To Whom It May Concern,
Please find my responses below to the discussion paper for the review on Surrogacy Legislation.

My experience is based upon being an altruistic gestational surrogate for two different families – with one arrangement resulting in a baby born within the last 6 years; as well as being an egg donor for a third family. I am happy for this to be de-identified but published online.

Proposal 1:

Yes. I would like to see a uniform surrogacy legislation across entire country. At present the laws between interstate teams are inconsistent, confusing, overwhelming, and discriminatory.

Proposal 2:

I do not have any concerns about having a regulator in place to oversee surrogacy and the matters set out in this proposal. However, I do not believe that this role should be carried out by an organisation that is responsible for reproductive technology. To me, this creates a conflict of interest. Currently, fertility clinics are largely responsible for approving surrogacy arrangements, and I feel this already places intended parents at risk of being treated unfairly. I would prefer to see oversight provided by an independent body, rather than by those who are directly involved in facilitating surrogacy.

Question A:

I believe it is important that the overseeing body cannot make any money from any part of the surrogacy process. I also think it is important that the people working within that body have a strong understanding of surrogacy, so that decisions are informed by real knowledge and experience, rather than being made purely as an administrative exercise or simply because certain boxes are ticked.

Proposal 3:

No, I do not think that SSOs should have a primary focus on matching members together. I believe their role should be to support the legislative processes of a surrogacy arrangement only.

Question B:

I believe that assisted reproductive technology service providers should only be responsible for assessing whether surrogacy is medically required and whether a person is able to carry a pregnancy as a surrogate. If all other parts of the process have been completed, and the parties can provide some form of confirmation from the regulator that these steps have been met, they should then be able to proceed to the transfer stage. I think clinics should be removed from all other parts of the surrogacy process leading up to the point of requiring their services.

Proposal 4:

Yes. I agree with this proposal. I think it's important that the wording 'may facilitate' stays in there to allow a clear pathway for traditional surrogacy to continue which may not require the use of IVF clinics. However, I think it's also important the legislation includes a caveat that clinics cannot refuse traditional surrogacy via IVF methods should a team desire to pursue a clinical process for obtaining a pregnancy using the surrogates' eggs.

Proposal 5:

I support the idea that there should be a presumption in favour of approving a surrogacy agreement when all requirements are met. This is important because, at present, many professionals involved in the process (including GPs, obstetricians, and psychologists) bring their own personal views or sense of responsibility into decision-making about whether surrogacy should proceed. This can result in people involved in surrogacy arrangements being made to feel as though they must justify or "earn" the right to have a child through surrogacy or prove that their intentions are purely altruistic and that nothing improper is occurring. Decisions to decline an agreement should be based on clear and objective evidence—whether medical, psychological, or social—explaining why it should not proceed. Where possible, people should also be given guidance on what needs to change, so they have the opportunity to address concerns and apply again at a later stage.

Question C:

It could be that I'm not familiar enough with legal processes to fully understand this question. However, I initially interpreted a SSO to be separate organisations that created to facilitate surrogacy, and while they sit under National legislation and a regulator – they are run by people with their own vested interests in the way a business may run. I

do not agree with this set up. I think that the national regulator /SSO should be the one 'organisation'.

Proposal 6:

Yes, I think those in a professional capacity, approving and proceeding with surrogacy arrangements should be held responsible for approving and facilitating teams that do not comply with the legislative requirements.

Proposal 7:

Our medical professionals absolutely need to improve their understanding of surrogacy. We also need positive public education and awareness campaigns about surrogacy, which I believe would encourage more people to consider becoming surrogates. I have provided information sessions to the community and the significant attendance highlighted the gap in accessible, reliable information. In addition, we need to develop official resources that can be used as recognised professional development for those who may be involved in surrogacy teams.

Proposal 8:

Yes, I think that legislation should dictate that surrogacy arrangements cannot be made based on profit or reward because I consider this coercion, and it removes the relationship out of surrogacy. However, I am open to intended parents being allowed to gift their surrogate however they like over the process of the arrangement and afterwards. Too often they fear that they cannot provide even the simplest gifts of thanks (considered normal by all other relationship standards outside of surrogacy) for fear of retribution. Perhaps a monetary value cap could be determined for such items.

Proposal 9 & 10:

Yes, I think that criminal offences in relation to engagement in commercial surrogacy should be repealed, however they should remain for those who engage in (reckless) surrogacy in countries where Australia does not have regulation/relationship arrangements for facilitating commercial surrogacy (much like we do for adoption). It should also be in place for third parties who enable commercial surrogacy to happen in those places. They are exploiting women, children, and intended parents in doing so.

Proposal 11:

Yes, I agree with this proposal to repeal the legislation that prohibits all advertising. However, I think it is important that there are clear guidelines around what level and type of advertising is appropriate. For example, is it appropriate for someone to spend thousands of dollars on a billboard, engage the media, or run targeted social media advertising? How should this compare to something more modest, such as a small newspaper advertisement? As media and technology continue to evolve, the forms of advertising will also change, so the definition needs to be flexible and future-proof.

Given how few surrogates there are, unrestricted advertising would likely disadvantage those who cannot afford high-cost advertising and turn the process into a competition. This risks undermining the core relationship-based nature of altruistic surrogacy. If surrogates cannot be paid or compensated, the relationship itself is often the most meaningful outcome. We want people to connect because they are building a lifelong relationship in the best interests of the child, not because one group has the most eye-catching or expensive advertisement.

Proposal 12:

Both traditional and gestational surrogacy should be legislated the same way.

Proposal 13:

Yes, I do not think access to surrogacy should be based upon choice. It needs to have a medical, biological, or psychological reason. However, I think that those things need to be broken down much further. Women with unexplained fertility should not be denied access to surrogacy for 10 years because there is always something new a specialist can try. There needs to be clear criteria that women with uterus' are not medically and financially discriminated against in their pursuit to access surrogacy.

Proposal 14:

I think that all team members should be a minimum age of 25. I do not think that an 18yo intended parent is mature enough to fully understand the implications of risk they are placing upon someone else and relationship challenges they will be up against. The only exclusion to this is in the case that a parent (grandparent of a child to be born via surrogacy) is planning on carrying for their own child/child's partner and there is time limit due to their upper age for a safe pregnancy. In this case I think that the parent is

fully informed and aware of the risks they are taking upon themselves for their own child and future grandchild.

And yes, all team members should have the legal capacity to make an informed decision.

Proposal 15:

Yes, I think that where intended parents are in a long term relationship (2+ years), that the requirement for only one being an Australian Citizen should be necessary. The need for all team members to be Citizens adds an additional layer of time, cost, and steps to complete surrogacy.

Proposal 16:

I believe that if surrogates and intended parents are over the age of 25, it should not be a requirement for a surrogate to have previously carried her own child. This suggestion assumes that all women want to have children, which is not the case. Women should have the autonomy to make their own decisions about pregnancy, childbirth, and parenthood. A medical clearance with an obstetrician/independent medical practitioner is already a standard part of surrogacy arrangements, yet most women do not undergo this level of medical assessment when becoming pregnant for themselves. We trust women to make these decisions for their own lives and families, and they should be equally trusted to make decisions regarding surrogacy. Requiring prior childbirth for surrogates is an unnecessary legislative overreach that undermines women's ability to make informed choices about their own bodies.

Proposal 17:

Yes, I support this proposal. However, it is crucial that the independent medical practitioner's assessment is based solely on the potential surrogate's health, not on any personal bias for or against surrogacy. It is common for providers to assume that surrogates are taking unnecessary risks by carrying a pregnancy for someone else, which can override their autonomy. A surrogacy should only be declined if there is a genuine, tangible health risk to the surrogate.

Proposal 18:

Yes, I agree with this proposal. Yes. As a surrogate – I never received a copy of the reports. They were handed to my intended parents, and I did not see them until the parentage order when I happened to read through the document.

Question D:

I have no concerns with this; however, the language used in these assessments and reports can come across very blunt and damning. When I read my own report, it was quite shocking and labelled me as someone who only enters relationships to get something out of them. This did not prevent me from entering arrangements, and all my relationships were successful and continue. I was very shocked and embarrassed that my intended parents, clinics, and now the court - had seen that report and I had not until the very end. Laypeople often struggle to interpret these reports and may not fully understand the language used. Privacy and ensuring that clients can meaningfully understand what is written about them should be a priority in every assessment.

Proposal 19/Question E:

Yes, I think criminal history checks should be legislated. I think this is best interest of any child to be born through surrogacy. However, I do think that perhaps minor traffic offences for example could be excluded after a certain time frame. For example: I would not consider a parking fine or a speeding ticket of <20km over the limit to be a concern for the character of a team member – however a DUI would be a concern for any future children travelling in the car with that parent. In the latter example though – if the offence was 10 years ago – then that person has proven that they have changed behaviour and are no longer a concern.
All violent offences or offences against anybody (child, adult, stranger, or family member - should be automatic exclusions against being considered for surrogacy. I don't think any time frame should accepted for proven changed behaviour. It's an exclusion forever.

Proposal 20:

Yes, I agree with this proposal. Yes, I think that lawyers should have special surrogacy accreditation.

Proposal 21:

Yes, I agree with this proposal. However, I'd like to see a legislated requirement to have ongoing group sessions – one per trimester of the pregnancy; and one group and one individual either post birth or at the termination of an agreement (when a pregnancy is not achieved). Even in good relationships, things arise and communication is hard. Having someone to talk it through with will always be beneficial for a team. This does however pose a problem with the number of ANZICA qualified professionals at present. It would possibly create a backlog and make it hard for teams to be compliant with this requirement. However, I think that teams do not partake in enough counselling (myself included) throughout the process.

Question F:

I have completed one surrogacy arrangement in Queensland and one in South Australia. In Queensland, it was a requirement for my husband to attend legal advice and counselling, whereas in South Australia it was not. I did the Queensland arrangement first, and because we saw the value in it, my husband chose to attend the non-compulsory counselling and advice for the second arrangement as well. He is heavily involved in the process before, during, and after, and his support has been very important to us.

However, I am aware that some surrogates who are separated from their partners—but not yet divorced—have found this requirement restrictive, limiting their autonomy to pursue surrogacy. I do not believe this is fair. Surrogates should be able to proceed even if they are newly single or in the process of separating, provided their mental, emotional, and financial stability can be confirmed by a psychologist. In such cases, clearance to proceed might be delayed until their stability is assured.

On the other hand, if a partner living with the surrogate refuses to participate in the legislated process, this raises serious "red flags" in my view. It could create significant challenges during the pregnancy, as the surrogate may lack the necessary support, and the partner may not understand the complexities or risks involved. This could place undue stress on their relationship. It should be made clear that a partner's compliance with the process does not equate to consent on behalf of the surrogate. There should be pathways for a surrogate to continue without partner involvement, but this should not be the standard approach.

Question G:

Yes, please see my answer to Proposal 21 for my thoughts on additional counselling.
I think that in a 'smooth' pregnancy and birth – it would be fair for IPs to continue to pay for counselling until 13 months after the birth (this allows for 1 year, accommodating the knowledge that there may be wait lists for appointments). Often the first birthday can bring up things that surrogates need to process.
For complicated pregnancies, traumatic births & recoveries, or team relationship break downs – I think it would be reasonable for intended parents to be responsible for two years counselling – but perhaps it would be better to determine a maximum number of sessions post birth. Such as 10 in two years. – like the original mental health care plan allowed. This allows for one session every quarter year. It should not place the intended parents in financial stress, but it also does place the burden of responsibility and financial loss on a surrogate for circumstances relating to the surrogacy pregnancy and birth that were outside of their control (though was an informed risk at the time of the arrangement being made). Consideration for the timeframe/sessions should be made upon the known times for healing from pregnancy and birth, physically & emotionally. To back this up, it would be in alignment with fair work – where women are allowed up to 24months unpaid leave for maternity leave. This acknowledges the changes that come with pregnancy and childbirth and the need for time be back to optimal health. This should be unrelated to caregiving. Pregnancy and birth are a lot on the body. In my case, my surrogacy pregnancy was my 5th full term pregnancy - it was a smooth pregnancy and birth, with no relationship complications. I felt that it took me approximately 10 months to feel 'myself' again. While every woman is different, I feel that surrogates should not be immediately 'discarded' financially post birth (or parentage order) – and IPs should be financially responsible for her health and wellbeing for a specified time frame after birth.

Proposal 22:

I would like "loss of earnings" to extend to a surrogate's partner, if a partner is included in the arrangement. It should also be clearly defined as either net or gross earnings, plus superannuation. Currently, there is a lot of confusion about how this should be calculated and paid. Some teams pay cash in hand based on net earnings, while others use gross and include it in tax returns. Clear guidance on this is needed.

There are also complications when workplace agreements or EBAs are involved. For example, my husband could not take unpaid leave if he had paid leave available. In our case, our intended parents paid net earnings plus super, because declaring it otherwise would have increased his taxable income. The cash in hand he received was effectively equivalent to using holiday pay he was forced to take.

I also believe that insurance coverage should extend either for the full life of the policy or for at least 12 months post-birth. In many cases, when teams break down, intended parents immediately cancel policies after birth, even if the policy is still active. Women remain in a vulnerable health state for at least a year after giving birth, and it is important that this is recognised. Standardising payment and coverage timeframes in legislation would normalise this support for the birthing woman and prevent disputes or financial games after the birth.

Question L:

Short answer: no.

I think this is something that can be determined by teams, and with respectful conversation and mediation through better counselling requirements.

Long answer: yes.
There may be surrogates who prefer higher-end maternity clothing or have specific personal preferences. Some might also take advantage of intended parents' generosity, such as expecting meals to be provided very frequently for their household during the pregnancy outside of generous support from Intended Parents —though exceptions should be made for surrogates on bed rest. Intended parents should not be taken advantage of, and surrogates also need to assume responsibility for costs that are matters of personal choice or preference rather than medical necessity.

To protect intended parents, there should be caps on certain items if costs were not discussed in advance and are not medically required. A cap for incidental expenses could also benefit surrogates, providing an allowance for unplanned but reasonable costs without making them feel guilty for requesting support.

For example, in my own surrogacy, the child I birthed as a surrogate, was born within three years of my own pregnancies. I needed very few maternity items, as I already had a wardrobe available. However, my size had changed postpartum, and neither my maternity clothes nor my normal wardrobe fit. I did not feel it was appropriate to request that intended parents cover these costs, so I replaced my wardrobe at my own expense. In hindsight, an established clothing allowance or cap would have been helpful for unplanned but reasonable expenses like this.

Proposal 26:

I do not believe that item 2a should be an opt-in process. It should either apply to all arrangements or not at all. My preference would be to remove this requirement entirely

and allow intended parents to gift their surrogates as they wish, up to a capped amount, without concern that it could be seen as coercion.

I do agree that item 2b should be a standard clause in all surrogacy arrangements. However, I would like clarification on how this payment will be managed. Specifically: What is the process for it to be paid out? Who authorises it, and where is the line drawn? Will the process be overly complex for a surrogate who may have experienced trauma? Is there a mechanism for intended parents to dispute the payment?

Additionally, I am concerned about how caps will be determined by the regulator. What benchmarks will be used, and is there a standard reference—such as the value assigned to a uterus in cases of hysterectomy? For informed consent, all parties should be made aware of these details before signing the agreement.

Question M:

As mentioned in the above proposal paragraph – I think that a compensation payment for a surrogates' time, effort, inconvenience, and unique contribution should be a standard across all arrangements if we are going to allow it. I do not think it should vary per arrangement. Making a surrogate responsible for asking this, when we know surrogates do not like asking for help, money, or support is exploiting women and the work they do. I believe the burden of responsibility for acknowledging the work of surrogates is required by legislation – that way intended parents cannot dispute a surrogates' invaluable contribution or use opt in as a loophole for avoiding paying it. We legislate every other wage with minimum payments, EBAs, and Industry awards. Surrogacy should be not different. I also think yearly income, tax and super implications/consequences should also be considered in how to legislate this.

Proposal 27:

I have no concerns with using a trust for surrogacy arrangements. However, I do not believe intended parents should be required to have the full amount deposited upfront. Assuming that all intended parents have immediate access to the total funds is unrealistic and risks discriminating against those who are not financially well off. Many intended parents rely on the incremental steps of the surrogacy process to save for the next stage. They may redraw on home loans, access superannuation, or take out individual loans or credit lines to cover costs. There is also significant variability in the number of egg collections and embryo transfers required to achieve a pregnancy, as well as in modes of pregnancy care.

I suggest that a minimum required amount be set, covering extreme hardship and lost wages of up to six weeks, with the option for intended parents to add to the trust as they save or obtain additional funds. This initial figure should also be used to determine the caps outlined in the surrogacy agreement, providing transparency for the surrogate. It could further help assess whether a team should be approved, particularly if expectations about costs vary widely between the parties.

Proposal 28 & 29:

Resounding yes. This is an important thing that should be immediately changed and legislated. I'd also like a smoother process for Medicare rebates. Perhaps there should be an option for them to go directly back into the trust account held by the SSO. That way it helps top up the trust funds, and there is not the complicated process of the surrogate getting the rebates because she is the patient. No need for her to withdraw money and physically hand it back to intended parents, or change her bank details with Medicare temporarily for the pregnancy. I do think that the gap costs should continue to benefit the surrogate and her Medicare threshold. This benefits her entire family as they contribute to another family ESPECIALLY if there continues to be no payments to a surrogate as financial compensation for surrogacy. However, I do think that this should be compensated for the intended parents by them receiving slightly larger Medicare rebates than those accessing assisted reproductive technology rebates for themselves (not surrogacy).

Proposal 30:

Yes, I agree with this proposal. The birth certificate is a huge stumbling block for parents and a reason they often choose to go commercial. If we want to limit those going overseas, then I think preapproval for parentage is important. The paperwork is also time intensive and is difficult for intended parents to follow up and complete with a newborn.

Question N:

Where a surrogate is questioning if the intended parents are suitable as parents (after a pregnancy is achieved), then yes, I think there should be a course for her to challenge the parentage in the best interests of the child. Another example may be where the child is no longer wanted by the intended parents, or if the intended parents pass away. I think this should be extended to 6 months though.

Proposal 31:

I cannot speak for how overseas arrangements work in relation to the birth certificates. I have no understanding of the legal implications of that.

However yes, I think that even in unapproved arrangements, the intending parents should have the ability to apply for parentage for best interests of the child. I do think the timeframe should be extended to 6 months.

Proposal 32:

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Question O:

Knowledge & intention at the time of pregnancy being achieved. Long term outcomes for the child and their best interest.

Question P:

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Question Q:

The Newborn and Dad & Partner Pay SHOULD NOT be tied to caregiving of a newborn. This is discriminatory. Many surrogates have children and require their partners support through time off work for recovery and parenting. This being tied to caregiving invalidates the work and recovery required of the birthing woman. They should be given the same entitlements as anyone else birthing their own child.

Medicare and Centrelink need to understand their own policies and procedures. There are so many inconsistencies and errors and incorrect information between surrogacy teams and branches of the services. It causes a lot of emotional and financial stress on teams and takes a lot of time to resolve.

It needs to be legislated by fair work that all maternity and paternity leave includes surrogates and their partners. Some EBA's and awards tie this to caregiving only, and therefore doesn't acknowledge the work and recovery required by those growing and giving birth to a human (and their families who support them).

Proposal 33:

Yes. As a surrogate this is very important to me that the addendum is on every birth certificate from birth. The intention of most surrogates is to be known to the child they birthed as a surrogate. This is regardless of relationship fall outs between the adults. There is no shame in surrogacy and disallowing it on birth certificates prior to age 16, implies that there is something to hide. Best interest of child is to always share their story and normalise it from very young, we know this from adoptions throughout our history, and from donor conceived children (now adults). I believe this would be best practise.

Proposal 34:

I do wonder in the instance where a relationship may break down- that a surrogate may not want intended parents to access a change of home address. So, privacy concerns are important to consider in the event of a breakdown amongst teams post birth. Is this something that needs to be updated or is it like a birth certificate, it's only the address at time of birth?
I also question the requirements for ethnicity and physical characteristics? Why? How does this offer anything of value or relevance? I'm a gestational surrogate – so what purpose does this serve? Is it for statistics purposes?

Question R:

Why can this not be submitted when the application for birth registration/certificate is applied for? If an addendum is going to be added to the birth certificate, all the information should be lodged at registration of birth. If an update of birth is needed to be made to the SSO/or National regulator, then wouldn't this also be a part of the same process?

Proposal 35:

If we are creating an overseeing body in SSO's then I think it serves the same purpose to keep a national surrogacy register; however, there are a lot of overlaps between donation and surrogacy. Will those who use donors have to lodge with both? That's just another step in a long list of processes. Can we simplify it into one national register for both?

Proposal 36:

Are there allowances for oversight? The chaos of a newborn and post-partum life, or medical concerns that cause delay to the return of normal life? Can it be a part of the post birth counselling process to ensure this is done? Where a professional has boxes to check to comply with legislation – this is one of them.

I do not know enough about overseas surrogacy processes to comment on any further proposals.

Thank you for your time.

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