Submission to the Australian Law Reform Commission – ANZICA

A Supportive Institutional Framework for Surrogacy Regulation - December 2025

Introduction

The Australian and New Zealand Infertility Counsellors Association (ANZICA) welcomes the opportunity to contribute to the Commission's work. Our submission reflects extensive clinical experience supporting intending parents, surrogates and partners, donors, and families across Australia and New Zealand, as well as reference to existing ANZICA best-practice guidelines.

Given the demands of clinical practice and the pressures inherent in this time of year, ANZICA has chosen to focus this submission primarily on matters directly related to counselling and psychological assessment. While our response does not address every proposal in detail, we express broad support for the development of a nationally uniform regulatory framework for surrogacy and provide more detailed commentary on those areas most closely aligned with our expertise.

PART 1 — Commentary on Proposals 1–3

Proposal 1 – National Harmonisation

ANZICA acknowledges the significant variations in surrogacy legislation across Australian states and territories. We strongly support efforts toward harmonization of legislative requirements to:

- Reduce confusion and complexity for parties navigating surrogacy across jurisdictions

- Ensure consistent standards of care and protection
- Facilitate best practice approaches nationally
- Improve equity in access to surrogacy for all Australians regardless of location

A unified approach to counselling requirements, assessments, and support would significantly benefit all stakeholders in surrogacy arrangements

A Commonwealth-led model, supported by referral of powers from the states, would provide the most coherent and reliable regulatory environment. If full referral is not pursued, we support uniform harmonised legislation across all jurisdictions under a nationally agreed framework.

Proposal 2 – Establishment of a National Regulator

ANZICA supports the establishment of a National Regulator responsible for surrogacy, donor conception and assisted reproductive technology more broadly. These areas cannot be effectively separated, as surrogacy arrangements frequently involve donor gametes and intersect with broader ART practice.

A National Regulator would allow:

- consistent psychosocial standards of practice,
- establishment of clear benchmarks for counselling and assessment,
- oversight of Surrogacy Support Organisations (SSOs),
- transparent processes for approval and monitoring of arrangements, and
- accountability to the community.

Whilst ANZICA welcomes the opportunity to collaborate with such a regulatory body, we emphasize that regulation of counselling standards should independently fall under the National Regulator rather than a professional association.

Proposal 3 – Surrogacy Support Organisations (SSOs)

Position

ANZICA supports appropriate oversight and regulation of surrogacy support organizations (SSOs) while recognizing the important role they play in facilitating surrogacy arrangements.

Regulatory Framework

ANZICA supports, in principle, the licensing and regulation of SSOs, provided their functions and boundaries are clearly delineated.

We recommend:

Role and Scope of SSOs

- SSOs should operate within a **Commonwealth regulatory framework**, ensuring uniform oversight.

- SSOs may assist with matching but **must not** perform counselling, undertake psychosocial assessments, or decide on participant suitability - These functions should remain with independent qualified professionals to maintain appropriate boundaries and avoid conflicts of interest

Professional Standards & Staffing

- SSOs should have designated officers who meet defined competency requirements, developed in collaboration with ANZICA.
- Legal and counselling services may be outsourced to independent professionals who report back to the SSO administratively but retain full discipline specific independence.

Governance and Financial Management

- ANZICA does not support restricting SSOs to not-for-profit status; this risks reliance upon funding organisations that may dictate service provision, including financial constraints that may preclude experienced professionals.
- If SSOs are permitted to manage escrow or trust funds, strict trust-accounting qualifications and independent auditing requirements must apply, in light of concerns raised by international examples.

Post-Birth Counselling Access

Position

- ANZICA supports making post-birth counselling available for at least six months for all parties to a surrogacy arrangement. This should be funded by intended parents (IPs) and accessible to surrogates without needing to seek the approval of IPs at the time. Provision of this support should *not* be a condition for parentage orders.

Rationale

Post-birth counselling should be:

- Offered proactively to all parties as standard practice
- Accessible without stigma or implication of problems
- Provided independently to ensure parties feel comfortable accessing support
- Funded through an independent mechanism (such as an escrow system) to ensure availability without creating barriers to access

Making post-birth counselling a routine offering rather than a legal requirement encourages uptake while avoiding the implication that accessing support may affect legal outcomes.

PART 2 — Counselling, Psychological Assessment & Related Proposals

Proposal 18 – Psychological Screening

ANZICA supports mandatory implications counselling and psychological assessment for **all parties** to a surrogacy arrangement (intended parent/s, surrogates and surrogate partners (where applicable). Equal participation promotes transparency, ensures informed consent of all parties, and minimises potential misconceptions and conflict.

To avoid inadvertently excluding skilled reproductive counsellors, the term *"psychologist"* should be replaced with **counsellor**, defined as a ***full ANZICA member with reproductive counselling expertise***, reflecting the appropriate qualification and expertise required for this specialised work.

Rationale

Using eligibility for **ANZICA full membership** as the qualifying criterion ensures that assessors have:

- Specialized training and experience in fertility counselling
- Deep understanding of the unique psychological complexities and relational dynamics inherent in surrogacy arrangements
- Adherence to professional standards and ethical guidelines specific to reproductive counselling
- Ongoing professional development specific to this specialized field

This approach ensures appropriate oversight while ensuring access to a sufficient number of qualified practitioners across Australia.

Scope of Psychological Assessment

ANZICA acknowledges ongoing professional debate regarding specific assessment methodologies, including the use of psychometric testing. We recommend that the specific requirements and methods of psychological assessment be decided according to the individual practitioner's clinical judgement, guided by ANZICA professional standards. This flexibility allows assessors to tailor their approach to individual circumstances while maintaining professional accountability through ANZICA membership requirements.

Assessments must include:

- Comprehensive implications counselling for all parties

- A formal psychological assessment conducted by a counsellor who is independent of the treating fertility clinic and eligible for ANZICA membership
- Use of psychometric instruments where clinically appropriate,
- Disclosure of current or past mental health conditions,
- Assessment of stress-management and coping strategies
- Provision of ongoing supportive counselling, distinct from the independent assessment, and delivered in accordance with ANZICA guidelines.

Question D – Should all parties participate in psychological assessment?

Position

Yes. Equal engagement with all parties, (intending parents, surrogates, and partners where applicable) prevents power imbalances and establishes a foundation for informed participation and consent.

Proposal 21 – Implications Counselling

ANZICA has the necessary experience and is willing to work with the National Regulator to develop detailed standards for the structure, delivery and documentation of counselling.

In line with ANZICA's current best practice professional guidelines, our firm recommended framework includes:

- **A minimum of five sessions** conducted by a counsellor who can demonstrate eligibility for membership of ANZICA **(**with two additional sessions, where applicable, in a known and separate donor arrangement):

    - Two sessions with intended parent(s)
    - Two sessions with the surrogate and their partner
    - Where a known donor is involved **-**Two independent sessions with the donor and their partner **(**where applicable) – this would not be required where the only known donor is the surrogate themselves through a traditional surrogacy arrangement
    - One final joint session - involving all parties to discuss the arrangement collectively

This strict minimum number of sessions ensures thorough exploration of implications for all parties and is consistent with best practice guidelines in all implications counselling. It is essential that appropriate time and space is provided *between s*essions to allow all parties time for separate discussion and reflection.

Independence of Psychological Assessment

ANZICA recognises the legal requirements and assessment required in a surrogacy arrangement and sees this as distinct from the implications counselling required to undertake

assisted reproductive treatment. As such, ANZICA supports the need for surrogacy related psychological assessments to be provided by a counsellor entirely separate from:

- The fertility clinic providing treatment
- Organisations involved in matching surrogates and intended parents
- Bodies responsible for approving surrogacy arrangements

This independence is essential to:

- Avoid conflicts of interest
- Maintains legal and procedural fairness
- Ensure all parties receive impartial assessment focused on their wellbeing
- Provide external oversight of the decision-making process

Unknown donors involved in the surrogacy arrangements are able to be managed through existing unknown donor requirements under the relevant legislation of each State and Territory.

Distinction from Clinic Support

While psychological assessment must be conducted independently, fertility clinics may continue to provide implications counselling and general psychosocial support services to all parties throughout the surrogacy process. This support is important but is distinct from the independent psychological assessment required before proceeding with the arrangement.

Proposal 19 – Criminal History Checks

Position

ANZICA does not support mandatory criminal history checks for intended parents in surrogacy arrangements.

Rationale

Criminal history checks are not required for any other assisted reproductive technology (ART) treatment in Australia. Requiring them specifically for surrogacy would create an inconsistent and discriminatory standard that singles out intended parents pursuing surrogacy compared to those accessing other forms of fertility treatment.

Surrogacy should be subject to the same professional standards and safeguards as other ART treatments, including appropriate psychological assessment and counselling, without imposing additional requirements that are not evidence-based or consistently applied across the fertility sector.

If an optional model is adopted, checks should be shared *only between the parties*, with no legislated disqualifying offences. Consent and decision-making should remain with those directly involved in the arrangement.

Additional Considerations

Streamlining Pre-Approval Processes

Where counselling has been completed in accordance with national standards, some procedural steps—such as those in Section 17—may be unnecessary. Reducing duplication would streamline the process while maintaining safeguards.

Funding and Escrow Arrangements

ANZICA supports the establishment of an escrow system to handle counselling costs independently. This mechanism would:

- Ensure counselling is funded appropriately
- Maintain independence of counselling providers
- Remove financial barriers to accessing required counselling
- Provide transparency in the use of funds related to surrogacy arrangements

Conclusion

ANZICA supports a nationally coherent and professionally grounded surrogacy framework. Our submission emphasises:

- best interests of participant, their partners and children to be born;
- consistent, evidence-based counselling standards;
- equitable psychological assessment for all parties;
- safe and clearly defined roles for SSOs;
- a central National Regulator; and
- transparent and ethically sound processes supporting informed consent.

ANZICA welcomes further engagement with the Australian Law Reform Commission on these matters and stands ready to provide additional expertise as needed.