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**SUBMISSION – REVIEW OF SURRAGACY LAWS
DISCUSSION PAPER 89 NOVEMBER 2025**

1. Thank you for the opportunity to comment on this well written discussion paper.
2. Firstly, I wish to state that it is my belief that surrogacy does not take into consideration whatsoever the needs or wants of a future child not yet born. The fact that it's own mother, sometimes providing her own egg and sometimes not, is not and will not, in the future, be the child's mother may be quite traumatic in itself both for the mother and child. So when the paper refers to what is best for the child, it really is trying to make the best from a situation that is not born from a mother and father co-creating a child that is then carried by the mother who will be the child's legal parent.
3. Secondly, I will not go into the morals of whether surrogacy should or should not happen but wish to say that if God intended for two people to have children, he would have made it happen. A child deserves to have a male father and a female mother, because each of them give the child what the other can't. That is not to say that intending parents will not or are not good parents, and that they do not love the child. It just means that if you look at nature, it actively selects who will be reproduced from. Surrogacy is a forced creation of a child into an environment where naturally, in most cases, it would not happen.
4. Thirdly, putting personal views aside, I will make observations on the regulatory side of surrogacy in Australia following the headings in the discussion paper. But before I do, I wish to talk about commercial surrogacy first and whether or not what is being proposed is in fact commercial surrogacy.
5. Commercial surrogacy is "when a surrogate gets a financial profit, gain or reward for the surrogacy (paid for more than their reasonable costs). This is illegal in

Australia.”¹ A Gonzales, published a paper,² in the United States, where it is documented that:

“Commercial surrogacy is any arrangement in which the woman is compensated for her services beyond reimbursement for her medical expenses. This is the opposite of altruistic surrogacy, an arrangement in which a woman volunteers to carry a pregnancy to term without receiving any compensation. Altruistic surrogacy mostly occurs between close family members and friends. Commercial surrogacy, on the other hand, is a thriving business where surrogacy professionals work on a person or couples behalf to find all the components necessary to fit their individualized needs and bring their child into the world.”³

6. The discussion paper refers to surrogates being compensated for “medical expenses” but it does not stop there. It suggests “monthly payments”, “suffering payments”, “hardship payments” and “losses”. These extra payments that go over and beyond the medical needs of a person, all else are payments that fit into definition of commercial surrogacy.
7. The aim of Government is to ensure there is no commerciality to surrogacy in Australia. It also wishes to diminish the possibility of intended parents to take advantage of a surrogate and exploit her. The proposals in this paper have swung the pendulum the other way, in that the surrogate is now in the driver’s seat making a profit, monetary or otherwise from the desperate intended parents. Just because something is called a “hardship payment” or bodily “pain payment”, does not take away the fact that they are payments that are over and above the reimbursable “expenses” for carrying and birthing a child. Those payments or services rendered for the surrogate that have very little direct bearing on the carrying or birthing a child will be exploited and those surrogates will be making a profit from the already expensive exercise for the intended parents.
8. A surrogate can opt to have her house cleaned, meals delivered, child care paid for and compensated for not being able to make a living. This in effect is commercial surrogacy. The fact that you need legislation to tell you that a ‘hardship payment’ (with an open cheque book) is not ‘for profit’ proves that point. A surrogate should not be ‘out of pocket’ but for her to have goods and services that an average pregnant women does not is an over-reach and goes against Governments ban on commercial surrogacy. Just because it is not called commercial surrogacy does not mean it is not.

Comments on Discussion Paper

¹<https://www.surrogacy.gov.au/terminology#:~:text=Commercial%20surrogacy,This%20is%20illegal%20in%20Australia.>

² https://www.law.georgetown.edu/genderjournal/wpcontent/uploads/sites/20/2019/11/Alicia_Surrogacy-6.pdf

³ Alex Finkelstein, et al., Surrogacy Law and Policy in the U.S.: A National Conversation Informed by Global Lawmaking, COLUM. L. SCH. SEXUALITY & GENDER L. CLINIC 5 (2016), https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/columbia_sexuality_and_gender_law_clinic_-_surrogacy_law_and_policy_report_-_june_2016.pdf

Institutional Framework

Proposal 1:

- 1.1 Surrogacy should be regulated by Commonwealth Legislation not states. This will ensure consistent application of law, regulations and policies in an area that is small, complex and specialised.
- 1.2 Legislation should establish a National Regulator over empowering existing agencies or department to ensure consistent application of legislation.
- 1.3 (a) Agree, a regulatory framework should be structured to outline what can and cannot be done in legislation
(b) the detail MUST be dealt with by the National Regulator and NOT an alternative.
- 1.4 Option 1.1 is preferred – states and territories to refer powers to the Commonwealth Parliament, followed by the Commonwealth implementing federal surrogacy legislation – this will allow consistency, streamlining, no time lags and ability to change legislation as is needed over time quickly.
- 1.5 Agree.

Establishing a National Regulator

Proposal 2

9. 2.1 Legislation should create a regulatory framework for surrogacy, with the National Regulator, and not alternative) holding the following functions and responsibilities:
 - a and b – Yes, standard setting
 - c and d – Yes, compliance
 - e to h – No - oversight of surrogacy agreements – this should be undertaken by the National Regulator and not be farmed out to a Surrogate Support Organisation (SSO). In fact it is not a good idea to have SSO's because we will have the same problem to that of National Disability Insurance Scheme (NDIS) providers in that they abuse the system. The industry of surrogacy is so small that it would be prudent to keep the matter within one agency, a one stop shop to cater for the needs of the surrogate and intended parents, it is where all information should come out of and go into, all information that is needed to be collected, debated, decided upon. By allowing SSO's to take over this role, it would create a true conflict of interest in that they would want to promote surrogacy just to keep their business model going.
 - i to m – community awareness and information provision – no – this is a waste of public funding. The industry is so small, those individuals who wish to know

something about it should contact the National Regulator being the one stop shop of information for intended parents, surrogates, health professionals.

10. 2.2 Responsibility for administering the regulator framework should sit with Option 2.1 the National Regulator for consistency.

Question A

11. There needs to be a national surrogacy oversight body.
12. Don't waste money on educating the public or improving public awareness about surrogacy in Australia. Provide resources and let those that are interested access them.
13. Accountability - have an independent board to ensure that money is not being spent on product or services that are over the top and unnecessary. Have clear policies on what the role of the National Regulator is and stick within those boundaries. No person or organisation with a conflict of interest should partake.
14. To achieve transparency, National Regulator would need to provide an annual report each year tabled in Parliament with enough detail about the legislative and regulatory areas to enable parliament to make any necessary changes. Although personal data would be confidential, enough information needs to be provided to paint a true picture of what is happening – ie how many persons have applied more than once, how many surrogates have been registered to be surrogates more than once, how many intending parents did not meet the criteria.
15. There is no reason why the National Regulator would not be a preferred option, but in the event that it is not, then another regulator such as the Organ and Tissue Authority may be appropriate. There is little point in spending public money for a very matter within our society. An existing regulator would be cost effective and already familiar with what could or would be expected of it. If not, easily adapted to it's current functions.

Permitting and Regulating Surrogacy Support Organisations

16. No, legislation should not enable SSO's to be established. Adding another layer of bureaucracy, inefficiencies and watering down it's role is completely a waste of time and money for all involved.
17. Public funding should NOT be used to:
 - 3.1, No, facilitating introductions or 'matching' intended parents and surrogates.
 - 3.2, No, it should not be the job of National Regulator to waive residency and citizenship requirements. Those should be placed in legislation and dealt with through the normal existing channels.

18. The National Regulator or existing National Regulator could undertake:

- 3.3, Yes – co-ordinating counselling,
- 3.4, Yes – assessing and approving surrogacy agreements,
- 3.5, Yes – providing information and case management services,
- 3.6, Yes – facilitating conflict resolution, and
- 3.7, Yes – holding funds.

Question B

19. Minimise overlap by allowing an existing National Regulator to add this portfolio under its existing structure. Do not set up SSO's as they will be profit driven, especially privately owned ones. The discussion paper states that "the mere fact that "restrictions on advertising and on professional matching services make it difficult for parties to connect" makes a perfect point that by establishing SSO's surrogacy will become commercial, because unless the parties know each other ie the intended parent and willing surrogate, why would a complete stranger allow to get herself impregnated within an embryo or give on of her eggs up for this exercise and not get anything in return. I refuse to believe that complete strangers would be happy to offer their womb purely out of the love they have for the complete strangers.
20. SSO's should not be established and private SSO's should definitely be off the table. For profit and capped fee organisations are still there to make money. For reasons outlined above and for Federal Government to ensure the parties to the surrogacy agreement are not exploited by SSO's or any other organisation that is not a National Regulator. The Federal government needs to be responsible, not some private company trying to make money from, on one hand, desperate intending parents and on the other, opportunistic surrogates.
21. To avoid coercion and influencing individuals into surrogacy, do not allow the establishment of SSO's. This will eliminate the spiralling of money being drained from intending parents and attracting surrogates into their role for all the wrong reasons.

Approving Surrogacy Agreements

Proposal 4

22. 4.1 and 4.2 Yes, but it is the National Authority that needs to verify that the agreement is true and accurate.

Proposal 5

23. 5.1(a) and (b) – No, approval should be done only by the National Regulator. Parties should meet with National Regulator face to face to ensure that potential red flags are dealt with early in the application process. As we are talking about an agreement that will create another human being, it is important that the rubber stamping does not happen without the National Regulator meeting with the

intending parents and surrogate. Supporting evidence should be reviewed by National Regulator.

24. 5.1 (c) – No ,there should not be a presumption in favour of approving a surrogacy agreement if all requirements are satisfied.
25. 5.2(a) and (b), No, when a surrogacy agreement has been approved it should not proceed on the administrative pathway, and intended parents should not be the child’s legal parent at birth. This will be problematic in situations where the birth mother does not wish to relinquish the child, or in instances where the child may be born with medical issues and the intending parents change their mind as to wishing to have the child as their own.
26. 5.3 Yes, but would add that ALL surrogacy arrangements should go through the legal pathway to ensure that there is consistency in treatment of all participants equally.
27. 5.4 No, all approvals of surrogacy arrangements should go through the National Regulator to ensure that all cases are treated consistently.

Question C

28. No, SSO’s are NOT an appropriate body to approve surrogacy agreements. This responsibility should lie with the National Regulator for the purpose of consistency and fairness to all parties across Australia.

Ensuring compliance with operational requirements

Proposal 6

29. 6.1 No, this will go against their ‘for-profit’ agenda, SSO’s should not be given the task of approving surrogacy agreements as it’s a conflict of interest to do so. This will be another disaster story similar to NDIS providers in each state and territory. Why create a problem where it does not need to be.
30. 6.2 No, the best way to ensure compliance with prohibition is not to give the power to an SSO in the first place.

Increasing Awareness and Education

Proposal 7

31. 7.1 No, it is a waste of public funding to be promoting information on surrogacy across Australia. Yes, develop the information, yes be the one stop shop for information about Australian surrogacy and overseas, but do not waste tax payer money on promoting something that affects a smidgen on tax payers in this country.
32. 7.2 Yes, the National Regulator should develop educational materials and make them available for those healthcare professionals who need them but do not spend time or money on promoting within hospitals etc. as it is not an effective way to spend public money.

33. The National Regulator should be a ‘one-stop shop’ for all things surrogacy. This ensures that the correct message and information is provided to all the right parties, resources are not wasted, in fact well utilised. Consistent rules and application.

Parameters of Lawful surrogacy

Criminal Law in the surrogacy context

34. The discussion paper talks about commercial surrogacy being a criminal offence. The Federal government must look more closely on the proposals of this document because it does in effect promote commercial surrogacy. By the mere fact that it tries to develop a ‘matching’ service, there must be something for the surrogate to enter an agreement in cases where she does not know the intending parents from a bar of soap when she registers her interest. Unless you know the intending parents and want to help them, I doubt individuals carry a baby for 9 months for no benefit at all.
35. Nothing will stop the ability of people exploiting each other where there is a good (the human child) being exchanged for goods and services (for the surrogate).
36. No civil or criminal penalties will stop people from finding loop holes to abuse the system, the intended parents and intended surrogates. It is important to create a surrogacy system that minimises the ability of criminal activity taking place in the first time rather than punish persons afterwards.

Prohibited domestic surrogacy arrangements

Proposal 8

37. This proposal is counterproductive and hypocritical. How can the government, through proposals in this discussion paper, on one hand allow the payment of “hardship” money by the intending parents to name an example and then outlaw commercial surrogacy. Just because you do not call something ‘commercial surrogacy’ does not mean that it is not by the virtue of what is being allowed.

Unregistered overseas surrogacy arrangements

Proposal 9

38. 9.1 How will you prove that an intended parent “intentionally or recklessly engaged in overseas surrogacy arrangements” without first registering the arrangement with a registration entity. How will agencies ensure that intending parents know about this legislation and how will it be enforced to persons who Australia will now know they are going to ‘pick up their baby.’
39. 9.2 It is not well understood why there would be a civil penalty versus a criminal one. So it's the case of, I don't want to see it done on my turf, but if you want to do it somewhere else you can.
40. How will you ensure that an agreement overseas is not exploitive when it is an exchange of money for a baby.

Facilitation of prohibited surrogacy arrangements

Proposal 10

41. 10.1 Yes, legislation should prohibit individuals/organisations from intentionally or recklessly facilitating, inducing or procuring etc person prohibited arrangements. However, if SSO's are established, there will be a conflict and high potential for conflict of interest and competing priorities ie what is best for the business vs what is best for the surrogate or intending parents. This is supported in paragraph 96 of the discussion paper.
42. 10.2 Compliance should be enforced with option 10.3 – A combination of civil penalties and criminal sanctions.
43. WA has this month passed amendments to the Surrogacy Act 2008 (WA) offering the following offences:

Clause 8 - Offence making surrogacy arrangement this is for reward.

Clause 9 - Reward for introducing parties for surrogacy arrangement

Clause 10 - Publishing willingness to make surrogacy arrangement that is for reward.

Clause 11 - Services connected with surrogacy arrangement that is for reward.⁴

Support Getting Started

Connecting intended parents and surrogates

Proposal 11

44. 11.1 and 11.2 – No, advertising should not be permitted as it makes the activity seem like a transaction between strangers to create a human. Parties should know each other and have some kind of relationship to one another and then all approach the National Regulator indicating that all parties wish to partake.

Threshold requirements for a surrogacy arrangement

45. Threshold requirements need to be consistent across all jurisdictions.

Proposal 12

46. 12.1 Agree.

47. 12.2 Agree.

Proposal 13

48. 13.1 No, a person should not have access to surrogacy due to a 'psychological reason' or "social need". Gay men, single men and persons with tokophobia should not have access to surrogacy because without this technology those individuals would not have conceived in any event. It would be physically impossible for a

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[https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_49114.pdf/\\$FILE/Surrogacy%20Act%202008%20-%20%5B00-e0-00%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_49114.pdf/$FILE/Surrogacy%20Act%202008%20-%20%5B00-e0-00%5D.pdf?OpenElement)

single or gay man to be pregnant and the person suffering from tokophobia would also not conceive due to fear of being pregnant or giving birth.

49. How will the regulator be able to assess whether or not a person has psychological reasons, will those psychological reasons affect the person's ability to care for the child after it is born? Is allowing a person with psychological issues in the best interest of the child? What about the person who has a 'social need', does this include a person who just does not wish to carry a child as it may provide stretch marks or the inconvenience of carrying a child for nine months? If the government is going to accept such ridiculous reasons, it might as well just open the flood gates and allow anyone and everyone to apply for surrogacy.
50. 13.2 Yes, the National Regulator can dispense with the requirement but for good reason, and those should be documented in the Annual Report each year.

Proposal 14

51. 14.1 Yes, agree that a surrogate must be at least 25 years old and have legal capacity to make informed decision.
52. 14.2 No, an intended parent should be older than 18. They should be at least 25 years old and have legal capacity to make an informed decision. An 18 year old having capacity to make decisions does not mean that they are mature enough to do so. It is discriminatory to think that a person wishing to be a surrogate should be 25 years old while the person asking her to do so could only be 18. The age of intended parents should be at least 25 years, a person at 18 has only been a child at 17 themselves. They need the maturity to understand the consequences of the undertaking which is life altering and life committing.

Citizenship and residency requirements

Proposal 15

53. 15.1 Legislation should provide that BOTH intended parents must be either an Australian citizen or permanent resident. This requirement should not be dispensed with by any organisation.
54. 15.2 No, State and Territory legislation should not be repealed.

Proposal 16

55. 16.1 Yes, legislation should provide that the surrogate must have previously carried a pregnancy and given birth to a live child, this will ensure that the person is aware of what is involved in addition being able to physically carry a child amounting to a live birth.

56. 16.2 No, the requirement should not be dispensed with for the reasons listed above. If you allow a woman to become a surrogate who has never carried a child before and never given birth to a live baby, may not be prepared for the physical or emotional toll that being a surrogate will have. It will also diminish her ability to make an informed decision because she would not have been able to ascertain what is involved and whether she will be physically, mentally and emotionally prepared for what is ahead. Allowing women to carry babies without having one previously opens up a Pandora's box. The only way you could have this provision if there are strict guidelines or policies that would need to be met by the mother to ensure that she knows what she is agreeing to. A psychologist might be able to assess a person as able and willing to become a surrogate only to later the surrogate freak out as to what she signed up for. The risks associated with surrogates who have not given birth in the past will be higher from an emotional and psychological view point and may always be present for the duration of her life.

57. Proposal 17

58. 17.1 Yes, a surrogate must undergo a medical assessment by an independent medical practitioner. The Regulator should be tasked with:

1. developing a policy and checklist that the independent medical practitioner will use;
2. accredit independent medical practitioners who will assess the surrogates.

59. This will ensure that a) surrogates are being assessed against specific criteria and b) medical assessments will be undertaken consistently.

60. 17.2 Assessment results should be provided by the medical practitioner directly to the National Regulator not an SSO.

61. Surrogates can have information disclosed to them, but those medical reports must be registered with the National Regulator, not an SSO. This will prevent surrogates or intended parents to 'shop around' for a medical practitioner to be deemed 'suitable' as a surrogate.

Proposal 18

Requirement for psychological screening

62. 18.1, Yes, all parties to go through psychological screening including the risk they pose to the yet to be born child.

63. 18.2, Yes, agree that all parties must disclose current or previous diagnosed mental health conditions. What kind of mental health conditions? Level of severeness? Any penalties for not disclosing? Who takes responsibility if the surrogate, due to her mental health issues volunteers to be a surrogate, does not disclose the condition/s and births a baby after which her mental disorder becomes evident in ie. Wishing to keep the baby etc.

64. 18.3, Yes, the independent psychologist must provide their report to each of the parties. It is not clear from the report as to whether the report on each person involved will be given to all the other parties, or whether it is a report between the individual affected and the organisation that needs to be informed.
65. What happens if parties do not disclose mental health issues? Are there any penalties/consequences?
66. National Regulator should develop guidelines/policies/checklist that will assist psychologists in determining whether a person is fit for the surrogacy agreement. What happens if one of the parties is not a fit person to be eligible for surrogacy agreement? Will reasons as to why be revealed? To whom?
67. The report should go and be registered by the National Regulator. That way, parties to the proposed agreement cannot 'shop around' for someone who will 'tick the box'.
68. Independent psychologists should, as should be the case with medical practitioners, be accredited and registered with the National Regulator.

Question D

69. Yes, all parties must go through a psychological assessment. The assessment cost should not be placed on Medicare.

Requirement for criminal history check

Proposal 19

70. Option 19.2 yes, legislation should require intended parents to undergo a criminal history check. The surrogate should be added also. The question as to whether any party should be privy to the police report needs to be answered, ie, one of the parties may not wish to proceed if someone has a criminal history.

Question E

71. If option 19.2 is chosen, it should not be limited to specific offences, it should be ALL offences.
72. The purpose of the criminal history check is to ensure that ALL parties, can see who they are dealing with. The individual is either allowing a human child to be carried by the criminal or the surrogate could be carrying a child for a criminal. Either way, parties need to have those details disclosed to each other so that they can make an informed decision that they are happy to proceed, regardless of what the criminal history is or otherwise. The discussion paper does not mention as to whether or not having a criminal history is a deal breaker for not being able to have a surrogacy agreement as far as the National Regulator is concerned.
73. The decision as to whether a surrogacy agreement should go ahead should be made by the National Regulator.

Legal advice requirement for intended parents and surrogates
Proposal 20

74. 20.1 Yes, but add that EACH individual to the surrogacy agreement must have independent advice. This would also include the partner of the surrogate if they have one. A decision needs to be made whether individual advice means ‘intending parents as a couple’ or as ‘individuals’.
75. 20.2 Yes, but I would also add discussion of consequences of agreement and some drawbacks/pitfalls of provisions.
76. 20.3 No, the accreditation should be given by the National Regulator. If each jurisdiction needs to do this, then the policies, guidelines etc would need to be rolled out consistently across Australia.

Proposal 21
Implications counselling requirement for intended parents and surrogates

77. 21.1 Yes, agree but the intended parents need to have counselling separately and together as a couple (if applicable), the same would go for the surrogate (and her partner, if they had one).
78. 21.2. Yes, who pays for the counselling? It should not be Medicare.
79. 21.3 Yes, agree that the counsellor provides a written confirmation that matters and consequences were discussed. However, consequences should be also discussed by the legal professional not just the counsellor, as the legal professional will provide legal advice if something should go wrong. The report must be filed with the National Regulator.

Question F

80. Yes, surrogates partner should undergo implications counselling because what the surrogate is embarking on will 100 Percent affect the partner.

Question G

81. Yes, there should be mandatory counselling for all parties, at least 1 pre-birth and at least 3 post-birth for all parties a month apart. This will allow parties to have the time and space to bring up any issues they have.
82. As to whether this is a private or Medicare expense, treat it in the same manner as those persons who do IVF. If it is included on Medicare for IVF, then allow it for surrogacy.

Surrogacy Agreements
Requirements for a complaint surrogacy agreement

83. 22.1 Yes, Legislation should not provide what constitutes a compliant and eligible agreement, however, it is the National Regulator that must be the body that determines who is eligible based on the following criteria.
- a) – in writing,
 - b) before surrogacy is attempted,
 - c) permitted payments (to me this looks like commercial surrogacy
 - d) – whether hardship payments are included. What happens if the surrogate changes her mind mid-term? Will the intending parents be forced to comply?
 - e) ongoing counselling at intended parents cost – yes but define ‘reasonable’ ie in instances where the surrogate is traumatised by giving up the baby she carries, and needs 6 months, a year or 5 years to continue receiving counselling. When enough is enough? There either needs to be a time or number of visits provision to cap this expense for all parties involved. Maybe legislation should state a maximum of 4? And then parties need to pay for their own sessions.
 - f) surrogates autonomy
 - g) threshold requirements met
 - h) Just because someone has gone through the motions and the boxes are ticked, does not mean that they should automatically be capable of entering an agreement.
84. Just because the boxes have been ticked, does not mean that intending parents or surrogate should be allowed to go ahead with the agreement. The National Regulator must declare that the agreement should go ahead, not be dictated to by a series of documents. Someone needs to make an assessment looking at all the available evidence.
85. 22.2 Yes, Legislation should provide that evidence of requirements should be attached to surrogacy agreement. The ‘devil’ is in the detail, ie will the reports (medical, psychological, legal etc) just outline that the person/s meet certain criteria or will details of particulars be included? Because they should be. The Regulator should take all evidence into consideration that has enough detail to make a proper judgement.

Question H

86. Yes, there are other things that the agreement should include such as:
- a) Whether intended parents/surrogate agree on surrogate being part of child’s life, and if so, in what capacity.
 - b. What course of action is there available in event that an agreement term is breached. Is it contract law? Will mediation be available and if so who will pay for it? Which terms of the agreement can be reviewed or changed if at all.
 - c. Will surrogates medical history be revealed to intending parents/child.
 - d. Who is the legal guardian of the child between the time of birth and intending parents being deemed legal parents.

- e. What happens if surrogate changes her mind, or if the intending parent, if there is only, dies before the baby is born.
- f. Subject matter that should be included would be thing such as contact the surrogate can have with the intendent parents or child after birth, is it weeks or years or not at all.
- g. Can a surrogate be a surrogate more than once?
- h. At what stage does the surrogate physically hand over the baby?
- i. If surrogate has autonomy over her body, can she leave the sate and go into hiding to have the baby?

Proposal 23

- 87. 23.1 Yes, legislation should allow surrogates right to autonomy etc.
- 88. 23.2 Yes, legislation should require that statement re above be included in the surrogacy agreement, for agreement to be compliant.

Enforcing surrogacy agreements

- 89. 24, Yes, surrogacy agreements that comply with legislative requirements should be enforceable, unless provisions are unlawful.

Question I

- 90. No, agreements that do not comply with legislative requirements should not be enforceable. Otherwise, people will write in them whatever they like.
- 91. No, agreements with unlawful provisions should not be enforceable.

Question J

- 92. All provisions should be enforceable.

Question K

- 93. Alternative Dispute Resolution clause should be included in the agreement before going to court, time consuming, costly and emotionally draining.

Support through the surrogacy journey

- 94. Whoever wrote paragraph 157 knew clearly that they were trying to gain support for 'hardship payments' by mixing into the paragraph payments for 'extraordinary medical complications'. Paying someone for discomfort of being pregnant versus a medical emergency or complication are very different and should not be considered together. If there is a medical need, a medical expense, then the intended parents should pay for it.

95. Intended parents should only be charged for the real and reasonable medical expenses of the surrogate. If the surrogate is not making her body available for 'profit', then she will not have a problem with this arrangement.

Proposal 25 – THIS IS THE MOST DANGEROUS PROPOSAL IN THE DOCUMENT

96. 25.1 No, it is mind boggling to read it being suggested that a surrogate will be paid what is called 'hardship payments' for the 'discomfort, pain and suffering'. I do not know of any female that is getting paid by her husband for the task of carrying their own child and going through labour. **If legislation allows for 'hardship payments to be made', then in effect legislation is allowing and promoting 'commercial surrogacy'**. A payment in exchange for the inconvenience of carrying the baby to term. Just because legislation states that a 'hardship payment' is not for 'profit', it does not mean it is not 'commercial surrogacy'. You cannot have legislation that states you should not make a profit from surrogacy on one hand and then allow monetary payments to be made for things that you cannot provide invoices for, ie pain.
97. 25.2 If the government's aim is to prevent commercial surrogacy, then it really needs to rethink proposal 25.
98. These provisions are too loose. How do you define 'reasonable' expenses of the surrogate and her partner if she has one. The wording is too loose when it refers to 'this must include, but is not limited to'.....certain costs. This whole area opens up the intending parents to being abused by the surrogate, taken advantage of in a financial way. Apart from expenses directly related to surrogacy, that would be refunded via the trust money, should not be funded by intending parents. **It is nothing more than exploitation of the parents to be and it will be done so legally.**
- j. Yes - Assessments
 - k. Yes - Medical. No – wellbeing – what is that? Yoga? Massages? Spas? Holidays?
 - l. No, Pregnancy related items – what does dietary items mean? – Lite and Easy delivered to your door for breakfast lunch and dinner for 9 months?
 - m. No – care of dependants – so a surrogate can stay home all day and have her existing 3 children taken to day care free of charge? Because the intending parents will be paying it?
 - n. NO – meals should not be delivered and surrogate should not have a house cleaner cleaning her house.
 - o. Travel and accommodation for surrogate and support person? For what? How often? Is it related to a medical appointment or birth or do we just want to go to Bali for rest and recuperation at a resort for a week?
 - p. Loss of earnings – is that because the person needs to stop work for medical reasons? Or can they just stop work full stop? Can the surrogate get this payment even if she was not employed at the time of signing the agreement or during her pregnancy? Is it just during a week before birth and 3 after?
 - q. No, health life and income protection insurance- how long for?
 - r. ? Birth support – what does that entail?

- s. Product or service recommended – such as? massages, aromatherapy. Product such as a massage chair?
- t. Medical expenses after birth – that's ok.

Scenario:

Provision 25.2 allows me to stay at home and get paid to do so (loss of earnings), my kids taken to daycare every day for free, all my meals and my family meals delivered, I go and have massages, pilates, go swimming during the day. I then need travel and accommodation paid for to Bali as I have a stressful life carrying the child. I have all my health care insurance paid for, I can go and see a counsellor whenever I like.

- 99. This is nothing less than commercial surrogacy. Paying someone to have your baby.
- 100. 25.3 There needs to be a list of things that parties agree to pay for. Extension of expenses, although voluntary and all parties must agree to , opens up a pandora box of future problems. Intending parents are going to feel pressured to pay for things they may not wish to do because the surrogate is carrying their child.
- 101. 25.4 – Yes, the National Regulator (the only body who should have this role) should develop standards and guidelines as to what cost is allowed to be claimed. There needs to be enough details so as to the intending parents are going into the agreement with open eyes. The checklist needs to be specific enough in terms of service or good, duration of the service, cost of the good or service capped etc... to ensure exploitation is kept at a minimum.
- 102. 25.4 Absolutely NO monthly allowance should be given. Instead, develop a phone app where the surrogate can put in what she is spending her money on and reasons why, and particulars. This would be recorded in real time. This would provide ease of use of app for the surrogate, quick transaction times and incoming parents knowing what is being claimed. Will intending parents have a say as to what costs are paid out of their trust fund?

Question L

- 103. Yes, caps should be set by the National Regulator only. Those costs should only be recovered for specific costs.
- 104. NO!, Monthly allowance should not be created under legislation as it will lead to intending parents being exploited as a result. The reason why there is a barrier to surrogacy in Australia is because it is not commercial, there is no incentive for women to become surrogates apart from the goodness of their heart. Providing payments called 'costs' is in effect paying someone to do the deed. If legislation will allow for monetary payments without invoices that are not related directly to surrogacy itself, then it is commercial surrogacy and therefore, just call it that. It is hypocritical to suggest that Australia does not support commercial surrogacy but then allows for money to come into the surrogates pocket through either monthly payments or payments for services such as child care, travel, accommodation, house cleaning and goods such as meals delivered.

**Reimbursement for hardship, at the surrogates election
Proposal 26**

105. 26.1 You cannot have legislation stating that a person, the surrogate, cannot make money via the surrogacy agreement, yet the same legislation allows for the intended parents to be exploited by things such as cleaners, meal deliveries, gardeners etc.

106. 26.2 ARE YOU SRIIOUS? No hardship payments should be allowed. Only real and accurate expenses as a result of surrogacy, not to make the surrogates life easier and one with more perks, which is exactly what would happen.

26.3 There should note **NO HARDSHIP CLAUSE**.

26.4 N/A

Question M

107. No, do not agree to any extra amount being given to the surrogate. OH MY GOD! Is this not commercial surrogacy? It's clear as day it is.

Proposal 27

108. 27.1 Yes, agree that intended parents should pay an agreed amount of money into a trust account, but the trust account should be held by National Regulator not other body.

109. 27.2 Agree that money should cover approved surrogacy agreement and exclude extraordinary complications. However, hardship payments should either be included in the initial amount or left out completely as it is a payment to make the 'lifestyle' of the surrogate easier.

110. 27.3 Before amounts are distributed to the surrogate, the intending parents should sign off on the payments before a body distributes the funding. That way, less disagreements will be had after the fact.

Proposal 28

111. Yes, only if IVF is also part of the Medicare system currently.

Proposal 29

112. Yes, only if IVF is also part of the Medicare rebates.

**Support when the child is born
Pathways to legal parentage**

Proposal 30

113. 30.1 a) No, the parent upon birth of the child should be the surrogate mother, then a judicial pathway should be taken, not administrative. All cases should be judicial. We are dealing with brining a new human into the world in unnatural circumstances, and as such, the pathway should always be judicial, not ticking box exercise.
114. 30.1 b No, the surrogate should be the legal parent of the child upon birth, after that, then the intending parents should be assigned that role via judicial pathway. Agreeing to 30.1 b) is adding trauma to the surrogate, especially if the baby is stillborn.
115. 30.1 c) Yes, agree that the Federal Circuit and Faily Court of Australia should take all considerations into account, but especially what is in the best interest of the child.
116. 30.2 Yes, absolutely agree that the Federal Circuit and Family Court of Australia should create a specialist list of dealing with surrogacy-related applications. It will assist in consistent application of the law in a niche area.

Question N

117. I do not believe that the intended parents should have the right to the child upon birth. The Surrogate should be deemed the mother upon birth and that right should then be transferred to the intended parents after application via judicial pathway. As stated above, 30.1 b) should be deleted and then you will not have the complication of a surrogate making sure that the intended parents are actually the parents. The surrogate should be listed on the birth certificate as the mother. Then add intending parents as the legal parents. The way in which parents are registered in circumstances where surrogate is in Australia, Proposal 31 pathway should be used for all. This is to ensure that no one is disadvantaged and everyone is subject to the same rules.

Judicial pathway to legal parentage

Proposal 31

118. 31.1 a) Yes, agree that surrogate and surrogates partner, if any, upon birth, are the legal parents.
119. 31.1 b) Yes, intended parents must make an application to the court to change legal parentage within 3 months of child being born and
120. 31.1 c) yes, court to take all relevant matters into consideration especially the interest of the child.
121. **Question**, will the Hague convention have a role in any of the legal proceedings? Has that been the case in the past? Is that something that legislation should consider especially with overseas surrogacy?

122. **Question**, what about in instances where the intended parents, if a couple, break up and do not want the child? Or if one parent is the intended parent and they die before the child is born?

123. 31.2 Yes, application should be heard and determined in specialist list.

Proposal 32

124. Retrospectivity of process outlined in Proposal 31 should only apply for some time prior to legislation coming into force, ie 6 or 12 months.

Question O

125. The Federal Circuit and Family Court of Australia should look at all available evidence (as long as the reports used to tick the boxes have enough detail in them). Factors such as; intention of each, the surrogate and intended parents, shared intention before conception, whether surrogacy arrangements shows that parents planned to assume permanent responsibility. Whether there have been any changes to either party ie criminal or mental or financial that should be taken into consideration. Whether both or one parent is genetically connected to the surrogate, whether surrogate has a genetic link. Whether surrogate free and fully consents to transfer of parentage, was the consent given before or after birth, is there any evidence of coercion, exploitation of either party or misunderstanding between the parties. Whether there is a risk of the child being stateless.

Question O

126. No, there should not be a simpler pathway for intending parents. Every intended parent should go through the judicial system. Using the law of other countries to determine parentage in Australia is playing with fire as there will be different, limited or no obligations that the parents must meet. If an intended parent could be deemed a parent in an overseas country even though they meet no Australian criteria for example they could have been convicted as a child abuser, but because the other country does not disallow such individuals to have access to children and access to children through surrogacy, and gave those individuals legal parentage, Australia will have its hands tied. It will also promote overseas surrogacy as it will allow persons, who would not be eligible to apply for surrogacy in Australia to do so overseas. Similar to underage brides coming into and being recognised as wives due to the fact that another country has made them a legal age for marriage.

What if federal process is not adopted

127. Federal process **MUST** be adopted, allowing states and territories to deal with such a complex and niche matter must be avoided at all costs if we want consistency and a system that works.

Question Q

128. The only laws that should be updated are those that will allow the intending parents to have the same leave entitlements as those that have a child of their own. That way, it will make it fair for all concerned.

Information about a person's gestational history

Information available through birth certificates

Proposal 33

129. 33.1 Yes, information should be collected and attached to a birth certificate including surrogates identifying details such as full name, address and date and place of birth.

130. 33.2 Yes, information should be attached to every copy of the birth certificate issued to the person born through surrogacy from BIRTH (33.1). That way, the child has access to all information from the beginning and nothing is hidden.

Assessing information through Surrogacy Register

Proposal 34

131. 34.1 Yes, to a) legislation should require details to be added to the National Regulators surrogacy register such as surrogate name, date and place of birth, home address and ethnicity and physical characteristics. Yes to b) traditional or gestational surrogacy and yes to c) details of fertility clinic and doctor if any.

132. 34.2, Yes, legislation should provide that surrogacy register has a copy of parentage order.

Question R

133. There should also be some information about medical history of the surrogate, ie diabetes, heart disease.

134. Information should be supplied by relevant authorities from relevant reports that have been supplied to the National Regulator through the application process. The information should not come directly from parties themselves as there is opportunity for falsifying information. The only information that can be added by a person is the surrogate in stating her medical history or family history of ie diabetes etc.

Proposal 35

135. 35.1 Legislation should require information listed in Proposal 34 to be included in Option 35.1 – the national surrogacy register established for this purpose.

136. 35.2 Persons born through surrogacy should have access to this information at any time sought by the child and not wait until after 16. Question – does that mean that

the intended parents have this information as does the surrogate but the child does not? why not? there is no reason to hide it. There may be more trauma associated from withholding the information.

137. Proposal 36

138. 36.1 No, legislation is not needed to impose sanctions for failure to collect and provide information because that information would already be provided to the National Regulator all along the process. Ie the courts should also inform the National Regulator if they have made any orders. Also, the Regulator should be called in as a witness to any judicial proceedings if there is a need to do so.

139. 36.2 Yes, failure to comply with requirements with civil penalties or criminal sanctions to discourage non-compliance.

Regulatory overseas surrogacy

Proposal 37

140. 37.1 a) Yes, a person should register their intention to engage in an overseas arrangements before attempting to achieve pregnancy via surrogacy.

141. b) Yes, information should be provided to intended parents on overseas surrogacy destinations.

142. c) Yes, intended parents should advise the National Regulator in which country surrogacy will occur.

143. d) If intended parents go ahead with unregistered overseas surrogacy arrangement what kind of civil penalties will apply? Is it still worth the risk? Will it still be worthwhile going overseas?

144. 37.2 a) Yes, legislation should be in place to not prevent an intending parent from applying for Australian citizenship etc.

145. 37.2 b) or legal parentage. However, it is important to consider that legislation does not encourage people to have overseas surrogacy and then use the Australian system to gain citizenship etc due to the fact that if they are not successful the child will be stateless.

Proposal 38

146. Yes, intended parents who have engaged in an overseas surrogacy arrangement must make application to the Federal Court and Family Court of Australia for legal parentage to be recognised.

Question S

147. The National Regulator should be responsible for process in Proposal 37. It is hard to develop factors on which destinations are good for surrogacy, because at the end

of the day, no one really knows what goes on overseas. It is a money making business wherever you go. There are just bad and worse countries.

148. There is no point in asking intended parents to demonstrate that they have made reasonable efforts to engage in domestic surrogacy before they engage in overseas surrogacy arrangements. One, they will lie and two, it's easier to go overseas.

**Streaming processes to return to Australia
Front-loading citizenship, passport and visa applications**

Proposal 39

149. 39.1 No, commencing the process of applying for citizenship, Australian passport, visa etc before the child is born is a recipe for disaster. So many things can go wrong before the child is born and even after, if the surrogate does not wish to relinquish the child or in instances where something happens ie death of intended parents. Having the process nearly approved before the baby is born may also be abused by intended parents ie. They supply a surrogate agreement to the Australian authorities to only after find out that the surrogate wants to get out of the arrangement, the intended parents are now half way through the application process. It would be really tempting for intended parents to get another surrogate, one that has not signed the surrogacy agreement from a different country just to have the paperwork in Australia rubber stamped. Yes, in theory the fast tracked process sounds good but it has too many drawbacks and little oversight for potential fraudulent actions due to desperation.

150. 39.2 No.

Question T

151. No, let the child be born first. Let the surrogate relinquish legal parentage second.

Question U

152. Yes, there could be unintended consequences. Too many unanswered questions.

Question V

153. No, Citizenship by descent should not be allowed for children born through overseas Australian Permanent Residents.

Question W

154. No. This will then deter people going overseas to try and go around the Australian requirements to be eligible for surrogacy in Australia.

Question X

155. No. The intended parents should not have an easy time bringing children in from overseas surrogacy arrangements.

Making it easier to obtain and renew passports

Proposal 40

156. No, a surrogate's consent must be sought for an initial passport, an affidavit in their native language relinquishing parental responsibilities is not an adequate safeguard especially since you will not know if the surrogate was pressured by intending parents or her own family or authorities.

Proposal 41

157. 41.1 Yes, once the first application for passport is made with consent by surrogate mother, then subsequent applications do not need her consent.

Other Comments for consideration

158. A future discussion paper needs to address areas of children becoming stateless, what happens to children who are stillborn or if the surrogate decided on an abortion, or if surrogate dies or intended parents die before the baby is birthed.

159. To make future discussion papers easier to comment on by the general public it would have been good to have a survey of agree/disagree/ reason paper put out.

160. Please retain my content details be retained and can I please be informed of the outcome of the submissions – report in due course.

161. Thank you once again for a great discussion paper.
