Submission on Discussion Paper: Review of Surrogacy Laws

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My apologies, due to constraints on my time, I have not been able to reply to all proposals/questions in the Discussion Paper. I also chose not to reply to a small number of proposals/questions as they appear more suitable for consideration by Australian legal and policy experts working in this complex area. Please note, I am at the ALRC's disposal should it wish to consult with me further on any of the points raised in this document.

Proposal 1

Agree with 1.a; 2; 3.a & b; 4 (Option 1.1); 5.
From an Irish perspective, our national regulator, the Assisted Human Reproduction Regulatory Authority (AHRRA) regulates the practice of surrogacy in a jurisdiction with only a national Parliament that legislates, and a population of little over 5 million people. Therefore, I appreciate that in a country like Australia, with a far greater population and where States/Territories have their own laws, referring family law jurisdiction to the Commonwealth Parliament would indeed require "a high level of collaboration and negotiation to achieve" but, as against this, I believe that a single Surrogacy Act and a National Regulator for all of Australia is the best way forward in legislating for and regulating an area fraught with legal and ethical complexities.

Proposal 2

Agree with 1. a, b, c, & d.
Agree with 1.e & f, but I believe that *all* surrogacy agreements should be approved by the National Regulator, as will be the process in Ireland.
Agree with 1.g, h, I, j., k., l. m.
Agree with Option 2.1

Question A
Answer: A Board and a Chairperson are essential for organisational oversight and accountability – in Ireland, the AHRRA comprises a Chairperson and 10 Board Members. There could be committees consisting of board members, employees of the National Regulator, and relevant external experts. These committees could be in the areas of Standard Setting, Licencing/Compliance, Surrogacy Agreements, and Community Awareness/Information Provision, ensuring greater efficiency for the National Regulator. The minutes of board meetings could be made publicly available to ensure transparency. A CEO of the National Regulator would be essential, as would relevant staff, particularly a sizeable legal division to carry out its functions.

Proposal 4

Agree with 1 & 2.

Proposal 5

Question C
Answer: I would agree with recommendation 1-3 in Proposal 5 if these functions were to be carried out by the National Regulator instead. As regards recommendation 4 in Proposal 5, surrogacy arrangements that do not satisfy medical and psychological assessments should not be allowed to proceed, for the benefit of all of the parties.

Proposal 7

Agree with 1.a, b, & c, and 2.a & b.

Proposal 8

Agree with 1, 2 & 3.

Proposal 9

Agree with 1, 2 & 3.

Proposal 10

Agree with 1 a & b.
Agree with Option 10.3 in recommendation 2, because individuals/organisations that may profit from such activity should be deterred from engaging in unethical activity in relation to surrogacy arrangements that may ultimately be harmful to the child(ren) born from such arrangements.

Proposal 11

Agree with 1 & 2.

Proposal 12

Disagree with 1 & 2. In the few jurisdictions that permit traditional surrogacy (the U.K., parts of Australia, South Africa, some U.S. States) there is remarkably little consideration of this practice from a *child-centric* perspective. Ireland prohibits traditional surrogacy arrangements, either prospective or retrospective, from being recognised under the Health (Assisted Human Reproduction) Act 2024.[1]

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* The views expressed by the author in this document do not represent the views of the Assisted Human Reproduction Regulatory Authority (AHRRA).

[1] For a discussion of the possible public policy rationale for this approach in Ireland, see Brian Tobin, 'Ireland's Irreconcilable Approaches to Domestic and International Surrogacy?" in K. Horsey, Z. Mahmoud

Globally, and despite ongoing efforts, there is as yet a dearth of information about how most adults born via surrogacy arrangements feel about the circumstances of their conception and birth.[2] Golombok observes that it is not yet known 'crucially, how children born through surrogacy will feel about their origins later in their lives'.[3] It is possible that, for some surrogate-born adults, being conceived by and born to a genetically related traditional surrogate and then transferred to intended parents may be a complicating factor as regards their sense of identity over time. Horsey observes that 'though we know that children born from surrogacy fare well in a psychological development sense, it would be interesting to glean the views of children who experience surrogacy, either by being born through surrogacy or as the existing child of a surrogate, especially on the law.'[4] Indeed, the views of children and adults born to traditional surrogates as to how Australian law regulates traditional surrogacy arrangements would be insightful, and should be pursued in Australia.[5] The question as to whether traditional surrogacy is ethically sound from a *child-centric* perspective, and whether it should be embraced throughout Australia, should not be lightly dismissed, and should factor into the ALRC's analysis when making final recommendations. This is not to say that traditional surrogacy should not be regulated by law, but nor should the practice be accepted unquestioningly. There is too much of a tendency globally to legislate for surrogacy from an adult-centric perspective that focuses on intentions of adults.

Ireland is not alone in viewing traditional surrogacy differently from gestational surrogacy. Internationally, statutory regulation of traditional surrogacy arrangements is most uncommon and it is largely gestational surrogacy that has been expressly legislated for in most jurisdictions where regulation is in place. The most surrogacy friendly States in the US - California, Nevada, New Hampshire, Nevada, Connecticut, Delaware and Maine - have all legislated for gestational surrogacy. Indeed, traditional surrogacy is estimated to account for only 5% of all surrogacies in the US.[6] Further, in the few jurisdictions where traditional surrogacy is expressly legislated for,[7] the (traditional) surrogate's genetic relationship with the child holds more legal weight than that of a gestational surrogate, because she is provided with a 'cooling off period' in which she can repudiate the arrangement. In South Africa, where both gestational and traditional surrogacy are permitted, a traditional surrogate can seek to terminate the surrogacy agreement for up to 60 days after the birth of the child, an option that is unavailable to a gestational

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and K. Wade (eds.) *Future Directions in Surrogacy Law: Law and Policy Reform in the UK and Beyond* (Bristol University Press, 2025) 212, 216-219

[2] The UK Longitudinal Study of Assisted Reproduction Families is the only investigation to have followed up children born through surrogacy since the time of their birth. Recent findings relate to 15 surrogate-born children who are now young adults, with a mean age of 20: see Vasanti Jadva et al., '"I know it's not normal but it's normal to me, and that's all that matters": experiences of young adults conceived through egg donation, sperm donation, and surrogacy' (2023) 38 (5) *Human Reproduction* 908.

[3] Susan Golombok, Modern Families (Cambridge, CUP, 2015) 137.

[4] Kirsty Horsey, 'UK Surrogates' Characteristics, Experiences, and Views on Surrogacy Law Reform' (2022) 36 (1) *International Journal of Law, Policy and the Family.*

[5] However, see the ongoing project, *Children's Voices in Surrogacy Law,* at https://childrensvoices.bristol.ac.uk.

[6] Diane S. Hinson and Maureen McBrien, 'Surrogacy across America' (2011) 34 (2) *Family Advocate* 32, 33.

[7] This does not include the UK, where traditional surrogacy is permitted but treated the same under UK domestic law as gestational surrogacy.

surrogate.[8] Although Greece only permits gestational surrogacy, legislation there provides that if it is proven that the fertilised ovum was that of the surrogate, she can challenge the intended mother's legal motherhood in court within six months of the birth and, if successful, she becomes the legal mother of the child.[9] In Florida, traditional surrogacy is even referred to as 'pre-planned adoption' and the traditional surrogate has a 'cooling off' period to repudiate the agreement up to 48 hours after the child's birth.[10]

For further discussion on traditional surrogacy see Brian Tobin, 'Ireland's Irreconcilable Approaches to Domestic and International Surrogacy?" in K. Horsey, Z. Mahmoud and K. Wade (eds.) *Future Directions in Surrogacy Law: Law and Policy Reform in the UK and Beyond* (Bristol University Press, 2025) 212, 216-219.

Proposal 13

Agree with 1 & 2.

Proposal 14

Agree with 1 & 2, but the age of 18 seems young for a person to take on the strenuous, emotional surrogacy journey as an intended parent. In Ireland, legislation provides that an intended parent must be at least 21 years of age.

Proposal 15

Agree with 1 & 2.

Proposal 16

Agree with 1 & 2.

Proposal 17

Agree with 1 & 2.

Proposal 18

Agree with 1, 2 & 3.

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[8] Julia Sloth Nielsen, 'South Africa' in Jens M. Scherpe, Claire Fenton-Glynn and Terry Kaan (eds.), *Eastern and Western Perspectives on Surrogacy* (Cambridge, Intersentia, 2019) 186.
[9] Eleni Zervogianni, 'Greece' in Jens M. Scherpe, Claire Fenton-Glynn and Terry Kaan (eds.), *Eastern and Western Perspectives on Surrogacy* (Cambridge, Intersentia, 2019) 147, 152.
[10] See Ch.63.213.FL Stat., available at http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0063/Sections/0063.213.html (accessed 27th November 2025)

Proposal 19

Agree with Option 19.2 – Since the 'baby Gammy' situation in 2014, pre-conception screening of intended parents for criminal offences has been introduced in, or recommended in, many jurisdictions. In Israel, the Surrogate Motherhood Agreements (Approval of Agreement and Status of Newborn Law) (Amendment No. 2) Law 2018 provides that the intended parents must not have been convicted of an offence which, in light of its severity or circumstances, constitutes a risk to the welfare of the child, and criminal proceedings are not pending against them in relation to such an offence.[11] Further, in 2023, the Law Commissions' also favoured introducing into law in the U.K. a requirement that 'enhanced criminal record checks' be carried out in relation to the surrogate, her spouse, partner or civil partner, the intended parents, and any adult over 18 who lives with the intended parents. If the checks disclose 'relevant offences' the surrogacy arrangement would not be allowed to proceed. The relevant offences would be the same as those which prohibit someone from adopting a child in the U.K., and include offences against children, sexual offences, and fraud.[12]

In Ireland, section 17 of the Health (Assisted Human Reproduction) Act 2024 provides that an AHR treatment provider shall not provide AHR treatment unless it is satisfied that the intending parents, and the surrogate and her partner, if any, do not present a potential significant risk of harm to *any child*, whether the child is born through AHR, or otherwise.[13] The parties will be required to complete a 'section 17 return' form for the AHR treatment provider, but section 17 (3) (b) of the Act states that the information to be provided in such a form is to be determined by the Minister via ministerial regulations after commencement, and this section of the recent legislation has not yet been commenced. However, section 17 (3) (c) provides guidance to the Minister by stating that 'in determining the information to be specified, *the paramount consideration is the safety of any child*'.[14] Thus, it appears that, at a minimum, in order to achieve this child-centred objective, the ministerial regulations will have to require, as part of a 'section 17 return', the disclosure of previous convictions or pending proceedings related to children which are relevant to a decision-making process concerning the granting of permission for treatment that might lead to the birth of a child.

In section 54 of the 2024 Act, the same requirements are made of the AHRRA before it can approve a domestic surrogacy arrangement.[15] The AHRRA must request each relevant person to submit a 'section 54 return' to it, but the information to be provided in

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[11] See R Schuz, 'Surrogacy in Israel' in J.M. Scherpe, C Fenton-Glynn and T Kaan (eds.) *Eastern and Western Perspectives on Surrogacy* (Cambridge, Intersentia, 2019) 176.

[12] See Law Commission and Scottish Law Commission, *Building Families through Surrogacy: A New Law* (Volume I: Core Report) (Law Com No 411, 2023) 31.

[13] The requirement for the surrogate and her spouse/partner (if any) to also undergo a criminal record check is crucial in a jurisdiction like Ireland, where the surrogate will be the legal mother at birth and can refuse to consent to a transfer of parentage/guardianship.

[14] Emphasis added.

[15] In Ireland, international surrogacy arrangements will also have to be approved by the AHRRA, which will require a 'section 85 return' in respect of the parties: see section 85 of the Health (Assisted Human Reproduction) Act 2024.

such a return is to be determined by the Minister via ministerial regulations after commencement, and this section of the recent legislation has not yet been commenced. However, section 54 (2) provides guidance to the Minister by stating that 'in determining the information to be specified, *the paramount consideration is the safety of any child*'.[16]

Question E

Yes, the criminal history check should be limited to specific offences, such as those relating to children, and violent offences. As in Ireland, this information should be provided to the National Regulator to determine if the surrogacy arrangement should be approved – see section 54, 2024 Act.[17] The requirement for a section 17 assessment in Ireland is superfluous in the case of surrogacy since treatment for surrogacy can only go ahead after the agreement has been approved by the AHRRA, and a section 54 return will already have been submitted to gain AHRRA's approval.[18] However, a section 17 return to the AHR treatment provider is quite necessary for other forms of AHR treatment (donor conception) that do not require AHRRA approval.

Proposal 20

Agree with 1, 2 & 3.

Proposal 21

Agree with 1 & 3.
Agree with 2, but the cost of any additional counselling should be borne by the party/parties that reasonably elect to avail of it.

Question F

In Ireland, the requirement for implications counselling is limited to the intended parents and the surrogate, and not extended to her partner.

Question G

No.

Proposal 22

Agree with 1 (except for 1.e), & 2. As regards 1.e, the cost of any additional counselling should be borne by the party/parties that reasonably elect to avail of it. With respect, your proposals load so much responsibility and cost onto the intended parents that they do little to make domestic surrogacy more attractive than international commercial surrogacy arrangements.

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[16] Emphasis added.
[17] See also section 85 of the Health (Assisted Human Reproduction) Act 2024.
[18] Or, in the case of an international surrogacy arrangement, a 'section 85 return' will have been made.

Question H

In Ireland, there is no requirement for a psychological assessment of the parties, there is merely a requirement of AHR counselling for all parties.

Proposal 23

Agree with 1 & 2. I would add that the intended parents' proposed statutory allocation of legal parentage should only commence upon the birth of the child, *after* all decisions in relation to the birth process have been made by the surrogate, and not before. **(Proposal 30).**

Proposal 24

Agree.

Proposal 25

Agree with 1, 3 & 4. Regarding 2, the expenses reasonably incurred that can be claimed by the surrogate are very broad and, again, are unlikely to make domestic surrogacy any more attractive to intended parents than international surrogacy. From 2 a-k, a plethora of expenses are stipulated. 2.b should be reconsidered as 'wellbeing costs' is far too broad; 2.j should also be redrafted to stipulate recovery for 'any product prescribed, or service recommended, by the surrogate's healthcare provider' and a written prescription for a product/written recommendation for a service should be required to be produced. Also, the cost of any *additional* counselling recommended by the surrogate's healthcare provider should be borne by the surrogate and not the intended parents.

Question L

Yes, and adjusted annually in line with inflation.

Proposal 26

Agree with 1, 2.b, & 4. Disagree with 2.a & 3, primarily because it is suggested in Proposal 25.2.k.i above that a surrogate should be able to recover 'medical expenses following…the birth of a child, miscarriage, or stillbirth (such as counselling or physiotherapy)' and if expenses can be recovered for such necessary services, this could help to alleviate a lot of the surrogate's post-birth 'discomfort, pain, suffering'.

Further, 2.a contains no suggestion as to how 'the likely loss experienced by a surrogate' for 'the commonly experienced discomfort, pain, suffering, and assumption of risk involved in pregnancy and childbirth' is to be medically/psychologically determined and verified.

Question M

No. The domestic surrogacy model suggested in these proposals is already a *highly compensated* model of regulation – this extra, rather broad payment would make it lean towards that applicable in some commercial surrogacy jurisdictions.

When proposing this compensated model of surrogacy regulation, one should be mindful of the UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, to which Australia is a party. In 2018, the UN Special Rapporteur on the Sale and Sexual Exploitation of Children made clear in her report that 'a truly "altruistic" surrogacy does not constitute sale of children, since altruistic surrogacy is understood as a gratuitous act, often between family members or friends'.[19] The model of regulation being proposed here is not really altruistic, but (highly) compensated, and in any event the UN Special Rapporteur cautioned that 'labelling surrogacy arrangements or surrogacy systems as "altruistic" does not automatically avoid the reach of the Optional Protocol' because altruistic (and compensated) surrogacy arrangements can involve substantial reimbursements to surrogates that exceed reasonable expenses, thus blurring the lines between commercial and altruistic surrogacy.[20] The ALRC should consider whether the type of compensated surrogacy regime proposed here could indeed lead to what is viewed as 'sale' of children, contrary to the Optional Protocol. My comments here should be read concomitantly with my comments below on Proposal 30.

Proposal 30

Agree with 1.a & c, disagree with 1.b because of the onus placed on the surrogate.

Principle 10 of the Verona Principles provides that 'States may provide intending parents with exclusive legal parentage and parental responsibility by operation of law at birth' *provided* that the surrogate has the right to confirm or revoke her consent to their parentage post-birth. Proposal 30 is virtually identical to that made by the Law Commissions in the U.K. and, from the surrogate's perspective, it is similarly *at odds* with the Verona Principles, a non-binding set of international 'best practice' guidelines for surrogacy.

Admittedly, part of the problem is the Verona Principles' silence on where legal parentage should lie if the surrogate revokes consent in a jurisdiction where she is not a legal parent at birth, and *who* should be responsible for initiating a court action in such cases of conflict. Indeed, the recommendation here is equally as anti-surrogate as that made by the Law

[19] See UNHRC, Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children' (UNHRC, 2018) 16, at https://docs.un.org/en/A/HRC/37/60.

[20] See UNHRC, Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children' (UNHRC, 2018) 16, at https://docs.un.org/en/A/HRC/37/60. See also the discussion in Brian Tobin, *The Legal Recognition of Same-Sex Relationships: Emerging Families in Ireland and Beyond* (Oxford: Hart, 2023) 103-106.

Commissions in the U.K. and is very concerning because, as in the U.K., (much of) Australia allows for traditional surrogacy, where the surrogate can be a *genetic* progenitor of the child. Proposal 30 provides that the intended parents' parenthood remains fixed, and the onus would be on the surrogate, usually the financially weaker party to the arrangement in any jurisdiction, to initiate costly court proceedings within 3 months of giving birth *and* (if she can overcome the financial and emotional hurdles) she must then demonstrate in court that she should be recognised as the child's legal parent.[21]

The Verona Principles clearly stipulate that 'where the surrogate mother is not a legal parent by operation of law at birth', she must be able to *'freely'* confirm or revoke her consent to the IPs having exclusive legal parentage after the birth of the child.[22] However, it cannot be said that a surrogate's inaction during the proposed three-month period after birth would be a freely given, tacit confirmation of consent when she knows that to change the legal situation regarding legal parentage in her favour would require a costly court action, and she does not have the financial means to initiate and proceed with a court application for a declaration.[23] *The practical effect of the suggested approach here would mean that most surrogates will be 'locked in' to the determination of legal parentage in favour of the intended parents at birth.*[24] Proposal 30 is not consistent with the type of post-birth autonomy envisaged for the surrogate in Principle 10 of the Verona Principles, or possibly even under international law, because the surrogate's ability to *freely* confirm or revoke consent after birth is also what is envisaged for surrogacy arrangements to comply with the UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.[25]

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[21] A recent survey of surrogates in the UK revealed that 55% of respondents (25 of 44 surrogates) had an annual household income of £40,000 or less, with 25% of those respondents having an annual household income of below £29,900: see Kirsty Horsey et al., 'UK Surrogates' Characteristics, Experiences, and Views on Surrogacy Law Reform' (2022) 36 (1) *International Journal of Law, Policy and the Family*. The fee for a Parental Order application in the U.K. is £260, and it is most likely this cost would be substantially added to because to attempt to successfully overturn the fixed legal parenthood of the IP(s) the surrogate may choose to hire lawyers.

[22] See Principle 10.5, *Principles for the Protection of the Rights of the Child born through Surrogacy (Verona Principles)*.

[23] Thus, in the vast majority of cases, the surrogate's 'right' to seek a declaration that they are the parent would be of no tangible, practical legal significance to them.

[24] See further the discussion on a very similar proposal by the Law Commissions in the U.K. in Brian Tobin, 'Ireland's Irreconcilable Approaches to Domestic and International Surrogacy?" in K. Horsey, Z. Mahmoud and K. Wade (eds.) *Future Directions in Surrogacy Law: Law and Policy Reform in the UK and Beyond* (Bristol University Press, 2025) 212, 231-233. Recently, the UN Special Rapporteur on Violence against Women and Girls, Reem Alsalem, called for the abolition of surrogacy, but that '[p]ending its abolition, States must take action to prevent further harm and strengthen the protection of the rights of women and children involved in surrogacy arrangements': see *Report of the UN Special Rapporteur on Violence against Women and Girls, its Causes and Consequences – The Different Manifestations of Violence against Women and Girls in the Context of Surrogacy* (A/80/150, 14th July 2025), 22 at: https://docs.un.org/en/A/80/158. Proposal 30 certainly does not *strengthen* the protection of the rights of the surrogate.

[25] See UNHRC, *Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children* (UNHRC, 2018) 17 – 18.

Question N

Yes, because this is suggested international best practice in the Verona Principles and is arguably necessary to comply with the UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. It is arguably even more necessary in a country like Australia, where a heavily compensated form of domestic surrogacy is being proposed, and traditional/genetic surrogacy is permitted (with the exception of Victoria).

Proposal 31

Agree with 1 & 2.

Proposal 32

Agree.

Question O

For prospective international surrogacy arrangements, it is recommended that judicial officers should consider factors like those set out in section 81 of Ireland's Health (Assisted Human Reproduction) Act 2024: https://www.irishstatutebook.ie/eli/2024/act/18/section/81/enacted/en/html#sec81.
Greater leniency could be applied in respect of the factors to be considered as regards retrospective international surrogacy arrangements, as in Part 12 of Ireland's Health (Assisted Human Reproduction) Act 2024: https://www.irishstatutebook.ie/eli/2024/act/18/enacted/en/print#part12.

Question P

No. The Verona Principles recommend that where the surrogacy arrangement is an international one that would not be permitted under domestic law, a post-birth best interests of the child assessment is necessary. Intended parents often travel to jurisdictions that strip the surrogate of all legal rights prior to the birth of the child or allow anonymous donor gametes to be used in surrogacy arrangements, thus frustrating the child's right to knowledge of his/her origins. Simply because IPs might be recognised as legal parents under the law in such jurisdictions does not mean that their legal parentage should be recognised in Australia without the need for a court order made following a judicial best interests of the child assessment.

Proposal 33

Agree with 1 & 2 (Option 33.2).

Proposal 34

Agree with 1 & 2.

Question R

In Ireland, information on any relevant male/female gamete donor is also included in the National Surrogacy Register, as is information on the intended parents and the surrogate – see further section 99 of Ireland's Health (Assisted Human Reproduction) Act 2024.
In Ireland, this information is provided to the National Regulator (AHRRA) by the assisted human reproductive technology service provider. However, the intended parents must cause the AHR treatment provider to collect this information and forward it to the AHRRA - see further section 99 of Ireland's Health (Assisted Human Reproduction) Act 2024.

Proposal 35

Agree with 1 (Option 35.1) & 2.a.

Proposal 36

Agree with 1 & 2 (Option 36.1), but given the increasing recognition of the importance to individuals of information pertaining to their origins, a *hefty* civil penalty regime is advisable to deter non-compliance with Proposals 34 & 35.

Proposal 37

Agree with 1.a,b.c.i (but not c.ii) & d.
Agree with 2.a (but not 2.b).

Proposal 37 is interesting because it is similar to how Ireland regulates international surrogacy arrangements under Part 8 of the 2024 Act. I disagree with 1.c.ii because, in Ireland, if an international surrogacy destination is not permitted by the AHRRA, it is for valid reasons to protect *all parties* – see section 81 (2) (a-g) of the 2024 Act for the factors considered by AHRRA in determining approval of a surrogacy jurisdiction. A jurisdiction either permits ethical surrogacy arrangements and protects the rights of all parties to the arrangement or it does not – it is difficult to see how IPs would, in practice, satisfy the registration entity that an arrangement in a non-permitted jurisdiction is in fact non-exploitative.

I partially disagree with 2.b because there has to be a deterrent to engaging in reckless overseas surrogacy arrangements in jurisdictions that do not adequately protect the rights of women and children. If both IPs who are party to an unregistered overseas surrogacy arrangement are entitled to apply for legal parentage, and the paramount determining factor is the best interests of the child, then a court is highly unlikely to deny them legal parentage. This is what has been happening in the U.K. Thus, there would be no deterrent to engaging in exploitative commercial/ethically unsound surrogacy arrangements abroad. *In Ireland, if the IP's surrogacy destination is not AHRRA-approved and they proceed, they cannot apply for a Parental Order under Part 8 of the 2024 Act.* The intended father, as genetic father, will be able to apply to the court for parentage and guardianship (parental responsibility) like any other unmarried father can under existing law, but the

intended mother, or co-father in a same-sex surrogacy arrangement, will only be able to apply for guardianship a minimum of 2 years after the birth of the child, and guardianship expires once the child reaches 18. Thus, if IPs want full parental status, rights and duties, there is an incentive for them to comply with the 2024 Act by pursuing surrogacy in AHRRA-approved destinations. It is respectfully submitted that there are not enough deterrents to engaging in exploitative, unregistered overseas surrogacy arrangements in Proposal 37 - this needs some reconsideration.

Proposal 38

Agree, but only as regards any IPs with *registered* overseas surrogacy arrangements.

Question S

The National Regulator should be responsible, and factors to be considered when determining 'permitted destinations' must include transparent gamete donation, the surrogate's ability to confirm/revoke consent post birth, any civil or military activities in the jurisdiction that pose a potential risk of harm to the parties, etc. Section 81 of Ireland's Health (Assisted Human Reproduction) Act 2024 is insightful in this regard: https://www.irishstatutebook.ie/eli/2024/act/18/section/81/enacted/en/html#sec81

I think IPs may act outside of the registration process. Indeed, as our 2024 Act has not yet been fully commenced, and AHRRA is not yet approving applications, it remains to be seen whether a similar process will work in Ireland. However, as stated above, if parties choose to ignore the registration process and go to jurisdictions that allow anonymous donor gametes and frustration of the child's right to information about his/her origins, or war torn jurisdictions that allow surrogacy, etc, then there has to be a serious deterrent, and this is currently not the case in these proposals.

The final question is indeed novel and could encourage engagement with domestic surrogacy in Australia, so yes, IPs should be required to demonstrate, as a precondition to registration, that they have made reasonable efforts to engage in domestic surrogacy before they can engage in a registered overseas surrogacy arrangement.

General Comments

The domestic surrogacy regime proposed here is well-considered and thorough, but so thorough that its many requirements may not necessarily make domestic surrogacy any more attractive than international commercial surrogacy. Some requirements for the content of a surrogacy agreement, and payments to the surrogate, should be reconsidered. The proposal as regards exclusive legal parentage at birth restricts the surrogate's post-birth right to *freely* confirm or revoke her consent to this in a manner that is arguably not compliant with international best practice or international law.
Finally, if the aim is to promote ethical, compensated *domestic* surrogacy arrangements, then there must be a greater incentive to do so, and stronger deterrents to engaging in unethical, unregistered international surrogacy arrangements.