



Law Council  
OF AUSTRALIA

# Review of Surrogacy Laws: Discussion Paper

Australian Law Reform Commission

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- the Law Institute of Victoria;
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- the Migration Law Committee of its Federal Dispute Resolution Section; and
- its Family Law Section

for their contribution to the preparation of this submission.

## Introduction

1. The Law Council of Australia appreciates the opportunity to respond to the Discussion Paper published by the Australian Law Reform Commission (**ALRC**) as part of its **Review** of Surrogacy Laws.
2. The Discussion Paper builds on the ALRC's Issues Paper,<sup>1</sup> to which the Law Council responded on 31 July 2025,<sup>2</sup> and outlines options to improve how surrogacy is regulated in Australia, seeking feedback to refine these options. We understand that this Discussion Paper is less detailed than the Final Report will be,<sup>3</sup> and that the Final Report is due to be delivered to the Attorney-General in July 2026.
3. The Law Council welcomes the ALRC's consultative approach and supports many of the directions explored in the Discussion Paper. We particularly endorse the emphasis on the rights and best interests of the child, protections for the rights of surrogates and intended parents, and the need to reduce legal fragmentation and complexity. This submission focuses on matters relating to:
  - a nationally consistent legal and regulatory framework for surrogacy;
  - the human rights framework for the ALRC's proposals;
  - legal parentage, including the right to seek a declaration, the determination of legal parentage and consideration of a simpler pathway to legal parentage;
  - streamlined processes for returning to Australia, including in relation to citizenship and statelessness; and
  - other practical considerations, including supports for surrogacy arrangements and for when a child is born.
4. The Law Council encourages the ALRC to maintain a child-centred, rights-based and nationally coherent approach in its final recommendations, particularly in areas where complex ethical and practical considerations remain unresolved. Given the breadth of legislative interaction and scope of reform contemplated by the Discussion Paper, it is important that its questions and proposals are considered cohesively and not in isolation in order to be meaningfully addressed. This may include, for example, a thorough legislative cross-analysis of the various relevant frameworks.
5. The Law Council would welcome the opportunity to provide further assistance as the review progresses.

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<sup>1</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Issues Paper 52, June 2025).

<sup>2</sup> Law Council of Australia, [Review of Surrogacy Laws: Issues Paper](#) (Submission, 31 July 2025).

<sup>3</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) 1.

## Harmonisation and oversight

6. The existing legislative framework for surrogacy is complex and requires parties to navigate both Commonwealth and State/Territory laws with significant variation across jurisdictions. The inconsistency creates uncertainty for families, increases reliance on overseas arrangements and undermines protections for children, surrogates and intended parents. It also has the potential to provide uneven human rights protections for these groups across the country.
7. As identified in our response to the Issues Paper,<sup>4</sup> the Law Council is supportive of a nationally consistent legal and regulatory framework for surrogacy in order to promote certainty, accessibility, clarity and fairness, and reduce the potential for “forum shopping”. We are pleased that the points provided in that response as a starting point for this framework have been considered and addressed in the Discussion Paper.
8. The Law Council received feedback that supports regulation of surrogacy through Commonwealth legislation, implemented by way of referral of the power to regulate surrogacy, as per **Proposal 1, Option 1.1**. The Law Society of New South Wales considers that this is preferable to enacting mirror legislation in each State and Territory, given the potential difficulties associated with coordinating consistent amendments across such legislation in the future. This approach would also ensure that all surrogacy matters are dealt with by the same court, the Federal Circuit and Family Court of Australia (**FCFCOA**), in order to develop a body of clear and nationally consistent practice, procedure and case law. Commonwealth legislation would therefore support consistency and clarity in surrogacy law, streamline the process for any future review and amendments and reduce the potential for parties involved in surrogacy to be involved in proceedings in both State/Territory and Federal courts.
9. The Law Council is also supportive of establishing a streamlined regulatory authority, preferably at the Commonwealth level, to support compliance with, and oversight of, surrogacy arrangements.<sup>5</sup> In this respect, the Law Council welcomes the ALRC’s proposal to establish a National Regulator to oversee a regulatory framework for surrogacy and supports the National Regulator being given the power to perform the functions set out in **Proposal 2**, in particular: standard setting, compliance, oversight of surrogacy agreements, and community awareness and information provision.
10. Relatedly, we support **Proposal 7**, which would require the National Regulator to publish and promote information that addresses common misunderstandings in the community about surrogacy; inform intended parents about surrogacy and surrogacy laws in Australia and overseas, as well as associated risks and requirements; and develop guidelines, training and training materials for professionals who provide services in surrogacy arrangements.

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<sup>4</sup> Law Council of Australia, [Review of Surrogacy Laws: Issues Paper](#) (Submission, 31 July 2025) [53]-[57].

<sup>5</sup> *Ibid.*, [58]-[59].

## Human rights

11. The Discussion Paper states that, “[w]hen regulating surrogacy, it is important to consider the rights of people born through surrogacy, surrogates, intended parents, and parents through surrogacy—with the best interests of the child being a primary consideration.”<sup>6</sup> The Law Council agrees with the central importance of protections for the child’s best interests in surrogacy arrangements, as required by international human rights law. This also accords with the Law Council’s position on the importance of human rights and their implications for surrogacy regulation as set out in our response to the Issues Paper.<sup>7</sup> We make the following specific observations in relation to the rights of the child, surrogates and intended parents as they relate to the proposals in the Discussion Paper.

## Rights of the child

12. The Discussion Paper identifies children’s rights and safeguards that are relevant to surrogacy regulation.<sup>8</sup> Barriers to surrogacy, including where intended parents are denied legal parentage, separated or even prosecuted,<sup>9</sup> are unlikely to be in the best interests of the child who requires a stable, loving environment conducive to the enjoyment of the full range of human rights.<sup>10</sup> As noted in the Discussion Paper, this can also lead to the loss of other rights for the child, such as citizenship, access to medical treatment and access to genetic information.<sup>11</sup>
13. The supportive national model proposed in the Discussion Paper would strike a better balance between the rights of children, intended parents, surrogates and family members. It would provide a clear pathway for intended parents to follow; avoid adverse outcomes such as prosecutions; and likely better protect vulnerable participants’ rights.
14. In answer to **Question A** in the Discussion Paper, the National Regulator should be required to have specific regard to any relevant international human rights obligations, with the Convention on the Rights of the Child (**CRC**)<sup>12</sup> foremost among them.
15. **Proposal 31** relates to unapproved surrogacy arrangements (including all overseas surrogacy arrangements). **Question O** asks about the factors the courts should be required to consider when considering parentage applications in relation to such arrangements. Noting that the courts will need to consider the best interests of the

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<sup>6</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) [34].

<sup>7</sup> Law Council of Australia, [Review of Surrogacy Laws: Issues Paper](#) (Submission, 31 July 2025) [9]-[18].

<sup>8</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) [35]-[37].

<sup>9</sup> See, eg, Kate McKenna, ‘[Australian couple could face prosecution after using commercial surrogacy service to have baby abroad](#)’, *ABC News* (1 May 2025).

<sup>10</sup> See Claire Fenton-Glynn, ‘Outsourcing Ethical Dilemmas: Regulating International Surrogacy Arrangements’ (2016) 24(1) *Medical Law Review* 59; also Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3 para 1)*, UN Doc CRC/C/GC/14 (29 May 2013) [4].

<sup>11</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) [36]-[37].

<sup>12</sup> Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

child alongside other considerations, specific guidance on the applicable rights may be required—particularly in light of the lack of a federal Human Rights Act to guide interpretation.

## Rights of surrogates

16. The Discussion Paper acknowledges the complexity of potential surrogates' rights and freedoms.<sup>13</sup> Private arrangements between consenting adults should be respected by the State, but only if they do not cause harm or result in exploitation—the risk of which arises in any surrogacy arrangement, but particularly in unregulated or poorly regulated commercial surrogacy arrangements, as noted in the Discussion Paper.<sup>14</sup>
17. **Proposals 20–26** would support Australian surrogates' autonomy and ability to make informed decisions, and protect them against exploitation. The Law Council welcomes such a considered, rights-based approach. However, this approach, while positive for those prepared to act as altruistic surrogates in Australia, also needs to consider the full range of surrogates' needs, which can change over time. We address the proposed framework for compensation to address the full scope of financial costs for surrogates at paragraphs [52]–[54] of this submission.

## Rights of intended parents

18. The Discussion Paper briefly canvasses the right to found a family under article 23(2) of the ICCPR, noting that it is contested in the context of surrogacy. This is understandable, given that the article was drafted in the 1960s and the full text refers to a right to “marry and to found a family,” reflective of the then contemporary approach to family formation. So much is acknowledged in the Human Rights Committee's *General Comment 19* of 1990, which states relevantly that there are “diverse concepts of the family”.<sup>15</sup> Other rights that may be relevant to intended parents include rights to privacy and non-discrimination.<sup>16</sup>
19. The Australian Government's own website on surrogacy states that the right to found a family is available to intended parents “provided that this is not at the expense of the rights of others, including the surrogate and any children”.<sup>17</sup> This may be assumed to derive from basic human rights law principles on respect for the rights of others, as expressed for example in other articles of the ICCPR.<sup>18</sup> The website also cites the 2018 *Thematic study on surrogacy and sale of children* by the Special

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<sup>13</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) [38]–[39].

<sup>14</sup> *Ibid.*

<sup>15</sup> UN Human Rights Committee, *General Comment 19: Article 23*, UN Doc HRI/GEN/1/1Rev.1 (adopted at 39<sup>th</sup> Session, 1990), [2].

<sup>16</sup> Ronli Sifris, Karinne Ludlow and Adiva Sifris, ‘Commercial Surrogacy: What Role for Law in Australia?’ (2015) 23(2) *Journal of Law and Medicine* 275, 290–291. See also International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (ICCPR) articles 2, 17 and 26.

<sup>17</sup> Australian Government, [Human Rights and Surrogacy](#) (Web page, undated).

<sup>18</sup> See, eg, ICCPR, articles 18(3), 19(3), 21 and 22(2).

Rapporteur on the sale and sexual exploitation of children,<sup>19</sup> in support of the assertion that there is no “right to a child” under human rights law.<sup>20</sup>

20. The regulatory regime proposed in the Discussion Paper could be an appropriate way to protect the rights of those who plan to found a family by means of surrogacy, because it would provide clear, relatively accessible pathways for doing so, while protecting the rights of the child and surrogate to the maximum extent possible.

## Legal parentage

21. The Law Council’s response to the Issues Paper expressed support for the introduction of uniform parentage laws to provide balanced, proportionate and timely processes, catered to the circumstances before and after the child’s birth, for recognising parentage in surrogacy arrangements.<sup>21</sup> We welcome the ALRC’s recognition of the need for “clear and efficient pathway[s]” to legal parentage in its Discussion Paper.<sup>22</sup>

### Question N

In relation to approved surrogacy arrangements, where intended parents are the legal parents upon the birth of the child, should the surrogate have a right to seek a declaration that they are the parent (per Proposal 30(1)(b))?

22. **Proposal 30(1)(b)** proposes to provide a surrogate with a right to seek a declaration of parentage within three months of the birth (or stillbirth) of the child. The Law Council supports a temporal limit for such a declaration, and agrees with the ALRC that this decision should prioritise the best interests of the child in line with the paramountcy principle in the *Family Law Act 1975* (Cth) (**FLA**).<sup>23</sup>
23. The Discussion Paper sets out a range of safeguards<sup>24</sup> to ensure that a surrogate has provided informed consent and is aware of their rights and the rights of other people involved in the arrangement. Notwithstanding those safeguards, the Law Society of New South Wales considers that it remains necessary to provide an avenue for a surrogate to seek a declaration of parentage as proposed, in the event that these safeguards are not adhered to, intentionally or unintentionally, so as to

<sup>19</sup> Human Rights Council, [Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#), UN Doc A/HRC/37/60 (15 January 2018).

<sup>20</sup> Australian Government, [Why Australia prohibits commercial surrogacy](#) (Web page, undated).

<sup>21</sup> Law Council of Australia, [Review of Surrogacy Laws: Issues Paper](#) (Submission, 31 July 2025) [39]-[40].

<sup>22</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) [181].

<sup>23</sup> *Ibid.*, [190]; Law Council of Australia, [Review of Surrogacy Laws: Issues Paper](#) (Submission, 31 July 2025) [40].

<sup>24</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) See, for example, Proposals 20 and 23. In relation to Proposal 20, the Law Council has previously observed in relation to relatively specialised practice areas that it may be impractical to operate accreditation schemes compared to those typically available for relatively broad practice areas with comparatively larger numbers of practitioners. See, for example, Law Council of Australia, [Review of the Native Title Act 1993 \(Cth\)](#) (Submission No 64 to the Australian Law Reform Commission, 23 January 2015) 18-19.

cast doubt on whether the surrogate has provided informed consent to the arrangement. This option would also provide flexibility to account for any developments that may occur during the pregnancy (and after a Surrogacy Support Service has approved the surrogacy agreement, as contemplated by the Discussion Paper)<sup>25</sup> that mean that it is no longer in the best interests of the child for the intended parents to have parentage over the child conceived via surrogacy.

### Question O

When there is an application to determine legal parentage (see Proposals 30, 31, and 32), should judicial officers of the Federal Circuit and Family Court of Australia be required to consider any specific factors when determining the application? If so, what should those factors be?

24. At present, Australian law does not contain a single authoritative or comprehensive definition of 'parent'. Rather, the concept is defined in a fragmented and context-specific manner across statutes and has been developed incrementally through case law, without a definitive pronouncement of general application. This makes it challenging to specify the factors that the FCFCOA is required to consider when determining legal parentage applications.
25. In *Masson v Parsons*,<sup>26</sup> the High Court of Australia held that the definition of 'parent' under the FLA<sup>27</sup> should be determined by reference to the 'ordinary' meaning of the word, unless a specific provision of the FLA provides otherwise. The 'ordinary' meaning of 'parent' "is a question of fact and degree to be determined according to the ordinary, contemporary Australian understanding of parent and the relevant circumstances of the case at hand".<sup>28</sup> Although the FLA provides that a 'parent' is defined to include adopting parents,<sup>29</sup> those in relation to artificial conception procedures,<sup>30</sup> and surrogacy,<sup>31</sup> the legislation does not provide exhaustive classes of persons who may qualify as parents.
26. We acknowledge that there have been calls for legislative intervention to provide a clear definition of the meaning of 'parent'.<sup>32</sup> In the absence of a substantive definition or established factors for determining parentage, and noting that views and attitudes regarding the meaning of 'parent' in the context of surrogacy continue to evolve and develop, we consider that surrogacy legislation should not be the first to attempt to define the concept, even through the articulation of indicia for the FCFCOA to consider when determining legal parentage applications.

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<sup>25</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) Proposals 3-5.

<sup>26</sup> [2019] HCA 21, [44].

<sup>27</sup> Sections 60H and 60G.

<sup>28</sup> *Masson v Parsons* [2019] HCA 21, [44].

<sup>29</sup> *Family Law Act 1975* (Cth), s 60G.

<sup>30</sup> *Ibid*, s 60H.

<sup>31</sup> *Ibid*, s 60HB.

<sup>32</sup> See Richard Chisholm, 'Who is a 'parent'? The need for review of Australian laws' (2021) 34 *Australian Journal of Family Law* 7, 7.

27. If the legislation were to include factors for consideration by the FCFCOA when determining a parentage application, there would need to be consideration of some broader and more complicated issues. This might include consideration of, for example: the relevant period of time that is being considered (before the approved surrogacy agreement, after the agreement but before the pregnancy, during the pregnancy, the period after birth); whether actions, intentions and agreements are relevant to the determination; and whether the law would recognise more than two legal parents. The Law Society of New South Wales notes that it would be preferable for a specialised court to determine the relevant factors as they arise in cases before it.

### Question P

Should there be a simpler pathway to legal parentage for intended parents who have engaged in a registered overseas surrogacy agreement (see Proposal 37); and are recognised in the birth country as the legal parents of the child? For example, should legal parentage be recognised in Australia without the need for a court order?

28. A simpler pathway to legal parentage for intended parents who have engaged in a registered overseas surrogacy agreement (as per **Proposal 37**), and are recognised in the child's birth country as the legal parents for the child, is sensible and likely to provide more certainty for parents and children alike. The Law Society of New South Wales suggests this could be by way of recognition or registration similar to that set out in Part VII, Division 13, Subdivision C of the FLA for registration of overseas child orders. Alternatively, it is suggested that the provisions under Subdivision C could be explicitly extended to register the legal recognition of parentage in the relevant overseas jurisdiction.<sup>33</sup>
29. If there were to be a simpler pathway to legal parentage in these circumstances, the Law Society of New South Wales suggests that the intended parents should be required to provide evidence of legal parentage from the child's birth country.

## Streamlining processes for returning to Australia

### Question T

Are there other ways that the applications listed in Proposal 39 could be streamlined or further aligned, in terms of the process or documentation required?

30. The Law Council received feedback that clear instructions with sample or template affidavits and other similar documents may reduce errors and resulting delays. Further, it would be worthwhile to provide translated instructions and relevant templates in languages commonly used in Australia.

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<sup>33</sup> Other examples can be found in the way in which foreign adoptions are recognised under State adoptions laws. See, for example, *Adoption Act 2000* (NSW), ss 116 and 117.

### Question U

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

31. Limiting access to the streamlined process to registered overseas surrogacy arrangements or subjecting intended parents to complex or costly registration processes may give rise to some unintended practical consequences. Some intended parents may seek alternative arrangements in jurisdictions with fewer regulatory safeguards or rely on less formal processes that are more difficult to oversee. These issues may be compounded by the fact that registration requirements can have a disproportionate impact on certain groups, including single people and same-sex couples, who may face barriers to registration in particular jurisdictions. This could give rise to discrimination concerns. Consideration may therefore need to be given to whether additional flexibility or alternative pathways are required to ensure the framework operates fairly and consistently with its objectives.

### Question V

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

32. Extending access to citizenship by descent to children born through overseas surrogacy arrangements to Australian permanent residents would promote consistency with established principles of family reunification and child welfare. It would recognise the practical reality that children are often intended to live permanently in Australia with their parents and that early certainty of legal status is in the best interests of the child. Providing a direct pathway to citizenship would also reduce reliance on temporary or permanent visa pathways which can be complex, costly and protracted, and may expose families to prolonged periods of legal uncertainty. In this way, extending citizenship by descent may support timely family stability, reduce administrative burden and better align immigration outcomes with contemporary family formation practices.
33. We note that this question appears to suggest that biological children who are born overseas to permanent residents of Australia are eligible for citizenship by descent. This is not correct.<sup>34</sup> However, we would support consideration of whether all children of permanent residents—both biological children and those born through surrogacy—should be able to obtain citizenship by descent.

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<sup>34</sup> A person is only eligible to citizenship by descent if their parent was a citizen at the time of their birth. See *Citizenship Act 2007* (Cth), ss 15A-18.

## Question W

Should there be a retrospective process for children who are stateless, who have been born through overseas surrogacy to intended parents who are Australian citizens or permanent residents, to obtain Australian citizenship? If so, how would this work?

34. We recommend the introduction of a retrospective pathway to Australian citizenship for children who are stateless at birth and born overseas through surrogacy to intended parents who are Australian citizens or permanent residents. Such a pathway would address a gap in the current legislative framework and provide certainty for children who would otherwise remain without a secure nationality status. It is also aligned with the principle that a child's best interests should be a primary consideration in all decisions affecting them, particularly in relation to nationality, legal status and family unity.
35. This could be achieved through the introduction of a provision in the *Australian Citizenship Act 2007* (Cth) establishing an avenue for citizenship by descent where:
- a child is born overseas through a surrogacy arrangement;
  - the child is stateless at birth; and
  - at least one intended parent is an Australian citizen or permanent resident,
- including where the child's birth occurred prior to the commencement of the provision. Providing retrospective operation would ensure that children already affected by statelessness are not excluded from the benefits of reform.
36. Any retrospective process should be supported by appropriate and proportionate evidentiary requirements. These may include evidence of the surrogacy arrangement and intended parentage, together with statements or evidence from the surrogate, the intended parents, and any assisting organisation, in addition to standard identity documentation where available. Such requirements would assist decision-makers to assess applications while recognising the practical evidentiary challenges that often arise in overseas surrogacy contexts. The approach would also balance the integrity of the citizenship framework with the need to avoid imposing evidentiary burdens that may lead to outcomes inconsistent with the child's best interests.
37. Consistent with this approach, consideration should also be given to the identity documentation requirements under the *Australian Citizenship Act 2007* (Cth). Concessions in some cases are currently available under Australia's Humanitarian Program for applicants unable to provide standard documentation<sup>35</sup> and could, in principle, be extended to stateless children born via overseas surrogacy. Extending these concessions would recognise the comparable vulnerability of this cohort and

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<sup>35</sup> Parliament of Australia, Migration, Pathway to Nation Building (Report by the Joint Standing Committee on Migration, September 2024) 285, [9.139]. It was acknowledged that exemptions are available, however, the Committee recommended that the Department of Home Affairs develop clear exemption guidelines that recognise the importance of providing a pathway for refugees to establish their identity claims when documentary evidence is unobtainable, while minimising the risk of fraud.

reduce the risk that children are denied citizenship outcomes due to circumstances beyond their control.

38. In addition, given the lengthy processing times often associated with applications involving statelessness or complex identity issues, we recommend establishing an expedited processing pathway for these applications, subject to all mandatory documentation being provided at the time of lodgement. Timely decision-making is particularly important in matters affecting children, as prolonged delays can undermine family stability, access to services and the child's sense of legal and personal security.
39. International obligations are also relevant to this question. Under article 7 of the CRC, children have a right to acquire a nationality immediately after birth. Australia is also party to the 1954 Convention relating to the Status of Stateless Persons<sup>36</sup> and the 1961 Convention on the Reduction of Statelessness,<sup>37</sup> both of which contain relevant obligations.<sup>38</sup>

### Question X

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

40. We support the introduction of an expedited temporary visa to enable children born through surrogacy to travel to Australia. This would provide an interim migration solution in circumstances where a fast-tracked pathway to citizenship or permanent residency for children born stateless through overseas surrogacy arrangements (as discussed in response to Question W) is not introduced or is not immediately available.
41. The availability of a temporary visa would allow the child to enter Australia lawfully while their longer-term status is resolved, including by enabling consideration of any onshore pathways to permanent residency or citizenship that may be available. This would provide greater certainty and stability for both the child and the intended parents during what can otherwise be a prolonged and complex process.
42. An expedited temporary visa would also reduce the risk of extended separation between children and their intended parents, particularly in cases where delays arise due to citizenship, parentage or documentation issues associated with overseas surrogacy arrangements. In this way, such a visa would operate as a practical safeguard, ensuring that children are not left in legal or geographic limbo while longer-term migration outcomes are determined.

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<sup>36</sup> Opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960).

<sup>37</sup> Opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975).

<sup>38</sup> See, eg, article 4 of the Convention on the Reduction of Statelessness.

## Other considerations

### Support getting started

#### *Psychological Assessment and Counselling*

43. We understand that counselling for surrogates and intended parents is widely recognised as a foundational element of ethical surrogacy practice.<sup>39</sup> It plays an important role in promoting participants' informed decision-making, emotional preparedness and resilience throughout the process.
44. For example, in the ACT, there are requirements on service providers to offer counselling before providing treatment.<sup>40</sup> This counselling must be provided by appropriately qualified professionals who are independent of those service providers. The requirement for independence is an important safeguard, as it promotes objectivity and helps to protect all parties from undue influence.<sup>41</sup>
45. This approach is reinforced by the Australian and New Zealand Infertility Counsellors Association (**ANZICA**) in its submission to the ALRC as part of the current review of surrogacy laws.<sup>42</sup> ANZICA recommends that counselling be provided at key stages of the surrogacy process for all parties, recognising the “significant psychosocial impact” that surrogacy arrangements can have over time,<sup>43</sup> and highlights the importance of clearly distinguishing such counselling from psychological assessment for evaluating suitability of engaging with surrogacy.<sup>44</sup>

#### *Requirement for criminal history checks*

46. If criminal history checks are to be conducted for surrogacy arrangements (see **Option 19.2** and **Question E** of the Discussion Paper), consideration should be given to the appropriate scope and thresholds for these checks, including how they can be designed to remain targeted and proportionate and to avoid creating unnecessary barriers for intended parents or surrogates or disproportionate impacts on specific communities.<sup>45</sup>
47. The ACT Law Society notes that consideration could be given to whether aligning any checks used in surrogacy frameworks with risk categories applied in related areas, such as adoption or foster care, would promote greater consistency across child-focused regulatory systems. Alignment of this kind may assist in clarifying expectations and supporting community confidence in the overall framework.

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<sup>39</sup> See, eg, Rafal Zadykowicz, Katie Watson, Aris Antsaklis, ‘FIGO position statement on surrogacy: Ethical considerations’ (16 September 2025) 171(2) *International Journal of Gynecology and Obstetrics* 588, 3.1.

<sup>40</sup> *Assisted Reproductive Technology Act 2024* (ACT), section 23. See further ACT Government, [Entering a surrogacy arrangement](#) (Web Page).

<sup>41</sup> See also see National Health and Medical Research Council, *Ethical guidelines on the use of assisted reproductive technology in clinical practice and research* (2017, updated 2023), 25-6 [4.3].

<sup>42</sup> Rebecca Kerner, ANZICA Submission No 277 to Australian Law Reform Commission Review of Surrogacy Laws (June 2025) 7.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*, 8.

<sup>45</sup> See, eg, Bronwyn Naylor, Georgina Heydon, ‘Criminal records, discrimination, and Aboriginal communities: Enhancing employment opportunities’ (2 October 2022) *Journal of Criminology* 55(4).

## Support when the child is born

### *The surrogacy register*

48. **Proposals 34 and 35** outline the requirements for a surrogacy register to allow people born through surrogacy access to information relating to key individuals who contributed to their birth, including surrogates.
49. The ACT Law Society considers that surrogacy agreements could also include registrable information that can be accessed by the child later in life to promote transparency and support the child's right to identity, matters that have been recognised in other jurisdictions and in the international legal framework.<sup>46</sup> The *Surrogacy Act 2010* (NSW) may be considered as a relevant example for requiring that surrogacy arrangements include details that can be recorded and retrieved in the future.<sup>47</sup> Robust privacy protections should also be maintained for all parties involved.

### *Surrogacy register content*

50. **Question R** queries whether **Proposal 34** captures all the appropriate and relevant information that should be included on the surrogacy register.
51. The Law Council received feedback that the surrogacy register should include medical and genetic information, where relevant, particularly in cases where the surrogate uses her own egg. Access to this information may be vital for the child's long-term health and identity rights by ensuring they have accurate details about their genetic heritage if needed for medical or personal reasons. This is not a novel concept. For example, we understand New South Wales law already requires documentation about conception and donor details as part of parentage order applications.<sup>48</sup> The ACT Law Society considers that collecting and storing this information can be done effectively while maintaining privacy safeguards in order to promote consistency, uphold the child's right to know their origins, and support informed decision-making throughout their life.

### *Compensation beyond reimbursement*

52. **Proposal 25** sets out a proposed framework for compensation which aims to acknowledge the full scope of the financial costs involved in being a surrogate.
53. As also acknowledged in the Discussion Paper,<sup>49</sup> evidence suggests that most intended parents would prefer domestic arrangements for surrogacy but are driven

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<sup>46</sup> Mia Dambach and Nigel Cantwell, *Child's right to identity in surrogacy* (Edward Elgar Publishing, 2022) Ch 6. Also see Elaine O'Callaghan, 'Surrogate Born Children's Access to Information About Their Origins' (22 July 2021) 38(1) *International Journal of Law, Policy and the Family* 00, 1-2, 3-6.

<sup>47</sup> *Surrogacy Act 2010 No 102* (NSW), ss 55-57.

<sup>48</sup> *Surrogacy Act 2010 No 102* (NSW), ss 24, 37. Also see *Assisted Reproductive Technology Act 2007 No 69* (NSW), s 41B.

<sup>49</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) 5 [21].

overseas by scarcity and complexity.<sup>50</sup> Reasonable support payments may increase domestic surrogacy availability and reduce reliance on overseas arrangements. However, we note existing laws already allow for reasonable expenses to be covered (although not uniform in approach),<sup>51</sup> and any move beyond reimbursement would also need to be accompanied by robust safeguards to prevent exploitation or undue inducement.

54. Question M asks whether an “additional support payment ... to recognise the surrogate’s time, effort, inconvenience and unique contribution” should be allowed. The Law Council takes no position on this question, other than to note again that additional payments would need to be carefully balanced to avoid exploitation risks.

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<sup>50</sup> Ezra Kneebone, Karin Hammarberg, Kiri Beilby, ‘Surrogates’, intended parents’, and professionals’ perspectives on ways to improve access to surrogacy in Australia’ (4 July 2024) 38(1) *International Journal of Law, Policy and the Family*, 3.

<sup>51</sup> Australian Law Reform Commission, [Review of Surrogacy Laws](#) (Discussion Paper 89, November 2025) [160].

## About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 107,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is [www.lawcouncil.au](http://www.lawcouncil.au).