AUSTRALIAN LAW REFORM COMMISSION
RESPONSE TO DISCUSSION PAPER – FORMAL SUBMISSION

Submitted by:

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Introduction

I commend the Australian Law Reform Commission (ALRC) for undertaking this review into Australia's surrogacy laws. This area of law has been significantly outpaced by reproductive technologies and increasingly divergent from the lived realities of Australian families. As a legal professional with 18 years' experience in commercial litigation, now practising in surrogacy and family creation law through my practice The Family Village, I provide this submission to assist the Commission in developing an inclusive, ethically robust, and practically workable legal framework.

This submission is informed by both professional experience and personal insight. As an intended parent and mother to three children—one of whom was born through a gestational surrogacy arrangement—it reflects a deeply lived understanding of the legal, medical, and emotional terrain that intended parents and surrogates must currently navigate.

Response to Proposal 1

I support a national approach to the harmonisation of surrogacy laws across Australia. Given the frequency of cross-jurisdictional surrogacy arrangements, a nationally consistent legal framework is fundamental to any meaningful and effective reform in this area.

In principle, I support the first option identified in the Discussion Paper—namely, the referral of powers to the Commonwealth to enable the enactment of uniform surrogacy laws. Such an approach represents best practice and would provide the greatest level of consistency and certainty.

However, Australia's constitutional and legislative history demonstrates that not all States and Territories are willing to refer powers to the Commonwealth in areas of legal and ethical complexity. In light of this practical reality, a more achievable and realistic pathway to reform is the adoption of mirrored or substantially uniform legislation across all States and Territories.

Response to Proposal 2

I support the establishment of a national regulator in relation to surrogacy. However, its functions and powers must extend beyond the approval of surrogacy arrangements and be broader than the existing regulated panel models currently operating in jurisdictions such as Victoria and Western Australia.

In practice, it is often too late in a surrogacy arrangement to rely on court intervention only after a child has been born. To ensure ethical, consistent, and child-focused surrogacy practices across Australia, a regulator must be vested with powers that extend beyond the mere approval of surrogacy agreements, including oversight, early intervention, and the capacity to address issues as they arise during the course of an arrangement.

The principal limitation to the implementation of a national regulator arises if the referral of powers to the Commonwealth does not occur and reform proceeds solely on the basis of mirrored State and Territory legislation. In that circumstance, there may be practical and constitutional challenges associated with the funding and operation of a truly national regulator.

If, as a result, reform were to default to the establishment of separate State or Territory boards or regulators, there is a real risk of inconsistent findings, determinations, and approaches across jurisdictions. Such an outcome would be concerning and would risk undermining the very purpose of reform, potentially placing Australia in a position no more coherent than the current fragmented framework.

In those circumstances, the preferable alternative would be for mirrored legislation to be sufficiently detailed and robust to confer the necessary powers, with relief able to be sought from an existing court within a State or Territory. While this approach is unlikely to be cost-effective, it may assist in promoting greater consistency in decision-making.

Notwithstanding these challenges, there is no doubt that the establishment of a national regulator remains the preferred and “gold standard” approach to surrogacy reform in Australia.

Response to Proposal 3

There are significant complexities associated with Proposal 3 that warrant careful consideration. Research and practical experience indicate that, in Australia, the vast majority of surrogacy arrangements arise from pre-existing relationships between the parties. While this may evolve over time as the demand for surrogacy increases, the current reality is that most arrangements are not facilitated by formal matching services.

This position is borne out by available data and professional experience. In Australia, Surrogacy Australia Support Service (SASS), which operates as a support organisation rather than a regulated professional service, reports matching only one to two arrangements per year. Notwithstanding this, many intended parents pay in excess of $1,300 to join SASS in the hope of being matched with a surrogate, often without success.

Approximately 80 per cent of intended parents locate a surrogate within their existing personal relationships, while the remaining 20 per cent form new relationships after connecting through informal channels, most commonly surrogacy-specific social media groups, particularly on Facebook.

A further concern is that individuals operating these organisations do not appear to hold legal or psychological qualifications, despite providing quasi-legal guidance and psychosocial support. This raises risks for the welfare of the parties involved and for children born as a result of surrogacy arrangements. These organisations cannot ensure that arrangements will proceed smoothly, that parties are appropriately matched, that emotional wellbeing is safeguarded, or that intended parents will ultimately be successful in obtaining a parentage order.

Importantly, there appears to be no accountability mechanism where a parentage order is refused or where relationships break down. Concerns have also been raised regarding the publication of identifying photographs and information through webinars and online materials, which may be inconsistent with non-publication laws.

While it is acknowledged that many of these organisations are established and operated by well-intentioned individuals seeking to support others, the absence of professional qualifications, regulatory oversight, and accountability presents real risks. In particular, promoting matching services that demonstrably have low efficacy, coupled with the provision of unqualified advice, may undermine the best interests of parties engaging in surrogacy arrangements.

For these reasons, it is difficult to see how licensing or regulation of such organisations would adequately address these concerns or meaningfully improve outcomes. Nor is it evident that regulation would lead to increased matching success, when matching is most commonly achieved through existing relationships or informal but active social media communities. In my view, Proposal 3 risks misdirecting reform efforts away from the realities of how surrogacy arrangements are formed in Australia.

In addition, Proposal 3 contemplates conferring significant decision-making powers on surrogacy service organisations in relation to surrogacy arrangements. It is unclear how the proposed legislative framework would ensure that such organisations are staffed by individuals with the requisite legal, psychological, and clinical expertise to make decisions of such consequence.

While I agree that any surrogacy service organisation would require a high level of regulation and oversight, that is where my agreement with the proposal largely ends. As currently framed, Proposal 3 appears to vest substantial authority in these organisations without articulating adequate or enforceable mechanisms to ensure that decision-making is undertaken by suitably qualified professionals, or that decisions are subject to meaningful review and accountability.

Further, the proposal does not satisfy me that conferring additional powers on surrogacy service organisations would lead to an increase in successful matching within Australia. On the evidence currently available, matching is most effectively achieved through pre-existing relationships or informal networks, rather than through formalised service providers. Granting enhanced powers to such organisations risks elevating their role beyond what is supported by their demonstrated effectiveness in facilitating surrogacy arrangements.

Response to Proposals 4 and 5

Fundamentally, I support the intent and objectives of Proposals 4 and 5. However, I do not support the conferral of approval powers on surrogacy service organisations. Decisions of this significance should rest with a national regulator, or a dedicated division within such a regulator, rather than with non-government service providers. This reinforces

the importance of establishing a national regulator as a central pillar of any reformed surrogacy framework.

If a national regulator cannot be established, I agree that it is not appropriate for courts to assume the role of approving surrogacy arrangements. In those circumstances, a model akin to that currently operating in Victoria should be adopted in each State and Territory, whereby an independent approval body provides pre-conception authorisation. Once approval is granted, an administrative pathway to the recognition of parentage upon birth can then operate efficiently and with certainty.

The proposal that unapproved surrogacy arrangements should proceed through a court-ordered parentage process appears conceptually inconsistent with the broader regulatory framework, particularly in circumstances where assisted reproductive technology (ART) service providers are only permitted to undertake procedures in the context of approved arrangements. That inconsistency may be less pronounced in cases of traditional surrogacy, where conception can occur without the involvement of an ART provider, allowing an unapproved arrangement to proceed and subsequently require judicial intervention to transfer parentage.

Any review of a decision made by a national regulator should be vested in the courts, preferably within a specialist division of the Family Court comprising judges with experience in complex surrogacy and parentage matters.

Response to Proposal 6

I am of the view that surrogacy service organisations should not operate independently of a national regulator. However, if this position is not adopted, a combination of civil and criminal penalties would be the preferred regulatory response.

Response to Proposal 7

I agree with proposal 7.

Education plays a critical role in supporting ethical, transparent, and child-centred surrogacy in Australia. It is equally fundamental to the wellbeing and identity development of children born through surrogacy and other forms of assisted reproduction.

As set out in my earlier submission, current approaches to reproductive and health education in Australian schools remain narrow and outdated. They continue to focus predominantly on conventional biological narratives of sexual reproduction, often excluding or marginalising the lived experiences of individuals and families formed through assisted reproductive technologies (ART), including in vitro fertilisation, surrogacy, and donor conception. This exclusion no longer reflects the reality of contemporary family formation in Australia and contributes to stigma, misinformation, and silence.

According to the Australian Institute of Health and Welfare, more than one in six Australian women of reproductive age now require some form of medical intervention to conceive.

Despite this growing prevalence, school-based sex and health education programs have not evolved to adequately reflect the diversity of family-making practices. The result is a generation of students who lack the language, understanding, and empathy necessary to comprehend the full range of ways in which families are formed today.

This educational gap has significant consequences. Children born through surrogacy or donor conception may experience a sense of difference or isolation when their origin stories are absent from the educational content they encounter. Research consistently demonstrates that early, open, and positive disclosure of a child's origins supports healthier psychological outcomes and identity formation. However, when schools reinforce a singular, heteronormative pathway to parenthood, they risk creating environments in which children from alternative family structures experience shame, secrecy, or exclusion.

The need for reform is not merely pedagogical, but grounded in human rights principles. The United Nations Convention on the Rights of the Child requires that education be directed toward the development of a child's personality, talents, and mental and physical abilities to their fullest potential, and to the preparation of the child for responsible life in a free society. A curriculum that excludes the realities of assisted reproduction and surrogacy fails to meet this standard, particularly for children born through ART or raised in non-traditional family structures.

Comparative jurisdictions have taken meaningful steps to address these shortcomings. In the United Kingdom, guidance issued by the Department for Education expressly includes donor conception and same-sex parenting within Relationships and Sex Education curricula. In parts of Canada and Scandinavia, inclusive family education is framed as a civic competency, essential to promoting equity, tolerance, and democratic participation.

By contrast, the continued omission of ART and surrogacy from Australian school curricula reinforces the perception that such family-building pathways are abnormal or controversial. This marginalisation is particularly acute for LGBTQ+ families, who are frequently absent from both classroom discussion and educational resources. Children of gay, lesbian, or transgender parents may feel alienated by narratives that fail to recognise the legitimacy and complexity of their families.

Reproductive education must therefore be reconceptualised—not merely as biological instruction, but as a framework for understanding the emotional, social, legal, and ethical dimensions of creating a family. This includes education about IVF, egg and sperm donation, surrogacy, and adoption, as well as the reasons individuals and couples pursue these pathways. It should also encompass discussion of the relational dynamics between donors, surrogates, intended parents, and children, and support age-appropriate conversations about consent, ethics, and disclosure.

Education is equally critical within healthcare settings. The role of a national regulator in education must extend beyond online resources or social media communications. It should include engagement with schools and the development of improved education and

training standards for health professionals, including nurses and midwives, many of whom are currently ill-equipped to support surrogacy arrangements in practice.

By way of example, I have recently been contacted by midwives seeking guidance following surrogacy births, including fundamental misconceptions about legal parentage and permanence of care arrangements. Such misunderstandings, held by professionals working in environments essential to the care and support of surrogacy families, underscore the urgency of structured, authoritative education in this area.

Ultimately, while the method of creating a family may differ, the underlying motivations—care, intention, and commitment—remain constant. Education that reflects this reality affirms the dignity and validity of all families and empowers children to understand and embrace their origins with confidence rather than shame.

From this perspective, the educational role of a national regulator—particularly in schools and healthcare institutions—should be treated as a priority component of surrogacy reform. Reforming reproductive and family education is not merely a matter of curricular accuracy; it is an essential step in reducing stigma, supporting openness, and fostering a more informed, inclusive, and compassionate society.

Response to Proposal 8 and 9

The repeal of existing criminal offences prohibiting commercial surrogacy should be supported. These offences have existed since the inception of surrogacy legislation in Australia, yet there is no evidence of meaningful enforcement. No prosecutions have occurred, while hundreds of Australians continue to engage in commercial surrogacy arrangements overseas. This demonstrates that the current criminal provisions are ineffective and do not operate as a genuine regulatory mechanism.

Rather than preventing or regulating surrogacy, these offences operate in a manner that is disconnected from the lived reality of Australian families. They neither deter conduct nor promote ethical practice, and they fail to advance outcomes that are consistent with the best interests of children. On the contrary, the existence of unenforced criminal prohibitions is counterproductive, driving arrangements offshore and beyond the reach of Australian oversight and safeguards.

While I consider a civil penalty regime to be more complex than desirable, I accept that it may represent a more effective and proportionate mechanism to deter exploitation and unethical conduct. A carefully designed civil penalty framework would allow for regulatory oversight and accountability, while avoiding the blunt and ineffective operation of criminal sanctions.

In this way, repeal of criminal offences, coupled with the introduction of appropriately calibrated civil penalties, offers a more pragmatic and child-focused approach to regulating surrogacy in Australia.

Response Proposal 10

I agree with Proposal 10. However, I am of the view that a civil penalty regime is sufficient to address the conduct contemplated by the proposal.

I share the concerns expressed by my colleagues that the introduction of criminal offences applying to professionals who provide advice in good faith would be inappropriate and potentially counterproductive. The risk of criminal liability is likely to deter qualified professionals from advising on surrogacy matters, particularly in complex or evolving areas of law.

Such an outcome would reduce access to proper, informed, and ethical legal and professional advice, and may inadvertently drive intended parents and surrogates toward unqualified or poorly informed service providers. This would undermine the objectives of reform and increase, rather than reduce, the risk of harm and exploitation.

A carefully calibrated civil penalty framework would provide a more proportionate and effective means of regulation, ensuring accountability while preserving access to competent professional advice in this highly sensitive area.

Response Proposal 11

I agree with Proposal 11.

As set out in my earlier submission, the existing prohibitions on advertising surrogacy arrangements in Australia—applicable to both intended parents and prospective surrogates—create significant barriers to the formation of ethical, informed, and safe surrogacy relationships. While these restrictions may have been intended to preserve the altruistic foundation of surrogacy, their current operation inhibits transparency, discourages open communication, and impedes the ability of parties to connect in a lawful and informed manner.

In my own experience, concern about inadvertently breaching advertising laws resulted in extreme caution when discussing our desire to build a family through surrogacy. Even informal or private expressions of interest were approached with hesitation, given the risk that such communications could be construed as unlawful advertising. This caution delayed the formation of a surrogacy relationship with a person who later indicated that they would have been willing to act as a surrogate but was unaware of our intentions at the relevant time. Had open and lawful communication been permitted, it is likely that this connection would have occurred earlier, avoiding significant emotional stress and delay.

More broadly, it is well established that most surrogacy arrangements in Australia arise between people who are already known to one another. Facilitating lawful, open discussion about surrogacy—rather than suppressing it through criminal or quasi-criminal prohibitions—has the potential to increase the number of ethical surrogacy arrangements by allowing people to express interest, seek information, and engage in informed conversations without fear of legal sanction.

Permitting responsible communication, supported by appropriate education and safeguards, is more likely to promote ethical practice than restrictions that drive discussion underground. If Australia is to increase the availability of altruistic surrogacy, reform must allow people to speak openly about surrogacy, to be properly informed, and to connect without the threat of criminalisation.

Response Proposal 12

I agree with this proposal, including the need for reform in Victoria.

Response to Proposal 13

I agree, in principle, that surrogacy should be available only where there is a genuine need for it, given that surrogacy necessarily involves a surrogate assuming physical and psychological risks. It is appropriate that those risks are not undertaken where surrogacy is not reasonably required by the intended parents.

I also recognise, however, that some women take the view that they have a strong right to choose how they use their own bodies, including choosing to act as a surrogate in circumstances that may not strictly meet a narrow conception of “need”. Balancing these perspectives underscores the importance of a clear, principled, and consistently applied framework.

Central to this issue is the definition of “need”. It is of critical importance that legislation clearly defines and distinguishes between *medical need*, *biological need*, *psychological need*, and *social need*. Leaving these concepts undefined or open to broad interpretation by individual practitioners risks inconsistent and inequitable decision-making.

Medical need should be defined in consultation with clinicians to ensure clarity for individuals who retain reproductive capacity but experience clinical infertility. Social need must also be expressly recognised to ensure equitable access for same-sex male couples, transgender individuals, and others who are unable to gestate a child, in accordance with equality and anti-discrimination principles.

At present, individuals who retain their reproductive organs—but are nonetheless unable to conceive or sustain a pregnancy—are frequently deemed ineligible for surrogacy. As a result, many are encouraged to continue multiple IVF cycles despite poor prognoses and the significant emotional, physical, and financial burdens associated with repeated treatment. In practice, individuals with documented infertility, such as repeated failed embryo transfers or recurrent pregnancy loss, may still be denied access to surrogacy unless they have undergone hysterectomy or other definitive interventions.

The absence of a consistent and inclusive definition of medical need permits discretionary decision-making that is applied unevenly across fertility clinics and practitioners. It is therefore submitted that legislation should incorporate a medically informed definition of infertility, which may include, for example, a specified number of failed IVF cycles or a diagnosis of recurrent pregnancy loss. Such criteria should be developed through

consultation with clinicians, legal decision-makers, and ethics experts, and applied consistently by ART service providers, regulators, and reviewing bodies.

Response to Proposal 14,15 and 16

I agree with these proposals.

Response to Proposal 17

In response to this proposal, it appears to require an additional independent medical assessment of a surrogate, beyond any assessment undertaken by an assisted reproductive technology (ART) provider. In circumstances where an ART provider is involved and is already conducting comprehensive medical testing and screening, I do not support the imposition of a further layer of medical assessment.

I agree that a surrogate should undergo appropriate medical assessment. However, where an ART provider is engaged, that assessment can and should be conducted in conjunction with the ART provider's existing clinical processes. Requiring a separate, additional assessment in those circumstances risks unnecessary duplication, increased cost, and delay, without a corresponding improvement in safety or outcomes.

This position is distinguishable from cases of traditional surrogacy, where no ART provider is involved and no clinical screening would otherwise occur. In those circumstances, a standalone medical assessment is appropriate and necessary to ensure the health and wellbeing of the surrogate and the child.

Accordingly, medical assessment requirements should be proportionate and responsive to the type of surrogacy arrangement, avoiding duplication where adequate safeguards already exist while ensuring appropriate oversight where they do not.

Response to Proposal 18

From the perspective of an intended parent, the requirement to undergo psychological assessment as a precondition to accessing surrogacy can be an extremely complex and distressing experience. While such assessments are not framed as evaluations of parental suitability, they are often experienced as exactly that. Intended parents frequently feel as though they are being judged on their capacity to be "good parents", rather than being supported through an already emotionally demanding process.

This experience stands in stark contrast to other pathways to parenthood. Individuals who conceive naturally, including in circumstances involving minimal planning or stability, are not subject to psychological assessment. Against that backdrop, the imposition of mandatory psychological assessments for intended parents risks being perceived as inequitable and stigmatising, even where that is not the stated intention.

For these reasons, I do not consider mandatory psychological assessment of intended parents to be necessary or appropriate. Instead, a more constructive and humane

approach would be to prioritise ongoing counselling and psychosocial support throughout the surrogacy journey.

I propose a structured support model comprising a minimum of ten counselling sessions delivered over the course of the arrangement: four sessions prior to entering the surrogacy arrangement, four sessions during the pregnancy, and two sessions following the birth. This model shifts the focus away from assessment and gatekeeping and towards education, emotional support, relationship management, and child-centred outcomes.

Such an approach recognises the inherent emotional complexity of surrogacy and provides meaningful support to all parties, while avoiding the adversarial or evaluative dynamics that can arise from formal psychological assessments.

Response to Proposal 19

Safeguards must exist, but they should be proportionate. Mandatory police checks should only apply in cases of identified risk or prior legal intervention. If retained more broadly, these checks must be transparent, non-stigmatising, and clearly justified by demonstrable risk.

Response to Proposal 20

I agree with Proposal 20. I also support the accreditation of practitioners who provide legal advice in relation to surrogacy. Given the complexity of this area of law, accreditation is necessary to ensure that advice is provided by practitioners with appropriate expertise and a sound understanding of the legal, ethical, and child-focused considerations involved.

There are currently too many practitioners who seek to “dabble” in surrogacy matters without sufficient knowledge or experience, or who approach these matters through an unnecessarily adversarial lens. This can lead to poor-quality advice, increased conflict between parties, and outcomes that are inconsistent with the collaborative nature of ethical surrogacy arrangements.

Accreditation would promote higher professional standards, improve the quality and consistency of legal advice, and better support all parties involved in surrogacy arrangements.

Response to Proposal 21

I agree with Proposal 21 and support the requirement that the identified topics be the subject of mandatory discussion between members of the surrogacy arrangement. These discussions are essential to ensuring informed consent, managing expectations, and identifying potential areas of complexity or disagreement at an early stage.

However, I am concerned that the current framing of counselling requirements tends to treat counselling as a discrete, front-loaded process that concludes once difficult or sensitive discussions have been addressed. In my view, this approach does not

adequately recognise the ongoing emotional and relational demands of surrogacy arrangements.

Counselling should continue throughout the course of the arrangement as a matter of course, rather than being left to the election of the parties. Even in the most cooperative and well-functioning surrogacy relationships, challenges and unforeseen issues inevitably arise over time. A structured schedule of ongoing counselling sessions would provide meaningful, proactive support and assist parties to navigate these issues constructively as they emerge.

Embedding continuing counselling as a standard component of surrogacy arrangements would better support the wellbeing of all parties and promote more stable, ethical, and child-centred outcomes.

If counselling is provided on an ongoing and structured basis throughout the surrogacy arrangement, it is likely to lead to improved outcomes for all parties. In those circumstances, the need for post-birth counselling may be reduced or limited to a shorter period.

Accordingly, consideration should be given to capping the costs of post-birth counselling for a surrogate to a period of up to three months, recognising that effective pre-birth and ongoing structured support as proposed above may mitigate the need for more extensive post-birth intervention.

Response to Proposal 22

I agree with Proposal 22. In addition, I consider that a surrogacy agreement should expressly record, in writing, the surrogate's informed consent to parentage of the child vesting in the intended parents, whether through an administrative process or by court order.

Including such a provision would promote clarity, manage expectations, and reinforce the shared understanding of the parties as to the intended legal outcomes of the arrangement, while remaining consistent with the principle that final determinations of parentage are subject to statutory processes and safeguards.

Response to Proposal 23

I agree with this proposal.

Response to Proposal 24

I agree that surrogacy agreements should be enforceable. Enforceability provides certainty and security for both intended parents and surrogates, and supports confidence in the integrity of the surrogacy framework.

However, cost recovery provisions that extend beyond those permitted under legislation should be unenforceable. Any such impermissible provisions or arrangements should be

identified and addressed by the national regulator at the approval stage, prior to the arrangement proceeding.

Enforcement of surrogacy agreements should vest in the courts. By the time a matter escalates to enforcement, the issues are likely to be complex, contested, and emotionally charged, such that judicial intervention and expertise are required.

In this context, enforcement proceedings would be best determined by a specialist division of the Family Court with experience in surrogacy, parentage, and other complex reproductive law matters. Concentrating enforcement jurisdiction in a specialist forum would promote consistency, expertise, and child-focused outcomes.

Response to Proposal 25

Reimbursement of surrogates for reasonable expenses is necessary and appropriate. However, further work is required to ensure that reimbursable expenses are clearly and uniformly defined in legislation, to promote consistency and certainty across jurisdictions.

I support the role of a national regulator in setting and enforcing caps on reimbursable expenses, as a means of preventing exploitation of both surrogates and intended parents. Any such caps should be developed transparently and be subject to regular indexation, so as to avoid the need for frequent legislative amendment and to ensure that reimbursement levels remain realistic over time.

Importantly, the regulatory framework must ensure that surrogates are not financially disadvantaged as a result of their participation in a surrogacy arrangement. Clear definitions, appropriate caps, and effective oversight are essential to achieving this balance.

Response to Proposal 26

I support the option of compensated surrogacy and welcome its inclusion in the proposals as an elective model. I remain cautious, however, as to whether the introduction of compensated surrogacy will materially increase accessibility to surrogacy in Australia. That said, it is appropriate to recognise that surrogates invest significant time and may experience hardship or disruption that is not currently compensated under existing frameworks.

Any move toward compensated surrogacy must be carefully balanced against the risk of exploitation, particularly for women who are socioeconomically disadvantaged. It must also guard against the financial exploitation of intended parents, many of whom are prepared to incur significant cost in pursuit of the opportunity to form a family.

In this context, I consider it essential that a national regulator be responsible for developing clear guidelines and imposing caps on compensation, informed by evidence and subject to regular review. Such oversight is necessary to ensure proportionality, transparency, and ethical practice.

I do not support a requirement that the election to pursue compensated surrogacy be irrevocably made at the commencement of the relationship or at the time the surrogacy agreement is executed. Flexibility is required to allow for circumstances that may arise unexpectedly during the course of an arrangement. Accordingly, I propose that an election to move to compensated surrogacy may be made at any time, with compensation payable prospectively from the date of the election.

This approach ensures that compensation reflects actual circumstances or hardship as they arise, without exposing either party to retrospective financial obligations. For example, if an election is made after the first trimester, compensation should be payable from the date of election forward, and not retrospectively. Conversely, where the election is made at the time the agreement is entered into, compensation may appropriately be payable from the commencement of the arrangement.

Importantly, if no election is made during the course of the arrangement, compensation should not be capable of being claimed retrospectively following the completion of the surrogacy. This principle should be clearly embedded in legislation to protect intended parents from unforeseen financial claims that are inconsistent with the parties' original understanding.

Response to Proposal 27

I do not support Proposal 27. In my view, surrogacy service organisations cannot be regulated with sufficient rigor to ensure that they consistently engage appropriately qualified professionals to fulfil the obligations contemplated in the Discussion Paper, including the operation and management of trust accounts.

Recent incidents in overseas jurisdictions, including the United States, demonstrate that the existence of escrow accounts or agency-managed trust arrangements does not necessarily ensure financial security or ethical surrogacy outcomes. The presence of an intermediary holding funds does not, of itself, mitigate the risk of mismanagement or misuse of money.

I do not support the imposition of additional requirements mandating that independent or non-professional entities hold funds on behalf of the parties. If a trust or escrow arrangement is required, existing solicitor trust accounts provide a well-established, heavily regulated, and professionally supervised mechanism for holding and disbursing funds.

While financial arrangements are often a sensitive aspect of surrogacy, I do not consider that the level of intervention proposed is necessary or proportionate. Existing legal mechanisms are capable of managing funds appropriately without introducing additional complexity or risk.

Response to Proposal 28 and 29

I strongly support these proposals.

Response to Proposal 30

I acknowledge that I approach Proposal 30 with a degree of personal conflict, insofar as it provides a mechanism for a surrogate to apply for a declaration of parentage. That conflict arises from lived experience rather than from an objective assessment of the legal framework, having navigated the heartache of a long infertility journey. It is important, however, to recognise the human dimension that inevitably informs perspectives in this area.

From a legal standpoint, I support the proposal. I also support the availability of an administrative pathway to the recognition of parentage, acknowledging that recourse to the courts should arise only where a dispute exists. This is consistent with how courts operate across other areas of law, where judicial intervention is reserved for contested matters.

I further strongly support the proposal that surrogacy-related applications be dealt with by a specialist list. Such matters raise complex legal, ethical, and factual issues, and would benefit from being determined by judges with specific training or expertise in surrogacy, parentage, and assisted reproduction.

The availability of an administrative pathway significantly reduces the burden on new parents and surrogates, who are often navigating the physical and emotional demands of birth and early parenthood. It alleviates the obligation to engage in complex legal applications and court appearances at a time when parties are least equipped to do so.

An administrative pathway also promotes certainty for hospitals, midwives, and other healthcare professionals. Clear and timely recognition of parentage assists in resolving confusion around consent, responsibility, and decision-making for the care of the child—confusion that frequently arises due to gaps in education and understanding of the legal framework governing surrogacy.

Response to Proposal 31 and 32

I agree with Proposal 31. The law must provide a clear and effective mechanism for recognising legal parentage for children born through surrogacy arrangements, including those undertaken overseas.

Experience demonstrates that Australians continue to engage in international surrogacy arrangements, and it is unrealistic to expect that this practice will cease. In those circumstances, the absence of a domestic legal framework to recognise and regulate parentage does not prevent international surrogacy; rather, it leaves children and families in legal uncertainty.

A mechanism for recognising parentage is therefore necessary to ensure that the best interests of the child are properly considered and protected. Many children born through overseas surrogacy are Australian citizens, and Australia has a clear obligation to ensure

that their legal status, parental relationships, and rights are formally recognised and secured.

Providing a lawful pathway to parentage recognition promotes certainty, safeguards children's welfare, and ensures that decisions affecting them are made transparently and in accordance with Australian legal standards.

I do not support the introduction of an administrative pathway for the recognition of parentage arising from overseas surrogacy arrangements. In my view, court oversight is the appropriate and necessary avenue in such cases.

International surrogacy arrangements raise complex legal, ethical, and factual issues, including differences in foreign legal frameworks, the enforceability of agreements, and the need to assess consent and financial arrangements in circumstances that fall outside Australian regulatory oversight. For these reasons, applications for the recognition of parentage in overseas surrogacy cases should be determined by the courts and allocated to a specialist surrogacy list within the Federal Circuit and Family Court of Australia.

In determining such applications, the Court should be empowered to consider, at a minimum:

- the existence and content of any formal surrogacy agreement entered into in the jurisdiction where the surrogacy occurred;
- clear and informed consent by the surrogate to the transfer of parentage;
- confirmation that the surrogate understands the nature and effect of the consent provided;
- evidence that the surrogate has been paid, at least, her medical expenses and is not awaiting payment or owed any outstanding debt in relation to the arrangement.
- Best interests of the child as the paramount consideration.

Judicial oversight in these circumstances provides the necessary safeguards to ensure that parentage determinations are made consistently with Australian legal standards and with the best interests of the child as the paramount consideration.

I agree that legislation should be retrospective in recognising parentage.

Response to Proposals 33 to 35

I have chosen not to provide a response to this proposal.

Response to Proposals 37, 38 to 41

I agree with these proposals. In my view, the national regulator is the appropriate body to receive and register notifications of an intention to engage in overseas surrogacy

arrangements. Vesting this function in a national regulator promotes consistency, oversight, and transparency.

I also support the regulator having sufficient flexibility to monitor, review, and amend any list of permitted countries. Such a framework must be responsive to changing international conditions, including legal reforms, geopolitical developments, and emerging concerns regarding ethical practice. A static or inflexible approach would quickly become outdated and risk undermining the objectives of reform.

I further strongly support the proposals relating to passports. The current framework lacks certainty and is frequently frustrating for families, creating unnecessary delay and distress at an already vulnerable time. Reform in this area is both necessary and overdue.

Thank you for the opportunity to contribute to this important review of Australia's surrogacy laws.

This submission is informed by lived experience, as well as a genuine commitment to reform that is ethical, inclusive, and firmly centred on the best interests of children. I acknowledge and sincerely commend the Australian Law Reform Commission for undertaking such a careful and considered examination of surrogacy in Australia, an area that is both legally complex and deeply human.

It is my hope that the Commission's recommendations reflect the real experiences of the families, surrogates, and children who engage with the surrogacy system in practice. A nationally consistent, compassionate, and rights-based framework has the capacity not only to improve the surrogacy process for those involved, but also to protect the dignity, security, and wellbeing of the children at the heart of every surrogacy arrangement.

Thank you for the opportunity to contribute to this important review and for your thoughtful consideration of these perspectives.

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