory requirement for intended parents to undergo criminal history checks.

We note that:

- such checks are not required for individuals conceiving naturally or through other forms of ART;
- mandatory checks risk being discriminatory; and
- the Discussion Paper does not clearly define what level of criminal history would be disqualifying or who would make such determinations.

If criminal history checks are introduced, clear, proportionate, and child-focused criteria would be essential.

Proposal 20 – Independent Legal Advice

ANZSREI considers independent legal advice to be reasonable and appropriate. However, cost and access remain significant barriers, particularly in regional and remote areas. These issues are not adequately addressed in the Discussion Paper and warrant further consideration.

Proposal 21 – Implications Counselling

ANZSREI supports implications counselling as a core safeguard in surrogacy arrangements. We recommend:

- consideration of whether a surrogate's partner should also be required to participate in counselling, recognising their role and potential impact on the arrangement; and
- careful consideration of the scope, duration, and cost of any mandated ongoing or post-birth counselling requirements.

Legislating for indefinite counselling without funding clarity risks creating unnecessary financial burden.

Proposal 26 – Hardship Payments

ANZSREI supports the recognition that certain payments to surrogates do not constitute impermissible profit, including hardship payments acknowledging:

- the physical burden, pain, and risk of pregnancy and childbirth; and
- extraordinary loss arising from serious medical complications.

We consider this a pragmatic and compassionate approach. We further recommend the ALRC consider whether legislation should explicitly allow an additional support payment recognising the

surrogate's time, effort, inconvenience, and unique contribution, beyond strict reimbursement of expenses, provided such payments are regulated and capped.

Proposal 31 – Parentage and Court Applications

ANZSREI supports a child-centred approach to parentage determination. However, we note that the proposed three-month timeframe for intended parents to apply for parentage orders may be impractical in some circumstances, particularly following premature birth, neonatal complications, or where overseas jurisdictions are involved. Greater flexibility may be required.

Proposal 37 – Registration of Overseas Surrogacy Arrangements

ANZSREI has concerns regarding the practical implementation of a system based on 'permitted destinations'.

Key issues include:

- how permitted destinations will be determined, reviewed, and updated;
- which body will hold responsibility and expertise for such determinations; and
- whether the proposal implicitly permits non-altruistic overseas surrogacy arrangements if conducted in a permitted jurisdiction.

Without clarity, this framework risks inconsistency and confusion for intended parents and clinicians alike.

Conclusion

ANZSREI commends the ALRC for undertaking this important review and for its engagement with clinical stakeholders. We strongly support reform that:

- harmonises surrogacy laws nationally;
- strengthens safeguards without creating unnecessary barriers;
- promotes safe, ethical domestic surrogacy; and
- prioritises the health and wellbeing of children, surrogates, and intended parents.

ANZSREI strongly encourages the application of a Medicare benefit for all aspects of the surrogacy arrangement including counselling, psychological assessments and assisted reproductive technology (ART) services related to surrogacy arrangements in Australia.

We would welcome ongoing consultation as reforms progress and remain available to provide further clinical expertise.

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