Miranda MONTRONE

Psychologist ***Family Therapist*** ***Infertility Counsellor***

BA MA MAPS MCOHP MANZICA

www.counsellingplace.com.au

Submission to the Australian Law Reform Commission
In Response to Discussion Paper 89: "Review of Surrogacy Laws"

I thank the Commission for the opportunity to respond to Discussion Paper 89 which has been developed following the recent Issues Paper, to which I made a submission. The Discussion Paper is impressive in the detail and breadth of issues covered. However, I will comment only on those issues which I consider important and on which I have extensive experience.

As background, I have counselled parties to surrogacy arrangements in Australia, since the mid-1990s. The total number of people whom I have counselled would be approximately 1200, comprising parties to around 350 altruistic surrogacy arrangements. This counselling includes pre-surrogacy implications and assessment counselling, post birth counselling, parentage order counselling, and counselling during a surrogacy pregnancy counselling if required.

In collaboration with colleagues, I have had several articles published in peer reviewed journals. This includes the following based on information from parties to 160 surrogacy arrangements (602 people):

- Montrone M., Sherman, K.A., Avery J.A., & Rodino I.S., (2020). *A comparison of sociodemographic and psychological characteristics among intended parents, surrogates and partners involved in Australian surrogacy arrangements.* Fertility and Sterility (USA Journal), 113(3), 642-652 https://doi.org/10.1016/j.fertnstert.2019.10.035

And the following just accepted for publication, in the journal Human Fertility (UK Journal), is an article using information from pre-surrogacy implications and assessment counselling for 87 surrogacy arrangements (322 people: intended parent/s, surrogates, surrogate partners)

- Montrone, M., Sherman K.A., *Psychosocial Assessment of Interpersonal Relationships in Altruistic Surrogacy*, to be published late 2025/early 2026, with the doi link: https://doi.org/10.1080/14647273.2025.2596688

Since the mid-1990s I have counselled parties to surrogacy arrangements in all states and territories of Australia. This included counselling during the early years for parties from some jurisdictions, where there was either no legislation or surrogacy was prohibited. I have little experience with overseas surrogacy as, when the NSW Surrogacy Act started in 2010, I was legally advised that if I were to work with parties undertaking surrogacy overseas, I would be aiding and abetting a crime. Summary details of my qualifications and experience in surrogacy related to my surrogacy counselling over 35 years, are shown in the attached Appendix.

Miranda Evans Montrone HIC Provider No 2612571B Psychologist Registration No PS0015921
ABN 68 546 252 855 email: miranda@counsellingplace.com.au
25 Mansfield Street, GLEBE NSW 2037 Tel: [redacted]

It is from this background that I make the following comments on the ALRC Discussion Paper 89, November 2025. Note that I have not addressed all 41 proposals but have addressed those which I consider most important, or where I have the most to contribute.

Proposal 2: Establishing a National Regulator

In my opinion the proposed regulatory authority should be based on the legal responsibilities as outlined in Proposal 2, though I believe the scope should be broader than proposed. In my opinion, several of the roles proposed for the Surrogacy Support Organisations (SSOs) should be included in the role of the National Regulator. I believe that instead of "oversight" the National Regulator should be responsible for "assessing and approving surrogacy agreements that are compliant with legislative requirements" (Proposals 4 and 5) and decisions regarding whether a surrogacy arrangement should or should not proceed.

I DO NOT believe that the proposed SSOs should have the multiple responsibilities detailed in Proposal 3, and I find it difficult to understand how the ALRC appears to have disregarded concerns re conflict of interest if the proposed SSOs were to have multiple roles with conflicting responsibilities. As a psychologist, particularly with my significant experience in surrogacy counselling and surrogacy legislation over the past 30 years, I find this difficult to understand. It would be a minefield and I can't believe that experienced legal people can't see it.

In addition, I believe the proposed National Regulator should also have responsibility for the development and maintenance of a **National Donor/Surrogacy Register**. Currently there are state/territory registers, but there is a well-documented need for a National Register and to me the proposed National Regulator would be the best place for this to exist. Such a National Register could be an aspect that the states/territories may be amenable to handing over *sooner rather than later, even if there were to be no over-riding changes in surrogacy legislation.*

Proposal 3: Permitting and regulating Surrogacy Support Organisations (SSOs)

In my opinion, the proposed SSOs, could be responsible for "facilitating or matching of intended parents and surrogates who meet the requirements; "provide information, case management, and support"; and perhaps "facilitating conflict resolution." I believe that it would be **inappropriate** for these organisations (whether non-profit or commercial) to provide surrogacy counselling – they could have a list of external independent counsellors to whom parties could be referred. Surrogacy counselling should only be undertaken by experienced full members of ANZICA (Australia and New Zealand Infertility Counsellors' Association).

I also believe that it would be **inappropriate** for the proposed SSOs to have responsibility for "determining requests to waive residence and citizenship requirements"; "assessing and approving surrogacy agreements." I would recommend this be undertaken by the proposed National Regulator or another government authority. "Holding funds in escrow" could be undertaken by a government or legal authority, as occurs in other transactions.

I am aware that there is a current consumer organisation that could be positioning themselves to undertake a role such as is outlined in Proposal 3. They may have even made a submission to the ALRC suggesting the roles as outlined. I have knowledge of the work of this organisation, through reports from clients, and from when I have attended and presented at their consumer conferences. Whilst they may good at consumer liaison and marketing, I am not impressed with the professionalism of this group. **I DO NOT** consider them to be suitable government allied service providers.

Proposal 18 and Proposal 21

Pre-surrogacy counselling

From my extensive experience in pre-surrogacy implications and assessment counselling, I believe it to be essential that all parties to a surrogacy arrangement (intended parent/s, surrogate, surrogate partner if she has one) should undergo counselling with a qualified independent counsellor. Whilst the surrogate partner does not have as much metaphorical skin in the game as the other three parties to a surrogacy arrangement, their involvement and support is nonetheless essential to the wellbeing of the surrogate, and of the surrogacy arrangement generally.

During my extensive pre-surrogacy counselling experience (approximately 300 altruistic surrogacy cases involving more than 1000 people) I have often suggested that the role of the surrogate partner is that of an "Anchor" for the surrogate to her normal human needs and the needs of the family. Not uncommonly, the surrogate may be very emotionally invested in the needs of the intended parent/s to have a very much longed for child, and she may not pay as much attention to her own normal human needs, which also can be forgotten by others.

I have found that both surrogates and partners respond well to this suggested role for the surrogate partner, which is accepted by the intended parent/s, and I have also had feedback as to the importance and value of the role at some post birth counselling sessions. Occasionally it has been crucial in decision making related to pregnancy and birth. Whilst the ALRC Discussion Paper references an English study where surrogates say they don't want partners to undertake counselling, I believe this to be an inappropriate example, as surrogacy and surrogacy counselling in the UK is quite different from that in Australia. (I and some colleagues are currently working on a qualitative analysis of the experience of surrogates and partners, as discussed in the post birth counselling session).

I am aware that it is sometimes proposed that there be two separate counsellors undertaking the two roles. However, in NSW, implications counselling by an independent counsellor is required under the NSW Surrogacy Act 2010, Section 35 (1), with the counsellor also being required to provide an assessment of suitability, with a written report, under the NSW Assisted Reproductive Technology Act 2007, Section 15A (5). I am aware that the roles have been separate in other jurisdictions such as Victoria and Western Australia, but from 35 years of undertaking pre-surrogacy counselling I would **strongly recommend** that the implications counselling and psychological assessment be undertaken by the **one independent counsellor**, who should be a Full member of ANZICA.

It is most important to address interpersonal issues between the parties, in the pre-surrogacy counselling which requires the counsellor to meet with all parties to the proposed surrogacy. Overall, the pre-surrogacy counselling should include implications counselling and psychological assessment by the one counsellor. Issues that should be considered include those recommended in the ANZICA Surrogacy Guidelines.

I would also recommend that, where possible, the independent counsellor make use of psychometric measures of mental health, rather than relying solely on reports from the parties, which may or may not be accurate. The second paper quoted in the introduction to this submission, "*Psychosocial Assessment of Interpersonal Relationships in Altruistic Surrogacy*" which is being published in a UK journal, Human Fertility, illustrates the value of incorporating psychometric assessment as well as clinical judgement, as an integral part of pre surrogacy counselling.

From experience the use of psychometric measures in pre-surrogacy counselling is analogous to the use of blood pressure measurement in routine medical examinations. In this article we have shown how psychometric measures can be used as an integral part of therapeutic assessment to develop and implement preventative psychosocial strategies to minimise potential interpersonal problems during a surrogacy arrangement.

When the NSW Surrogacy Act started in 2010, I doubted the necessity for mandatory post birth counselling of the "birth mother and partner", if she has one, as required under Section 35(2). I believed that from the pre-surrogacy counselling work I had done with my clients, they had been thoroughly prepared. However, I have since come to value such a routine post birth counselling session, that does not require the surrogate to state that she has problems or needs help.

From my experience this post birth counselling is usually one session only, and acts as a debrief, relinquishment counselling session for the surrogate and partner, prior to the legal formalities. From undertaking more than 60 of these post birth counselling sessions I have had only a very small number who needed more than one session, and only one or two whom I have referred to another counsellor for continuing support. I have often done this post birth session after having seen all the parties for the Section 35(1) pre surrogacy counselling, and have found that they really appreciate being able to give feedback to the counsellor with whom they discussed the surrogacy before they became pregnant/gave birth. As mentioned, with colleagues, we are undertaking a qualitative analysis of the surrogate/s and partner/s feelings post surrogacy birth.

After the birth, the intended parent/s, even with the best of intentions and good will, are understandably totally focussed on their much longed for child/ren, and less available to be there emotionally for the surrogate, who may have some very normal post birth physiological reactions and emotions, even though she does not want to keep the child/ren. I would strongly recommend that post birth counselling for surrogate and partner be a routine requirement, with no requirement for there to be a stated a mental health concern.

Conclusion

Whilst I am in awe at the detail and depth of the ALRC Discussion Paper, I have not addressed all/most proposals in any detail in my submission. I believe that my summary comments make my views clear on the proposals which I have addressed. My comments are based on my experience of more than 45 years working in psychological counselling: including individual, relationship, and family therapy; assisted reproduction; and most relevant to this submission, 35 years' experience in surrogacy counselling for approximately 350 surrogacy arrangements.

Whilst I have addressed these issues thoroughly, I have little hope that there will be any substantive changes in Australia wide surrogacy legislation. Though there have recently been state/territory legislative changes (eg NT, ACT, NSW) to my knowledge there have been no federal legislative changes. Amongst the many submissions I have written over the years, I wrote submissions to the 2009 Proposal for a National Model to Harmonise Regulation of Surrogacy; and to the 2015 House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Surrogacy, and I was invited to attend the related Roundtable. The resulting Surrogacy Matters (2016) report was quite comprehensive, with some positive recommendations addressing a number of significant dilemmas in the world of surrogacy.

What has happened: NOTHING!

In my opinion Proposal 1, "Promoting a nationally consistent approach through harmonisation" is the most important Proposal in the ALRC Discussion Paper.

None of the other proposals have relevance unless and until there is national legislation. However a noteworthy absence in the otherwise comprehensive Discussion Paper 89, is any discussion of the logistics of changes required in Federal/State/Territory legislation and relationships, which would need to occur for there to be any overarching surrogacy legislative changes.

As a non-lawyer, but an experienced professional having many years of observation of Australian politics and particularly assisted reproduction, I believe that the chance of there being any significant change in this aspect of Federal/State/Territory legislation is minimal. So, in my humble opinion I do not expect anything much to change with surrogacy legislation in Australia. This is a real pity, as it would be beneficial, and could hopefully address significant concerns regarding Australians travelling overseas for surrogacy, where the rights of all parties are not necessarily respected, as they are in domestic surrogacy arrangements. In Australia we do surrogacy well, with the rights of all parties medically, psychosocially, and legally respected.

If, however, I am wrong, and there were to be substantive changes to which I could contribute my knowledge and experience further, I would welcome the opportunity to do so. I have a wealth of knowledge through many years of surrogacy counselling, and I have met many wonderful people, who have together bought into the world child/ren who would not otherwise be born. Surrogacy is emotionally and physically challenging, but the people whom I have counselled during the surrogacy counselling processes, have been overwhelmingly respectful, considerate people, who used the counselling to benefit themselves and their families. They have engaged with the process, and my professional recommendations, to the benefit of all, but most importantly to the benefit of existing offspring, and to the hoped for child/ren from the surrogacy arrangements.

Miranda Montrone
Sydney 15 December 2025
https://counsellingplace.com.au/

APPENDIX: QUALIFICATIONS OF INDEPENDENT COUNSELLOR

Miranda Montrone, Psychologist, Family Therapist, Infertility Counsellor

Counselling Place, www.counsellingplace.com.au
25 Mansfield Street, Glebe 2037
Sydney, New South Wales, Australia
Tel: [redacted]
miranda@counsellingplace.com.au

As required by the New South Wales (NSW) Surrogacy Act 2010, I hereby state that I am a qualified counsellor with the experience and qualifications of a kind required by the Regulations to exercise the functions of a Counsellor under the Act. Having qualified with a B.A. (Macq.) in 1976, and a M.A. (Syd.) 1990, I have been registered as a psychologist since 1991 (PSY0001138165) (Health Psychology endorsed). I have relationship therapy (couple and family) training (1990, 1991) and I am a Clinical Member of the Australian Association of Family Therapists. I have been a member of the Fertility Society of Australia (FSA) now Fertility Society of Australia and New Zealand (FSANZ) since 1991 (Member No 183), as also a member of ANZICA (Australia and New Zealand Infertility Counsellors' Association), which is now a sub- group of the FSANZ. I am familiar with the ANZICA Surrogacy Guidelines (September 2016 and 2022) and the NHMRC Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (2007). At the FSANZ Conference in September 2025, I was awarded Honorary Life Membership.

I have worked in the areas of infertility and assisted reproduction for more than thirty-five years. For nine of those years (1992-2001) I worked as Infertility Counsellor at the then City West IVF (now IVF Australia, Western Sydney). Since 2001 I have worked solely in private practice in Glebe, Sydney, with more than 50% of my work being related to infertility and assisted reproduction. This work includes the independent psychological assessment of altruistic surrogacy proposals required even before surrogacy legislation, by a number of assisted reproduction clinics (in Sydney and Canberra) as part of the pre surrogacy treatment process. Since 2010 I have also done post surrogacy birth relinquishment counselling and the counselling required for parentage order applications. Over more than 35 years I have counselled in approximately 350 altruistic surrogacy cases, including before surrogacy treatment and/or conception and after the birth of a child conceived through surrogacy.

As an illustration of my professional background, I list here some papers/presentations which I have given at professional conferences/workshops or had published:

- Secrets in Families, Fertility Society of Australia Conference, Adelaide 1992
- Ethical Considerations in ART – A Baby at any price? – Psycho-Social Implications. International Meeting of Consumers and Physicians (IFIPA) Sydney 1996
- Assisted Reproduction & Long-Term Family Issues. Family Court Judges' Conf., Sydney 2001
- A Voluntary Contact Register: Stakeholders, Values, Processes, Dilemmas. FSA, Perth 2003
- The Role of Assessment in Preparation for Surrogacy. ANZICA Workshop. FSA Sydney 2006
- Gestational Surrogates. ANZICA Workshop, FSA Annual Conference, Brisbane 2008
- Pre-Surrogacy Assessment, ANZICA Workshop, Sydney May 2011
- Information Dissemination as an integral part of assessment and decision making in surrogacy, APS Health Psychology Conference, Sydney April 2015
- Pre-Surrogacy Assessment Counselling – A Review of 120 cases; and Use of the PAI in Pre-Surrogacy Assessment, FSA Conference, Canberra September 2015
- Altruistic Surrogacy Relationships and Values, ASPIRE Conference, Jakarta April 2016

- Pre-Surrogacy Assessment: Positive and Negative Indicators, (Prize winning paper) FSA Perth September 2016
- Experience of Surrogates, Fertility Society of Australia Conference, Adelaide, October 2017
- What do we know about Altruistic Surrogates? Fertility Society of Australia. Conference, Hobart Oct 2019
- Podcast prepared by Bryant McKinnon Lawyers on Surrogacy, Donor and IVF, 12/2019 https://bryantmckinnon.com.au/family-matter/childrens-matters/surrogacy-ivf/
- A comparison of sociodemographic and psychological characteristics among intended parents, surrogates, and partners involved in Australian altruistic surrogacy arrangements. Vol 113, No 3, Fertility & Sterility March 2020 https://doi.org/10.1016/j.fertnstert.2019.10.035
- Surrogacy in Australia. Journal für Reproduktionsmedizin und Endokrionologie (Reproductive Medicine and Endocrinology) Vol 17 (2020) No 5
- Surrogacy: Implications & Assessment Counselling. Australian Psychological Society Webinar 20 July 2021 https://www.psychology.org.au/Event/22339
- American Society for Reproductive Medicine MHPG Clinical Session: Testing: A therapeutic assessment model in the psychological screening of gestational carriers. October 19 2021
- APS (Australian Psychological Society) Webinar Presentations:
    - Surrogacy Implications and Assessment Counselling (Before Conception to After Birth, July 2021
    - PIPIG Interest Group: Part 1 – Infertility and Assisted Reproduction, 5 April 2022
    - PIPIG Interest Group: Part 2 – Third Party Reproduction 17 April 2022
- FSANZ (Fertility Society of Australia and New Zealand) June 2023 pre-Conference ANZICA Workshop presentation: ANZICA – The Early Years of Donor Counselling.
- FSANZ (Fertility Society of Australia and New Zealand) Conference Adelaide Sept 2025, Presentation: Assessment of Interpersonal Relationships in Pre-Surrogacy Counselling.
- Human Fertility 2025 Psychosocial Assessment of Interpersonal Relationships in Altruistic Surrogacy Counselling. https://doi.org/10.1080/14647273.2025.2596688

I made written submissions to the South Australia Legislative Council into Gestational Surrogacy (2007); to the Queensland Investigation into Altruistic Surrogacy Committee (2008), and to the NSW Investigation into Altruistic Surrogacy in NSW (2008), and was invited to appear before both the Queensland and New South Wales hearings. In 2009 I made a written response to the Proposal for a National Model to Harmonise Regulation of Surrogacy and in 2013 I wrote a submission to the NSW Inquiry into Managing Information related to Donor Conception and appeared before the Inquiry. In early 2015 I co-wrote a submission to the Australian Government Surrogacy Inquiry, and was invited to participate in a Federal Government Standing Committee Roundtable on Surrogacy and also co-wrote a submission of behalf of ANZICA (ANZ Infertility Counsellors'; Association) and appeared before the subsequent 2015 Federal Inquiry into Surrogacy. Further I made a submission in 2024 to the NSW Review of the Surrogacy Act and the Status of Children Act.

All submissions were based on experience in supportive, implications and assessment counselling of patients during donor and surrogacy treatment at the then City West IVF, as well as extensive experience in independent psychological assessment of patients before clinic approval for altruistic surrogacy treatment (approximately 300 cases), counselling a number of people during a surrogacy pregnancy, assessment counselling related to several planned home surrogacy arrangements, counselling after the birth and handover of a baby. Since the introduction of the NSW Surrogacy Act in 2010 I have also completed approximately 50 post surrogacy birth Section 17 parentage order counselling assessments.