Dear Chair and Assistant Commissioner,

REVIEW OF AUSTRALIA's SURROGACY LAWS – DISCUSSION PAPER

Thank you for the work done following the last submission process. I agree with many of its proposals. Thank you also for the opportunity to provide further contributions. In brief summary the key issues I believe require further consideration are as follows:

- A National Regulator operating under Commonwealth laws is an appropriate and necessary reform. While Surrogate Support Organisations (SSOs) may play a valuable role in supporting intended parents and surrogates to navigate the surrogacy process, private or quasi-private organisations — even where profit is capped — should not be delegated regulatory functions. SSOs inherently face conflicts of interest where they are involved in support (a facilitative role) and approval (a regulatory role).

- The replacement of court ordered parentage orders with an administrative process for most surrogacy arrangements is a positive reform. If additional responsibilities are allocated to the Federal Circuit and Family Court for non-standard parentage orders, this must be accompanied by a corresponding expansion of resources, including judicial capacity, specialist expertise, and funding.
- The ALRC's mandate includes to expand access to surrogacy in Australia and avoid Australians going overseas to exploitative jurisdictions. The Discussion Paper has effectively balanced a fine line between altruistic and compensated surrogacy by expanding the costs and expenses for which a surrogate is reimbursed. However, without a clear designation of Australian surrogacy as a "compensated" model, the changes may not have the desired effect of expanding the pool of surrogates as much as needed. By framing reimbursement so sensitively as widened expenses and a "hardship payment" (which effectively seems like a liquidated damages payment for harm, pain and suffering incurred), this may not incentivize more women to become surrogates and may even discourage them.
- The current framing — which characterises reimbursement as expanded expenses and a "hardship payment" (effectively operating as a form of liquidated compensation for pain, suffering, and disruption) — risks failing to incentivise participation and may, in practice, discourage women from becoming surrogates. As fair as the descriptor can be in many cases, a transparent framing of surrogacy as a regulated compensated model would more positively acknowledge the significant physical, emotional, and social contribution made by surrogates, and is more likely to encourage participation. I recognise, however, that the ALRC is balancing a range of competing stakeholder interests and may be constrained in how far it can move toward explicit compensation.
- The Discussion Paper does not consider the embedded laws and regulations affecting surrogacy within Australian immigration laws and regulations and I strongly recommend that these be considered as part of Australia's overall surrogacy law framework. I have proposed changes to these to expand access to regulated surrogacy and increase access to surrogacy within a non-exploitive model.

- Finally, I strongly support the proposal to establish a list of permitted overseas surrogacy jurisdictions. This approach is consistent with Australia's existing practice of recognising certain foreign legal frameworks in other areas of law and provides a principled mechanism to discourage engagement with exploitative overseas arrangements while preserving lawful, well-regulated pathways. It is also in the best interests of children whose parentage has been recognized in other rule of law abiding systems. Any changes to surrogacy laws necessitating a change in a permitted jurisdiction can be done simply by gazette in changes to a "permitted jurisdiction" schedule.

Enclosed is my more complete response to the Discussion Paper. Where I have not responded to a particular proposal, I either agree or have no-objection.

Finally, I understand from members within the Surrogacy Community that consultations have not occurred with members who provided written comments to the prior round of submissions and have had lived experience of surrogacy, other than industry professionals. I suggest that the Commission's review would be strengthened by doing so, and by engaging in dialogue with parents who have engaged in commercial surrogacy overseas but have not felt comfortable providing written submissions.

Thank you for the opportunity to contribute. I trust my comments assist.

Kind regards,

RESPONSE TO REVIEW OF AUSTRALIA's SURROGACY LAWS – DISCUSSION PAPER

Background.

I am a parent by surrogacy. My daughter was born in Canada. I have been through all relevant pre-surrogacy processes in NSW, Australia and have also followed processes in Canada for registration of birth, parentage, and exit to Australia. I am in the process of applying for Australian citizenship by descent and a passport.

Prior to embarking on this surrogacy, I deeply researched and investigated surrogacy in Georgia, Mexico, Colombia and Argentina and peripherally Greece. As one of the administrators of the Australian Surrogacy Community, the QFG Support Group and previously the NSW/ACT Surrogacy Community and the Argentinian Surrogacy Group, and founder and admin of the NSW IVF Community, I have voluntarily assisted hundreds of women and couples. I have provided a submission to the NSW Law Reform review process and gave an initial submission to the ALRC process

Professionally, my career has involved legal practice in Australia, and New York and law and policy reform in the Asia-Pacific. In particular, I have analysed and provided advice on the regulatory reform of unregulated sectors to establish independent regulators in developing countries in a range of sectors so am familiar with core-principles of governance surrounding establishing sector regulators and regulating both public-private partnerships and private actors. My doctorate involves aspects of international regulation. I consider myself well placed to make observations on the Discussion Paper.

Proposal 1 : National Regulator

I agree with Proposal 1. Surrogacy should be regulated uniformly by Commonwealth legislation and a national regulator should be established.

Whilst not heavily elaborated upon in the Discussion Paper, I agree with the suggestion that the national regulator should form part of an overall National Assisted Reproductive Technology ART) Regulator, with surrogacy forming a department or division. It is a more resource efficient use of human skill, could avoid duplication and overall is more cost-efficient where the overall ART sector also drastically needs regulation, and surrogacy is one aspect of ART. I provided reasons for this more extensively in my initial submission.

Question A

The design principles and regulatory safeguards for a National Regulator of surrogacy and ART are the same as establishing good governance of any independent regulator, with the keys being independence, human and financial capacity and the clarity of roles and objectives, as follows:

- **Independence** - The National Regulator should be independent from government influence and capture of regulated agencies. Ideally a three-member panel representing legal and medical

issues should and assume overall responsibility for licensing decisions. But if the regulator is separate from other ART functions then part times panelist may be appropriate.

- **Clarity Regulatory Objectives and Roles** - The overall regulatory objective should promote the best interests of children born through surrogacy and avoid exploitation of surrogates and intended parents (IPs). To the extent possible, overlap of roles with other government and private agencies should be avoided.
- **Capacity -** Capacity in terms of (i) human resources, skill set, and experience and (ii) financial resources, are critical. The regulator needs access to skill capacity in health, law, and psychology.
- **Transparency and Confidentiality -** Decision-making and the reasons for such decisions should be public, but personal information surrounding the health, and legal issues of individuals needs to be kept confidential.
- **Accountability -** Whilst the Regulator needs to be independent, its decisions need to be transparent and available for review and oversight. A dispute resolution process should be available if regulatory, licensing or approval decisions are made that are contested. An ombudsman or reference to an existing state or national ombudsman rather than access to the courts immediately would be appropriate.
- **Predictable -** decisions need to be predictable, consistent and prompt.
- **Participatory**- the regulatory decision making process of rules should follow consultation and public review processes.

Proposals 2 : Powers of a National Regulator

I am in favor of a National Regulator, and items 1.a - d., and 1 i-m.

I strongly support the National Regulator assuming overall responsibility for determining oversight of surrogacy agreements and other regulatory determinations. I support the establishment of a **National Regulator** and the move away from post-birth parentage orders toward up-front approval of surrogacy arrangements that allows a streamlined administrative process. However, **the approval of surrogacy arrangements is a regulatory function** and must be exercised **by the National Regulator itself**. This function should **not** be delegated or contracted out to Surrogacy Support Organisations (SSOs), hence Proposals 2 e.-g. need modification to account for this.

In relation to item 1 c., I recommend the ALRC be more specific about the licensing conditions for the regulation of the SSOs. The Discussion Paper provides for their establishment is general but the extent to which they contribute or not will depend upon the professional skill set they possess, and in the details of what they are permitted to do, how they facilitate support, and what they are entitled to charge.

SSOs, as described in the Discussion Paper, are **not stated as requiring any professional qualifications or expertise**. Even if they were purely support organizations, the ALRC should **specify professional expertise requirements in the proposed law reform paper itself**.

I am strongly opposed to proposals 2 e.-g which make SSOs the entity for approving surrogacy arrangements, whereas I respectfully suggest the National Regulator itself is the right entity and this regulatory function **should not be contracted out** to SSOs.

Importantly, what is also currently missing from the National Regulator's responsibilities is the extent to which independent surrogacy relationships between friends and family can still flourish and continue ***without the involvement of an SSO.*** This should be clarified *as* ***not all surrogacy teams will require their involvement.*** Whilst it makes sense to submit documentation to the National Regulator in such cases to streamline administrative approval, it does not make sense to force the cost and bureaucracy of an additional layer with yet another unprofessional private sector organisation - an SSO when a journey is otherwise independent. Accordingly, Proposal 3.1,3.3, 3.5, and 3.6 should be legislated as optional supports rather than as supports assumed to be required for all surrogacy journeys.

Proposal 3 : Surrogacy Support Organisations

I am **strongly opposed** to (i) delegating the approval of Surrogacy Arrangements to the SSOs (proposal 3.4), (ii) empowering SSOs to make any quasi-regulatory determinations such as waiving residency and citizenship requirements (proposal 3.2), or (iii) to SSOs being required to hold IPs funds in a trust account (proposal 3.7).

(i) Conflict of Interest in Support Role and Approval Role

Surrogacy support and matching are facilitative functions and are appropriate roles for SSOs. **Approving surrogacy arrangements is not.** Conflating facilitative and regulatory roles creates an **unavoidable conflict of interest**, regardless of how rigorously SSOs are regulated. If SSOs are both support organisations and approval organisations, the ALRC would be empowering them to offer IPs accelerated approval of surrogacy arrangements if they pay for their support services - this is the potential actual conflict, but it is clear that there is also an apparent conflict in performing both roles.

Further, I agree that SSOs should be required to be either not-for-profit or profit capped entities, the conflict of interest is **structural:**

- Whether SSOs are for-profit, profit-capped, or not-for-profit, organisers can and do extract value through salaries, director fees, consulting arrangements, and expenses.

- Whilst capping profits is sound policy and may lessen the effect, even "capping profits" does not prevent rent extraction through the means described and is not an effective safeguard against conflicts of interests.

Moreover, it is unclear what protective purpose the additional SSO approval layer is intended to serve. Professional lawyers, physicians and psychologists have given their approval, and functioning ART clinics will not perform an embryo transfer without these approvals.

In fact, most ART clinics charge the "administrative fee" (of several thousand dollars) to assign nurses or administrators to check the boxes on these requirements. If SSOs are now meant to be assigned to do this

box-checking exercise it is not clear why without professional level skill sets, and with a conflict of interest, they would perform a more effective task than the ART clinic. As I understand, the current problems in Australian surrogacy are **not** failures of ART clinics to check legal, medical, or psychological documentation so the current approval system is overall not broken. The real problems are:

- the **shortage of surrogates**,
- the **tedious and unnecessary post-birth parentage order process**
- Team **breakdowns** during or post- birth
- In some cases, the **failure of IPs to compensate surrogates** fully for the costs and expenses of surrogacy.

SSOs may facilitate more surrogates and possibly even broker better team relationships (although not guaranteed). But, it is not right for the approval to be done by an SSO - an organisation with a conflict of interest. If there are genuinely greater risks requiring enhanced scrutiny, **those risks should be addressed directly by the National Regulator**, not by delegating quasi-regulatory authority to organisations with inherent conflicts of interest.

If the risks are not that great, the current system could continue with professional approvals and Art Clinics ticking the boxes subject to submission to the National Regulator who would provide periodic audits and if non-compliance is found, penalties be issued. Whilst it could also be argued that an ART clinic also had a degree of conflict of interest, a large (often publicly traded), clinic has a far greater risk of reputational and financial damage that could be imposed by a criminal or civil penalty than a small, start-up SSO initiated by IPs or surrogates which is their likely profile, and the physicians and embryologists performing the embryo transfer have professional ethical duties to the patient which those employed in a profit seeking SSO would not have.

Additionally, true "Independent" journeys between IPs and Surrogates who are friends and / or family and do not desire or need support, should not be forced to engage with SSOs (which are effectively an agency), when they are merely a quasi unprofessional regulator which at best would duplicate the tasks of other professionals.

(ii) SSOs are non-professional and SSO Approvals Duplicate Professional Work

The Discussion Paper requires SSOs to receive and review **legal, medical, genetic, and psychological material**, including counselling and psychological reports, even after these have already been cleared by qualified professionals.

Lawyers, doctors, and psychologists are subject to professional ethics, regulatory oversight, and disciplinary regimes. SSOs are not. The Discussion Paper does not require SSOs to include members of these professions, and even regulated SSOs would not be subject to equivalent standards. If SSOs are expected to do anything more than a box-ticking exercise, they would need:

- legal expertise,
- medical expertise,
- psychological expertise.

Requiring this would **duplicate professional work**, replicate existing safeguards, and **waste cost and intellectual effort**. If SSOs are *not* reviewing substantively, then the process becomes a **redundant box-ticking exercise**, already adequately performed by ART clinics prior to embryo transfer, with ART clinics already charging ($2000-$5000) for such administration (and unlikely to stop).

(iii) SSOs as Non-Professionals Should not Possess Sensitive Medical, Psychological and Legal Information about Individuals.

It is **entirely inappropriate** for a non-health-governed body, without professional medical obligations, to possess and manage sensitive health and psychological information.

- Even large, sophisticated IVF providers have experienced serious data breaches (i.e Genea).

- Expecting small or newly formed SSOs to securely manage highly sensitive legal and medical data is unrealistic.

SSOs, as described in the Discussion Paper, are **not stated as requiring any professional qualifications or expertise**. Existing organisations operating in this space do not currently possess the legal, medical, or psychological background qualifications necessary for an effective regulatory role.

- Without mandatory expertise requirements, any intended parent or surrogate could establish an SSO, as is already occurring in Australia and overseas.
- Regulatory capture is a thing - in the context of surrogacy where a small regulator with limited resources would be surrounded with strong personalities from existing organisations such capture has a significant potential to reduce the effectiveness of even the strongest regulation.
- Essential services involving vulnerable populations particularly health and childcare cannot be assumed to be adequately left to the private sector and these sectors require additional regulation. For example, in NSW following the death of an infant in a NSW Private Hospital, the NSW government made the decision to return critical care to the public system reflecting concerns about safety, oversight and accountability. Similar regulatory failures exist in the child care sector. Despite the existence of national regulatory frameworks, private child-care provision has remained vulnerable to regulatory capture and enforcement gaps. Public inquiries and criminal proceedings have demonstrated that existing safeguards have not consistently prevented serious misconduct, including cases involving pedofile abuse within child-care settings.

(iv) SSOs and Trust Accounts

I object to a mandatory requirement to place funds in escrow with an SSO. Holding finance in a trust account creates unnecessary risks that should be otherwise avoided, especially if the surrogacy team has chosen to proceed with an independent journey. Establishing a trust account for the disbursement of

expenses could be optionally done with a bank, lawyer or elsewhere, or if the ALRC insists on it being done as part of the surrogacy framework, then the National Regulator should set up an account.

Overseas, in Canada and the United States agencies holding intended parents funds in trust accounts have absconded with those funds. Moreover, surrogacy and escrow agents demand large fees for merely holding the money (My own experience was that I was asked to pay $5000 CAD for a one time deposit and disbursement of CAD $21000, which I opted to do through another avenue).

(v) New York Matching Agency Comparator

New York is the only jurisdiction where matching agencies are licensed and strictly regulated and is a great model to consider. It has the New York State Department of Health as the regulator and the agencies are subject to strict conflict of interest rules in making their license application application, and do not do approvals. Beyond that, licensing conditions appear procedural and administrative.

It's worth considering the differences in terms of the size of the surrogacy industry in New York and the volume of finance in that state, and the amount of money such agencies would be earning as commercial agencies. There are more than 35 agencies in New York. If Australia remains a surrogacy jurisdiction based on reimbursement, its surrogacy industry will not approach the financial size of the industry in New York, and the likelihood of the number of SSOs increasing to approximate anything like that in New York is not large.

The implication here is that SSOs would have a far harder time making investments in agency infrastructure such as software to protect surrogates and intended parents confidential and private information, or to professionalise the services that such agencies offer.

I also understand that verification is done by matching agencies, without submission to the Ministry of Health but unlike the Discussion Paper's proposed streamlined administrative process for most parentage applications, in New York, a pre-birth order from the New York Supreme Court determines parentage by assessing documents at that stage. Thus, I would say this is a critical difference and where an administrative process is proposed, it should be the National Regulator, rather than the SSOs, if needed, to sign off that the process has been appropriately complied with, prior to embryo transfer.

(vi) SSOs and Increasing Access to Surrogates?

Finally, in relation to SSOs, I respectfully observe that the SSO's role of seeking to match surrogates and intended parents, whilst valuable, may or may not open the door to more surrogates. In Australia, Surrogacy Australia, has sought to raise the profile of surrogacy and generate matches for some years now, but has not successfully achieved more than a handful of matches over many years.

Currently in 2025 in Canada for example, despite a plethora of agencies, there is a relative dearth of surrogates. I have discussed with several agencies who all report that they are struggling to find women who wish to be surrogates now, and are citing the lack of compensation as a barrier. Even in the US, where surrogacy is compensated and matching agencies exist, demand exceeds supply.

In contrast, in developing country jurisdictions where compensation is available *and meets the expectations of surrogates*, more surrogates are available (although not all pass the more stricter clearance standards than in Australia or Canada).

A real expansion in the number of surrogates in Australia will only occur through changes in the overall incentive structure for women to do so - i.e. increasing compensation. I note the Proposals in the Discussion Paper and discuss my thoughts on compensation below.

Question B.

This is a good question. Almost all IVF service providers already have their own surrogacy coordinators, typically charging between $2,000 and $5,000 for this role. Introducing SSOs for the approval function would create significant duplication, and it is not clear that there is any benefit in having even the National Regulator undertake the box ticking exercise of ensuring that the legal documents, medical clearance, and the psychological assessments are done as this aspect of the current system is being completed by professionals and is not broken, i.e. psychological reports are being provided, legal documents are getting done, and an IVF clinic won't proceed to transfer an embryo to a surrogate unless they have this and the surrogate and intended parents consent.

I was surprised to read in the Discussion Paper that some clinics in South Australia allow surrogacy to proceed with only one lawyer for both sides, but am not aware of this occurring in NSW or Qld where ART Clinics appear to apply the rules more stringently. It would seem that stronger regulation of ART Clinics to adhere to this box ticking exercise would be more appropriate if any aspect of this regulatory process is to be contracted out to the private sector.

Proposal 5 : Approving Surrogacy Agreements

(i) SSOs

As per my comments to Proposal 3, I strongly oppose Proposal 5(1)(a) and (b) and 2 (b) as giving the subjective authority to approve a surrogacy arrangement to an SSO that is not an appropriate or qualified entity to delegate a regulatory approval authority, and an entity that duplicates tasks already done by professionals.

I would support this proposal should the approval authority be the National Regulator, or the ART clinic provider subject to the Regulator's periodic audits of the ART clinic providers.

If an SSO has provided advice or support to the parties during the surrogacy process, it has a clear conflict of interest in providing the approval, if it hasn't it could use the lack of prior connection to incentivize the use of its (paid) services.

Conversely, where the parties have undertaken an independent journey or have received advice and support elsewhere, Proposal 5(a) would simply force those parties to engage the SSO for approval which

adds an unnecessary layer. In circumstances where there is no conflict between the parties and the arrangement has already been approved by the ART provider, this additional layer of approval is unnecessary and unjustified.

(ii) Standard Form Surrogacy Agreements

If a standard form surrogacy agreement is adopted, most surrogacy agreements will inevitably become box-ticking exercises. In those circumstances, it is not clear why review or approval cannot be handled by the ART clinic provider as part of its existing clinical and compliance processes, rather than requiring involvement from a separate SSO. Such providers could be stringently subject to audit and civil and criminal penalties from the National Regulator, which would be more likely to have a reputational impact on a large ART Clinic than on a small SSO.

Additionally, to make the National Regulator effectively an appeal authority from the SSO (Proposal 4.4.d) risks additional unnecessary delay and cost for a process that is not currently broken. The problems with surrogacy are not widely occurring at this approval stage and a box-ticking exercise by an SSO collecting documentation is unlikely to solve them even if they were.

Question C

I do not consider it appropriate for SSOs to approve surrogacy agreements. Approval and oversight of surrogacy agreements should be the ultimate responsibility of the National Regulator, but could be delegated to ART Clinics subject to a clearer statement of approval requirements, periodic audits, and criminal and civil penalties.

At paragraph 68, ALRC states that there are significant numbers of surrogacy arrangements occurring that are not legally compliant. Whilst I understand there are examples of this that have ended up in Court, this is not consistent with the experience or understanding of Australian Surrogacy Community (ASC) members, where this has not been identified as a widespread or systemic issue occurring as a result of gestational surrogacy where IPs and Surrogates each have a lawyer and ART clinics check this prior to embryo transfer. It would seem more likely in the case of "traditional surrogacy".

If ASC experience is not representative and non-compliant arrangements are in fact occurring at a scale, that would point to a failure of regulatory oversight rather than a gap that should be filled by private or quasi-private sector organisations. Any response to non-compliance should therefore sit with a properly empowered National Regulator, not be delegated to SSO or other private entities.

Proposal 6 : Ensuring Compliance with Operational Requirements

Proposal 6 should be unnecessary if approvals and oversight are properly undertaken by the National Regulator. However, breaches of license conditions related to their support function should be treated seriously and I do believe that criminal and civil penalties are appropriate. There should still be clear penalties where a SSO undertakes actions that contravene the law or purport to exercise regulatory functions beyond its lawful role.

If ART Clinics do the approvals then proposal 6 should be reframed in terms of the ART Clinics.

What is not addressed by this proposal or the Discussion Paper is the currently illegal advertising and recruiting of Australian Intended Parents by foreign agencies coming to Australia. This is currently happening with impunity and for example many Australians were currently recruited to a particular agency in Argentina and another in Greece that descended into human trafficking issues in each jurisdiction. How does the ALRC now consider Australian employees or agents of foreign agencies who are doing such recruitment? Would they be caught by such civil or criminal penalties or would they be allowed to continue?

Proposal 10: Facilitation of Prohibited Surrogacy Arrangements

In relation to proposal 10, I support compliance being enforced for organisations by a combination of criminal and civil sanctions, whilst I support civil penalties for individual surrogates and intended parents.

I am not convinced proposal 10, is a full response to capture all behavior I described in relation to proposal 6. I also comment below on the idea of registering overseas surrogacy arrangements which I don't think will work in practice.

Proposal 13 : Requirement for a Reason to Access Surrogacy

I support the proposal, but the medical need for surrogacy for heterosexual women needs greater clarity as different ART clinics and even different doctors within ART clinics applying different standards, with some requiring women to endure many miscarriages and repeated implantation failures and other infertility and other physicians requiring less.

Moreover, it should be clearly stated in proposal 13 that failed pregnancy with embryo donation is not required prior to surrogacy. Unexplained infertility is not resolved automatically by embryo donation but some doctors, unable to determine the reasons for a woman's inability to maintain a pregnancy, assume it is, and compel a woman to use donor eggs prior to surrogacy. This may both be unnecessary and waste valuable time for a woman during her child-bearing years, when a biological child through surrogacy may be possible as some women, including myself, have experienced.

Proposal 15 : Citizenship and Residency Requirements

Proposal 15 should be expanded to include the repeal or amendment of provisions in the Migration Act and/or associated regulations that prevent medical treatment visas from being issued for a surrogate to give birth in Australia. These regulations clearly form part of the framework of surrogacy law in Australia and have not been considered by the ALRC at all.

Australian surrogacy laws permit a surrogate in Australia to be of any nationality - they need not be an Australian citizen or permanent resident and the ALRC has not proposed changes to this. In the context of

the ALRC's mandate to (i) expand access in Australia to surrogates; and (ii) limit exploitation, as well as in Australia's multi-cultural society, it is appropriate that surrogates could be from any jurisdiction.

Australian citizen and permanent resident intended parents could very well have friends or family that are not Australians that are willing to act as surrogates. However, currently, the appropriate visa for a potential surrogate to enter Australia on is the Medical Treatment Visa 602 and this prevents a woman entering for "the purpose of birth as a surrogate" even if the surrogacy is altruistic. There is no logical or legal justification for this exclusion, especially in situations where the surrogacy complies fully with Australian surrogacy law and ethics, as the child will be an Australian citizen.

Under the ALRC's new proposed scenario with the National Regulator, the regulator and not the Department of Home Affairs would be the appropriate government agency to ensure that there was no exploitation of a surrogate prior to embryo transfer. In effect, there would remain two levels of check: (i) Australia's immigration laws are strict enough regardless that a vulnerable woman would be unlikely to get a visa if the intent was merely surrogacy exploitation and not a genuine friendship or family of an Australian or permanent resident; and (ii) the National Regulator's review process. A third level of check could be imposed that the potential surrogate be a genuine family member or friend and evidence be provided of the same. These checks would ensure that the proposed surrogacy was reasonable and ethical. It would be a preferable approach to having Australians go overseas to developing countries for several reasons: (i) it eliminates the likelihood of real exploitation, (ii) even with the Australian intended parents fully paying for all surrogacy medical costs without relying on Medicare, the exercise is likely to be less expensive for intended parents than Australians traveling overseas; and (iii) this option does actually expand the pool of available surrogates for Australians without increasing exploitation as long as safeguards are met.

The current MTV 602 particularly limits Australians with deep personal ties to friends or family abroad who might otherwise know eligible women willing to carry a child. If the ALRC is focused on both expanding the pool of available surrogates and limiting exploitation of Australians going overseas for surrogacy, allowing surrogates into Australia *whilst strictly subject to consideration by the National Regulator,* is an appropriate way of doing so.

My view of the objections of some pundits that a woman should not travel for surrogacy, is that there is no reason why, if consent is real, voluntary, full and prior, that a woman should not have the autonomy to make this decision any differently from their decision to be a surrogate. The existence of a National Regulator, and its review of potentially complex cases would allow this issue to be full considered and real consent and autonomy to be considered.

At present, the interaction between surrogacy law and the restriction on immigration regulations places on surrogacy law renders the immigration regulations part of the surrogacy law framework and an important consideration for the ALRC as it currently stands as a practical barrier.

Proposal 17 : Requirements for Medical Screening

For reasons stated above in relation to Proposal 2 and 3, I strongly oppose Proposal 17 insofar as it would require medical reports to be provided to an SSO. SSOs are private sector bodies (whether or not profits are capped) with no specified medical expertise or qualifications. I understand that even in New York,

where matching agencies are licensed, only high level clearance medical and psychological information is provided unless given by the parties.

SSOs would not be health organisations in the same way as ART Clinics or other regulated health services are, and the Discussion Paper does not require them to employ health professionals with the requisite medical or clinical expertise.

For the ALRC to reasonable consider SSOs to receive such detailed and personal medical information, they would need to be designated medical or health services with the associated standards of confidentiality, professional staff and standards and software infrastructure. This would be needed for them to receive, assess, or store sensitive medical information, but based on presently existing Australian surrogacy organisations and examples from overseas jurisdictions, this expectation would be unrealistic. - they are individuals who have done a surrogacy journey. It's highly inappropriate for them to be given personal medical information.

Medical reports should remain within the health system and with the ART provider and/or National Regulator, where appropriate clinical expertise, privacy safeguards, and accountability mechanisms - including either professional ethical safeguards or government ones - exist.

Proposal 18 : Psychological Screening

I am agnostic about Proposal 18 because I do believe more extended psychological or social worker screening is required (as I described extensively in my initial submission to the ALRC), and I don't believe this proposal significantly changes the current practice because it remains a one-off snap shot of a surrogacy team's psychological situation. Psychological assessment is already undertaken within the existing legal frameworks and is typically conducted by a single psychologist and included within what is now described in the Discussion Paper as implications counselling. This differs only in splitting the screening and the implications counselling.

It is possible for many people to perform or respond to questions in a way that leads to a positive psychological assessment on a one off occasion but it is a review over time, or an assessment of living circumstances, that leads to a clearer analysis of the appropriateness of mental health to be a supportive IP or appropriate surrogate. Why this matters is because of the number of team break-downs that have happened over recent years and its been devastating for some surrogates and intended parents.

I note that this process is designed to eliminate the parentage order, and by doing so, if a pregnancy is successful, will eliminate a barrage of costs, psychological included and that is positive.

However, I would query whether the additional cost in splitting the upfront psychological assessment and implications counselling between two counsellors compared with the current situation, obtains significant increase in substantive benefit to be worth the likely increase in upfront costs. Current upfront costs already approximately $3,000 for psychological assessment and reporting. Requiring two psychologists at this stage may effectively double this upfront cost. (And not all surrogacy's in fact lead to a baby so

increasing upfront costs has a devastatingly sad impact if tens of thousands are paid without a pregnancy).

It is appropriate and sensible that both intended parents and the surrogate undergo psychological assessment. However, if the substantive benefit is not significant, it may not be worth the shift and split to two counsellors.

Separately, Also, the National Regulator could assist contain costs by capping costs that psychologists charge too and /or working with the relevant professional association to do so.

In some jurisdictions, a social worker makes an assessment prior to surrogacy. I provided the rationale and explanation for this in my initial submission to the ALRC and continue to consider it a useful way of avoiding some of the relationship problems that lead to breakdown.
Rather than report my exposition, I refer the ALRC back to my original submission and request further consideration of this check rather than the separate psychological assessment.

Question D

Yes - its appropriate for both intended parents and the surrogate to undergo psychological assessment as to their expectations and suitability for surrogacy. I would also think the surrogate's partner, if they have one, should also undergo it as his role in the process, is essential.

Proposal 19 : Requirement for Criminal History Check

There is a valid rationale for requiring both intended parents to undergo criminal history checks. The Discussion Paper hasn't mentioned the surrogate and the surrogate's partner as requiring criminal history checks, but this should be required as well. Say for example there was a history of domestic violence within the surrogates home, whilst that may be unlikely, it would have clear implications for the physical and emotional health of the surrogacy. Whilst not all of this will raise to the level of criminality, if it had, one would want to know about it.

Criminal history information is sensitive personal data and should only be handled by appropriately regulated entities with clear statutory authority, such as the National Regulator, or a psychologist, not by private or quasi-private SSOs.

Proposal 20 : Legal Advice Requirement for Intended Parents and Surrogates

In relation to proposal 20, the National Regulator should be required to cap the cost of legal advice at least in relation to straightforward legal advice based on the standard form legal agreement. There is currently an incredibly wide range of costs charged for essentially similar services within the surrogacy industry and much of it is very standard. Complex or unusual surrogacy agreements of course would attract higher fees.

Proposal 21 : Implications Counselling

Question F

I agree that the surrogate's partner should undergo implications counselling, given the important role they play in the surrogacy journey.

Question G

I have already responded explaining my recommendations for additional counselling requirements over time in my initial submission and I incorporate those recommendations by reference here and I refer back to that submission.

I also strongly support mandatory post-birth counselling for the full team, as this is a point at which support is often most needed, and also a time that leads to relationship breakdown. I think it should be provided to the team within 2 weeks of birth and for two subsequent months.

I believe the surrogate should be encouraged to have at least three counselling sessions in "fourth trimester" - at least one a month.

Question H :

Surrogates should complete a criminal history check.

The ALRC should consider requiring a social worker assessment - at least in certain circumstances, where vulnerability may be a risk, such as instability in living arrangements.

Proposal 23 : Prohibited Provisions in a Surrogacy Agreement

I agree with Proposal 23. Further, if the right to bodily autonomy is to be included in the agreement, I also believe the other fundamental right that needs to be enshrined in the agreement is that surrogacy agreements need to respect the "best interests of the child." I propose that the ALRC include a recommendation that " Legislation requires a statement confirming this right be included in a surrogacy agreement for the agreement to be compliant."

Proposal 24 : Enforcing Surrogacy Agreements

I agree with Proposal 24 and find the responses to the questions straightforward. If a surrogacy agreement is lawful, it should be enforceable. Conversely, if a surrogacy agreement is unlawful, it should not be enforceable. It is impossible in the abstract to say that all surrogacy costs of an unlawful agreement should be paid. That would have to be determined by a mediator or in court on a case by case basis.

Regarding the method of enforcement, a structured, national regulator-led dispute resolution process would better protect all parties and reduce unnecessary legal cost while preserving access to the courts where resolution is not possible. Courts are never the best mode of dispute resolution for anyone but lawyers in matters of relatively low financial value. I would recommend that where issues arise regarding

enforcement, there should be an initial pathway within the regulatory framework — such as referral to the National Regulator, an ombudsman, or a Regulator directed mediation process — to attempt resolution before resorting to litigation. Court proceedings are prohibitively expensive and adversarial, and should be a last resort rather than the default mechanism for resolving disputes.

Regarding enforcement:
In Australia, the overwhelming majority of surrogates are overwhelmingly caring, and altruistically motivated and do their absolute best for the surrogacy journey and intended parents. However, it's not universal and just like there are IPs who create problems in surrogacy teams, surrogates can create traumatic situations for IPs. In Australia, in one unique situation, a pregnancy was aborted against the knowledge and will of the intended parents, and on other occasions surrogates have intentionally not taken their medication against medical advice leading to either implantation failure or the loss of a pregnancy. Overseas, such instances are more common particularly in commercial jurisdictions where surrogates have been known to stop medication to collect repeated payments without continuing with a pregnancy.

Happily such situations in Australia are rare, but if Australia expands the pool of available surrogates, partially based on a version of compensated surrogacy, it is possible such challenging, painful, and irreversible situations may also expand - is there any limit on the right to bodily autonomy to the extent it affects the best interests of the child in utero? Is that a situation where a contract is enforceable and if provable is a situation for damages? *How does the ALRC consider such situations and how could they be limited or do they fairly fall within the surrogates right to bodily autonomy?*

Proposal 25 : Cost Recovery for Surrogates

I support proposal 25 in particular item (4) where the National Regulator be tasked with making clear the specifics of what this means. For example, "Well-being costs," a similarly vague term in Canada recently had lawyers argue over whether the costs of gym membership should be included with some saying that it wasn't a reasonable cost of surrogacy whilst others considered it important for a healthy pregnancy. Whilst every conceivable cost could not be considered in advance, if there is to be predictability and consistency surrounding the way these costs are applied, greater clarity will probably be needed. However, the language in Proposal 2(4) is unclear in relation to how a monthly allowance for incidental expenses is to be formulated. Insisting on a universal cap for incidentals may be unrealistic because different women will have different incidentals and different expense profiles.

A simpler and more workable approach is the model used in Canada, where a monthly allowance is agreed in advance, prior to contracting, based on the surrogate's estimated expenses. The surrogate is then entitled to receive that monthly allowance only to the extent that she is able to document her actual expenses.

Question L
No, I do not believe the National Regulator should set caps on the amounts a surrogate may recover for specific costs. As mentioned above, these would be different for different women based on their personal circumstances and income. If such caps are imposed, surrogates are likely to be left out of pocket, which

undermines fairness. However, a surrogate would need to be able to document or justify the expenses as "reasonable," if the non-compensatory model is still to be adopted.

The caps that are required are caps on professional fees, including ART services, psychological counselling, and legal services. As soon as a matter is described as "surrogacy-related", professional fees often increase significantly. This is not unique to Australia; it occurs internationally. Caps should therefore apply to professional service providers. Caps should not apply to the reimbursement of a surrogate's actual expenses.

Reimbursement for Hardship. Proposal 26 and Question M

As described above, if the overall objective of the ALRC review is to increase accessibility of surrogacy in Australia, I am not sure that the proposed model which essentially retains a more generous altruistic expense based model and then frames payments as a "hardship payments," which are essentially damages or liquidated damages payments for damage or harm of pregnancy, will achieve the overall objective of incentivizing more women to become surrogates. Whilst it provides some degree of compensation, the model is probably hard for the average woman outside the surrogacy community to decipher - or at least be persuaded or incentivized by.

I appreciate that the ALRC is balancing sensitivities across multiple constituencies, but it is unclear how that balancing exercise will operate in practice. Framing surrogacy as involving only expenses plus hardship payments is unlikely to meaningfully incentivise more women to become surrogates.

A compensated model, even a tightly regulated one, is still far more likely to increase participation. I remain strongly in favor of a compensated model and one that is declared to be so. However, I respect and appreciate the expansion of payments provided by the ALRC but would at a minimum recommend an alternative framing of these payments as other than hardship payments.

Item 2B operates more like an insurance payment and should be expanded to clearly include scenarios such as: - twin or multiple births - stillbirth - hysterectomy - haemorrhage and other serious birth-related complications

Question M.

Yes, if this approach is adopted, then yes, the National Regulator should be empowered to administer and oversee it. I agree with Question M, but the current drafting is perhaps not framed in a way that would encourage more women to become surrogates and its meaning is not clear. As structured, it resembles a liquidated damages mechanism and it is not clear that it will meet the objective of increasing the number of surrogates.

Proposal 27 : Holding the Funds in a Trust Account

I strongly oppose a requirement that a SSO manage a trust account. This creates a clear conflict of interest, particularly where the SSO both controls the funds and is involved in making or facilitating payments. It would be preferable for funds to be held in a lawyer's trust account, although I acknowledge

this may be administratively burdensome. In any event, the use of a trust account should not be compulsory. Many parties undertake independent surrogacy journeys that do not require that level of support or oversight.

Proposals 28 and 29 : Medicare

I support Proposals 28 and 29. However, Medicare should play a role in capping the fees that professionals are permitted to charge for surrogacy-related services. In practice, once surrogacy is involved (in Australia and overseas), professional fees are often significantly inflated. Introducing Medicare-based caps or fee controls would help prevent overcharging, promote consistency, and ensure that surrogacy-related care remains accessible and proportionate, without shifting unreasonable costs onto intended parents or surrogates.

Proposal 30 : Administrative Pathways to Parentage
I support the elimination of the parentage order and the administrative path to parentage.

Proposal 30. 2.

The Discussion Paper makes recommendations regarding the Federal / Family Court's need for a special surrogacy list, without referencing whether additional human skill sets are required or whether financial resources will need to be allocated. It is not clear that the Family Court has either the specialist expertise or the human and financial capacity to determine additional surrogacy-related applications of this kind without additional resources. The Family Court is already significantly overburdened, and the proposals do not identify any corresponding increase in funding, staffing, or specialist capability. Any proposal that relies on increased court involvement must expressly address the Court's resourcing, workload, and skill-set capacity. Absent such consideration, transferring these matters to the Family Court risks delay, increased cost, and poorer outcomes for children and families.

Question N.

I propose this is the one situation where a traditional surrogate needs to be distinguished from a gestational surrogate. I do not consider in the ordinary course a gestational surrogate should have the right to renege on the surrogacy arrangement and apply for parentage. I recognize the enormous gift a gestational carrier gives intended parents, but do not believe any other relationship to the child is potentially significant enough for her to renege on this promise.

I do believe a traditional surrogate is unlikely to change her mind regarding relinquishment, but I think *she should have the right* to seek a declaration that she is the parent as they are both the biological mother, and the carrying/birth person. I also consider three months is too short post-birth for the surrogate to decide to make such an application. If she has had a C-section, she is recovering from major surgery for 6 weeks and hormonal shifts post birth will take at least three months to reduce.

Judicial Pathways to Parentage : Proposal 31

Overseas parentage

The current position in relation to overseas surrogacy arrangements does not improve on the status quo ante and in relation to the jurisdictions of Canada, the United States, New Zealand, and the United Kingdom, actually sets the law back by compelling an application to the Family Court where none is currently required. My response here touches on the issue of permitted jurisdictions which I discuss further below.

In Canada and the United States, parentage is lawfully transferred to the intended parent, and that intended parent is recorded as the child's mother or father on the birth certificate and the child will have a foreign passport. For all intents and purposes it is like any other child born in these countries: the Australian government awards the child citizenship by descent. Currently, few, if any, parents of US and Canadian born children currently avail of Family Court.

This process should not change so the practical necessity of involving a Family Court proceeding for children born in these countries does not exist. It is thus irrational, not in the best interests of the child, and not keeping with the comity established with these countries for Australian law to continue to treat the surrogate as the child's legal parent despite what is stated on the child's birth certificate.

Requiring intended parents from these jurisdictions to return to Australia to commence proceedings in the Australian Federal/ Family courts is costly, unnecessary, and may not occur in practice. In many cases, there would be no practical or legal reason for the intended parent to seek further court orders, because they are already fully recognised as the child's parent in the overseas jurisdiction and in all other countries based on the passport and birth certificate. This disconnect does not serve the best interests of the child. It creates legal uncertainty, imposes unnecessary financial and procedural burdens, and leaves children in a position where their parentage is recognised internationally, they may be awarded Australian citizenship, but parentage is not recognised under Australian family and surrogacy law despite being able to become Australian via descent.

To recognize the parentage and birth certificates issued by these jurisdictions is not like Australia is doing something radical for surrogacy. Australia routinely recognizes certain jurisdictions, principally these five amongst them, in relation to foreign adoptions, foreign marriages, medical qualifications, and some foreign judgments.

Whilst these jurisdictions will not have identical surrogacy laws to Australia, and issues may always arise, in principal their surrogacy legal frameworks will require a surrogate's voluntary consent, the surrogacy will be governed by preconception legal agreements, the legal frameworks operate within rule of law systems, and there is not routine exploitation of surrogates. Moreover, Australia could take confidence that even if exploitation were discovered in these systems it would be dealt with under the rule of law: if we hear of a court case because of an agency exploiting IPs in Canada, or human trafficking in California, it is highlighting that they have detected an anomaly and their regulatory process is working - not that its not. It makes no sense to burden our Australian Fed/Family Court by embedding in legislation a presumption that the birth certificates and parentage issued to children of surrogacy arrangements from these jurisdictions is potentially unethical.

If the ALRC does not accept my recommendation for automatic recognition where parentage has already been lawfully transferred in a recognised jurisdiction (such as the USA, Canada, or New Zealand), then instead of going to the Family Court, there should be a direct administrative pathway to Australian recognition of parentage through the National Regulator, not the courts.

If the birth certificate records the intended parents and the documentation is in proper form, that should be sufficient for recognition without forcing families into expensive and unnecessary Federal/Family Court proceedings. Moreover, this should eliminate the additional documentation surrounding surrogacy for citizenship by descent applications (they currently ask for excessive documentation - the surrogacy agreement, the fertility clinics medical records, sometimes obstetric records etc).

In relation to Proposal 31.b. and c., as discussed above, it is not clear that the Family Court has either the specialist expertise or the human and financial capacity to determine additional surrogacy-related applications of this kind or that it is the best use of limited court resources.

In relation to Proposal 31.b. it is entirely unrealistic to assume that a new parent can make legal applications within three months of the birth of a child or within three months of returning to Australia. The post-birth period is dominated by recovery, infant care, sleep deprivation, and often international relocation. If any time limit is to exist, it should be at least 12 months, whether calculated from the birth of the child or from the family's return to Australia. It is also not clear why a strict time limit is necessary at all.

Question O

The key question with all surrogacy arrangements is "Did the surrogate freely and voluntarily consent to the arrangement?" In order to do so, she needed to have psychological counselling, full medical disclosure of the process and all risks involved, consent to any travel prior well in advance of having to do so, have independent legal advice of her rights and the risks involved, and be advised of her right to ongoing counselling. I believe a social workers report should be conducted for all surrogacy but at least it should be conducted for overseas surrogacies in developing countries where the risks of exploitation are greater as it requires a social worker to consider and report on her living conditions, home-life and safety at home.

Question P

Yes, there should be a simpler pathway to recognition of parentage for intended parents who enter into registered overseas surrogacy arrangements, particularly in stable and well-regulated jurisdictions.

At a minimum, this pathway should apply to jurisdictions such as Canada (at the provincial level), the United States (at the state level), the United Kingdom, Ireland, and New Zealand. If the ALRC does not consider it appropriate to permit full countries, then it should at least be appropriate to assess jurisdictions at the provincial or state level, given differences within federal systems.

I have made the case for why certain jurisdictions should be permitted above.

Proposal 33 : National Surrogacy Register

I support a National Surrogacy Register - like a National Donor Register. I do not consider Proposal 33. 2 to be in the best interests of the child. No equivalent addendum is provided on birth certificates for children conceived using egg or sperm donation, despite issues concerning genetic origin information. While the proposal is framed as respecting the rights of the surrogate, it is not clear that it is in the best interests of the child for their birth certificate to be materially different from that of other children.

For donor-conceived children, access to information is managed appropriately through a donor register, rather than through annotations on the birth certificate itself. There is no clear reason why a surrogacy register would not sufficiently and effectively operate in the same way. If birth certificates containing surrogacy-related information are to be issued at all, this should not occur before the child reaches the age of 18, when they can make their own informed decision about accessing that information.

Proposal 37: Registering Overseas Surrogacy Arrangements

I agree with the proposal to maintain a **list of permitted overseas surrogacy jurisdictions**, and accept that this list will necessarily be **short**. It would be **administratively straightforward** for a National Regulator to establish:

- regulations setting out the criteria for permitted jurisdictions; and
- a **schedule of permitted jurisdictions** attached to those regulations.

The fact that overseas surrogacy regimes may change over time is **not a valid reason to avoid regulation**.

- Schedules to regulations are routinely amended and what would be proposed would be legislation / regulation that applies to “Permitted Jurisdictions”. Permitted Jurisdictions would be scheduled and if anything changed that caused the ethical safety of surrogacy in that jurisdiction to change radically and quickly it could be gazetted quickly.
- Adding or removing jurisdictions via gazette is a **standard regulatory mechanism**
- A National Regulator could update the schedule efficiently as circumstances change.

Accordingly, I disagree with any suggestion that variability in overseas regulatory frameworks and changes in surrogacy over time - even sometimes rapidly - makes this approach impractical or undesirable.

However, I do gently suggest the ALRC should be **much clearer about which jurisdictions are considered permitted**. The number of overseas jurisdictions where surrogacy is lawful and **generally well-regulated** is very limited. In practice, this list would include:

- Canada
- certain U.S. states
- New Zealand

- the United Kingdom (including Gibraltar)
- Ireland

All such regulatory systems apply different approaches but require similar broad frameworks of ethical surrogacy.

- a surrogate's voluntary consent prior to embryo transfer
- Medical consents for the surrogate and intended parents
- Preconception legal agreements
- The provision of independent legal advice
- payment of surrogacy costs and expenses
- psychological counselling

In other areas of law, Australia already draws clear distinctions between aligned jurisdictions such as the **United States, Canada, New Zealand and the United Kingdom**, and other countries. It is consistent with existing legal practice to recognise the regulatory integrity of these systems and doesn't make sense for Australian surrogacy law to require higher standards than we do in other areas of the law and fail to recognize comity. The idea here like in other areas of law is not to achieve some ethical absolutism on surrogacy frameworks but to steer Australians heading overseas (which will happen anyway), towards jurisdictions which apply threshold ethical standards including those identified above, and that operate within the bounds of rule of law systems whereby those standards will be enforced. However, if exceptions were to be drawn, it would be possible to recognize jurisdictions (states / provinces) within federal countries.

Moreover, following legal ethical processes, intended parents are lawfully recognised and listed on a birth certificate in such jurisdictions, Australia should not seek to second-guess the regulatory frameworks of these comparable legal systems. That is not in the best interests of a child where parentage has already been recognized and birth certificates issued.

Jurisdictions that should not automatically be listed as permitted include Mexico and Colombia - whilst some agencies ensure that surrogacy in such jurisdictions is conducted ethically, not all do. Similarly, in Georgia, surrogacy processes are lawful and well established, however, they are followed differently by different agencies and universal adoption of the country as an ethical jurisdiction would not be appropriate. Ukraine has a lawful and well regulated surrogacy framework but the current war renders it ethically problematic.

In my prior submission, I proposed that certain agencies within these jurisdictions be assessed and considered to be listed as "permitted." This approach has risks and benefits as an incorrect assessment of foreign agencies because of the challenges with due diligence in a foreign country, could lead the National Regulator to recommend agencies that ultimately were problematic. However, possibly less risky may be if the National Regulator were to maintain a register of agencies where Australians were able to review their experience with overseas agencies and this was available for review by future intended parents.

I am not sure that it will be practical to require Australians to register their intention to engage in overseas surrogacy before travelling overseas. I do not support penalties for unregistered overseas surrogacy.

I am also unclear if the process of registering Australian Citizenship by Descent of a child born overseas through surrogacy to Australians living overseas will involve more than mere registration. Will it involve the need to communicate with the National Regulator? Under the current proposal would it require filing with the Federal/Family Court?

Proposal 38 Parentage under the Family Court Act

I do not support requiring an application to the Federal /Family Court in circumstances where parentage has already been lawfully established in recognised jurisdictions.

For the United States, Canada, New Zealand, and the United Kingdom, recognition should occur through an administrative filing with the National Regulator, rather than through court proceedings.

Any application period should be at least 12 months from the family's return to Australia. Families may spend months overseas completing the journey and then face newborn care and extensive paperwork (including citizenship processes). Requiring a court application within three months is entirely unrealistic.

Question S
Responsibility for overseas surrogacy recognition should sit with the National Regulator, not a SSO.
Permitted destinations should be jurisdictions with which Australia recognises legal comity, rule of law, and regulatory cooperation, including the UK, New Zealand, Canada, and the United States (with assessment at the state/province level where necessary).
I do not support any requirement that intended parents prove they made "reasonable efforts" to pursue domestic surrogacy first. Timing constraints after frequently long IVF journeys and a lack of domestic supply of surrogates mean many families reasonably choose not to attempt domestic surrogacy.

Proposal 39 (including Proposal 39-2)
The documentation requirements for overseas surrogacy recognition should be strictly limited.
It is unclear what additional documentation is contemplated beyond the surrogacy agreement.

The Department of Home Affairs currently requires extensive and intrusive documentation, including clinic embryo transfer records, and sometimes obstetric records. If an Australian is the parent on the birth certificate, and if children of surrogacy are to be treated no differently irrespective of the genetic link, it seems excessive and unnecessary that such medical information be provided to the Department of Home Affairs. There needs to be some streamlining and reduction of such medical documentation upon establishment of the National Regulator.

In addition, intended parents should have the option of providing: the surrogacy agreement, and DNA evidence establishing biological parentage as an alternative to producing detailed clinic embryo-transfer records.