Submission by the Australian Nursing and Midwifery Federation

Australian Law Reform Commission – Review of Surrogacy Laws: Discussion Paper (2025)

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Australian Nursing & Midwifery Federation

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Introduction

1. The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 345,000 nurses, midwives and care-workers across the country.

2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

5. The ANMF thanks the Australian Law Reform Commission for the opportunity to participate in the 2025 inquiry into Australia's surrogacy laws following the publication of the Review of Surrogacy Laws: Discussion Paper (2025) (the Discussion Paper). The Discussion Paper provides a detailed and well-articulated summary of the key problems with the current systems around surrogacy laws in Australia and highlights many of the issues raised in our initial submission. Limited domestic surrogacy access, risks of exploitation in international surrogacy arrangements, lack of support and guidance for surrogates, intended parents, and those involved in surrogacy arrangements including health and maternity care professionals, and the currently limited recognition of children's rights who are born through international surrogacy arrangements.

6. The ANMF is pleased to see that evidence and recommendations provided in our previous submission to the Australian Law Reform Commission's review of surrogacy laws have been considered by the Commission and appear to have assisted in informing the content of the Discussion Paper to underpin a nationally consistent, ethical, and accessible surrogacy system grounded upon health and wellbeing-focused, rights-based principles.

7. The ANMF is in agreement with the Australian Law Reform Commission that Australia's surrogacy laws must uphold both the principles and practical application of human rights, respect and dignity, accessibility, consistency across jurisdictions, legal clarity and certainty, and the pragmatic balancing of least restrictive regulation while maintaining optimal safety and inclusiveness for all parties to a surrogacy arrangement and the person born as a result.

8. Nationally consistent surrogacy laws would provide stakeholders and the wider community with assurances that surrogacy is a safe and supported path to parenthood where the surrogate, intended parent(s), and child's rights, autonomy, and dignity are carefully considered and preserved. We agree that federal legislation would be the preferred and most practical approach combined with the establishment of an independent national regulator and accredited surrogacy support organisations.

9. As the largest professional and industrial organisation for nurses and midwives in Australia, who are themselves the largest health and maternity care professional group who provides the greatest amount of direct care to surrogates, intended parents, and babies born through surrogacy arrangements, we have a strong focus on their current challenges in the surrogacy landscape. The Discussion Paper proposes multiple mechanisms to enhance their knowledge, integrate their services, and ensure they provide appropriate and inclusive care. Current gaps in health and maternity professional services, including a widespread lack of understanding of

surrogacy among healthcare providers, have led to instances of poorly coordinated and sometimes insensitive and uninclusive treatment of surrogates and intended parents. Nurses and midwives want to provide high-quality, inclusive, and appropriate care to all members of the community, so the coordinated development of evidence-based guidelines and training (Proposal 2) are a welcome recommendation which is strongly supported by the ANMF.

10. We welcome the proposals that eliminate financial exclusion and ensure fair recognition of the surrogate's costs, including expanded Medicare access by amending regulations to allow Medicare rebates for assisted reproductive services used for surrogacy (Proposal 28). The current exclusion is discriminatory and expanding Medicare access would reduce the financial burden of surrogacy, making access more equitable. We also support requiring intended parents to reimburse the surrogate for all reasonably incurred expenses (Proposal 25), including loss of earnings and health, life, and income protection insurance. This ensures surrogates are not left financially disadvantaged.

11. In terms of parentage recognition, we strongly endorse the proposed administrative pathway to legal parentage (Proposal 30) for approved domestic arrangements. This model resolves the primary problem that the surrogate retains legal responsibility at birth. This can cause additional and unnecessary burden and distress upon all parties and places clinical teams in a challenging position. We advise that better clarity must be achieved in terms of advice and requirements around decision making during pregnancy and childbirth especially when the surrogate is unable to make a decision (e.g., the surrogate might be unconscious or incapacitated during a procedure). Without this clarity, situations could occur when it would be unclear who has responsibility for making decisions that could impact the health and wellbeing of both the surrogate and the baby. This might increase the risk of complications and/or poor health outcomes, or even death. These risks and possible outcomes

might also increase the risk of harm or litigation for clinicians.

12. There are some areas where further amendment may be necessary. While supportive of the Discussion Paper's general direction, we believe that several proposals must be strengthened or reconsidered to fully realise a rights-based framework, particularly concerning long-term health protections and potentially punitive measures.

13. In terms of mandatory long-term health care and workplace entitlements, the Discussion Paper could go further to establish the necessary mandatory, systemic long-term support required for surrogates and intended parents. There are two key issues here, i) the health and maternity care system must better acknowlegde and respond to the fact that surrogates and intended parents might be at greater risk of falling through the cracks postnatally, as they do not have the same established touchpoints with the system as others and health and maternity care systems and clinicians might have less understanding and awareness of the ongoing needs of surrogates following birth, and; ii) social services, employment, Medicare, and welfare systems are not currently fit for purpose for supporting surrogates and intended parents due to these individuals not meeting existing eligibility criteria for support or access to longer term payments via Centrelink. Because surrogates do not go on to become primary caregivers for a baby, they do not meet eligibility requirements for certain payments despite often requiring time for physical and psychological/emotional recovery. Both guaranteed workplace entitlements and long-term health and maternity care follow-up for surrogates and intended parents must be offered as standard and be consistent with entitlements available to parents who begin families via other means.

14. It is important that surrogates should be able to receive equitable postnatal and follow-up care as mothers of babies born in non-surrogate birthing contexts. While mothers of babies born outside of surrogacy can remain linked to the health and

maternity care system via ongoing connections through maternal, child, and family health services, because surrogates do not have a baby in their care, they could be less likely to have this ongoing support, particularly if they have no existing relationship with a health or maternity care professional or service. This means that surrogates might not have efficient or fit for purpose access support for issues or complications and fall through the cracks for issues that would be identified earlier on among other birthing mothers. Surrogates require much of the same postpartum support as other women who have given birth, as they face the same physical recovery period and postpartum complication risks and physical changes such as pelvic organ prolapse, abdominal muscle separation, mastitis, and wound infections, and increased mental health risks such as depression, anxiety, pychosis, and hormonal imbalance. Reimbursement for expenses is not a substitute for mandated, systemic health and maternity service provision and health and maternity care services and the clinicians who work there should be better supported to provide appropriate care for surrogates.

15. Similar to long-term health and workplace entitlements that would need to be captured appropriately in enterprise bargaining agreements, entitlements like surrogacy leave are not consistently applied across sectors, and Centrelink support is often unclear. We propose legislative changes be made to ensure surrogates have access to fair and adequate leave to recover from pregnancy and childbirth. In addition, there should also be greater consideration for how intended parents are best supported throughout the postnatal period, as currently there are inconsistencies and gaps in the way intended parents are cared for through the state's and territory's varied maternal and child health programs provided by states and territories. Intended parents must be able to access the same types of services as parents who have started families through 'traditional' means.

16. While Proposal 26 introduces payments for "hardship", the ANMF is concerned about the optional nature of this payment. If the payment is made optional, it could many surrogates might choose to forego the payment. This is because in many alturistic surrogacy arrangements, surrogates might feel uncomfortable about speaking up to claim an optional payment especially when the arrangement has been made with a friend or family member. We recommend that the payment – which is intended to recognise the commonly experienced discomfort, pain, suffering, effort, time, and assumption of risk involved in pregnancy and childbirth (Proposal 26(2)(a)) - should be a standard, mandatory entitlement, if the goal is to reflect ethical standards. In line with the fact that being a surrogate comes with a range of responsibilities - many shared with 'traditional' pregnancy - the payment could instead be called a "surrogacy responsibility payment". This name change is recommended, as international research and discussion with experts and those who have experienced surrogacy supports the observation that many surrogates have very positive experiences with surrogate birthing arrangements, and naming it a "hardship" payment does not provide a necessarily realistic or relatable name for the payment and might result in many surrogates feeling uncomfortable claiming the payment.

17. With regard to penalties for overseas surrogacy practices, the ANMF maintains its opposition to penalising intended parents who are driven overseas due to domestic barriers. While we endorse the repeal of existing extraterritorial criminal offences (Proposal 9(3)), we are critical of replacing this with a new civil penalty regime (Proposal 9(2)) enforced against intended parents for unregistered arrangements. We contend that the focus should be on solving domestic barriers, not sanctioning families. It will be important to consider how this issue is governed and managed in order to support equity of access between people of differing means, as there is a risk that such policies might disproportionally impact families with limited means.

18. The ANMF is also opposed to requiring intended parents to demonstrate reasonable efforts to engage in domestic surrogacy as a precondition to registering an overseas arrangement. Such a precondition penalises those who are often legally excluded from surrogacy, thereby adding further legal risk, emotional strain, and uncertainty. Even acknowledging that the proposed reforms – if effected – would dismantle barriers to surrogacy for some groups (e.g., same sex male couples in Western Australia until the WA Surrogacy Bill was passed in early December 2025), it is likely that practical barriers will remain for many, such as persistent lack or variable availability of surrogates.

19. The Discussion Paper's proposed domestic system, while improved, is still highly regulated, requiring compliance checks, psychological screening, legal advice, counselling, and SSO approval (Proposals 4, 5, 17–21). Adding a mandatory, demonstrable precondition for a "reasonable effort to engage in domestic surrogacy" introduces another layer of complexity and uncertainty to the intended parents' journey, which might be viewed as conflicting with the reform principle of improving accessibility. Further, establishing a list of "permitted destinations" is highly complex because the surrogacy landscape is dynamic and requires criteria based on human rights principles (e.g., identified surrogates, informed consent, independent legal advice).

20. The ANMF is strongly supportive that the altruistic foundation of surrogacy must be protected without exception. Altruistic surrogacy is an arrangement where the surrogate is reimbursed for expenses and compensated for non-financial losses associated with the arrangement, but does not receive a financial reward. While certain financial realities accompany the process of surrogacy, these costs must be handled with transparency and ethical integrity rather than the provision of financial reward (i.e., payment for services rendered). Surrogacy should not be commercialised, and maintaining the integrity of surrogacy should be a fundamental

responsibility of the Regulator with humanitarian safeguards at the centre of all regulatory decisions.

21. The ANMF strongly supports the need for genetic and heritage records for every child born through surrogacy. These must be documented and rigorously preserved for future use. This responsibility is fundamental to protecting each child's identity, ancestry, and long-term health and wellbeing particularly with regard to hereditary illnesses or conditions.

22. Any regulatory authority entrusted with oversight of surrogacy must enforce strict, operational safeguards. This includes full responsibility for oversight and auditing of Surrogacy Support Organisations and establishing clear, enforceable, and stringent conditions and monitoring requirements. Such measures are essential to prevent unethical, fraudulent, or predatory behaviour and to uphold public confidence in the system.

23. Below, we have provided brief responses to the questions posed within the Discussion Paper. We look forward to the release of the Australian Law Reform Commission's Final Report and the Recommendations that will be posed therein.

Question A: What are important design principles or safeguards for any regulatory body to have?

24. Informed by the ANMF's position and the principles outlined in the Discussion Paper, the Regulator must be built on a foundation of equity, consistency, accessibility, accountability, and a strong commitment to health and wellbeing. The regulator should also be genuinely independent from Government and from industry. At its core, the regulatory body must ensure that surrogacy is accessible to all Australians who seek to form families, free from discrimination based on gender, sexual orientation, marital status, or family structure. Equity and inclusivity must

underpin eligibility criteria, information provision, and all decision-making processes. Because the existing surrogacy landscape is fragmented and inconsistent across jurisdictions, the Regulator must also play a central role in harmonising laws and processes nationwide. National consistency will reduce confusion, improve fairness, and ensure equal protections and entitlements for surrogates, intended parents, and children regardless of where arrangements take place.

25. A health and wellbeing focus must run throughout the Regulator's work. Surrogates experience the same physical recovery needs, psychosocial risks, and postpartum vulnerabilities as any birthing parent, and the system must be designed around supporting their autonomy, safety, and informed consent. The body must also be pragmatic and efficient in its operation. Many surrogacy arrangements already span jurisdictions, and duplicating regulation in each state or territory would be cumbersome and inefficient. A national framework with streamlined processes is the most efficient pathway to ensuring accessibility and clarity for all parties.

26. To uphold these principles, the Regulator must implement strong operational safeguards. It must be responsible for licensing and auditing Surrogacy Support Organisations, setting clear licensing conditions, and monitoring compliance to prevent unethical, fraudulent, or predatory behaviours. Strong enforcement powers are essential for maintaining system integrity. The Regulator must also serve as an accountability mechanism in the approval of surrogacy agreements. This includes reviewing SSO decisions not to approve agreements when parties request it and assessing applications that are complex or require additional scrutiny, ensuring fairness and consistency in decision-making.

27. Transparency and accessibility are equally critical safeguards. The Regulator must provide accurate and easily accessible information about both domestic and overseas surrogacy, including legal requirements, processes, expected timelines,

and potential risks. This is vital for addressing the widespread lack of understanding that exists across the general public, intended parents, and health and legal professionals. It must also develop national standards, templates, and guidelines—including cost-recovery rules and model surrogacy agreements—to support ethical and transparent practice and reduce unnecessary disputes. Managing the national surrogacy information register is another key function. By maintaining accurate records and enabling people born through surrogacy to access information about their genetic and gestational origins, the Regulator will protect the identity rights and long-term wellbeing of children.

28. The Regulator must also strengthen professional competence across sectors involved in surrogacy. This includes developing nationally consistent, accessible guidelines for healthcare providers to ensure inclusive, consistent, and evidence-based care for surrogates and intended parents in all clinical settings. Training and professional development for health practitioners, counsellors, and legal professionals will be necessary to ensure they understand the specific needs of surrogacy arrangements and are equipped to provide respectful, well-informed support.

29. Overall, the National Regulator must be designed as a central, coherent, and ethically robust institution that applies the principles of equity, consistency, health and wellbeing, and practical accessibility. Through clear operational safeguards—licensing, auditing, standard-setting, enforcement, public education, and professional training—it should act to minimise risks, prevent exploitation, safeguard surrogates, intended parents, and children, and ensure that all parties are supported throughout the surrogacy process within a nationally consistent and ethically grounded system.

Question B: *How can we minimise overlap in functions with other organisations, such as assisted reproductive technology service providers?*

30. The ANMF supports the establishment of accredited, evidence-based support services (Surrogacy Support Organisations - SSOs). Importantly, the ANMF recommends that a 'capped fee' financial model should be adopted rather than a 'for-profit' model to ensure equity of access and affordability and reduce the risk of marketisation in the sector. Surrogacy Support Organisations such as this could minimise overlap as long as SSOs ensure that the identified specialised needs of surrogacy, such as addressing the widespread lack of understanding among health and maternity care providers, are met through knowledgeable, inclusive support. As discussed, assisted reproductive technology (ART) service providers might also be able to offer specialised support for surrogacy (i.e., by 'opting in' to become an accredited SSO) as part of the range of their services, however, this might not be the case for all ART providers, as some might choose not to become an SSO and offer specialised services for surrogate births.

31. If ART providers are able to become an SSO, it will be vital to ensure that there is clarity regarding delineation of medical service provision and relationship and process management. Further, it will also be important to consider how to manage potential conflicts of business interests in these cases. Here, the issue might be less that for-profit or not-for-profit status would support affordability and reduce marketisation and more that sufficient regulation and accreditation must effectively prevent unethical operation and practices.

Question C: Do you think it is appropriate for SSOs to approve surrogacy agreements?

32. The ANMF would support SSOs handling the approval process prior to birth, provided the SSOs are accredited to a high standard and operate within a framework that ensures national consistency. The system must be robust enough to foster ethical, equitable, and accessible arrangements. Here, it is vital that if SSOs are to approve agreements that lead to a presumption of parentage, they must

employ designated and accountable officers with relevant qualifications. These officers should possess expertise in legal, health, or psychosocial fields, as self-appointed accreditors who lack this background also lack the verifiable qualifications needed for such serious assessments.

Question D: Should both the surrogate and the intended parent(s) be required to undergo a psychological assessment?

33. The ANMF is not supportive of the proposal that surrogates and intended parents should undergo assessment to determine their suitability to enter a surrogate arrangement. While we acknowledge that surrogacy arrangements can give rise to emotional, psychological, and social challenges, and that surrogates can be vulnerable to postpartum complications, including depression and hormonal imbalance, requiring psychological assessments would be overly paternalistic and unfair. This is also because no such psychological assessment is required for prospective parents prior to starting families via "traditional" means. While all parties entering a surrogacy arrangement should be supported to do so safely, better availability, coordination, and access to approproate support services (should they be needed) must be the priority. Evidence from well-regulated jurisdictions (e.g., Australia, Canada, UK) demonstrates that most surrogates report positive and rewarding experiences when supported by high quality implications counselling and clear processes. Instead of screening surrogates and intended parents, we propose strengthening mandatory pre-surrogacy implications counselling and the introduction of a consistent, funded, and high quality postnatal follow-up program for all parties (surrogates, intended parents, and, where relevant, partners). One suggestion would be to create a new MBS item for psychological support to facilitate access for surrogates and intended parents in addition to those already available on a mental health plan, acknowledging the emotional burden of assisted reproductive techniques, and complexities of surrogacy.

Question E: If criminal history checks are required, what should be the purpose?

34. The ANMF is opposed to implementing a requirement for criminal history checks for intended parents as this is not done for parents who start a family through 'traditional' means. If checks do occur, this could happen through SSOs requiring that parties complete criminal history checks as part of their business model where their purpose should be primarily directed toward ensuring the best interests of the child and advancing the overall objective of a safe domestic surrogacy system. The ANMF supports a shift in focus away from punishment of intended parents and towards developing robust, ethical systems. The South Australian surrogacy system provides that all parties must share criminal history checks with oneanother, but there is no requirement for specific offences that would limit access to surrogacy. This enables parties to make their own decisions regarding whether or not to continue with an arrangement based on informed consent.

Question F: Should the surrogate's partner (if any) be required to undergo implications counselling?

35. Requiring the surrogate's partner to undergo counselling helps to ensure the surrogate is supported throughout the arrangement. This reflects the lived realities of surrogacy. This support is vital given the surrogate faces the same physical recovery period and vulnerability to postpartum complications as other women and their partner (if present) should be involved.

Question G: Should there be additional counselling requirements?

36. Yes, specifically regarding post-birth care where counselling should be recommended and encouraged (but not required). In our previous submission, the ANMF highlighted that health and maternity care follow-up for surrogates and intended parents is often minimal (a few weeks after discharge). The ANMF specifically recommends that long-term follow-up care—both physical and emotional—must be extended to all surrogates. Long-term follow-up care must be implemented as surrogates face the same physical recovery period and vulnerability

to postpartum complications, including depression and hormonal imbalance, as other women who have given birth (this is also described above). Health and maternity care systems - which currently vary by state and territory with no nationally standard approach to maternal and child health - must extend this support for an adequate period, similar to the maternal and child health services available for other mothers, and this should be covered by Medicare. Intended parents should also be able to benefit from access to similar relevant postpartum supports and services.

Question H: In relation to surrogacy agreements, should any other subject matter or requirements be included or prohibited?

37. The ANMF would advocate for the inclusion of provisions that reflect the recommendations articulated in our previous submission around guaranteed workplace entitlements and long-term follow-up for surrogates. We would also strongly support prohibiting any provision that infringes upon the surrogate's autonomy and bodily integrity. Another issue is that some local councils are notified of new births through legislated requirements. Such legislative requirements should include provisions for surrogate births in a similar fashion, noting however, that this might be challenging as this is not a standard practice in all jurisdictions nationally.

Question I: Should the following be enforceable:

- surrogacy agreements that do not comply with the legislative requirements but are otherwise lawful?
- certain provisions within unlawful surrogacy agreements, for example, cost recovery provisions?

38. There must be provision to allow a party to enforce the surrogacy arrangement even if the agreement is not compliant. The ANMF suggests that it would likely be a lawyer's role to ensure an arrangement is compliant, so it would not be appropriate to disqualify an arrangement because of a lawyer's error. The parties involved in the arrangement should not be disadvantaged for non-compliance if the intention of the

agreement and its aspects were clear.

Question J: For otherwise compliant surrogacy agreements, should there be any provisions that are unenforceable, other than those captured by Proposal 23?

39. If an arrangement includes provisions that are not outlined in Proposal 22 above, there should be an allowance for them to not be enforceable. For example, some agreements include a provision to nominate guardians to a child if the intended parents are unable to take custody. This sort of provision cannot be enforced on the nominated guardians. Another example is that other provisions, for example, those that nominate specific preferred birth arrangements or the hospital cannot be enforced if circumstances change.

40. The ANMF highlights that greater consistency and prescriptiveness is necessary regarding what can and cannot be included in a surrogacy agreement, as currently there are no standards or consistent guidance which results in great variability in the content of agreements including clauses that would not be legally binding or enforceable such as clauses that presume to impose certain restrictions and requirements around the bodily and personal autonomy of the surrogate.

Question K: What is the best method of enforcement? For example, by a court?

41. The ANMF does not take a particular position regarding the best method of enforcement. Early dispute resolution methods could be handled via SSOs with the assistance of qualified counsellors, lawyers, and mediators with the courts only becoming a necessary recourse in circumstances where resolution cannot be achieved otherwise.

Question L: Should the National Regulator set caps on the amounts that can be recovered for specific costs, and for the monthly allowance?

42. The ANMF is supportive of the proposal to set maximum caps for common incidental expenses as a monthly allowance to maintain the integrity of the altruistic system and prevent commercial exploitation. These caps must be set at a level that

truly reflects ethical standards by adequately and realistically covering the surrogate's health burdens, with consideration given to reasonable inflation. For items that have specific costs, a maximum cap should not be set as every surrogacy arrangement is likely to be unique and items such as loss of earnings, travel, accommodation, and medical expenses are likely to vary widely. Here, a maximum cap would risk leaving surrogates potentially financially disadvantaged. Another option could include setting a total cap on the overall claim period (e.g., allowing monthly claims over the term of pregnancy as well as a three to six month term postpartum claim period) might help maintain integrity of the altruistic model while reducing risk of the system drifting towards commercialisation and potentially inequity and unethical practices.

Question M: Should legislation allow intended parents to pay the surrogate an additional support payment beyond reimbursement for costs and losses?

43. The ANMF is supportive of this optional payment. As above, surrogacy payment must reflect ethical standards and recognise the surrogate's time, health burdens, and related costs. This additional payment provides greater recognition of the surrogate's time, effort, inconvenience, and unique contribution. If the payment at Proposal 26(2)(a) remains optional, this additional support payment is necessary to ensure regulations meet sufficient ethical standards, thereby improving access to domestic surrogacy. As noted, the current "altruistic" model results in a significant shortage of surrogates and leaves surrogates financially disadvantaged, which results in potentially unethical practices. We also note that compensating surrogates for their time, effort, and inconvenience does not necessarily undermine altruistic motivations. This is supported by international research on surrogate motivations in Canada, the United States, and the United Kingdom, where payment regulations are less restrictive than in Australia.

Question N: Should the surrogate have a right to seek a declaration that they are the parent (per Proposal 30(1)(b))?

44. The ANMF advocates for the proposed administrative pathway to legal parentage (Proposal 30) pre-birth to minimise distress and align the legal framework with the intended parent's relationship. However, under a rights-based system, the ANMF would support retaining the right for the surrogate to seek a declaration as a critical safeguard in rare instances where the child's best interests are compromised.

Question O: Should judicial officers be required to consider any specific factors when determining parentage?

45. Judicial officers should be required to give paramount consideration to the best interests of the child. Specific factors should include the child's right to preserve their identity and know their genetic and gestational origins.

Question P: Should there be a simpler pathway for legal parentage for registered overseas surrogacy with parentage recognised in the birth country?

46. The ANMF would support a simpler pathway to recognition (e.g., without a court order) for compliant, registered overseas arrangements in regulated countries, as the current criminalisation and lack of recognition cause legal risk, emotional strain, and uncertainty for families. This would also align with efforts to establish improved jurisdictional consistency.

Question Q: What changes (if any) should be made to laws, policies, or practices to ensure that intended parent(s) have access to fair and adequate parental leave and surrogates have access to fair and adequate leave to recover?

47. Legislative changes are urgently required and laws, policies, or practices must be changed to mandate equitable surrogacy leave provisions for surrogates to allow adequate time to recover from pregnancy and childbirth. The ANMF explicitly recommends guaranteed workplace entitlements for surrogates. Surrogacy leave entitlements are inconsistently applied across sectors, and Centrelink support is often unclear. Employers should be required to include equitable surrogacy leave

provisions, and access to Centrelink should be simplified and clarified.

48. Intended parents should likewise have equitable access to parental leave entitlements as parents who start families via 'traditional' means.

Question R: What information should be included on the surrogacy register, and who should be responsible for providing it?

49. The register should include identifying information to support the child's right to identity and knowledge of their genetic and gestational origins. Responsibility should ideally sit with an entity required to ensure compliance, such as the SSO or the ART provider, to guarantee the information is provided efficiently and reliably.

Question S: In relation to the overseas registration process, what factors should be considered for "permitted destinations," and should domestic search be a precondition?

50. Factors for "permitted destinations" should focus on whether the country has regulatory systems that ensure the surrogate's human rights are upheld, guaranteeing free and informed consent and freedom from exploitation. We would likely raise concerns should strict domestic search preconditions be put in place if current eligibility criteria remain exclusionary for certain family types, as these restrictions are what initially force people overseas to access surrogate birth. Strict preconditions would be inappropriate to apply while domestic barriers persist. The ANMF argues that Australians are often driven overseas by discriminatory eligibility requirements (e.g., barring same-sex male couples). Requiring a failed domestic search penalises those already facing exclusion and adds legal and emotional strain. The focus should remain on developing robust, ethical, and inclusive domestic systems.

Question T: Are there other ways that the applications listed in Proposal 39 (citizenship, passport, visa) could be streamlined?

51. The ANMF would support removing complexity to ensure intended parents and children are not subject to legal risk, emotional strain, and uncertainty. Streamlining

must focus on expediting processing times to allow families to be reunited quickly and uphold the child's rights to identity and nationality.

Question U: Could limiting access to this streamlined process to registered overseas surrogacy arrangements have any unintended consequences?

52. Limiting access could risk unfairly penalising children born of unregistered arrangements by delaying their access to citizenship and services, violating the principle that the child's best interests must be the primary consideration and that they should not be treated differently based on the circumstances of their birth.

Question V: Should citizenship by descent also be recognised for children born through overseas surrogacy to Australian Permanent Residents?

54. The ANMF supports this to ensure equity and promote a rights-based system. This is critical to mitigating the risk that children born through overseas arrangements could become stateless.

Question W: Should there be a retrospective process for stateless children who have been born through overseas surrogacy?

55. Yes. Such a process is required to uphold the rights and best interests of the child, particularly their right to nationality. Children born from overseas arrangements currently face delays in citizenship and lack of legal parentage recognition which must be acknowledged and remediated.

Question X: Should a temporary visa, which allows children born through surrogacy to enter Australia, be introduced?

56. Introducing a temporary visa with a sufficient expiry date would help alleviate the practical hurdles intended parents face in bringing the child home. This aligns with minimising emotional strain and ensuring the child is quickly able to access their family and home. While this would assist in bringing a child home, as with Question T, the ANMF supports a streamlined approach to ensure efficient access to Medicare and government benefits.