TOWARDS A NATIONAL FRAMEWORK FOR SURROGACY IN AUSTRALIA

SUBMISSION TO AUSTRALIAN LAW REFORM COMMISSION'S REVIEW OF SURROGACY LAWS: DISCUSSION PAPER (2025)

12 JANUARY 2026

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INTRODUCTION AND BACKGROUND

Equality Australia welcomes the opportunity to further contribute to the Australian Law Reform Commission's (**ALRC**) Review of Surrogacy Laws (**Review**), following our submission in response to the Issues Paper, lodged in July 2025 (**our first submission**). We reiterate that while Equality Australia does not speak from direct personal experience, we represent and work closely with LGBTQ+ families, many of whom have engaged with surrogacy in Australia and overseas.

Further to our first submission, we note the significant development of the passage through parliament of the *Assisted Reproductive Technology and Surrogacy Act 2025* (WA) which we strongly welcomed, particularly as it alleviates the discrimination against same sex couples seeking to become parents.

Equality Australia welcomes the overall direction of the proposed reforms, which represent a significant and constructive shift towards a more accessible, child-centred and effective surrogacy framework in Australia. In particular, the proposals relating to regulated compensation for surrogates and streamlined pathways to legal parentage address two of the most serious and enduring shortcomings of the current system.

These proposed reforms have the potential to greatly reduce the need for Australians to pursue overseas surrogacy, improve safeguards for all parties, and ensure that children born through surrogacy have their parents legally recognised from birth. The ALRC's proposals emphasise risk mitigation, proportional regulation and national consistency and represent a marked improvement on existing fragmented and punitive approaches.

SUMMARY OF KEY POINTS

In this submission, Equality Australia has responded to each of the reform proposals and many of the questions in the Discussion Paper. In particular, we highlight the following key points:

- We strongly support the proposed move towards a **nationally consistent regulatory framework**, including the establishment of a National Regulator, to address fragmentation, inconsistency and legal uncertainty across states and territories.
- We welcome the ALRC's **clear shift away from criminalisation** while maintaining appropriate protections against coercion or exploitation, where criminal approaches have failed for decades to prevent harm, and have created increased stigma and risk for families and children.
- We strongly support the proposals permitting **regulated, capped compensation for surrogates**, and emphasise that recognising compensation is critical to increasing access to domestic surrogacy, properly recognising the role of surrogates.
- We strongly support reforms that provide **clear, timely and child-centred pathways for the transfer and recognition of legal parentage**, including recognition from birth where certain requirements are met.
- We emphasise that **non-compliance or procedural defects should not prevent the recognition of parentage** for children already born, and that courts must retain discretion to act in the best

interests of the child, including **by allowing for retrospective recognition of parentage for children born overseas**.

- We support the development Surrogacy Support Organisations (**SSOs**) as providing for matching services and regulated supports for families, but **caution against a model that relies too heavily on the emergence of SSOs as a new for-profit industry**.
- We express our **reservations with the proposal for pre-surrogacy registration for overseas surrogacy** through the creation of a preapproved country list.
- We support **improved education, guidance and information provision** for families, professionals and the broader community, including through national registers and consistent terminology.

POTENTIAL REFORMS

A SUPPORTIVE INSTITUTIONAL FRAMEWORK

We agree with the Discussion Paper that surrogacy is far too complex and difficult to access and navigate in Australia, in part because of inconsistent frameworks across the country.[1]

We **support Proposal 1,** which strongly aligns with our recommendations made in our first submission.

A national approach is the ideal approach, with the potential for substantially consistent state or territory laws in the alternative. We support any mechanism that achieves this outcome.

Surrogacy often involves cross-border arrangements, and inconsistent state laws:

- deter domestic surrogacy,
- push people overseas, and
- create legal uncertainty for children, surrogates and parents.

Creation of a National Regulator of surrogacy arrangements, assisted reproductive technology and donor conception is our preferred option to support and oversee family formation. While we accept that existing agencies in states and territories and/or a federal government department could potentially fulfil the role, a specialised federal body would be the best option for consistency, to ensure ethical practice, and to safeguard the rights of all parties involved.

We suggest some caution is taken in the drafting of legislation and subordinate legislation in ensuring that any new oversight body does not become an additional gatekeeper that reintroduces new and different barriers to surrogacy, since any potential over-regulation might continue to encourage intended parents to go overseas.

Finally, in relation to the use of terminology, we endorse consistency in the use of language and note the importance of avoiding inappropriate and misleading terms such as 'surrogate mother' or

[1] Australian Law Reform Commission, 'Discussion Paper: Review of Surrogacy Laws' (Discussion Paper 89, November 2025) 14 (**Discussion Paper**).

'birth mother'. We support the use of terminology as set out by the ALRC Discussion Paper key terms.[2]

Establishing a National Regulator

In relation to **Proposal 2**, Equality Australia **supports** the establishment of a national regulatory framework for surrogacy and the creation of a National Regulator with the functions and powers outlined in the Discussion Paper (Option 2.1). **This is provided that** its functions are enabling, proportionate, and designed to remove, not replicate (or extend) the barriers that currently deter domestic surrogacy in Australia.

In response to Question A, we suggest that any regulatory body should be designed to be enabling rather than involved in additional gatekeeping. Some design principles could include:

- Accessibility and timeliness – with clear statutory timeframes for approval processes.
- Transparency – the need for defined and clearly communicated reasons for decision-making.
- Natural justice – requirements for internal and external review and appeals.
- Educative focus – focussing efforts and resources on support/education/information provision, over enforcement, with appropriate separation between these functions of the regulator.

Option 2.2 is not preferred, however would be an acceptable alternative, and we can see the benefit of aligning state donor registries with information registries in relation to surrogacy, particularly as surrogacy often occurs with the use of donated gametes or embryos.

Surrogacy Support Organisations (SSOs) and approval processes

Proposals 3-6 partially align with our first submission but suggest a larger and more significant role for SSOs than we had anticipated.

We generally support the establishment of SSOs as optional, regulated bodies that provide support, coordination, and facilitation for surrogacy arrangements. The absence of lawful matching services and coordinated support is a key barrier to domestic surrogacy and a significant driver of overseas arrangements.

In relation to the approval process proposed in Proposal 4, we support in principle the presumption in favour of approving agreements, and the automatic recognition of parents at birth following an administrative rather than court process, the incorporation of an alternative pathway for arrangements not approved administratively, and the option of reviews of decisions.

However, we have some reservations about the extent to which SSOs should exercise discretionary approval or refusal powers over surrogacy agreements.

We understand that stakeholder concerns about conflicts of interest in the fertility industry might underpin this proposal. In our view, vesting approval power in SSOs does not eliminate those concerns, but instead shifts them to another private industry. Unlike fertility clinics, which involve medical professionals throughout the process who must assess clinical risk and operate within established medical liability and medical professional standard frameworks, SSOs may not employ

[2] Ibid 3.

any professionals with relevant clinical, legal or ethical expertise. This raises questions about both accountability and decision-making quality where approval or refusal powers are exercised.

As there is essentially no established surrogacy 'industry' in Australia (either for, or not-for profit), it is unclear whether SSOs would be financially viable at scale, even though this may already be the system in place in other countries (e.g. Canada, USA). If an insufficient number of SSOs operate across the country, this could lead to significant delays or, in practice, push the majority of approval functions back onto the National Regulator. Consideration should be given to whether there will be sufficient access to services in regional and remote areas of Australia.

While we can see the benefits of SSOs providing streamlined approval for low-risk, low-complexity arrangements, a system in which the administrative pathway to parenthood depends on the existence of SSOs risks becoming untenable if no viable sector emerges. By contrast, the fertility industry is already well established, financially viable, and accustomed to operating under substantial regulatory oversight. It currently supports surrogacy patients alongside medically infertile people, same-sex couples and solo parents, and is therefore demonstrably capable of absorbing additional regulatory responsibilities.

Proposal 3 in the Discussion Paper contains two options:

- Option 3.1 - to permit the establishment of SSOs to provide introductions, coordination of services, assessment and approval, case management etc, or
- Option 3.2 - to permit existing institutions or organisations to provide some or all of these supports and safeguards.

We suggest a combination of these options.

We support SSOs having various functions proposed such as holding and administering funds in trust, providing case management, facilitating dispute resolution, and coordinating counselling and legal advice. We also have **no concerns with Proposal 5** in requiring compliance of SSOs involving criminal and/or civil penalties to ensure a high level of ethical practice.

However, we consider it may be more workable to adopt a more flexible assessment and approval model, including by:

- allowing assessments and approvals to occur *either* through SSOs or directly via the National Regulator, so that parties may choose between managing their own surrogacy arrangement and then applying through the National Regulator, or engaging an SSO for support and approval where possible; or
- retaining the role for fertility clinics in approving surrogacy arrangements.

Increasing awareness and education

We agree with the ALRC's concerns around the stigmatisation of surrogacy and the need to build understanding in the community and among professional service providers. Therefore, we **strongly support Proposal 7**. We recommend that any guidelines developed should be done in close consultation with LGBTQ+ parent groups, such as Rainbow Families Australia.

Parameters of lawful surrogacy

We agree with the ALRC's assessment that using criminal law to prohibit surrogacy is of questionable effectiveness, difficult to enforce (or not enforced in practice), and generally inappropriate. Criminalisation of intended parents or surrogates can increase stigma, drive practices underground or overseas, and is disproportionate.[3]

We **support Proposal 8** in relation to commercial surrogacy, which instead recommends a civil penalty regime with sufficiently high prescribed penalties, which is preferable to criminal sanctions. This approach is not only more proportionate and more likely to be enforced, but also less likely to disadvantage children born through surrogacy, who may be denied the right for their parents and family to be recognised because of the risk of criminal prosecution. It also recognises that Australian law should not outright endorse international surrogacy, which could be the perception if there is no penalty at all.

In relation to overseas surrogacy, we **strongly support Proposal 9(3)** which would repeal the extra-territorial offences in ACT, NSW and Queensland, which do not permit overseas surrogacy even in circumstances where it is conducted in a consensual, legal and well-regulated context in the relevant jurisdiction. Aside from the reality that these provisions are never enforced, they are out of step with other like jurisdictions, and there are already other criminal laws that would capture abhorrent crimes like human trafficking or slavery. All the provisions currently do is create more stigma and prevent the recognition of parents in Australia. We have some **reservations about the effectiveness of the registration option in Proposals 9(1)-(2)** which we deal with under our response to Proposal 37 on page 13.

We **support Proposal 10** prohibiting coercive practices within the surrogacy industry and are comfortable with a mix of criminal or civil penalty enforcement depending on the context and degree of seriousness of the offence. We highlight that care should be taken to avoid a situation where professionals such as counsellors or lawyers are inadvertently criminalised or fear criminalisation when simply providing their services in good faith – there are already few service providers available, and there is a risk of a chilling effect leading to even fewer services being available, or even longer delays. This issue would need to be very carefully considered in legislative drafting.

Support getting started

Connecting intended parents and surrogates

In our first submission, we suggested changes to the approach to advertising, which are currently impractical, and unfairly penalise families by criminalising how they connect with surrogates for arrangements that are otherwise legal. We recommended the removal of criminal penalties for unpaid advertising,[4] which is **aligned with Proposal 11** for legislation to provide that advertising for surrogacy is permitted for arrangements that are not prohibited, and for existing legislation with blanket bans on all advertising on surrogacy, to be repealed.

[3] Discussion Paper, 25-27.

[4] Our First Submission, 12.

We note the Discussion Paper elaborates that the connecting of intended parents with surrogates could be centralised through SSOs, other organisations such as an assisted reproductive technology service provider, their own networks or through advertising. Permitting flexibility for options to connect can ensure access to surrogacy, however, we reiterate our preferred approach for predatory behaviour and non-compliance to be addressed through:

- the National Regulator having powers to monitor for paid advertising by surrogates or intended parents online, issuing take-down notices to both end users and social media companies where these adverts are detected, and be able to issue fines for non-compliance with these notices, and
- SSOs being permitted to advertise, but for advertisements to be monitored by a surrogacy oversight body to ensure the advertising is not misleading or deceptive.

Threshold requirements

We **support Proposal 12** that addresses an issue raised by Equality Australia in our first submission – traditional surrogacy should not be treated differently from gestational surrogacy, and there is also no basis to treat surrogacy involving genetic connections differently.

Treating gestational and traditional surrogacy differently in Victoria creates a two-tier system in which only some intended parents and surrogates can access necessary health services. This distinction is discriminatory, stigmatising and impractical, and fails to accommodate situations in which a traditional surrogate requires assisted reproductive technology to conceive.

We also **support Proposal 13**, which suggests requiring a 'medical, biological or psychological reason' for surrogacy, which is broader than the current terms used in most states and territories of 'medical or 'social' need. As we noted in our previously submission, 'medical' need can be narrowly interpreted by medical practitioners, creating exclusionary practices. We appreciate consideration having been given in the drafting of this proposal to non-medical reasons for infertility, such as people who are technically medically capable of carrying a pregnancy but would struggle with a pregnancy psychologically – such as trans men. We note that new legislation in Western Australia once in force will have no eligibility criteria in that state, but that this approach has faced some opposition, and the drafting of proposal 13 may be a sensible middle-ground.

Regarding the age of parties, we **support the balanced approach in Proposal 14**, which reflects the current ACT model. It allows discretion for prospective surrogates for aged 18–24 where appropriate, while maintaining 25 as the general minimum age.

Consistent with concerns raised in our submission to the Issues paper, we **strongly support Proposal 15** in removing unnecessary residency requirements and also appreciate the need for at least one intended parent to be an Australian citizen or permanent resident. This both addresses overly restrictive and impractical barriers to surrogacy that arise from state-based residency requirements and reasonably prevents the emergence of Australia as a destination for international surrogacy from overseas. We support some discretion, as proposed, for particular exceptional situations, such as where the surrogacy arrangement involves a party with some significant connection with Australia.

Proposal 16 departs from our prior recommendations on this issue. While we maintain that a surrogate has the right to make decisions about their own body, we have **no major concerns** as long as there is a pathway available in cases where a potential surrogate does not intend to have a child of their own. We also caution that non-compliance with a requirement to have a live birth (or

seek special approval) prior to engaging in surrogacy should never be a barrier to recognition of parentage – this scenario could potentially arise in the case of traditional surrogacy in particular. Courts have discretion to waive this requirement in granting parentage.

Consistent with current practice in relation to medical and psychological approvals for all parties, we have **no concerns regarding Proposal 17 or 18**, as they are critical safeguards to the process. Again, the parties' failure to comply to these requirements should not be an issue that prevents the transfer of parentage for a child already born from surrogacy.

We **strongly support Option 19.1,** which does not require mandatory criminal history checks. While these are to be applied across the board, these checks are highly stigmatising and disproportionately target gay men, who are major users of surrogacy. The need for these checks often draws on harmful and unfounded stereotypes that gay men are more likely to 'groom' or 'harm' children or may use surrogacy to 'obtain' a child for this purpose. There is no evidence to support these notions, and imposing such checks reinforces stigma rather than protecting children.

A different and potentially more reasonable justification for criminal history checks can be ensuring the full, informed consent of a surrogate. If checks are introduced for this purpose, it would be unreasonable to apply them when the surrogate is well known to the intended parents, such as a relative or close friend. At minimum, any checks should only be required if the intended parents have only recently met the surrogate in the course of arranging the surrogacy.

SSOs or the National Regulator could include criminal history checks as a step in the process where any red flags arise, but there should be no legislative requirement to do so, allowing the flexibility to deal with matters on a case-by-case basis.

As quality, independent, legal advice is another significant safeguard in the process, we **generally support Proposal 20**.

Counselling is also a critical and central part of the process, and we **generally support Proposal 21**. However, we query why there is a need for the assessment counsellor to be different from the independent counsellors (Proposal 21(1)(c)). This might create delays because of lack of specialist counsellors' availability, and seems to be no longer a requirement in Victoria, and will not be a requirement in Western Australia after the new legislation is in force.[5] In response to Question G, we are aware that post-birth counselling (a requirement in only some jurisdictions) is often perfunctory as the baby is at this time with the parents in 99% of situations. As this step can create unnecessary delays to recognition of parentage it should not be a mandatory requirement.

Surrogacy agreements

We **support** the approach to, and proposed content of, surrogacy agreements as set out in **Proposal 22 and 23**, as there are obvious benefits to requiring minimum standards to protect all parties, and to ensure that no terms infringe the surrogate's human rights. We also **support** the enforceability of surrogacy agreements where compliant with the minimum requirements as proposed by **Proposal 24**.

[5] See *Assisted Reproductive Technology and Surrogacy Act 2025* (WA) s 108(1)(e).

Questions I and J ask about the enforceability of surrogacy agreements that are non-compliant with legislative requirements but otherwise unlawful. We think that these complex matters should be determined by the Federal Circuit and Family Court, retaining the best interests of the child as a primary consideration –it is critical that the court has sufficient discretion to grant parentage and/or parental responsibility to any party, to avoid any adverse outcome for a child because their parents and/or surrogate failed to comply with technical requirements.

Support through the surrogacy journey

Reimbursement and compensation

To ensure that surrogates are not left out of pocket because of their decision to help a family, **we support Proposal 25,** which sets out the expenses that should be claimable by a surrogate where not for 'impermissible profit or reward'. Monthly allowances rather than a reimbursement approach are likely to mean the surrogate will not be financially disadvantaged, and will reduce administrative burden, stress and potential conflicts.

In our first submission, we expressed our support for compensation for surrogates beyond recouping expenses. We **therefore strongly support Proposal 26**, which allows for the optional payment of 'hardship payments', capped at a reasonable amount by the National Regulator. However, we do not consider 'hardship' to be the most appropriate or accurate framing for what is, in substance, recognition of a surrogate's contribution, deserving of proper financial recognition.

Further, Question M in the Discussion Paper asks whether there should be potential further payments for their contribution. We are unconvinced it is helpful to delineate between the 'hardship' already described in Proposal 26(2)(a) (including pain, suffering and discomfort) and other aspects that a surrogate should be compensated for (time, effort, inconvenience etc), and would suggest an approach that encapsulates all of these aspects into a single capped lump sum.

For some, the most significant impact may arise from the time required for fertility treatment and its effects on career progression or time with their own children; for others, physical or health-related impacts following birth may be more significant. Attempting to draw artificial distinctions between different forms of labour, impact or adversity is neither necessary nor helpful.

Finally, we **support the approach of Proposal 27** to ensure incremental payment through a trust account, which aligns with our previous recommendations.

Medicare entitlements

The recommendations in **Proposals 28 and 29 strongly align** with our previous recommendations to end discriminatory approaches to Medicare rebates for surrogacy procedures. As noted in the Discussion Paper, there is no sound policy basis for this exclusion, which we think is likely to amount to unlawful discrimination if challenged in the Federal Court under the *Sex Discrimination Act 1984* (Cth).

Support when the child is born

Pathways to legal parentage

Recognition of legal parentage is Equality Australia's primary concern about the current surrogacy scheme in Australia. We concur with the Discussion Paper in stating that the best

interests of children require a 'clear and efficient pathway for their functional parents to be recognised as their legal parents', but instead the system is overly 'complex, time consuming, and expensive.'[6] Of most concern, the current approach unacceptably leaves children without legal recognition of their parents for many months after the birth.

The Discussion Paper is generally consistent with our previous recommendations in providing for two, alternative, pathways:

- **administrative pathway** – where parents recognised from birth, where pre-approved has been granted.
- **judicial pathway** through the Federal Circuit and Family Court specialist list – where the surrogacy arrangement was not pre-approved.

We **strongly support** the approach set out in **Proposal 30** which ensures timely recognition of the parents of the child, but with safeguards to ensure that the surrogate may contest the parentage within 3 months of birth. We believe, consistent with the Discussion Paper's consideration, that this will strongly incentivise the use of approved surrogacy arrangements. One reservation we hold is about the approval process and whether this should be kept with SSOs, as we discuss in detail on page 5.

Proposal 31 and 32 is also strongly supported. These allow for the declaration of parentage within 3 months of birth in circumstances where the parties did not use an approved surrogacy agreement, and importantly, cover situations where parents entered into surrogacy overseas. We have consistently argued that children should not be denied the right to have their parents and family recognised because of decisions about their conception that they were not a part of. Retrospectivity in Proposal 32 is also critical to ensure children who have already been born prior to reforms have the benefit of these changes.

The cases anticipated to proceed under the judicial pathway are likely to be more complex cases and will be ensure a more appropriate use of specialist court resources. Proposal 30 means that straight forward domestic surrogacy matters that are currently 'rubber stamped' through a drawn-out court process do not have to take up state courts' time anymore.

Question P asks whether there should be a different process for intended parents who have engaged in a registered overseas surrogacy arrangement. We strongly support automatic recognition of parentage where a parent/s are registered in the country of birth as the child's parent/s, such as in the USA. There should be no need to undertake a court process in Australia (sometimes in addition to a court process in the child's country of birth), and this should involve an administrative process instead.

Parental leave entitlements

In our first submission, we expressed the importance of surrogates and intended parents obtaining equitable access to paid leave. Surrogates require paid leave in the lead up to birth, for the birth and to both physically and mentally recover post-birth. Intended parents require parental leave for the birth and to bond with and care for the child after birth.

[6] Discussion Paper, 55.

We note the Discussion Paper states, 'it is unclear if surrogates' minimum leave entitlements under the National Employment Standards are adequate to allow the surrogate to recover from the pregnancy and birth'. We recommend that their adequacy is determined with regard to both the lived experiences of surrogates and the views of health workers.

The lack of clarity in enterprise agreements and modern awards as to the applicability of parental leave entitlements to parties to a surrogacy arrangement, could be addressed through amendments to the *Fair Work Act 2009* (Cth). Legislative changes should clarify that parental entitlements extend to surrogates and intended parents, and the extent to which they are covered by provisions relating to parental entitlements. The Fair Work Commission could also amend its model terms for enterprise agreements, taking care to ensure surrogates and intended parents' leave entitlements are explicitly accounted for.

The Discussion Paper identifies challenges experienced by intended parents and surrogates when engaging with Centrelink staff to access paid parental leave. While acknowledging the volume of legislative and related frameworks that Centrelink works across, we recommend that training and /or guidance material provided to staff covers surrogates' and intended parents' eligibility for parental leave entitlements.

Further, we reiterate our recommendations from our previous submission in relation to parental leave entitlements:

- Ensure surrogates have adequate time for physical and emotional recovery and reconsider the number of hours required for surrogates to have worked prior to birth.
- Ensure that parents through surrogacy are not disadvantaged for having availed themselves of surrogacy, in relation to their paid parental leave requirements.
- Parents who have entered into registered overseas surrogacy arrangements to be provided the same parental leave entitlements as parents who have entered into domestic surrogacy arrangements.

Information on gestational history

In our first submission, we expressed our view that all people born through surrogacy (and where relevant, donor conception) should have access to information about their genetic and gestational origins, including the identity of the surrogate who birthed them, and therefore strongly support a national register (ideally combined with a national donor conception register).

It is unclear whether secrecy around surrogacy arrangements is in fact a significant issue in Australia requiring changes to birth certificate laws. In our experience, particularly in relation to children born to LGBTQ+ parents, families are open about the circumstances of their child's birth from a very young age. Surrogacy is distinct from historical practices around donor conception, where secrecy was once advised; even in that context, non-disclosure has not been recommended for at least a quarter of a century.

Addendums to birth certificates have limited use in circumstances that parents are strongly motivated to hide information from their child, as it would not be difficult to simply hide or not provide a birth certificate – most children don't have a copy or are unaware of their birth certificate until their later teenage years.

In relation to **Proposal 33, we have some reservations** with annotations on birth certificates (whether from birth, or after 16), as we consider more clarity is needed. Annotations must be designed to safeguard the privacy of children born through surrogacy and their parents. Birth certificates are a child's first, and often only, identity document. Subtle annotations such as 'more information is available in relation to this record' on the back page or in an additional page are appropriate. In contrast, stating 'this is a child born through surrogacy' on the front of a certificate would compromise the child's privacy, as well as that of their parents.

Surrogacy Register access

We **support** access to information for people born via surrogacy as set out in **Proposals 34, 35 and 36**, and consider the level of detail captured is appropriate, as well as the age of access being 16 (or whenever mature enough). Any streamlining through piggybacking existing donor conception registries or, ideally, through creating a single national register would be beneficial.

Regulating overseas surrogacy

We **do not oppose proposals 37 to 39 but have some reservations**. Rather than continuing with the current criminalisation of overseas surrogacy arrangements, the Discussion Paper proposes 'partial prohibition' through a registration system – this would restrict access to only those jurisdictions which have stronger regulation and potentially discourage intended parents travelling to other destinations where exploitation is more of a risk.

Failure to comply would not be criminalised but intended parents would be subject to civil penalties, and critically, a child would not be denied their citizenship, passport or visa, or recognition of their parents. Under **Proposal 38**, the Federal Circuit Court and Family Court would be able to recognise parentage, and under **Proposal 39** citizenship and visa pathways would be streamlined, which we **support** as promoting the best interests of the child. To clarify, failure to comply with these processes should not mean that parentage should *never* be granted, but that this would involve more intense scrutiny of the court.

However, we are unsure whether it is feasible to maintain a reliable list of permissible jurisdictions for overseas surrogacy. Political, social and environmental conditions can change rapidly and unpredictably, and legislative reforms — particularly in areas such as parental recognition or donor conception — may render a jurisdiction unacceptable with little notice. Further, the risk of unscrupulous operators exists in any jurisdiction, regardless of its formal legal framework.

While it may be possible to develop and maintain such a list, doing so would require substantial and ongoing resourcing, and potentially working with SSOs in other countries. It would need to go well beyond the passive maintenance of a static list and instead involve continuous monitoring, bilateral engagement and formal partnerships of the kind undertaken by the Intercountry Adoption Australia program, which only permits adoptions with approved partner countries. Without a comparable level of oversight and investment, the effectiveness and reliability of any such list would be highly questionable.

With regard to Question S about the registration process, should it proceed, we consider that the public National Regulator is a far more appropriate option to approve these arrangements than an SSO. However, this role could also be situated within Home Affairs or another federal government department.

Citizenship, passports and visas

We support **Proposals 39 to 41** in improving processes in relation to recognition of citizenship or permanent residency. Sensible attempts to improve processes, keep families together in the early days after the birth, and remove administrative burden for overseas surrogates involving passports applications (and passport renewals) are very welcomed. We concur with the ALRC's approach to 'front-loading' and streamlining applications for citizenship, passports and visas where required. In response to Questions T to X, we support retrospective recognition of the children born through overseas surrogacy in the rare but possible cases of statelessness and strongly support the idea of a temporary visa for babies to enter Australia soon, similar to the adoption visa.

CONCLUSION

Overall, the Discussion Paper proposals provide a strong and credible foundation for surrogacy law reform in Australian. These reforms have the potential to substantially improve outcomes for surrogates, intended parents and children born through surrogacy in Australia. We thank the ALRC for their considered work on this topic and look forward to the final report.