

Australian Government

Australian Law Reform Commission

SUMMARY REPORT

ENHANCING RESPONSIBLE ACCESS:

AN EFFECTIVE REGULATORY FRAMEWORK FOR SURROGACY

ALRC Report 145
September 2026

Acknowledgement of Country

We acknowledge the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters, skies, and community. We pay our respects to their Elders past and present, and to their community leaders, and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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INTRODUCTION

Introduction

1. Surrogacy is the practice of a person carrying and giving birth to a child for another person or people. It can involve a single intended parent or a couple, and a surrogate. In many cases, it also involves people who have donated gametes. Surrogacy provides a pathway to having a child for people who would otherwise be unable to. 'Altruistic' surrogacy — surrogacy that is not for profit or reward — is recognised as a legitimate way to form a family in every state and territory.

2. Increasing numbers of Australians are using surrogacy to grow their families. In 2023, the number of Australian children born through surrogacy was more than double the number born a decade earlier. Overseas surrogacy now accounts for approximately 80% (or four in five) of Australian children born through surrogacy.[1]

3. When conducted in a rights-respecting and responsible way, surrogacy provides an important social good. For many people, having and raising a child is one of the most fundamental of human aspirations, central to living a fulfilling and meaningful life. Equally, surrogacy conducted in a way that is not responsible or rights-respecting carries serious risks of harm and exploitation.

4. The Australian Law Reform Commission ('ALRC') has been asked to make recommendations for the better regulation of surrogacy. In conducting this Inquiry, we have found that state and territory laws impede access to responsible surrogacy, provide insufficient certainty for surrogates and intended parents, and do not adequately safeguard the rights of the child, surrogates, or intended parents. Taken together, the problematic nature of Australian surrogacy laws is a major driver of intended parents going overseas, where the risk of harm and exploitation is at its highest.

5. The engagement by Australians in overseas surrogacy arrangements is either not regulated at all in some Australian states and territories, or ineffectively regulated in others. For most Australian children born through surrogacy, this regulatory gap means that they are born overseas into potentially unregulated, risky environments,

1 This estimate is approximate and indicative (**Appendix D**). Overseas surrogacy figures are derived from data provided by the Department of Home Affairs (Cth). They are based on the number of Australian citizenship by descent applications involving surrogacy arrangements, which has been used as a proxy for children born through overseas surrogacy to Australian intended parents: Email from the Department of Home Affairs (Cth) to the Australian Law Reform Commission dated 17 April 2025. Domestic figures are derived from Australian and New Zealand Assisted Reproduction Database and New Zealand Ethics Committee on Assisted Reproductive Technology reports on live births following surrogacy arrangements. The figures are not directly comparable, as they are drawn from different sources, measure different things, and use different reporting periods and methodologies. There are also limitations to the data. The domestic surrogacy data was provided by Stephen Page to the ALRC and independently verified by the ALRC: Emails from Stephen Page to the Australian Law Reform Commission dated 9 May 2026 and 30 July 2026.

where the unresolved or delayed resolution of difficult issues about parentage, citizenship, and identity may cause them significant harm.

6. In practical terms, it is largely Commonwealth institutions — the Department of Foreign Affairs and Trade, the Department of Home Affairs, and the Federal Circuit and Family Court of Australia — left responsible for managing the consequences of most surrogacy arrangements. Where state and territory laws effectively regulate only around 20% of surrogacy arrangements engaged in by Australians, and the consequences of the remaining 80% fall largely to Commonwealth institutions, the ALRC considers that surrogacy should be properly characterised and dealt with as a national issue regulated by a national regulatory regime or, at the least, by nationally consistent state and territory regimes.

7. The ALRC has concluded that surrogacy requires a regulatory response that both improves access to domestic surrogacy while better addressing the substantial risks of exploitation and other forms of harm associated with overseas surrogacy. Implementing the recommendations in the Final Report will provide for a more accessible, fair, responsible, and effective regime for regulating domestic surrogacy. It will also far better ensure that Australians who engage in overseas surrogacy do so responsibly. The proposed reforms will more effectively guard against the potential for exploitation and other forms of harm to surrogates and children born through surrogacy. The reforms will also improve compliance with Australia's international human rights obligations.

Our task

8. The ALRC has been asked to make recommendations about how to better regulate surrogacy so that our laws are harmonised, consistent with Australia's international law obligations, and protect and promote human rights, with the best interests of children being paramount. In particular, the Terms of Reference ask us to consider:

- how to reduce barriers to domestic 'altruistic' surrogacy arrangements;
- how overseas surrogacy should be addressed by Australian law;
- how legal parentage should be recognised in Australia for children born through overseas surrogacy, and how citizenship, visa, and passport requirements for such children could be aligned; and
- the information that should be available to children born from surrogacy arrangements.

“

As a surrogate, I’m choosing to carry a baby not to become a mother, but to help another family become whole. Yet the current legal system doesn’t reflect that truth ... make surrogacy laws more equitable, consistent, and child-centred. Every family deserves dignity. Every child deserves legal certainty. And every surrogate deserves clarity, protection, and respect.

Submission 44

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EXECUTIVE SUMMARY

Executive summary

9. The ALRC's starting point, and the parameters for the reforms we have been asked to consider, are clear. First, the Terms of Reference for this Inquiry task the ALRC with making recommendations that will improve the regulatory regimes for surrogacy in each state and territory,[2] and those regimes essentially provide that surrogacy that is not for profit or reward[3] is lawful. Consistently with our Terms of Reference and the current laws in Australia that regulate domestic surrogacy, the starting point for our recommendations is that surrogacy that is not for profit or reward is a legitimate form of family formation. Second, and again consistently with the Terms of Reference and the existing regulatory regimes in each state and territory, the ALRC does not recommend permitting domestic surrogacy for profit or reward. In other words, we do not recommend that Australia move from an 'altruistic' surrogacy regime to a 'commercial' surrogacy regime.

10. Surrogacy can be a legitimate form of family formation when engaged in responsibly, but it can also lead to significant exploitation and other forms of harm. The avoidance of those harms is the focus of all the recommendations made in the Final Report. Irresponsible surrogacy practices can result in the exploitation of surrogates, the sale of a child, the denial of the rights of the child to identity or nationality, or the best interests of the child being otherwise overridden.

11. These harms are far more likely to result from overseas surrogacy engaged in by Australians than from domestic surrogacy engaged in by Australians.[4] Some 80% of engagement by Australian intended parents in surrogacy is engagement in overseas surrogacy. Whilst engagement by Australians in domestic surrogacy can be better regulated (as we describe below), engagement by Australians in overseas surrogacy is either not regulated at all,[5] or is ineffectively regulated. The exploitation and other forms of harm associated with some overseas surrogacy arrangements is very significant and of great concern. That is particularly so, because the best interests of the child must be given primary consideration, and each year there are over 300 Australian children born through surrogacy who are born through overseas surrogacy arrangements.[6] This is a trend that, unless abated, will likely continue.

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2 Australian Law Reform Commission, 'Terms of Reference', *Review of Surrogacy Laws* (6 December 2024) <www.alrc.gov.au/inquiry/review-of-surrogacy-laws/terms-of-reference/>. The Terms of Reference ask the ALRC to consider how to reduce barriers to domestic 'altruistic' surrogacy arrangements.

3 This is commonly referred to as 'altruistic' surrogacy. We discuss the use of this term below.

4 References to Australians throughout the Final Report include Australian citizens and permanent residents.

5 Four of eight states and territories do not have extraterritorial prohibitions: the Northern Territory, South Australia, Tasmania, and Victoria (see **Chapter 13**).

6 Email from the Department of Home Affairs (Cth) to the Australian Law Reform Commission dated 17 April 2025.

12. Within the parameters identified above, the ALRC's recommendations are designed to improve access to well-regulated domestic surrogacy and avoid the risks of exploitation and other forms of harm associated with problematic overseas surrogacy, in primarily three ways.

13. First, access to domestic surrogacy would be improved, including by removing or diminishing those elements of Australia's domestic surrogacy regimes that drive Australian intended parents to engage in overseas surrogacy. This would be done by providing increased support to intended parents and potential surrogates so that that they can find and better engage with each other. Fairness would be enhanced and the number of potential surrogates would also likely be increased by reforms designed to ensure that surrogates do not suffer financial or other disadvantage. This would involve surrogates being reimbursed for all costs and losses reasonably incurred by them.

14. Recommended reforms to how the law deals with legal parentage would provide a more streamlined and certain approach, focused on the need to give the best interests of the child paramount consideration. Legislative safeguards, which help to ensure that surrogates engage in surrogacy with free and informed consent to avoid exploitation, would be strengthened and made effective, where currently they are largely ineffective. The recommended reforms would also establish a regime to protect the child's right to identity, where little or nothing is currently provided. Inconsistencies across state and territory regimes, that operate as barriers to accessing surrogacy, would be harmonised by being dealt with on a national or nationally-coordinated basis.

15. Second, the regulatory regime proposed for overseas surrogacy would apply to all Australians, not merely some. This would address a very substantial regulatory gap that currently exists across four of the eight state and territory jurisdictions.

16. Third, by empowering Australian intended parents through guidance and advice to engage responsibly in overseas surrogacy, and by imposing due diligence obligations on intended parents to act reasonably to avoid the potential harms of overseas surrogacy, the recommended regime would be proactive and focused on what Australia can control and enforce. The regulation of overseas surrogacy would therefore be effective in circumstances where, so far as it exists, it is currently ineffective. It would substantially avoid Australians engaging in overseas surrogacy arrangements where there is a significant risk of exploitation of the surrogate, the sale of a child, or the denial of the rights of the child to identity or nationality. The proposed reforms would also help to protect Australian intended parents from exploitation.

A note on terminology — 'surrogacy that is for profit or reward'

Australian surrogacy laws create a regulatory regime that permits some surrogacy arrangements and prohibits others. This is reflected in the law's distinction between arrangements that are not for profit or reward (often labelled 'altruistic' surrogacy), and those that are for profit or reward (often labelled 'commercial' surrogacy).[7] The distinction rests on the idea that arrangements involving profit or reward are more likely to be exploitative, including that such surrogacy may exploit the surrogate and commodify the child born through surrogacy (**Chapter 2**).[8]

While the ALRC does not propose to change that dividing line, we have avoided describing surrogacy as 'altruistic' or 'commercial'. In our view this binary is artificial and unhelpful. It presents the categories as mutually exclusive when that does not reflect 'the reality of the practice'.[9] Research indicates, for example, that surrogates' motivations are often mixed, rather than being purely altruistic or purely commercial.[10] Regardless of how much a surrogate is paid, they may still face a risk of being exploited.

The binary also distracts from the more important task of designing measures that meet the key objectives of the legislation. Fixating on it as the main safeguard against exploitation and other forms of harm diverts focus away from other safeguards that could be more effective. As the 2023 Law Commission of England and Wales, and Scottish Law Commission Report observed, the binary does little to help us answer 'what payments the intended parents should be permitted to make to the surrogate'.[11]

7 Most jurisdictions prohibit 'commercial' surrogacy arrangements: *Parentage Act 2004* (ACT) ss 40–1; *Surrogacy Act 2010* (NSW) ss 8–9; *Surrogacy Act 2022* (NT) s 48; *Surrogacy Act 2010* (Qld) ss 10, 56; *Surrogacy Act 2019* (SA) s 23; *Surrogacy Act 2012* (Tas) ss 8, 40. In Victoria and Western Australia, the term 'commercial' is not used. In Victoria, legislation provides that '[a] surrogate must not receive any material benefit or advantage as a result of a surrogacy arrangement': *Assisted Reproductive Treatment Act 2008* (Vic) s 44. Western Australia's legislation uses the term 'for reward': *Surrogacy Act 2008* (WA) s 6; *Assisted Reproductive Technology and Surrogacy Act 2025* (WA) ss 106–7 (this Act will commence in mid-2027).

8 See, eg, Ronli Sifris, Karinne Ludlow and Adiva Sifris, 'Commercial Surrogacy: What Role for Law in Australia?' (2015) 23 *Journal of Law and Medicine* 275, 288–9.

9 Anita Stuhmcke, 'The Regulation of Commercial Surrogacy: The Wrong Answers to the Wrong Questions' (2015) 22 *Journal of Law and Medicine* 333, 334.

10 Olga Van den Akker, 'Genetic and Gestational Surrogate Mothers' Experience of Surrogacy' (2003) 21(2) *Journal of Reproductive and Infant Psychology* 145, 150–1.

11 Law Commission of England and Wales and Scottish Law Commission, *Building Families through Surrogacy: A New Law (Volume II: Full Report)* (Law Commission Report No 411, Scottish Law Commission Report No 262, 2023) 304 [12.5].

Accordingly, the Final Report avoids the terms 'altruistic' and 'commercial' surrogacy wherever possible, and does not rely on this binary as the basis for recommendations. Instead, the ALRC uses the term 'surrogacy that is for profit or reward',[12] which better reflects the substance of and legislative intent behind the existing prohibition.

12 In the Discussion Paper, we proposed the prohibition of surrogacy for 'impermissible' profit or reward. This is because we were open to hearing the public's views on surrogates receiving permissible profit or reward, such as payments in recognition of time, effort, and inconvenience. However, we have recommended retaining the prohibition on any form of profit or reward. For this reason, we have omitted the word 'impermissible' in the Final Report.

Snapshot: key statistics

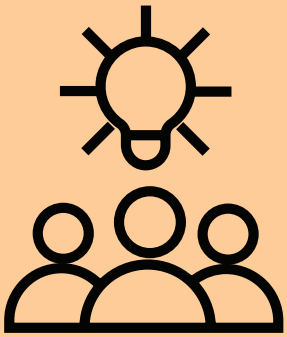


1
Issues Paper

1
Discussion Paper

1
Final Report

47
Recommendations

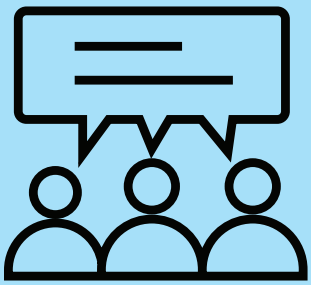


1
Assistant Commissioner

12
Commission staff

6
Expert Readers

11
Advisory Committee members



61
Consultations

120+
Consultees

468
Unique submissions

1,697
Total submissions

What we heard

The good things are pretty similar to any other ‘normal’ family. Just because we weren't made stereotypically, doesn't mean that good things are different.

Submission 17

It allowed my parents to have children when they couldn't otherwise.

Submission 132

What are some good things about being born through surrogacy?

I EXIST

Submission 33

...it shows that there are lots of different ways to make a family and all of them can be full of love. My twin sister and I know how much we were wanted and that makes us feel really special.

Submission 42

We are talking about people’s lives and the shape of their families. This includes the ability to read your child a bedtime story, to see their first day at school, to be able to see them compete in sport, to get married and to have grandchildren. The thought of not having these experiences is gut wrenching but is a reality for people like me without the option of surrogacy. These are the stakes we are talking about.

Submission 171

What we heard about the value of surrogacy

I do not see my surrogate as simply someone who just carried me for 9 months. I do not see her as solely a transaction that my dads made in order to have me, no. I see her as a part of my family, a part of my history, a part of my future. I call her my aunty. She made an informed choice to help my dads create a family, and I am eternally grateful that she did.

Submission 29

…these laws do not stop international surrogacy — they only drive it underground and leave families legally and emotionally vulnerable. Instead of punishing parents, we should be ensuring ethical, transparent, and safe surrogacy arrangements, wherever they occur.

Submission 88

We are committed to ensuring our son knows his story, and the woman who helped bring him into the world. But Australia lacks a national registry to safeguard this right. It's time we created one.

Submission 173

What we heard about the problems with surrogacy regulation in Australia

The main barrier for surrogates and [intended parents] to meet are the current Australian laws which are outdated and uninformed, and restrict the ability of us, and many others, to grow or start their families.

Submission 312

The current system relies heavily on a surrogate's ability to advocate for herself and navigate uncomfortable conversations, at a time when they are feeling incredibly vulnerable. For those without a strong pre-existing relationship, this ambiguity can lead to tension, unfair financial outcomes, and even breakdowns in the surrogacy arrangement.

Creating a clear, national consistent list of reimbursable costs — including lost income — to ensure surrogates are not left out of pocket would provide clarity, fairness and transparency for all parties.

Submission 62

REFORM CONTEXT

The reform context

The value and risks of surrogacy

17. Surrogacy enables people to form families in circumstances where they otherwise would not be able to. Submissions to this Inquiry highlighted the importance of surrogacy for people who are unable to have children without it:

> I am currently an intended surrogate for a loving, committed couple who are unable to carry a child due to serious and permanent health conditions. This couple has been foster carers, opening their home and hearts to children in need for years. They have so much love to give, and surrogacy is their only option to grow their family.[13]

> We are talking about people's lives and the shape of their families. This includes the ability to read your child a bedtime story, to see their first day at school, to be able to see them compete in sport, to get married and to have grandchildren. The thought of not having these experiences is gut wrenching but is a reality for people like me without the option of surrogacy. These are the stakes we are talking about.[14]

> I am a parent through surrogacy after a successful journey here in Australia in 2024. After finding out at the age of 16 that I was born with a condition called MRKH syndrome, I was faced with the reality that surrogacy would be my only option if I ever wanted to have my own child.[15]

18. Most people arrive at surrogacy as a last resort, including because pregnancy is medically or biologically impossible, or because other assisted reproductive pathways have been exhausted. Surrogacy also 'facilitates both traditional and new family forms'.[16] For intended parents, surrogacy may be the only way to realise their deeply held aspiration to have a child and experience family life as a parent: to welcome and raise a child from birth, form a life-long parent-child relationship, and share in the profound joys, responsibilities, and everyday experiences of parenthood and family life. For these reasons, it is important that the law facilitates surrogacy.

13 Name withheld, *Submission 302*.
14 Name withheld, *Submission 171*.
15 Name withheld, *Submission 59*.
16 Kirsty Horsey, 'How Can a Reformed Surrogacy Law Reflect Pragmatism and Respect Ethics?' in Andelka M Phillips, Thana C de Campos and Jonathan Herring (eds), *Philosophical Foundations of Medical Law* (Oxford University Press, 2019) 253, 254.

19. Surrogacy also carries risks of exploitation and other forms of harm for children born through surrogacy, surrogates, and intended parents.[17] These risks are particularly present overseas, in unregulated or poorly regulated environments, and those marked by significant social and economic disparity (**Chapter 13**).

20. Risks to the child include that they may be treated as the subject of a transaction, including in ways that may amount to the sale of the child (**Chapter 14**).[18] Surrogacy arrangements may undermine the child's right to identity,[19] particularly where information about their genetic and gestational origins is not collected or accessible (**Chapter 14**). Surrogacy can also create uncertainty about legal parentage, particularly where the law does not promptly recognise the people caring for and intending to raise the child. That uncertainty can affect legal decision-making responsibility, the child's care and wellbeing, and the child's legal relationship with their family (**Chapter 10**). There may also be risks of child abandonment,[20] although it is unclear whether children born through surrogacy are more likely to be abandoned than children in other contexts, and general laws dealing with child abandonment would apply. In overseas surrogacy arrangements, the risks of harm may be heightened by the laws of the birth country and by difficulties satisfying evidentiary requirements, which can delay a child's return to Australia or, in some cases, create a risk of statelessness (**Chapter 13**).

21. Some submissions raised concerns that children may be harmed by separation from the person who gave birth to them.[21] Having regard to the current law, research,

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17 We received many submissions expressing concerns about surrogacy and the risks it could raise: see, eg, Australian Christian Lobby, *Submission 104*; M Somerville, *Submission 106*; International Coalition for the Abolition of Surrogate Motherhood, *Submission 134*; Coalition of Australian Feminist Organisations, *Submission 155*; Australian Feminists for Women's Rights (AF4WR), *Submission 182*; Australian Catholic Bishops Conference, *Submission 187*; GeneEthics, *Submission 338*; Women's Bioethics Alliance, *Submission 349*; The National Catholic Bioethics Center, *Submission 370*; M Quinlan, *Submission 381*; Active Watching Waiting, *Submission 390*; International Coalition for the Abolition of Surrogate Motherhood, *Submission 396*; Anglican Church Diocese of Sydney, *Submission 398*; Mothers Adoption Loss Alliance, *Submission 407*; ARMS (Vic), *Submission 408*; Women's Forum Australia, *Submission 416*.

18 See, eg, concerns expressed in Australian Christian Lobby, *Submission 104*; Presbyterian Church of Australia, *Submission 122*; FINRRAGE (Australia), *Submission 180*; Australian Catholic Bishops Conference, *Submission 187*; FamilyVoice Australia, *Submission 232*; The National Catholic Bioethics Center, *Submission 370*; LifeSiteNews, *Submission 391*; GeneEthics, *Submission 425*.

19 See, eg, concerns expressed in Australian Catholic Bishops Conference, *Submission 187*; The National Catholic Bioethics Center, *Submission 370*; M Quinlan, *Submission 381*. See also Australian Christian Lobby, *Submission 104*; International Coalition for the Abolition of Surrogate Motherhood, *Submission 134*; World Youth Alliance, *Submission 411*.

20 Department of Foreign Affairs and Trade, *Submission 434*.

21 Australian Christian Lobby, *Submission 104*; Australian Catholic Bishops Conference, *Submission 187*; FamilyVoice Australia, *Submission 232*; Catholic Women's League Australia, *Submission 241*; Adoptee Rights Australia, *Submission 344*; Women's Bioethics Alliance, *Submission 349*; Active Watching Waiting, *Submission 390*; International Coalition for the Abolition of Surrogate Motherhood, *Submission 396*; Anglican Church Diocese of Sydney, *Submission 398*; Mothers Adoption Loss Alliance, *Submission 407*; Women's Forum Australia, *Submission 416*.

and submissions from people with personal experience of surrogacy received by the ALRC, we have not treated those concerns as substantiated and have therefore not given them significant weight in formulating our recommendations. Australian law already recognises and facilitates family forms in which children are raised by parents who are not genetically related to them, or in which legal parentage is not determined by who gave birth to the child, including in current surrogacy, gamete donation, and adoption laws. Longitudinal research tentatively indicates that children born through surrogacy have outcomes similar to children who are conceived without the assistance of assisted reproductive technology ('ART'),[22] and do not experience negative psychological adjustment.[23] Research also suggests that young adults born through surrogacy, particularly those who are made aware about their means of conception early, do not experience negative feelings about their gestational origins.[24] This is consistent with what the ALRC heard from children born through surrogacy, who generally expressed positive views about their birth, existence, and family.[25] For example, children born through surrogacy stated that:

> I am a supporter of surrogacy as it was the reason I was born. My dads couldn't have become parents and created our family without it. I am very happy that I have two loving dads and that they've had the opportunity to have children through surrogacy. In general I think it's great that there's an avenue for people to have biological children even if it isn't possible for them to conceive a child themselves.[26]

> [o]ne of the good things about being born through surrogacy is that it made it possible for my family to exist. My dad really wanted to be a parent and surrogacy gave him that chance. I also think it shows that there are lots of different ways to make a family and all of them can be full of love. My twin sister and I know how much we were wanted and that makes us feel really special.[27]

22. The ALRC recognises that surrogacy may also give rise to risks of exploitation and other forms of harm for the surrogate, particularly where the surrogate has engaged in the arrangement without free and informed consent. A surrogate may be

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22 Viveca Söderström-Anttila et al, 'Surrogacy: Outcomes for Surrogate Mothers, Children and the Resulting Families — a Systematic Review' (2016) 22(2) *Human Reproduction Update* 260, 274; Susan Golombok et al, 'A Longitudinal Study of Families Formed through Reproductive Donation: Parent-Adolescent Relationships and Adolescent Adjustment at Age 14' (2017) 53(10) *Developmental Psychology* 1966, 1973–4; Susan Golombok et al, 'Parenting and the Adjustment of Children Born to Gay Fathers Through Surrogacy' (2018) 89(4) *Child Development* 1223, 1230. Cf Susan Golombok et al, 'Children Born through Reproductive Donation: A Longitudinal Study of Psychological Adjustment' (2013) 54(6) *Journal of Child Psychology and Psychiatry* 653, 658.

23 Golombok et al, 'A Longitudinal Study of Families Formed through Reproductive Donation: Parent-Adolescent Relationships and Adolescent Adjustment at Age 14' (n 22).

24 Vasanti Jadva et al, 'I Know It's Not Normal but It's Normal to Me, and That's All That Matters': Experiences of Young Adults Conceived through Egg Donation, Sperm Donation, and Surrogacy' (2023) 38(5) *Human Reproduction* 908, 909.

25 Name withheld (minor), *Submission 26*; Not published (minor), *Submission 27*; Name withheld (minor), *Submission 32*; Name withheld (minor), *Submission 33*; Name withheld (minor), *Submission 36*; Name withheld (minor), *Submission 42*.

26 Name withheld, *Submission 234*.

27 Name withheld (minor), *Submission 42*.

left financially disadvantaged by the arrangement, including by incurring expenses without adequate reimbursement or by losing income. They may also experience physical harms associated with pregnancy and childbirth, including pain, suffering, and life-threatening health complications (**Chapter 8**). Psychological harms may arise, including depression or from concerns associated with relinquishing the child.[28] Harm may also occur where the surrogate does not retain control over decisions affecting their body, healthcare, pregnancy, or birth. More serious harms include slavery and human trafficking (**Chapter 13**). In some circumstances, these harms can be characterised as discrimination, including where exploitation reinforces stereotypes about women's role as child-bearers. However, as discussed in **Chapter 14**, this concern is confined to surrogacy that is exploitative.

23. Intended parents may also be harmed by surrogacy arrangements, particularly where they enter arrangements based on information, assurances, or expectations that cannot be fulfilled. These risks appear most acute in overseas surrogacy arrangements. Intended parents may suffer financial loss where they make substantial payments to fraudulent agencies or intermediaries who seek to profit from their predicament, or through the provision of misleading information about the arrangement (**Chapter 13**). They may also face unexpected delays in bringing the child to Australia where difficulties arise in relation to birth documentation, or if changes in the law in the birth country affect the legality of the arrangement (**Chapter 13**).

24. These risks do not diminish the value of surrogacy as a form of family formation. They do, however, underscore the need for a regulatory framework that facilitates surrogacy to occur in a rights-respecting and responsible way.

Surrogacy in Australia

25. More Australians are using surrogacy to grow their families, through both domestic and overseas surrogacy arrangements. Exact numbers are difficult to determine. However, available estimates suggest that domestic gestational surrogacy births more than tripled over the recent decade, from 27 births in 2014 to 84 births in 2023.[29] Overseas surrogacy also increased substantially over a similar period, from 246 in 2015 to 375 births in 2024, an increase of more than 40%.[30] This growth is notable because it has occurred while Australia's overall birth rate has fallen, and the fertility rate has continued to decline.[31] It suggests that surrogacy is becoming a

28 Ezra Kneebone, Kiri Beilby and Karin Hammarberg, 'Experiences of Surrogates and Intended Parents of Surrogacy Arrangements: A Systematic Review' (2022) 45(4) *RBMO* 815, 825.

29 See footnote 1, which explains how this estimate was arrived at.

30 Email from the Department of Home Affairs (Cth) to the Australian Law Reform Commission dated 17 April 2025.

31 The total fertility rate is the average number of registered births per woman aged 15 to 49 years. The Australian Bureau of Statistics notes that 'Australia's total fertility rate was 1.481 babies per woman in 2024, lower than 2023 (1.499) and the rate 10 years ago (1.795 in 2014)': Australian Bureau of Statistics, 'Births, Australia: Statistics about Births and Fertility Rates for Australia, States and Territories, and Sub-State Regions (15 October 2025)' <www.abs.gov.au/statistics/people/population/births-australia/latest-release>.

more significant pathway to family formation, rather than merely reflecting broader growth in the number of children being born.

26. The increasing trend in Australians engaging in surrogacy appears to reflect a combination of social and technological factors that have made surrogacy more accepted, needed, and practically available. Surrogacy is now more recognised as a legitimate method of family formation.[32] Although comprehensive and reliable data on the attitudes of Australians to surrogacy is limited, available research suggests that most Australians aged 18–49 support access to surrogacy for heterosexual and same-sex couples,[33] and only a minority believe that surrogacy cannot be justified in any situation.[34] This suggests that the growth in surrogacy is occurring in a broader social context in which surrogacy is becoming more understood as a legitimate way for people to form families.

27. This broader acceptance has occurred alongside changes in how families are formed in Australia. Same-sex relationships have gained greater legal and social recognition, including through the legalisation of same-sex marriage in 2017. Between 2016 and 2021, the number of male same-sex couples with children increased by 161%, compared with a 7.9% increase in couples with children overall.[35] While census data does not reveal how those children were conceived or born, surrogacy is the only pathway through which single men or male same-sex couples can have biological children. This suggests that changing patterns of family formation are likely to be contributing to an increased need for surrogacy.

28. The increasing age at which people are having children may also be contributing to the need for assisted reproductive pathways, including surrogacy. The average age of mothers has risen over time, with a growing proportion of women giving birth aged 35 and over.[36] Another relevant factor is that domestic and intercountry adoption rates have fallen considerably over time.[37] While adoption and surrogacy are distinct pathways to family formation, declining adoption rates form

32 Sonia Allan, *The Review of the Western Australian Human Reproductive Technology Act 1991 and the Surrogacy Act 2008* (Report: Part 2, 2019) 10. See also Kelton Tremellen and Sam Everingham, 'For Love or Money? Australian Attitudes to Financially Compensated (Commercial) Surrogacy' (2016) 56(6) *Australian and New Zealand Journal of Obstetrics and Gynaecology* 558, 561.

33 Tremellen and Everingham (n 32) 559–60. Note the majority of respondents were aged in their 30s and 40s.

34 Of the respondents surveyed, 9% believed that surrogacy could not be justified in any situation: ibid 558.

35 Australian Bureau of Statistics, 'Same-Sex Couples Living Together in Australia: Examining Characteristics of Same-Sex Couples from the 2021 Census Data (2 December 2022)' <www.abs.gov.au/articles/same-sex-couples-living-together-australia>.

36 Australian Government, Australian Institute of Health and Welfare, 'More Expectant Mothers Accessing Antenatal Care' <www.aihw.gov.au/news-media/media-releases/2025/2025-july/more-expectant-mothers-accessing-antenatal-care>.

37 Australian Government, Australian Institute of Health and Welfare, 'Adoptions Australia' <www.aihw.gov.au/reports/adoptions/adoptions-australia/contents/adoptions>.

part of the broader context in which surrogacy may be becoming more needed for people who are unable to have children without assistance.

29. At the same time, ART has become more mainstream,[38] with around 6% of Australian children now born through ART and use of ART expected to continue to grow.[39] Because gestational surrogacy requires ART, these developments have made surrogacy a more feasible pathway for people who cannot otherwise have children. Technological advances in ART may also improve the prospects of creating embryos for use in surrogacy.[40] These factors suggest surrogacy is becoming more practically available as a pathway to family formation.

30. These broader trends are accompanied by factors that push intended parents towards overseas surrogacy in particular. Research suggests that Australian intended parents pursue overseas surrogacy for a range of reasons, including a shortage of people willing to be surrogates in Australia, the perceived length and complexity of the domestic process, uncertainty associated with Australian law recognising legal parentage, greater access to donated gametes, and the broader options available overseas.[41]

31. The factors highlighted above will likely contribute to continued growth in surrogacy. As surrogacy becomes more accepted, more necessary to contemporary family formation, and more practically available through ART, more Australians may seek to use it to form families. If domestic surrogacy remains difficult to access, complex to navigate, or legally uncertain, intended parents are likely to continue pursuing surrogacy overseas. The increasing overseas dimension of surrogacy therefore transforms what might once have been viewed as a matter for state and territory regulation into an issue requiring a national response.

The current state of the law

32. The shift in how Australian society approaches family formation (discussed above) is partially reflected in the history of Australian surrogacy laws. Early responses in the late 1980s and early 1990s were cautious, ranging from measures

38 Allan (n 32) 10.

39 Greg Hunt and Rachel Swift, *Findings, Recommendations and Framework for an Australian 10 Year Fertility Roadmap* (Fertility Society of Australia and New Zealand and Reproductive Technology Accreditation Council, 2024) 6.

40 Te Aka Matua o te Ture | Law Commission (NZ), *Te Kōpū Whāngai: He Arotake Review of Surrogacy* (Pūrongo | Report No 146, 2022) 45 [2.22].

41 Ezra Kneebone et al, 'Australian Intended Parents' Decision-Making and Characteristics and Outcomes of Surrogacy Arrangements Completed in Australia and Overseas' (2023) 26(6) *Human Fertility* 1448, 1452.

to completely criminalise surrogacy to failing to regulate it at all.[42] However, over time, Australian jurisdictions moved towards recognising surrogacy that is not for profit or reward as a legitimate form of family formation, and establishing legal pathways to transfer legal parentage from surrogates to intended parents.[43] Recent reforms and reviews in Australian and comparable jurisdictions continue this trend towards a more open, enabling, and rights-based approach to surrogacy,[44] including by broadening access to surrogacy.[45]

33. All states and territories have legislation in place to regulate domestic surrogacy. State and territory legislation generally establish an enabling framework for surrogacy, by providing for a pathway from the point of entering the arrangement through to recognising the legal parentage of the child born through surrogacy (**Chapter 10**), while defining the parameters between surrogacy that is lawful and unlawful (**Chapter 2**).

34. Legislation generally includes eligibility and process requirements, which we collectively refer to as 'legislative safeguards' (**Chapters 5** and **6**). For example, intended parents must have a medical or social need to enter a surrogacy arrangement in some jurisdictions in Australia (**Chapter 5**), and each party is required to obtain legal advice and counselling (**Chapter 6**). Further, each jurisdiction allows for the surrogate to be reimbursed for reasonable economic costs and loss of earnings associated with the surrogacy arrangement (**Chapter 8**), and has provided that surrogacy agreements are unenforceable, aside from provisions relating to such reimbursement (**Chapter 7**). Each state and territory has a scheme that enables the transfer of legal parentage from the surrogate to intended parents through a parentage order by a court (**Chapter 10**). Legislation specifies that in parentage decisions the child's best interests are the paramount consideration (**Chapter 10**).

35. All states and territories only permit 'altruistic' surrogacy, which limits payment to surrogates to reimbursement of reasonable expenses and loss of earnings. There is a consistent policy of criminalising domestic surrogacy that is for profit or reward,

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42 Jenni Millbank, 'The New Surrogacy Parentage Laws in Australia: Cautious Regulation or "25 Brick Walls"?' (2011) 35(1) *Melbourne University Law Review* 165, 6–7; Ronli Sifris, 'Surrogacy' in Ben White et al (eds), *Health Law in Australia* (Thomson Reuters, 4th ed, 2023) 533, 536–7. For example, Queensland initially criminalised all forms of surrogacy, paid and unpaid: *Surrogacy Parenthood Act 1988* (Qld) s 3. New South Wales did not introduce legislation on surrogacy until 2007.

43 Millbank (n 42) 11–14.

44 See, eg, Department of Health (WA), *Ministerial Expert Panel on Assisted Reproductive Technology and Surrogacy* (Final Report, 2023); Law Commission of England and Wales and Scottish Law Commission (n 11); Te Aka Matua o te Ture | Law Commission (NZ) (n 40); Sonia Allan, *The Review of the Western Australian Human Reproductive Technology Act 1991 and the Surrogacy Act 2008* (Report: Part 1, 2019).

45 Currently, same-sex couples and single men are precluded from accessing surrogacy in Western Australia: *Surrogacy Act 2008* (WA) s 19(2). However, this restriction will be removed by the new *Assisted Reproductive Technology and Surrogacy Act 2025* (WA), which will commence mid-2027: Western Australia, *Parliamentary Debates*, Legislative Assembly, 13 August 2025, 2235 (Meredith Hammat).

frequently called 'commercial' surrogacy (**Chapter 2**). Some jurisdictions extend this prohibition to overseas arrangements (**Chapter 13**).

36. It is mainly Commonwealth government entities responsible for the management of overseas surrogacy when children born through surrogacy seek to return to Australia, through the processing of applications for Australian citizenship, visas, and passports (**Chapter 13**). The Federal Circuit and Family Court of Australia also has a role to play in determining matters relating to legal parentage or parental responsibility in the context of both domestic and overseas surrogacy arrangements (**Chapter 10**).

37. The legislative framework that exists for domestic surrogacy has no equivalent for overseas surrogacy. As discussed above, approximately 80% of surrogacy arrangements undertaken by Australian intended parents therefore fall outside any dedicated Australian regulatory framework. Meanwhile, the arrangements that remain within domestic surrogacy legislation are also subject to limited proactive oversight. Legislative safeguards are generally not assessed until after a child has been born, with only one jurisdiction requiring approval before a pregnancy is attempted.[46] The practical effect is that, despite the extensive body of legislation governing surrogacy in Australia, a large proportion of arrangements involving Australian intended parents proceed without meaningful oversight, leaving both overseas surrogacy and significant parts of domestic surrogacy in a regulatory vacuum.

Key objectives of Australian surrogacy laws

38. Importantly for this Inquiry, the key objectives that can be identified from the purposes, objects, and guiding principles, and provisions of Australian surrogacy legislation are:

- to protect rights, including by preventing harm and exploitation to children born through surrogacy and surrogates;[47] and
- to uphold the best interests of the child.[48]

39. States and territories seek to achieve these objectives in a number of ways, including by prohibiting surrogacy that is for profit or reward (**Chapter 2**),

46 Only Victoria and Western Australia currently require approval of surrogacy arrangements before parties attempt to achieve a pregnancy. After the *Assisted Reproductive Technology and Surrogacy Act 2025* (WA) commences in mid-2027 and this requirement is abolished in Western Australia, approval will only be required in Victoria (**Chapter 4**).

47 See, eg, *Surrogacy Act 2022* (NT) s 6(b); *Surrogacy Act 2019* (SA) s 7(1)(a); *Assisted Reproductive Treatment Act 2008* (Vic) s 5(b)(i).

48 Most jurisdictions emphasise the best interests of children in the purposes and objects of their respective surrogacy legislation: see *Surrogacy Act 2010* (NSW) s 3; *Surrogacy Act 2022* (NT) s 5; *Surrogacy Act 2010* (Qld) s 6(1); *Surrogacy Act 2019* (SA) ss 6, 7(3); *Surrogacy Act 2012* (Tas) s 3(1); *Assisted Reproductive Technology and Surrogacy Act 2025* (WA) s 5(2)(a) (which will commence in mid-2027). See also *Assisted Reproductive Treatment Act 2008* (Vic) s 5(2)(a).

ensuring the parties' free and informed consent,[49] and providing that the paramount consideration in administering the legislation is the best interests of children born through surrogacy.[50]

40. The key objectives underpinning surrogacy regulation in Australia — protecting rights, with a focus on preventing harm and exploitation, and upholding the best interests of the child — are objectives the ALRC agrees with and does not seek to change. As discussed below, the recommendations in the Final Report aim to better realise these objectives in practice.

49 *Surrogacy Act 2022* (NT) s 6(a). See also *Assisted Reproductive Technology and Surrogacy Act 2025* (WA) s 4(b)(ii).

50 *Surrogacy Act 2010* (NSW) s 3; *Surrogacy Act 2022* (NT) s 5; *Surrogacy Act 2010* (Qld) s 6(1); *Surrogacy Act 2019* (SA) ss 6, 7(3); *Surrogacy Act 2012* (Tas) s 3(1); *Assisted Reproductive Technology and Surrogacy Act 2025* (WA) ss 5(2)(a), 120 (which will commence in mid-2027). See also *Assisted Reproductive Treatment Act 2008* (Vic) s 5(2)(a).

PROBLEMS AND SOLUTIONS

Overview of problems and solutions

41. While these key objectives are fundamental to the system for regulating surrogacy, the current legal framework often falls short of achieving them. This section provides an overview of the key problems identified in the current framework and the reforms recommended to address them. If implemented, the reforms recommended in the Final Report would improve access to well-regulated domestic surrogacy, and be more effective at preventing exploitation and other forms of harm, including by better avoiding the substantial risks associated with overseas surrogacy.

Domestic surrogacy accessibility: problems and solutions

42. A clear theme to emerge from this Inquiry is that domestic surrogacy is difficult to access. This is due to four barriers to access: a shortage of available surrogates, a lengthy and difficult process, laws that can operate in an overly restrictive and fragmented way, and financial barriers. These barriers, and the reforms recommended to address them, are discussed below.

43. One of the most significant barriers to accessing domestic surrogacy is the shortage of people willing to be surrogates in Australia.[51] Most intended parents and surrogates who engage in domestic surrogacy are known to each other (**Chapter 2**). As a result, intended parents who do not have someone within their existing family or social network who is willing to act as a surrogate have limited avenues for finding a surrogate domestically. This shortage is reflected in data from a 2021 survey, in which 'I could not find a surrogate in Australia' was the second-most frequently reported reason from intended parents for choosing overseas surrogacy.[52]

44. This difficulty is also recognised by professionals working in surrogacy and ART who agree that finding a surrogate in Australia is a 'time-consuming and potentially fruitless process' (**Chapter 4**). This view was echoed in submissions received in this Inquiry:

> [w]e decided not to do it locally even though it is cheaper as we did not have any family or friends who would be willing to be a surrogate for us, which is how most people in Australia match with their surrogate. The rest have to try and find someone elsewhere, such as on Facebook groups. It wasn't natural for us trying to put ourselves out there to get noticed, and there are far too many

51 See, eg, Michael Gorton, *Helping Victorians Create Families with Assisted Reproductive Treatment: Final Report of the Independent Review of Assisted Reproductive Treatment* (2019) xxx. See also South Australian Law Reform Institute, *Surrogacy: A Legislative Framework* (Report No 12, 2018) 33.

52 Reported by 56% of those who were completing, planning to complete, or had completed overseas surrogacy: Kneebone et al (n 41) 1452 table 2.

> [intended parents] compared to surrogates. We did not want to wait years to try and match as we didn't want to be too old before becoming parents.[53]

45. Overly restrictive laws in relation to reimbursement likely contribute to the shortage of surrogates in Australia. Current laws can fail to cover the full range of economic costs surrogates incur, leaving surrogates out of pocket because of the arrangement. Legislative categories of reimbursable economic costs can be too narrow or incomplete, and in practice the listed examples may be incorrectly treated as an exhaustive list. They also do not provide for reimbursement for non-economic losses associated with pregnancy and childbirth, such as physical and psychological impacts, and a loss of amenity (**Chapter 8**). As a result, surrogates may be financially disadvantaged, or required to absorb significant personal costs and experience significant loss. This unfairness makes being a surrogate potentially unattractive and not feasible for many people and may discourage potential surrogates from taking on the role (**Chapter 8**).

46. A related barrier is the length and difficulty of the domestic surrogacy process. In this Inquiry, people with personal experience of surrogacy described the process from initial steps through to securing legal parentage as 'impossible',[54] 'complicated',[55] and bureaucratic.[56] While domestic surrogacy would have been the preferred option for most intended parents in Australia, it is often perceived as too hard to pursue. In the 2021 survey discussed above, 92% of intended parents who were planning to engage in, or were engaging in overseas surrogacy, said they would have preferred to pursue domestic surrogacy,[57] but 69% identified the length and complexity of the domestic process as a barrier.[58] A 2013 survey reported a similar result, with the belief that domestic surrogacy was too long and complicated among the most frequently reported reasons for not considering it.[59]

47. The problems with the length and difficulty of the process are related to laws that overly restrict how intended parents and surrogates find each other, and how they are then supported through a surrogacy arrangement. Legislative limits stifle the development of services that would help parties navigate the process (**Chapter 4**), including by prohibiting introductions between intended parents and surrogates, and restricting advertising in relation to surrogacy (**Chapters 2** and **4**). These prohibitions leave parties with limited, often informal pathways to connect and be supported. More broadly, information about surrogacy is limited, fragmented,

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53 Rainbow Families, *Submission 260*. This was a view shared with Rainbow Families as part of their own community consultations. See also Not published, *Submission 206*; Name withheld, *Submission 340*; Not published, *Submission 341*.

54 Rainbow Families, *Submission 260*. This was a view shared with Rainbow Families as part of their own community consultations.

55 Name withheld, *Submission 343*.

56 Rainbow Families, *Submission 260*.

57 Kneebone et al (n 41) 1451. This study involved 320 participants.

58 Ibid 1452 table 2.

59 Sam G Everingham, Martyn A Stafford-Bell and Karin Hammarberg, 'Australians' Use of Surrogacy' (2014) 201(5) *Medical Journal of Australia* 1, 2. This study involved 259 participants.

and inconsistent, making it hard for people to understand and access the domestic process (**Chapter 3**).

48. These problems are compounded by the fact that surrogacy is mainly regulated through inconsistent state or territory laws. The result is a fragmented 'patchwork' of legislative safeguards, prohibitions, pathways to legal parentage, and systems for children born through surrogacy to access information about their origins (**Chapters 3** and **11**). This makes the law confusing and difficult to navigate.[60] It also increases the complexity and cost of coordinating the services required to support arrangements, especially given surrogacy arrangements in Australia often cross state and territory borders (**Chapter 3**).[61] In those cases, parties may be exposed to inconsistent rules and friction at different stages of the same arrangement.

49. Financial barriers can also prevent people from pursuing domestic surrogacy. In some cases, intended parents and surrogates may have difficulty accessing financial entitlements that are readily available to people involved in other forms of family formation (**Chapter 9**).

50. An important way the recommendations in the Final Report aim to make domestic surrogacy easier to access is by reducing the disincentives to becoming a surrogate. **Recommendations 23** and **24** would ensure surrogates are reimbursed for all costs and losses reasonably incurred because of the arrangement, so they do not suffer financial and other disadvantage. **Recommendation 23** provides for a clearer and more consistent requirement for intended parents to reimburse surrogates for all reasonably incurred economic costs, as well as the loss of earnings, and expands the illustrative categories of reasonable costs that must be reimbursed. **Recommendation 24** would allow surrogates to elect to be reimbursed for the commonly experienced non-economic losses, such as the physical and psychological impact and loss of amenity resulting from pregnancy and childbirth, as well as any extraordinary losses arising from serious medical complications. These recommendations would make becoming a surrogate fairer and more feasible, and may increase willingness to take on the role. Reimbursement would also be made clearer and more secure by requiring intended parents to deposit, or secure a guarantee for, the full estimated economic costs of the arrangement (**Recommendation 25**).

51. The recommendations in the Final Report also aim to make domestic surrogacy easier to access by improving how intended parents and surrogates find each other and are supported through an arrangement. Private, licensed Surrogacy Support Organisations ('SSOs') operating under a capped fee model would play a central role in that pathway by facilitating introductions, coordinating the services needed to meet eligibility and process requirements, and providing information, case management, and support throughout the arrangement (**Recommendation 8**). These measures

60 For example, Dr Oxlad described the current system as 'an absolute nightmare': South Australian Law Reform Institute (n 51) 128 [13.1.1].

61 Hunt and Swift (n 39) 7.

would be complemented by fewer restrictions on advertising (**Chapter 2**) and better access to information about surrogacy, including for professionals involved in surrogacy arrangements (**Recommendation 7**). These reforms would also help address the shortage of surrogates by making it easier for intended parents and potential surrogates to connect.

52. These reforms depend on an institutional architecture that would support an accessible domestic surrogacy system. A nationally consistent legislative framework would reduce complexity and administrative burden by making legislative safeguards, prohibitions, pathways to legal parentage, and systems for access to gestational information consistent across jurisdictions.[62] This could be achieved through enacting one Commonwealth law or uniform or substantially consistent state and territory legislation (**Recommendation 3**). Where judicial involvement is necessary, centralising the legal parentage process in the Federal Circuit and Family Court of Australia would further support consistency (**Recommendations 28** and **29**). A national regulator for surrogacy, or an existing national regulator acting in that role (collectively 'the National Regulator') would (in addition to its role in relation to overseas surrogacy) give practical effect to the domestic framework by regulating SSOs and acting as a central source of reliable information. If establishing a National Regulator is not viable, consideration should be given to whether the functions recommended for the National Regulator could be allocated to a mix of existing agencies or government departments at the Commonwealth, state, and territory level (**Chapter 3**). These measures would together create the institutional architecture needed to make domestic surrogacy a more accessible pathway to family formation.

53. Access to Medicare-subsidised fertility treatment carried out for the purpose of surrogacy (**Recommendation 26**) would help address some of the financial barriers to accessing domestic surrogacy.

Domestic surrogacy legal certainty: problems and solutions

54. Another issue that makes domestic surrogacy difficult is the uncertainty, stress, and difficulty associated with recognising legal parentage in Australia. Of those who responded to the 2021 survey discussed above, 43% selected 'in Australia, the surrogate has the right to keep the child if she changes her mind' as a reason for choosing overseas surrogacy.[63] Similarly, 'concern that the surrogate might decide to keep the child' was the most frequently reported reason that respondents to the 2013 survey discussed above chose overseas surrogacy.[64] The uncertainty is compounded by the difficulty of the legal parentage process itself, which intended parents and parents through surrogacy have described as unnecessary, expensive,

62 It would also result in a more consistent approach (**Chapter 3**) to overseas surrogacy, which engages issues of national responsibility and concern.
63 Kneebone et al (n 41) 1452 table 2.
64 Everingham, Stafford-Bell and Hammarberg (n 59) 2.

and bureaucratic.[65] In this Inquiry, we heard that the current process to transfer legal parentage is a major source of stress and anxiety for all parties (**Chapter 10**).

55. This issue stems from the current law which, as a starting point, recognises the surrogate and their partner (if any) as the legal parents of the child upon birth. That position is inconsistent with the parties' intentions under the surrogacy arrangement. Even where those intentions are clear and aligned, and statutory safeguards have been met, the parties must still go to court to reverse the legal position (**Chapter 10**). This makes recognition of legal parentage less certain and more difficult than it needs to be.

56. Concerns about the uncertainty and difficulty of recognising legal parentage would be largely addressed through a more certain and streamlined approval process for surrogacy arrangements, facilitated by SSOs (**Recommendation 9**). Approved arrangements (**Recommendation 10**), having met legislative safeguards (see below), would be able to proceed with greater certainty through an administrative pathway to legal parentage, under which intended parents are recognised as the child's legal parents from birth (**Recommendation 28**). This would shift the starting position of the law, by aligning legal parentage with parties' intentions when entering the arrangement. It would replace a process that currently operates after the fact through the courts, with one that operates in advance and administratively, making recognition of legal parentage more certain and less difficult. The change in approach would help remove a potential barrier for people who may consider becoming surrogates but are concerned they could be left legally responsible for the child, and create a strong incentive for intended parents to pursue surrogacy domestically rather than overseas (**Chapter 10**). Importantly, it would ensure that children born through surrogacy have their functional and social family legally recognised from birth, consistent with the best interests of the child (**Chapter 10**).

57. However, no regulatory framework can provide complete certainty, given the rights of everyone involved. The recommendations in the Final Report therefore preserve an important safeguard for the surrogate. They allow the surrogate to apply for a parentage order recognising them (and their partner, if any) as the child's legal parent or parents within three months of the child's birth, extendable to six months in exceptional circumstances (**Recommendation 28**). Where there is no approved arrangement, the judicial pathway would remain available so that legal parentage can still be determined in accordance with the child's best interests, rather than being unavailable due to non-compliance alone (**Recommendation 29**).

65 Ezra Kneebone, Karin Hammarberg and Kiri Beilby, 'Surrogates', Intended Parents', and Professionals' Perspectives on Ways to Improve Access to Surrogacy in Australia' (2024) 38(1) *International Journal of Law, Policy and The Family* 1, 12.

Domestic surrogacy harm prevention: problems and solutions

58. Domestic surrogacy can create risks of harm for children, surrogates, and intended parents if the regulatory framework does not provide sufficiently comprehensive, consistent, or effective safeguards. For children, these risks include uncertainty about legal parentage, which can create gaps in decision-making authority in matters affecting their care and wellbeing, and fail to reflect their family relationships (**Chapter 10**). There is also limited protection of identity rights, with most jurisdictions providing only limited access to information for people born through surrogacy about their gestational origins (**Chapter 11**). Further, inadequate mechanisms exist to identify any risks to child safety before conception (**Chapter 5**). For surrogates, current laws can result in financial and other disadvantage (**Chapter 8**), and do not consistently protect their autonomy or uphold free and informed consent (**Chapters 5**, **6**, and **7**). More broadly, the law does not consistently ensure that foreseeable challenges are identified and addressed before an arrangement proceeds, which can have serious consequences for the parties, including relationship breakdowns (**Chapter 6**). Intended parents may also be exposed to harm where reimbursement obligations are unclear or inadequately supervised, creating a risk that one party to an arrangement may financially exploit another (**Chapter 8**).

59. These risks arise in part because legislative safeguards are not as comprehensive or extensive as they should be. They are inconsistent across jurisdictions, with some jurisdictions imposing stronger legislative safeguards while others adopt weaker requirements or no equivalent requirement (**Chapters 5** and **6**). As a result, the level of protection afforded to children born through surrogacy, surrogates, and intended parents, depends on where the arrangement occurs. These requirements therefore do not reliably protect rights or prevent exploitation and other forms of harm in the way they are designed to do.

60. These problems are compounded by the absence of effective oversight. Compliance with legislative safeguards is generally not assessed until an application for legal parentage is made, after the child has already been born (**Chapters 4** and **10**). There is therefore no earlier opportunity to ensure, for example, that the surrogate gave free and informed consent, reimbursement arrangements were fair, or issues relevant to the child's best interests were identified before conception. By that stage, it is usually too late to remedy any non-compliance, or for requirements to have any operation or useful effect (**Chapters 4** and **10**).

61. Enforcement is a further weakness in the current framework. Surrogacy prohibitions rely on criminal sanctions which, in this context, are an inadequate tool for preventing exploitation and other forms of harm. They are not used (**Chapters 2** and **12**), and can discourage people from seeking support or information for fear of

criminal liability.[66] This makes arrangements less visible,[67] increasing rather than reducing the risk of harm.[68]

62. However, harmful outcomes are not inherent to surrogacy. A well-regulated system can reduce these risks, through clear safeguards and protections for those involved, as well as effective oversight.[69]

63. For children, the ALRC's recommendations aim to protect their rights and interests by ensuring that legal parentage reflects, as early as possible, the family in which it is in their best interests to be raised. As discussed above, where there is an approved surrogacy arrangement, unless a court determines otherwise by reference to the best interests of the child, intended parents would be recognised as the child's legal parents from birth, consistently with the free and informed intentions of all the parties to the surrogacy arrangement (**Recommendations 10** and **28**). This would reduce legal uncertainty and support timely decision making about the child's care and wellbeing.

64. The recommendations also establish, for the first time, a nationally consistent system for recording and accessing information about a child's gestational origins (**Recommendations 30**–**32**). They move beyond ad hoc and incomplete state-based arrangements by requiring relevant information to be collected at birth, flagged through a birth certificate addendum, and stored on a National Surrogacy Register. In practical terms, this creates a new framework to help children born through surrogacy understand their origins and better realise their right to identity (**Chapters 11** and **14**).

65. To help protect the best interests of any children born through surrogacy, intended parents would be required to undergo a Nationally Coordinated Criminal History Check. For the surrogacy arrangement to be approved (**Recommendation 9**), the report must indicate that no offences have been committed by the intended parent(s) against a child (**Recommendation 16**). This would enable any foreseeable and serious risks of harm to be identified and mitigated before the child is conceived.

66. In relation to surrogates, financial reimbursement is critical to ensuring they are treated fairly. A surrogate should not be left financially or otherwise

66 Anita Stuhmcke, 'Extra-Territoriality and Surrogacy: The Problem of State and Territory Moral Sovereignty' in Paula Gerber and Katie O'Byrne (eds), *Surrogacy, Law and Human Rights* (Routledge, 2015) 65, 77; Human Rights Watch, 'Submission to the Special Rapporteur on the Sale and Sexual Exploitation of Children: Inputs on Safeguards for the Protection of the Rights of Children Born from Surrogacy Arrangements' (2019) <www.hrw.org/news/2019/06/03/submission-special-rapporteur-sale-and-sexual-exploitation-children>. See also Claire Fenton-Glynn, 'Outsourcing Ethical Dilemmas: Regulating International Surrogacy Arrangements' (2016) 24(1) *Medical Law Review* 59, 74; Name withheld, *Submission 44*; K Cox, *Submission 105*; S Jefford, *Submission 128*; K Horsey, *Submission 418*.

67 See, eg, Not published, *Submission 123*; Name withheld, *Submission 177*.

68 Human Rights Watch (n 66).

69 See, eg, A Whittaker, C Volks, A Molas (et al), *Submission 201*.

disadvantaged because of the arrangement. At the same time, payments should not become an inducement to act as a surrogate, particularly where that may undermine free and informed consent. The ALRC's recommendations maintain this balance by allowing reimbursement for costs and losses connected with the arrangement (**Recommendations 23** and **24**), while continuing to prohibit domestic surrogacy that is for profit or reward (**Recommendation 1**). Payments are therefore permitted to avoid unfairness to the surrogate, but not to create a financial incentive to enter the arrangement, or to reward gestational services. This maintains the current distinction between reimbursement for costs and losses and surrogacy that is for profit or reward, and is directed at addressing existing legislative objectives (**Chapter 2**). As discussed below, however, that distinction may warrant reconsideration in the future.

67. The ALRC's recommendations also include additional measures to preserve these safeguards for surrogates in practice. In particular, the National Regulator (**Recommendation 6**) would set a maximum cap for payments for non-economic loss and extraordinary loss (**Recommendation 24**). This would better ensure that those payments are used for the purpose of reimbursing actual non-economic and extraordinary losses, rather than becoming a disguised form of profit or reward. Other prohibitions are intended to close off pathways to surrogacy for inappropriate financial inducement or profit or reward. This includes a prohibition on the facilitation or advertising of domestic surrogacy that is for profit or reward (**Recommendation 2**).

68. In designing a well-regulated surrogacy system, the ALRC has placed particular emphasis on protecting surrogates' autonomy through 'free and informed consent'. This is a central safeguard against exploitation and other forms of harm, including protecting the best interests of the child.

'Free and informed consent' — the cornerstone of protecting against exploitation and other forms of harm

A surrogacy arrangement based on the surrogate's free and informed consent ensures genuinely voluntary participation and reflects the 'existence of the conditions in which true, meaningful choice is able to be exercised'.[70] In practice, that means ensuring a surrogate understands the nature of surrogacy[71] and the medical, legal, and practical risks it may involve, and is able to decide whether to proceed without undue pressure,[72] coercion, or financial inducement. Where these conditions are present, the surrogate's autonomy and rights are respected and the central concern about exploitation and other forms of harm is substantially addressed.

70 Horsey (n 16) 257.

71 Neil C Manson, 'Informed Consent' in Hugh LaFollette (ed) *The International Encyclopedia of Ethics* (Blackwell Publishing Ltd, 2013) 2616, 2626.

72 See National Health and Medical Research Council, *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (2017) 27; Francoise Shenfield et al, 'Ethical Considerations on Surrogacy' (2025) 40(3) *Human Reproduction* 420, 421.

The recommendations in the Final Report are intended to help secure those conditions through legislative safeguards, and by prohibiting coercion and domestic surrogacy that is for profit or reward.

This emphasis on free and informed consent also informs the Final Report's 'least restrictive' approach to regulation (see below). Where a surrogate and intended parents have made a free and informed decision to enter a surrogacy arrangement, the law should generally respect that decision and limit its intervention. Interference with the arrangement should be confined to circumstances where it is necessary to protect the rights and interests of others; for example, where there is a risk of the sale of a child or other harm.

We recognise that the terms 'consent' and 'informed consent' ordinarily imply that consent is given freely and voluntarily. However, the Final Report uses the phrase 'free and informed consent' to underscore the particular importance of consent in the context of surrogacy being both informed and free from undue pressure, coercion, or financial inducement.

69. The recommendations aim to reduce the risks of exploitation and other forms of harm, including by ensuring free and informed consent and protecting the best interests of children born through surrogacy. These objectives are pursued through a series of requirements that must be met before a surrogacy arrangement could be approved (**Recommendation 9**), following which parties would be able to attempt to achieve a pregnancy and proceed on the administrative pathway to legal parentage (**Recommendation 10**). These legislative safeguards draw together existing protections across Australian jurisdictions and build on them. The result would be a higher and more consistent standard of protection than currently exists in any single jurisdiction. They include the following:

- Intended parents must be unlikely to be able to conceive, gestate, or give birth to a child, for a medical, biological, or psychological reason (**Recommendation 11**). This would help ensure that surrogacy is used where there is a genuine basis for it and that the risks that surrogacy may involve are not imposed without sufficient justification.
- To support free and informed consent and reduce the risk of coercion or exploitation, a surrogate must be at least 25 years old and intended parents must be at least 18 years old before an arrangement can be approved (**Recommendation 12**). These age requirements would help ensure that parties are sufficiently mature to understand and navigate the complexities and challenges of surrogacy.
- To support free and informed consent and reduce the risk of harm, the surrogate must have previously carried a pregnancy and given birth to a live child (**Recommendation 14**), and an obstetrician must certify that the arrangement can proceed without undue risk to the surrogate's health (**Recommendation 15**). These requirements would help ensure that

the risks of surrogacy are understood and appropriately managed before an arrangement proceeds.

- To support free and informed consent, all parties must receive independent legal advice and counselling about significant issues raised by the arrangement (**Recommendations 17** and **18**). This would help ensure that each party understands the nature and implications of the arrangement. It also would help ensure that foreseeable challenges are identified and addressed before an arrangement proceeds.
- To support free and informed consent, the parties must enter into a signed, compliant surrogacy agreement (**Recommendation 20**). The agreement must address significant matters, including cost and loss recovery, the surrogate's bodily integrity and autonomy, and the parties' expectations about their relationship following the birth of the child. This would reduce the scope for misunderstanding or disputes, and help ensure the arrangement proceeds on a shared understanding of each party's rights and obligations.

70. The legislative safeguards also include citizenship or residency requirements (**Recommendation 13**). In some circumstances, the parties may also be required to undergo psychological assessment (**Recommendation 19**). These requirements are not intended to operate inflexibly. In certain circumstances, they may be dispensed with as part of the approval process (**Recommendation 9**). This feature would allow for flexibility or additional scrutiny where the circumstances require it.

71. To protect intended parents, **Recommendation 23** restricts claims for reimbursement where costs are incurred beyond the three-month period following the birth of a child, miscarriage, stillbirth, or termination of a pregnancy. Claims made after that period are only payable if they were incurred in connection with a serious medical complication experienced during pregnancy or childbirth, or were incurred with prior approval from the nominated SSO (**Recommendation 24**), unless a court orders otherwise.

72. Nationally consistent legislation, supported by a National Regulator (**Recommendation 3**), would help ensure the recommended safeguards operate consistently. It would mean that intended parents, surrogates, and children are subject to the same requirements and protected by the same safeguards, rather than being treated differently because of inconsistent state and territory laws. A National Regulator (**Recommendation 6**) would support this consistency by overseeing SSOs (**Recommendation 8**), supporting proper decision making about approval of surrogacy arrangements (**Recommendation 9**), and helping parties understand their rights and responsibilities (**Recommendation 7**). In this way, the recommendations would replace an uneven system of safeguards with a system in which safeguards operate more consistently and comprehensively.

73. To strengthen and make safeguards more effective, the recommendations would move oversight to the start of the domestic surrogacy process and create strong incentives and high levels of compliance with safeguards before the arrangement

begins. First, parties would need approval to proceed with the arrangement before attempting to achieve a pregnancy (**Recommendation 9**). Because ART is essential for gestational surrogacy, which is the most common form of surrogacy,[73] this is expected to produce high levels of compliance with legislative requirements. This structure would be reinforced by prohibiting approval of arrangements that do not comply with legislative requirements (**Recommendation 33**), and by prohibiting ART service providers from facilitating a pregnancy unless satisfied that an approved surrogacy arrangement is in place (**Recommendation 34**).

74. Second, approval would also be the gateway to the administrative pathway to legal parentage. Parties who have not received approval would need to seek a transfer of legal parentage through the judicial pathway (**Recommendations 10** and **29**). This would give parties a further incentive to comply with the safeguards before conception, making them more effective. Further, because approval would be required before parties can proceed with an embryo transfer or otherwise attempt to achieve a pregnancy, and most surrogacy arrangements rely on ART, the ALRC expects high levels of engagement with the administrative pathway. This is significant because that pathway gives effect to the child's best interests.

75. These features would result in earlier and more effective oversight. By requiring approval before any attempt to achieve a pregnancy, and making approval the gateway to the administrative pathway to legal parentage, the recommendations would bring most domestic arrangements into the regulatory framework before conception. This would allow risks, lack of free and informed consent, or other issues to be identified while harm can still be prevented, rather than only after the birth when non-compliance may be much harder, or impossible, to resolve. In that way, safeguards are more likely to operate meaningfully, rather than being considered too late to have any real protective effect (**Chapter 4**).

76. More generally, the recommendations would replace criminal sanctions for conduct relating to domestic (and overseas) surrogacy with civil penalties, enforced by the National Regulator across a range of prohibitions (**Chapter 12**). This is intended to make enforcement more likely, effective, and proportionate. Civil penalties are subject to a lower standard of proof and can be enforced by a regulator heavily invested in maintaining the integrity of the scheme. Because of this, they are easier to enforce and likely to be just as effective as, if not more effective than, criminal sanctions in supporting compliance and protecting against harm and exploitation.

73 See, eg, Sarah Jefford, *More Than Just a Baby: A Guide to Surrogacy for Intended Parents and Surrogates* (2020) 6–7. Gestational surrogacy uses an egg other than the surrogate's own, while traditional surrogacy uses the surrogate's own egg. Practitioner data provided to the ALRC suggests that traditional surrogacy is a minority of domestic arrangements: Sarah Jefford, a surrogacy lawyer, reported that 13% of approximately 600 domestic surrogacy matters in which she had acted over the previous four years involved traditional surrogacy; Narelle Dickinson, a psychologist and reproductive counsellor, reported that approximately 10% of around 280 matters in which she had been involved were traditional surrogacy arrangements. While not comprehensive national data, these figures suggest that gestational surrogacy is the predominant form of surrogacy used, possibly accounting for upwards of 85% of arrangements.

Civil penalties would also preserve the objective of deterrence, while being less stigmatising.

Overseas surrogacy harm prevention: problems and solutions

77. The conditions created by the current regulatory framework push intended parents towards overseas surrogacy, and the number doing so appears to be rising (see above). This can expose surrogates, children, and intended parents to risks of harm and exploitation (**Chapter 13**). In some destinations, concerns arise about medical care and living conditions,[74] as well as gaps in protections for surrogates. This includes safeguards for free and informed consent, such as access to counselling, and protections for bodily integrity and autonomy, such as limits on embryo transfers.[75] There are instances where surrogates have been inadequately reimbursed, had their freedom of movement restricted, or been subject to human trafficking and slavery-like conditions (**Chapter 13**). For children, overseas arrangements can create a lack of certainty about legal parentage or citizenship, and challenges in accessing information about the surrogate (**Chapter 13**), which are relevant to their right to a parent-child relationship, nationality, and identity. They may also raise risks under international law, including contravening the prohibition on the sale of a child (**Chapter 14**). Intended parents may also be harmed in overseas surrogacy arrangements, including through misleading information or assurances, financial losses, and through unexpected delays caused by problems with paperwork, birth documentation, or changes in the law (**Chapter 13**).

78. While not all overseas arrangements raise these concerns, they are heightened in jurisdictions that are unregulated or poorly regulated, or marked by significant social and economic disparity (**Chapter 13**). These risks are significant and should not be understated. However, the current approach to regulating surrogacy is not adequate to address them and may, in some cases, contribute to the very harm and exploitation the laws seek to prevent. As a submission from a couple who were intended parents observed, the 'intent is to prevent exploitation, but in reality, it mainly drives Australians to seek surrogacy in secret or abroad, with no oversight'.[76]

79. There are several reasons the current approach is inadequate (**Chapter 13**). Australians' engagement in overseas surrogacy is not regulated at all in four of eight states and territories, creating a significant regulatory gap. Other jurisdictions regulate these arrangements through extraterritorial prohibitions, which do not appear to be sufficiently effective and are not enforced. Australians are treated differently in relation to the same overseas conduct depending on where they live. While some Australians can legally access overseas surrogacy to form a family, others may be criminally liable for doing so. Further, the current approach relies on state

74 Kirsty Horsey and Zaina Mahmoud, 'Surrogates' and Intended Parents' Experiences of Surrogacy Arrangements: A Systematic Review' (2023) 46(1) *RBMO* 7, 7–8.
75 Kneebone et al (n 41) 1454.
76 Name withheld, *Submission 37*.

and territory-based laws and enforcement mechanisms that are not well suited to conduct beyond Australia's borders. A response focused on proving and sanctioning prohibited conduct overseas is difficult to effect, given Australia's limited influence and investigative capacity in such situations. Finally, the current approach fails to distinguish between lawful, well-regulated arrangements and those that are not. Not all overseas surrogacy arrangements that are for profit or reward are exploitative. Imposing a blanket prohibition in these circumstances is therefore a blunt response to a nuanced problem. As more Australians pursue overseas surrogacy, this uneven, ineffective, and one-size-fits-all approach is a pressing concern.

80. Other issues relating to the regulation of overseas surrogacy include that there is no requirement, where children are born through an overseas surrogacy arrangement, for details of the child's birth — including both gestational and genetic origins — to be recorded and made accessible to them in Australia (**Chapter 13**). This is inconsistent with the child's rights to identity (**Chapter 14**). There is also no requirement for intended parents to obtain confirmation of their legal relationship to the child (**Chapter 13**). As discussed in **Chapter 10**, recognition of legal parentage is important for both practical reasons and a child's sense of identity, and is the source from which many rights and obligations are derived. Finally, intended parents can face practical hurdles when seeking to return to Australia with children born through overseas surrogacy and to obtain the surrogate's consent for an initial passport and passport renewal (**Chapter 13**).

81. The ALRC's recommendations aim to make domestic surrogacy a more viable and preferred pathway, reducing the need for intended parents to look overseas. However, the current regulatory response also does too little to influence conduct in overseas arrangements. Whether or not Australia has extraterritorial legal obligations, the ALRC considers that as a matter of good policy Australia should, where practicable, regulate to reduce the risk of Australians entering overseas arrangements that may undermine the human rights of those involved (**Chapter 14**). A new, proactive national approach, targeted at conduct that can be more effectively regulated, is required.

82. The recommendations therefore seek to engage with overseas surrogacy more proactively, responsibly, and effectively. The proposed regime would steer Australian intended parents, through guidance and advice, to responsible overseas arrangements, rather than relying only on sanctions after an arrangement has occurred. By focusing on conduct within Australia, the framework would target what Australia can control, making breaches easier to investigate and enforce, and supporting more effective deterrence. It would allow lawful, well-regulated arrangements to proceed, while helping to avoid arrangements involving a significant risk of exploitation of the surrogate, the sale of a child, or the denial of the child's rights to identity or nationality. The proposed reforms would also help to protect Australian intended parents from exploitation.

83. Intended parents would be required to engage with the National Regulator (**Recommendation 6**) before and during an overseas arrangement, receive clear guidance and legal advice before entering it, and take reasonable steps to act responsibly when choosing to engage in an overseas surrogacy arrangement. Specifically, intended parents would be required to:

- register their intention to engage in overseas surrogacy with the National Regulator (**Recommendation 38**);
- obtain guidance from the National Regulator ('Responsible Overseas Surrogacy Guidelines') about the general risks involved to the surrogate, the child, and themselves, and what steps they are legally required to take to responsibly engage in overseas surrogacy (**Recommendation 37**);
- obtain legal advice from a lawyer in Australia and in the overseas destination, to ensure the arrangement is lawful and that they understand their legal obligations (**Recommendations 41** and **42**);
- take reasonable steps to act responsibly in choosing to engage in an overseas surrogacy arrangement (**Recommendation 43**), including by following the guidance in the Responsible Overseas Surrogacy Guidelines, the legal advice obtained, and the information obtained after further reasonable enquiries. This is to avoid engaging in an overseas surrogacy arrangement which is unlawful in the overseas jurisdiction, fails to meet minimum content requirements specified by Australian law, and involves significant risk of the exploitation of the surrogate, the sale of a child, or the denial of the rights of the child to identity or nationality; and
- update their registration to confirm that legal advice was obtained and to provide a copy of the surrogacy agreement (**Recommendation 44**).

84. To help ensure the guidance provided in the Responsible Overseas Surrogacy Guidelines is not undermined by misinformation, and to protect intended parents from harm or exploitation, those who seek to facilitate or arrange overseas arrangements would be prohibited from intentionally or recklessly providing intended parents with incorrect or misleading information or advice (**Recommendation 40**).

85. Repealing extraterritorial criminal prohibitions (**Recommendation 36**) and introducing nationally consistent legislation (**Recommendation 3**), supported by a National Regulator (**Recommendation 6**), would enable a national approach to regulating overseas surrogacy, address the substantial regulatory gap that currently exists across four of the eight states and territories, and support these recommendations in practice. A national approach is especially appropriate where a scheme seeks to influence conduct overseas, better aligning regulation with the national and international character of surrogacy. It would also enable consistent guidance, expectations, monitoring, and use of civil penalties where appropriate. This would make surrogacy regulation more consistent and effective than the current patchwork of inconsistent laws.

86. After a child is born, the ALRC's recommendations would better protect a child's right to birth registration, nationality, and a parent-child relationship, and to preserve their identity (**Chapter 14**). To achieve this, information about the circumstances of the child's birth would be recorded on the National Surrogacy Register (**Recommendation 45**), and Australian citizenship, passport, and visa processes would be better aligned (**Recommendation 46**). The recommendations would also require intended parents to apply for legal parentage through the judicial pathway to have their relationship with the child recognised (**Recommendations 29** and **45**). **Recommendation 47** would simplify passport renewals.

87. This new approach to overseas surrogacy would place higher expectations on intended parents who choose to go overseas. It would require them to be informed and take practical steps to reduce the risk of exploitation and other forms of harm, with clear consequences for non-compliance in the form of a civil penalty. Providing intended parents with a lawful and regulated pathway is more likely to reduce the risk of harm than a blanket prohibition on Australians engaging in overseas surrogacy for profit or reward. Over time, this may help to change how Australians engage in overseas surrogacy: by moving from an unregulated pathway to one in which responsible engagement is understood as part of the process from the start.

Figure 1: A supported and responsible domestic surrogacy process

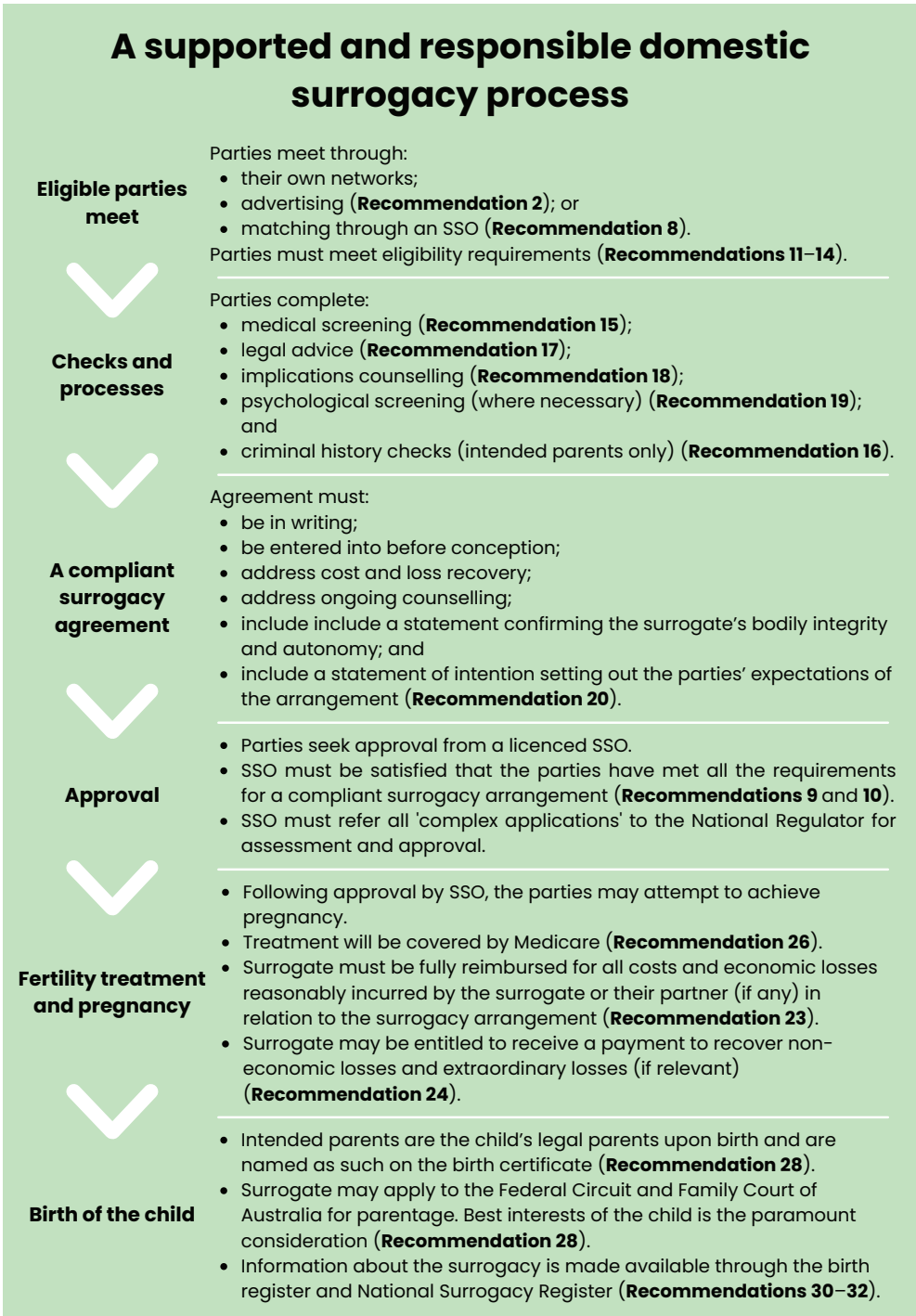


Figure 2: A proactive and responsible overseas surrogacy process

A proactive and responsible overseas surrogacy process

Registration	Before entering into an overseas surrogacy arrangement, intended parents must first register their intention to do so with the National Regulator (**Recommendation 38**).
Guidance	Intended parents receive guidance from the National Regulator on: • risks and steps to take to avoid risks; • minimum content requirements for a surrogacy agreement; and • legal obligations to act responsibly (exercise due diligence) (**Recommendations 37** and **39**).
Legal advice	Before entering into an overseas surrogacy arrangement, intended parents must obtain legal advice from lawyers in Australia and from the overseas jurisdiction (**Recommendations 41** and **42**).
Exercise due diligence	Before entering into an overseas surrogacy arrangement, intended parents must be reasonably satisfied that the agreement meets the minimum content requirements and does not involve significant risk of: • exploitation of the surrogate; • the sale of a child; or • the denial of the rights of the child to identity or nationality. (**Recommendation 43**).
Arrangement	• Intended parents enter into overseas surrogacy arrangement.
Update registration	• Before entering into an overseas surrogacy arrangement, intended parents must provide the National Regulator with confirmation of legal advice and a copy of the written agreement (**Recommendation 44**).
Child born	• Surrogacy arrangement proceeds and a child is born.
Return to Australia	• Intended parents apply for Australian citizenship and a passport, or visa, for the child and return to Australia with the child (**Recommendations 46** and **47**).
Update birth registration and apply for parentage	Within 6 months of arriving in Australia, intended parents must: • provide National Regulator with the child's birth details (**Recommendation 45**); and • apply to the Federal Circuit and Family Court of Australia for legal parentage of the child (**Recommendation 45**).

APPROACH TO REFORM

The ALRC's approach to reform

88. The following section outlines the main reform approaches and principles that have shaped the recommendations in the Final Report. In summary, the ALRC has:

- aimed to make surrogacy more accessible and more responsible;
- made recommendations compliant with Australia's international human rights obligations;
- sought to ensure that the law is harmonised and clear; and
- taken a pragmatic and least restrictive approach to regulation.

Making surrogacy more accessible and responsible

89. The ALRC's approach is to facilitate access to the benefits of surrogacy while better preventing the harms it can involve. Making domestic surrogacy easier to access and navigate is an important part of that approach. Surrogacy provides an important pathway to family formation for people who would otherwise be unable to have children, and improving access to it helps ensure those benefits can be realised. Making domestic surrogacy more accessible is also a protective reform because it would reduce reliance on overseas surrogacy and the risks associated with it. Many intended parents in Australia would have preferred to pursue domestic surrogacy had it been easier to access.[77] A viable domestic surrogacy pathway is therefore a form of harm reduction: it gives intended parents a regulated, local alternative to going overseas, supported by Australian legal protections, healthcare, and support services.[78]

90. At the same time, improving access to surrogacy must be accompanied by a more responsible regulatory framework. If domestic surrogacy is to become easier to access and more common in Australia, the law should facilitate it in a way that protects the rights and interests of surrogates, intended parents, and children born through surrogacy. This requires accompanying protections that reduce the risk of exploitation and other forms of harm, support free and informed consent, and promote the best interests of children. It also requires a more responsible approach to overseas surrogacy, so that Australians who continue to pursue arrangements overseas are better supported to do so in ways that reduce the risk of harm and exploitation. As such, the Final Report makes recommendations that increase the accessibility of domestic surrogacy and promote a responsible approach to surrogacy.

77 Kneebone et al (n 41) 1451. Among respondents to this 2021 survey who were considering surrogacy 'overseas' or 'in Australia *and* overseas' only 8% said that overseas surrogacy was their first choice.

78 A Whittaker, C Volks, A Molas (et al), *Submission 201*.

Compliance with international human rights obligations

91. Section 24(1)(b) of the *Australian Law Reform Commission Act 1996* (Cth) requires the ALRC to ensure that in performing its functions

> the laws, proposals and recommendations it reviews, considers or makes: are, as far as practicable, consistent with Australia's international obligations that are relevant to the matter.

92. This requirement to take account of Australia's international obligations is reinforced in the Terms of Reference, which focus on the importance of viewing surrogacy, and any reforms to surrogacy laws, policy, and practice, through a human rights lens. For example, the Terms of Reference ask the ALRC to:

- have regard to 'the human rights of children born of surrogacy, [surrogates], and intended parents';
- identify legal and policy reforms that are consistent with Australia's obligations under international law and conventions, and protect and promote the human rights of children born as a result of surrogacy arrangements, surrogates, and intended parents, noting that the best interests of children are paramount; and
- consider Australia's human rights obligations.[79]

93. Compliance with international obligations and human rights considerations have been foregrounded throughout this Inquiry and form the basis of its recommendations. The rights of the surrogate, intended parents, and children born through surrogacy are all protected by the recommendations in the Final Report, with the rights of children being a primary consideration. **Chapter 14** contains a detailed analysis of the rights of the child, the rights of the surrogate, and the rights of intended parents, and explains how the recommendations in the Final Report uphold these rights, including where such rights intersect.

A harmonised and clear legal framework

94. 'Harmonisation' is a key reform principle relevant to achieving uniform or complementary Commonwealth, state, and territory laws, as required by the Terms of Reference. In line with the Terms of Reference, the recommendations identify ways to make surrogacy laws more consistent between jurisdictions, so that they operate in a fairer, more protective, and more effective way. The current legislative landscape creates inequality in access, protections, and outcomes for children born through surrogacy, surrogates, and intended parents, while adding complexity to arrangements that often cross state and territory borders (**Chapter 3**). Greater national consistency would help ensure that access to surrogacy and key legislative safeguards do not depend on where people live and make domestic surrogacy easier to navigate (**Chapter 3**). National consistency is also important to the successful implementation of the recommendations in the Final Report. Less national

79 Australian Law Reform Commission, *Terms of Reference* (n 2).

consistency across jurisdictions may dilute the impact of the recommendations and, in some cases, make existing problems of inconsistency worse.

95. In addition to harmonised laws, it is important that surrogacy regulation provides for clear and certain laws about the rights and obligations of everyone involved, 'at the earliest possible time', before an arrangement begins and after a child is born through surrogacy.[80] Legal clarity can protect the rights and interests of parties to a surrogacy arrangement, support compliance,[81] and reduce the risk of misunderstandings and disputes.[82] Legal clarity can also support consistency in how the law is applied. When the law is not clear or certain, this can create risks, such as differences in how judges might approach decisions on legal parentage.[83] As discussed above, uncertainty can push intended parents to pursue surrogacy overseas, which can bring with it greater risks than domestic surrogacy.

A pragmatic and 'least restrictive' approach to reform

96. A pragmatic approach to surrogacy focuses on developing a regulatory framework that is workable in practice and responds to societal needs and advancements in ART, even where opinions differ about surrogacy.[84] In this Inquiry the ALRC has taken a pragmatic approach in several areas, such as by recognising that Australians will continue to engage in overseas surrogacy and focusing on creating a framework that supports responsible engagement (**Recommendations 37**–**45**). Our recommendations also seek to minimise unnecessary compliance burdens and costs that would undermine the accessibility of surrogacy by streamlining processes where possible and requiring additional regulation only where necessary, to manage identified risks or protect the rights and interests of those involved. This approach is also reflected in the way the recommendations align ART and surrogacy regulatory frameworks, so that they operate in a streamlined and complementary way, rather than imposing unnecessary duplication or friction (for example, see **Recommendation 9(6)(a)**).

97. A pragmatic approach is related to an approach of least restriction, where informed decisions by consenting adults are generally respected by governments

80 Achieving legal clarity about parent-child relationships that result from surrogacy arrangements has been the focus of previous inquiries: see, eg, Te Aka Matua o te Ture | Law Commission (NZ) (n 40) 93–4 [3.91]–[3.95]; House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Surrogacy Matters: Inquiry into the Regulatory and Legislative Aspects of International and Domestic Surrogacy Arrangements* (2016) rec 2; South Australian Law Reform Institute (n 51) 94 [9.6.1], citing Department of Justice (NSW), *Statutory Review: Surrogacy Act 2010* (2018) 6 [2.9]–[2.11].

81 Arie Freiberg, *Regulation in Australia* (The Federation Press, 2nd ed, 2025) 197.

82 Sara L Ainsworth, 'Bearing Children, Bearing Risks: Feminist Leadership for Progressive Regulation of Compensated Surrogacy in the United States' (2014) 89(4) *Washington Law Review* 1077, 1112.

83 Ibid.

84 Scott argues that regulating rather than prohibiting is more effective at mitigating risk and 'promoting social welfare': Elizabeth S Scott, 'Surrogacy and the Politics of Commodification' (2009) 72(3) *Law and Contemporary Problems* 109, 145–6.

and remain as private arrangements as far as practicable.[85] Taking this approach, oversight of surrogacy arrangements should be limited, rather than having a direct and ongoing role,[86] especially where the surrogate has engaged in the arrangement with free and informed consent (see above). Regulatory intervention should also be proportionate to the risks it seeks to address and no more than is required to meet the regulatory objective.[87] Consistent with this approach, the ALRC has taken a more facilitative approach where arrangements are routine, while retaining more targeted oversight and proportionate enforcement where this is justified.

Further reform

98. At this stage, the ALRC has not recommended the payment of surrogates beyond the parameters described above, namely we have not recommended payments that are for profit and reward. The ALRC has taken a cautious approach, having regard to the Terms of Reference (which ask us to address barriers to 'altruistic' surrogacy). We also recognise that surrogacy for profit or reward could, without sufficient and effective safeguards, operate as a financial inducement, which could undermine free and informed consent and thus increase the risk of exploitation and other forms of harm. However, the ALRC also recognises that a blanket prohibition on profit or reward may not be necessary in the future to guard against such risks.

99. Whether a blanket prohibition on profit or reward remains necessary warrants reconsideration in the future. A prohibition on all forms of remuneration may limit the number of people willing to act as surrogates in Australia, resulting in intended parents continuing to pursue overseas arrangements that carry greater risks of exploitation and other forms of harm (**Chapter 2**). It may also raise concerns about compliance with Australia's international obligations (**Chapter 14**). A prohibition on profit or reward may not be necessary to protect against financial inducement, exploitation, or the sale of a child, particularly where legislative safeguards effectively address those risks. In those circumstances, the prohibition may unjustifiably limit the surrogate's human right to autonomy and reproductive freedom. For now, the ALRC considers that a cautious approach is warranted while the recommended legislative safeguards are implemented and their effectiveness tested. **Recommendation 5** provides an opportunity for a statutory review of the new legislative framework for surrogacy after an appropriate period of operation and a reconsideration of this position.

85 See South Australian Law Reform Institute (n 51) 94–5 [9.71]–[9.73]. Taking a least restrictive approach (for example, by providing for a proportionate response to regulation) has been emphasised as a reform approach in other reform efforts and inquiries related to surrogacy and ART more broadly: see, eg, ibid 89 [9.2.7]; Gorton (n 51) 24; Standing Committee of Attorneys-General, Australian Health Ministers' Conference, Community and Disability Services Ministers' Conference Joint Working Group, *A Proposal for a National Model to Harmonise Regulation of Surrogacy* (2009) 2.

86 Freiberg (n 81) 11–12.

87 Ibid 189–90.

100. Another issue that may affect the viability of domestic surrogacy is access to donor eggs. Donor eggs are commonly used in surrogacy arrangements,[88] but there is a shortage of egg donors in Australia.[89] Australian law does not permit gamete donation if it is for profit and reward,[90] and research indicates that demand for donor gametes now outstrips supply.[91] This can make it difficult for intended parents to access donor eggs unless they can find a willing donor.[92] For some, the need to access donor eggs may therefore be another reason to pursue overseas surrogacy.[93]

101. To an extent, the potential for domestic surrogacy to develop in Australia, and for intended parents to pursue it as an option instead of overseas surrogacy (see above), will depend on the availability of donor eggs, an issue that is beyond the scope of this Inquiry.

88 Kneebone, Hammarberg and Beilby (n 65) 2; Theresa Glennon, 'Legal Regulation of Family Creation through Gamete Donation: Access, Identity and Parentage' in Susan Golombok et al (eds), *Regulating Reproductive Donation* (Cambridge University Press, 2015) 60, 61.

89 Kneebone, Hammarberg and Beilby (n 65) 2, 13; Genia Rozen et al, 'Barriers to Reproductive Treatments in Australia' (2023) 52(3) *Australian Journal of General Practice* 109, 111; Giuliana Fuscaldo et al, 'Getting Eggs "out of the Basket": Facilitating Decisions about Surplus Frozen Eggs' (2025) 51(1) *Reproductive BioMedicine Online* 1, 2.

90 *Human Cloning for Reproduction Act 2002* (Cth) s 21.

91 Rosemarie G Hogan et al, '"Battery Hens" or "Nuggets of Gold": A Qualitative Study on the Barriers and Enablers for Altruistic Egg Donation' (2022) 25(4) *Human Fertility* 688, 693.

92 Rozen et al (n 89) 111; Stephen Page, 'Surrogacy in Australia: The "Failed Experiment"?' (2023) 174 *Precedent* 22, 27. See also Ezra Kneebone, Karin Hammarberg and Kiri Beilby, 'Surrogates', Intended Parents', and Professionals' Perspectives on Ways to Improve Access to Surrogacy in Australia' (2024) 38(1) *International Journal of Law, Policy and The Family* 1, 2.

93 Kneebone et al (n 41) 1451–2; Genia Rozen et al, 'Barriers to Reproductive Treatments in Australia' (2023) 52(3) *Australian Journal of General Practice* 109, 111. See also Martyn Stafford-Bell, Sam Everingham and Karin Hammarberg, 'Outcomes of Surrogacy Undertaken by Australians Overseas' (2014) 201(6) *Medical Journal of Australia* 1, 2–3.

INQUIRY PROCESS

Inquiry process

Submissions and consultations

102. In June 2025, the ALRC released an Issues Paper with 27 questions and invited submissions to inform the ALRC's understanding of the problems with how surrogacy is regulated in Australia and how these problems might be solved.[94] The ALRC received 374 unique submissions in response to the Issues Paper, which were published on our website. We conducted 42 consultations to inform the Issues Paper and after it was published (see **Appendices A** and **B**). Submissions and consultations from this phase of the Inquiry informed the development of draft proposals for reform.

103. The ALRC also identified approximately 1, 241 submissions generated in response to a campaign template disseminated by the Australian Christian Lobby. A sample of these submissions was published on the ALRC's website.[95] These submissions were derived from generated statements that were selected by submitters through an online form and generated into an email.[96] Responses from these submissions generally advocated for surrogacy to be prohibited due to concerns about exploitation or other forms of harm. As discussed above, while the ALRC acknowledges this perspective, the Inquiry is directed to how surrogacy should be regulated rather than whether it should be lawful, with concerns about harm addressed through the recommendations and in **Chapter 14**.

104. In November 2025, the ALRC published a Discussion Paper which included 41 proposals for reform to improve the regulation of surrogacy in Australia and asked for feedback to help refine these proposals.[97] The ALRC received 85 unique submissions in this phase, which were published on our website, and conducted 19 consultations (see **Appendices A** and **B**). Submissions and consultations from this phase of the Inquiry informed refinement of the proposals in the Discussion Paper and the development of recommendations in the Final Report.

105. Submissions were published in line with the confidentiality process and our **submission policy**. Only a sample of template submissions was published due to resourcing constraints and given these submissions were substantively similar.

106. Some Australian laws prohibit the identification of people involved in surrogacy arrangements or family court proceedings, and some jurisdictions criminalise surrogacy for profit or reward overseas. The ALRC also received feedback that fear

94 Australian Law Reform Commission, *Review of Surrogacy Laws* (Issues Paper No 52, 2025).

95 A Fouche, *Submission 98*; K Q Ho, *Submission 101*; P Kerrison, *Submission 354*; C Elias, *Submission 460*; D Griffiths, *Submission 461*; I Murray, *Submission 462*; J Moss, *Submission 463*; J Shelley, *Submission 464*; M Crowley, *Submission 465*; M Rose, *Submission 466*; R Chong, *Submission 467*; R Roy, *Submission 468*.

96 Some of these generated statements were manually edited by the submitter.

97 Australian Law Reform Commission, *Review of Surrogacy Laws* (Discussion Paper 89, 2025).

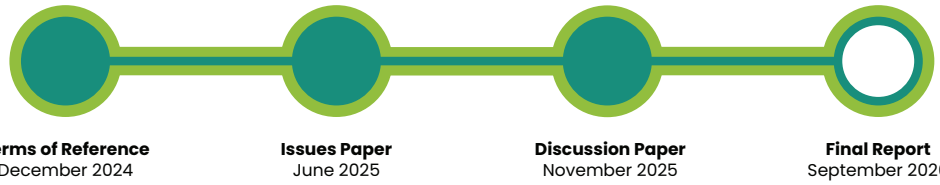
of prosecution may have deterred some intended parents, and parents through surrogacy, from making a submission. To comply with relevant laws, and to support people to engage with the Inquiry, the ALRC deidentified submissions that identified, or could identify, people involved in surrogacy arrangements, unless consent was obtained before publication. As a result, many submissions in the Final Report are labelled 'Name withheld' or 'Not published'. Submissions from children born through surrogacy are generally labelled 'Name withheld (minor)' to protect their identity while recognising their status as children.

107. Across the Inquiry, the ALRC consulted with surrogacy organisations, health professionals, psychologists and counsellors, lawyers, judicial officers, academics and surrogacy experts, and government agencies. Consultees were based in Australian states and territories, as well as the United Kingdom, the United States, Canada, New Zealand, Denmark, Ireland, Israel, and South Africa. Consultations were held online, with some conducted as roundtables to explore specific themes and perspectives, including with state and territory government agencies, births, deaths and marriages registries, donor registries, feminist organisations, and Christian groups.

108. The ALRC also provided presentations on this Inquiry at the ANZ Fertility Law and Ethics Symposium from 9–10 October 2025 in Melbourne and the Australasian Association of Bioethics and Health Law Conference, 7–9 December 2025 in Christchurch, New Zealand.

109. The Inquiry's Terms of Reference were amended on 17 July 2026 by the Attorney-General, extending the deadline from 29 July 2026 to 11 September 2026.

Figure 3: Inquiry milestones and timeline



Advisory Committee

110. The Inquiry was informed by a group of 11 people who comprised the Advisory Committee (see **Participants**). The Advisory Committee brought together people with different experience and expertise in surrogacy. The Advisory Committee's function is to provide advice to, and to share their views with, the ALRC. The Advisory Committee's advice and views are informative and not determinative.

111. The ALRC formally met with the Advisory Committee three times. The ALRC also met with some Advisory Committee members in consultations or roundtables and received written input from some members, including submissions.

112. This Inquiry benefited greatly from Advisory Committee members' depth of knowledge and expertise, and advice. The ALRC sincerely thanks the Advisory Committee for contributing their time and their commitment to this Inquiry.

Research, analysis, and review

113. The Final Report reflects the ALRC's research, analysis, and conclusions, based on the totality of the evidence base. That evidence base included material gathered through the processes above, including submissions and consultations, as well as research on Australian laws and practice and relevant overseas approaches. It included legislation, case law, academic literature, and reports of previous inquiries or reviews. The ALRC also considered publicly available quantitative data, and data provided by some organisations and individuals.

114. In assessing that evidence base, the ALRC considered the relevance, source, and context of the material, and the weight that should properly be given to it. This included considering whether the material was provided by a person or organisation with direct experience of surrogacy, relevant professional or subject-matter expertise, or institutional responsibility in the area. The ALRC also considered whether particular views and accounts were supported by, or differed from, other material in the evidence base.

115. Some chapters of the Final Report were read by expert reviewers, who provided feedback based on their experience and expertise (see **Participants**).

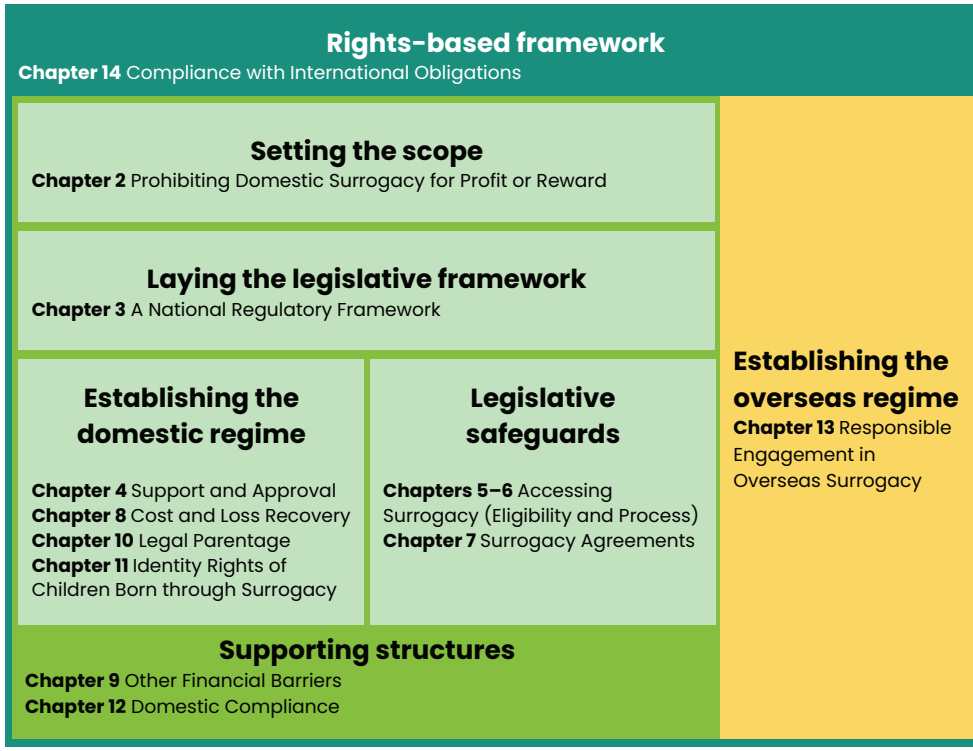
116. Artificial Intelligence ('AI') tools were used to support aspects of the research, editing, and proofreading of the Final Report. AI was not used for legal reasoning, decision making, or in the development of findings or recommendations. All AI-generated outputs were reviewed and approved by ALRC staff.

NAVIGATING THE FINAL REPORT

Navigating the Final Report

117. The Final Report has 14 chapters, which set out a recommended regime for regulating domestic and overseas surrogacy.

Figure 4: Guide to the Final Report chapters



TERMS OF REFERENCE

Terms of Reference

Review of Surrogacy Laws

I, the Hon Mark Dreyfus KC, Attorney-General of Australia, having regard to:

- surrogacy providing Australians who are unable to give birth an opportunity to have a child;
- the medically, emotionally, financially and legally complex nature of surrogacy arrangements;
- the legislative responsibilities that states and territories have with regards to surrogacy laws, and current inconsistencies in legislative arrangements across Australian jurisdictions;
- the human rights of children born of surrogacy, their surrogate mothers and intended parents, and the risks commercial surrogacy can pose to vulnerable women and children;
- the increasing access by Australians to surrogacy arrangements and services overseas.

REFER to the Australian Law Reform Commission (ALRC) for inquiry and report, pursuant to s 20(1) of the *Australian Law Reform Commission Act 1996* (Cth), a review of Australian surrogacy laws, policies and practices to identify legal and policy reforms, particularly proposals for uniform or complementary state, territory and Commonwealth laws, that:

- are consistent with Australia's obligations under international law and conventions; and
- protect and promote the human rights of children born as a result of surrogacy arrangements, surrogates and intending parents, noting that the best interests of children are paramount.

In particular, the ALRC is asked to consider

- how to reduce barriers to domestic altruistic surrogacy arrangements in Australia, including by ensuring surrogates are adequately reimbursed for legal, medical and other expenses incurred as a consequence of the surrogacy;
- how surrogacy arrangements made outside of Australia should be addressed by Australian law;
- what is the appropriate recognition of legal parentage in Australia for children born of surrogacy overseas, and how may citizenship, visa and passport requirements for children born of surrogacy overseas be aligned;
- the information that should be available to children born from surrogacy arrangements, including what information should be included on a child's birth certificate in order to meet Australia's human rights obligations under the Convention on the Rights of the Child.

In undertaking its inquiry, the ALRC should consider Australia's human rights obligations and any findings and recommendations of the 2021 *Working Group on Surrogacy Final Report to Attorneys-General and Relevant Ministers: Opportunities to achieve national consistency in surrogacy regulation in Australia*, the 2016 House of Representatives Standing Committee on Social Policy and Legal Affairs *Surrogacy Matters* report and Australian Government response, the 2013 Family Law Council report on *Parentage and the Family Law Act 1975*, the 2009 report of the Standing Committee of Attorneys-General *A Proposal for a National Model to Harmonise Regulation of Surrogacy*, the UN Special Rapporteur on the sale and sexual exploitation of children 2019 *Thematic study of safeguards for the protection of the rights of children born from surrogacy arrangements* and 2018 *Thematic study on surrogacy and sale of children*, and relevant reviews of state and territory surrogacy legislation since 2017.

Consultation

In performing its functions in relation to this reference the ALRC will undertake public consultation, and identify and consult with key stakeholders, including relevant government departments and agencies, legal advocacy and human rights bodies in Australia, members of the legal profession and other experts who specialise in surrogacy or human rights matters, members of the medical, psychology or counselling profession who specialise in surrogacy matters, fertility industry bodies and lived experience cohorts, including surrogates, intended parents and individuals born from surrogacy arrangements.

Timeframe

The ALRC should provide its final report to the Attorney-General by 29 July 2026.

The Terms of Reference were amended by the Attorney-General on 17 July 2026, extending the deadline to 11 September 2026.

“

I am currently an intended surrogate for a loving, committed couple who are unable to carry a child due to serious and permanent health conditions. This couple has been foster carers, opening their home and hearts to children in need for years. They have so much love to give, and surrogacy is their only option to grow their family.

”

Submission 302

RECOMMENDATIONS

Recommendations

Chapter 2

Recommendation 1

1. Legislation should provide that intended parents and surrogates are prohibited from engaging in a domestic surrogacy arrangement for profit or reward ('prohibited domestic surrogacy arrangement').
2. Legislation should provide that non-compliance with the prohibition in paragraph 1 will result in liability to a civil penalty.
3. Existing criminal offences that prohibit 'commercial surrogacy' (or equivalent) should be repealed.

Recommendation 2

1. Legislation should provide that individuals and organisations, including Surrogacy Support Organisations (**Recommendation 8**), are prohibited from directly, intentionally or recklessly:
    a. facilitating, or attempting to facilitate, a prohibited domestic surrogacy arrangement (**Recommendation 1**); or
    b. advertising or otherwise promoting engagement in a prohibited domestic surrogacy arrangement (**Recommendation 1**).
2. Legislation should provide that the prohibitions in paragraph 1 should not apply to:
    a. a legal professional providing legal advice; or
    b. any person providing medical or other assistance to a surrogate in order to avoid or address injury or harm to the surrogate's health.
3. Legislation should provide that non-compliance with the prohibitions in paragraph 1 will result in liability to a civil penalty.
4. Existing criminal offences that prohibit the facilitation (or equivalent) or advertising (or equivalent) of surrogacy arrangements should be repealed.

Chapter 3

Recommendation 3

1. The Australian, state, and territory governments should enact a legal and regulatory framework for surrogacy that reflects the recommendations in this Report.
2. The legal and regulatory framework should be either uniform under Commonwealth legislation (preferred) or substantially consistent across state and territory laws (**Recommendation 4**).
3. This legislation should establish and empower a National Regulator to hold the responsibilities and carry out the functions outlined in **Recommendation 6**.
4. This legislation should establish a civil penalty regime and empower an appropriate court or courts to impose civil penalties and provide associated relief to address non-compliance with the prohibitions or obligations proposed by **Recommendations 1**–**2**, **33**–**35**, **38** and **40**–**45**.
5. The legal and regulatory framework should be structured so that:
    a. the substance of any obligation, right, entitlement, or prohibition conferred or imposed is dealt with in legislation; and
    b. any necessary corresponding detail is set out in delegated legislation, guidelines, or standards set by the National Regulator (**Recommendation 6**).

Recommendation 4

1. To implement the preferred approach in **Recommendation 3**, the Australian, state, and territory governments should enter into an intergovernmental agreement to refer appropriate powers to the Commonwealth Parliament. The Australian Government should then enact Commonwealth surrogacy legislation.
2. In the event that a referral of powers to the Commonwealth is not achievable, the Commonwealth, states, and territories should enter into an intergovernmental agreement to enact nationally consistent surrogacy laws through mirror, hybrid, or applied legislation.
3. Legislation developed under any of the options in paragraphs 1 or 2 should adopt consistent and updated terminology.

Recommendation 5

Legislation should require a statutory review of the operation of the legal and regulatory framework for surrogacy (**Recommendation 4**) after an appropriate period (between five to seven years).

Recommendation 6

1. Legislation should establish and empower a national regulator for surrogacy, or alternatively, empower an existing national regulator (collectively 'the National Regulator') to hold the following responsibilities and carry out the following functions:

Standard setting

a. setting licensing conditions for Surrogacy Support Organisations (**Recommendation 8**);

b. setting and maintaining a mandatory scale of maximum fees that Surrogacy Support Organisations may charge for their services;

c. developing guidelines on approving surrogacy arrangements to be applied by Surrogacy Support Organisations and the National Regulator (**Recommendation 9**);

d. developing guidelines on applications to be referred by Surrogacy Support Organisations to the National Regulator or assessed by the National Regulator (**Recommendation 9**);

e. developing and maintaining standards, guidelines, and processes on cost and loss recovery for surrogates (**Recommendations 23**–**25**);

f. developing a standardised draft surrogacy agreement that parties may use as a basis for a compliant surrogacy agreement (**Recommendation 20**);

g. developing the Responsible Overseas Surrogacy Guidelines (**Recommendation 37**);

Compliance

h. licensing Surrogacy Support Organisations, including monitoring compliance with licensing conditions and taking appropriate action, including revoking a licence in response to any breaches of conditions that warrant revocation;

i. inspecting Surrogacy Support Organisation records for the purpose of monitoring compliance with licensing conditions;

j. accrediting Surrogacy Support Organisation staff members to conduct assessments and make decisions in relation to applications to approve surrogacy arrangements;

k. enforcing compliance through the civil penalty regime enacted by legislation (**Recommendation 3**);

Oversight of surrogacy arrangements

l. assessing applications to approve surrogacy arrangements referred by Surrogacy Support Organisations or remitting the application back to the Surrogacy Support Organisation for assessment (**Recommendation 9**);

m. reviewing Surrogacy Support Organisation decisions not to approve a surrogacy arrangement, at the request of a party to the surrogacy arrangement (**Recommendation 9**);

n. keeping records of surrogacy arrangements approved by a Surrogacy Support Organisation or the National Regulator (**Recommendation 9**);

o. establishing and managing a registration system for all overseas surrogacy arrangements (**Recommendation 37**);

p. improving research and data collection on domestic and overseas surrogacy arrangements, in particular to address any gaps in surrogacy data;

Community awareness and information provision

q. developing information and educating the public about surrogacy (**Recommendation 7**);

r. developing educational material for professionals who provide services to parties to surrogacy arrangements (**Recommendation 7**); and

s. managing the National Surrogacy Register and providing information held on the Register to people born through surrogacy (**Recommendations 31**–**32**).

2. In the event that a national regulator for surrogacy is not established or an existing national regulator is not empowered to perform the responsibilities and functions listed in paragraph 1, the Commonwealth, states, and territories should place these responsibilities and functions with existing regulatory bodies or departments. An intergovernmental agreement should be entered into to facilitate national consistency in the performance of the responsibilities and functions listed in paragraph 1 including, in particular, the standard-setting and compliance functions.

Recommendation 7

1. In carrying out its community awareness and information provision function (**Recommendation 6**), the National Regulator should publish and promote information to:

a. educate the public and increase understanding about surrogacy and address common misunderstandings about surrogacy and Australia's surrogacy laws;

b. inform intended parents and surrogates about surrogacy in Australia and Australia's surrogacy laws;

c. inform the public, and specifically intended parents, about surrogacy laws, policies, and practices overseas, and associated risks; and

d. inform the public, and specifically intended parents, about the Responsible Overseas Surrogacy Guidelines and the requirement to register their intention to engage in an overseas surrogacy arrangement (**Recommendations 37** and **38**).

2. In carrying out its community awareness and information provision function, the National Regulator should also develop educational materials for professionals who provide services in surrogacy arrangements. This should include:

   a. guidelines for providing appropriate and inclusive care in surrogacy arrangements, to be adopted by healthcare providers such as hospitals and medical professionals; and

   b. training or training materials on surrogacy and surrogacy laws for professionals, such as Surrogacy Support Organisation management and staff (**Recommendation 8**), lawyers, healthcare professionals, and counsellors.

Chapter 4

Recommendation 8

Legislation should empower the National Regulator to license Surrogacy Support Organisations to provide, in accordance with the licensing conditions set by the National Regulator (**Recommendation 6**), the following supports and implement the following safeguards for intended parents and surrogates:

a. facilitating introductions for, or 'matching' of, intended parents and surrogates who meet the requirements in **Recommendations 11**–**14**;

b. coordinating the counselling and other services that need to be engaged with to meet eligibility and process requirements (**Recommendations 15**–**19**);

c. assessing and approving compliant surrogacy arrangements, or referring 'complex applications' to the National Regulator (**Recommendation 9**);

d. providing information, case management, and support for intended parents and surrogates throughout the surrogacy arrangement;

e. notifying parties about their right to request a psychological assessment (**Recommendation 19**); and

f. facilitating conflict resolution between intended parents and surrogates.

Recommendation 9

1. Legislation should provide that Surrogacy Support Organisations (**Recommendation 8**), and where applicable, the National Regulator (**Recommendation 6**) (collectively, 'an approval body'), should be empowered to approve compliant surrogacy arrangements.

2. Legislation should provide that to access the administrative pathway (**Recommendation 28**), parties to a surrogacy arrangement must obtain approval from an approval body before attempting to achieve a pregnancy.

3. Legislation should provide that:

    a. before granting approval to access the administrative pathway, an approval body must assess all supporting evidence provided by the parties to a surrogacy arrangement in accordance with guidelines developed by the National Regulator (**Recommendation 6**) and be satisfied that they meet all the preconditions in **Recommendations 11**–**20**;

    b. where a Surrogacy Support Organisation is not satisfied that the parties to a surrogacy arrangement have met all the preconditions in **Recommendations 11**–**20**, it must not approve the surrogacy arrangement. The parties may seek to have that arrangement reviewed by the National Regulator; and

    c. the National Regulator may dispense with a precondition in **Recommendations 11**–**20** if satisfied that a minor procedural irregularity has occurred, or that exceptional circumstances exist justifying approval of the arrangement.

4. The process for approving surrogacy arrangements in paragraph 3 should incorporate the following elements:

    a. Parties to a surrogacy arrangement may seek approval from a Surrogacy Support Organisation, regardless of whether the arrangement was facilitated by a Surrogacy Support Organisation.

    b. Surrogacy Support Organisations must refer all 'complex applications' (paragraph 7) to the National Regulator, as a condition of their licensing (**Recommendation 8**), unless the parties do not wish the arrangement to proceed.

    c. The National Regulator may remit a 'complex application' back to a Surrogacy Support Organisation for approval (**Recommendation 6**).

    d. Applications to Surrogacy Support Organisations must be assessed and determined by a staff member accredited by the National Regulator (**Recommendation 6**).

5. Legislation should provide that for a transitional period of two years from commencement, or a further period if prescribed, the National Regulator may

assess and approve primary applications submitted by the parties without the involvement of a Surrogacy Support Organisation.

6. Legislation should provide that when an approval body assesses a surrogacy arrangement for approval:

    a. the completion of a process required by an assisted reproductive technology service provider, which would also satisfy a precondition for a surrogacy arrangement, discharges that precondition;

    b. there should be a presumption in favour of approval where the parties meet all the preconditions; and

    c. an approval body should review surrogacy arrangements 'on the papers'. Meetings with the parties should only occur where an approval body considers them necessary.

7. Legislation should provide that applications should be treated as 'complex applications', and be referred by a Surrogacy Support Organisation to the National Regulator, where:

    a. as part of any psychological assessment, the psychologist recommends that the surrogacy arrangement should not proceed or the psychologist is unable to make a recommendation but identifies risk factors in their report (**Recommendation 19**); or

    b. the Surrogacy Support Organisation considers that the application otherwise raises complex issues as identified in guidelines developed by the National Regulator (**Recommendation 6**).

Recommendation 10

1. Legislation should provide that when a surrogacy arrangement has been approved ('approved surrogacy arrangement'):

    a. the approved surrogacy arrangement may proceed on the administrative pathway, and the intended parent(s) will be the child's legal parent(s) at birth (**Recommendation 28**);

    b. the Surrogacy Support Organisation must lodge the approved surrogacy arrangement with the National Regulator (**Recommendation 6**);

    c. the approval applies to any embryo transfer or attempt to achieve a pregnancy carried out as part of the approved surrogacy arrangement; and

    d. the approval body may issue a document certifying that the arrangement is an approved surrogacy arrangement for the purposes of the administrative pathway to legal parentage, and explaining that the legal consequence is that the intended parent(s) will be the child's legal parent(s) at birth.

2. Legislation should provide that a surrogacy arrangement that is not approved by the Surrogacy Support Organisation or the National Regulator ('unapproved surrogacy arrangement') cannot proceed on the administrative pathway to legal parentage, but may proceed via the judicial pathway to legal parentage (**Recommendation 29**).

Chapter 5

Recommendation 11

As a precondition for approval (**Recommendation 9**), intended parents must be unlikely to conceive, gestate, or give birth to a child for a medical, biological, or psychological reason.

Recommendation 12

As a precondition for approval (**Recommendation 9**):

a. a surrogate must be at least 25 years old, unless otherwise approved by an accredited counsellor, and have the legal capacity to make an informed decision; and

b. intended parents must be at least 18 years old and have the legal capacity to make an informed decision.

Recommendation 13

1. As a precondition for approval (**Recommendation 9**) at least one intended parent and the surrogate must be an Australian citizen or permanent resident.

2. State or territory legislation that imposes state or territory-based residency requirements should be repealed.

Recommendation 14

1. As a precondition for approval (**Recommendation 9**) the surrogate must have previously carried a pregnancy and given birth to a live child.

2. The requirement in paragraph 1 may be dispensed with in circumstances where:

    a. the obstetrician conducting the medical screening (**Recommendation 15**) is satisfied that the surrogacy can proceed without undue risk to the surrogate's health; and

    b. the counsellor conducting the implications counselling (**Recommendation 18**) is satisfied that the surrogate and the intended parent(s) understand the potential risks associated with the surrogacy arrangement and are making a free and informed decision to continue with the arrangement.

Recommendation 15

As a precondition for approval (**Recommendation 9**):

a. the surrogate must undergo a medical assessment by an independent obstetrician;

b. the obstetrician must certify that the surrogacy can proceed without undue risk to the surrogate's health; and

c. the obstetrician must provide the certification to the surrogate and the surrogate's nominated Surrogacy Support Organisation (**Recommendation 8**), so that the certification can be considered as part of the approval process (**Recommendation 9**).

Recommendation 16

As a precondition for approval (**Recommendation 9**):

a. the intended parent(s) must undergo a Nationally Coordinated Criminal History Check;

b. the report from the Nationally Coordinated Criminal History Check must indicate that no offences have been committed by the intended parent(s) against a child, including child exploitation offences; and

c. the report from the Nationally Coordinated Criminal History Check must be provided to the intended parents' nominated Surrogacy Support Organisation (**Recommendation 8**), so that the report can be considered as part of the approval process (**Recommendation 9**).

Chapter 6

Recommendation 17

1. As a precondition for approval (**Recommendation 9**), all parties must receive independent legal advice. The advice must cover:

    a. the surrogate's bodily integrity, autonomy (**Recommendation 21**), and the legal requirement for free and informed consent in relation to medical treatment or procedures that directly affect them;

    b. legal parentage under the administrative pathway or the judicial pathway, including the timing and effect of the surrogate's consent, and the right to apply for a parentage order (**Recommendations 28**–**29**);

    c. the operation and enforceability of the cost and loss recovery provisions in the surrogacy agreement (**Recommendations 23**–**24**); and

    d. the right of the child born through surrogacy to know their genetic and gestational origins, including their right to access registered information (**Recommendations 30**–**32**).

2. Legislation should provide that the legal practitioner providing the advice must provide each party with written confirmation that the matters outlined in paragraph 1 were discussed, the requisite advice was provided, and the legal practitioner believes the party appeared to understand the advice, so that it can be considered as part of the approval process (**Recommendation 9**).

3. Law societies in each jurisdiction should develop and provide accreditation for lawyers who provide legal advice on surrogacy arrangements.

Recommendation 18

1. As a precondition for approval (**Recommendation 9**), all parties, and the surrogate's partner (if any), must undergo counselling. The counselling must:

    a. be provided by a counsellor, who is a full member of the Australian and New Zealand Infertility Counsellors Association;

    b. include at least:

        i. two independent counselling sessions with the intended parent(s);

        ii. one independent counselling session with the surrogate;

        iii. one independent counselling session with the surrogate and the surrogate's partner (if any); and

        iv. a joint counselling session with the intended parent(s), the surrogate, and the surrogate's partner (if any);

    c. be provided by the same counsellor for all sessions, unless it is impracticable to do so; and

    d. include discussion of the following matters:

        i. the implications of the surrogacy arrangement for the relationships between the parties and their respective families;

        ii. the attitudes of the parties to genetic screening, possible termination of pregnancy, and any other complications that may arise during medical treatment, pregnancy, or birth;

        iii. the possibility of any party changing their mind regarding who should parent the child born through the arrangement;

        iv. the attitudes of the parties towards the conduct of the pregnancy, including the extent to which the intended parent(s) should have input into the surrogate's lifestyle choices during the pregnancy;

        v. the implications if the intended parents separate during the surrogacy arrangement;

        vi. the attitudes of the parties relating to how and when the child should be told about their genetic and gestational origins;

vii. the attitudes of the parties to the surrogate or the surrogate's family having an ongoing relationship or contact with the child born through the surrogacy arrangement, and the extent of such contact;

viii. how the parties will resolve any disputes that arise during the surrogacy arrangement;

ix. where the proposed arrangement is a traditional surrogacy arrangement, the implications of a traditional surrogacy arrangement, including the surrogate's role as both surrogate and egg donor; and

x. any other circumstances relevant to assessing the suitability of the arrangement to proceed.

2. Legislation should provide that if during the counselling process the counsellor identifies risk factors that may affect whether the arrangement should be approved (**Recommendation 9**), the counsellor must notify the parties' nominated Surrogacy Support Organisation (**Recommendation 8**) of those risks.

3. Legislation should provide that the counsellor must advise the parties that ongoing counselling is available to them — individually and collectively — throughout the course of the arrangement and for up to three months following the birth of any child born (or stillborn) through the surrogacy arrangement. Ongoing counselling may be initiated at the reasonable election of any party to the surrogacy arrangement (**Recommendations 20** and **23**).

4. Legislation should provide that the counsellor must provide each party with written confirmation that the matters outlined in paragraph 1(d) were discussed, and that the counsellor believes the party appeared to understand the counselling and the personal consequences of the surrogacy arrangement, so that it can be considered as part of the approval process (**Recommendation 9**).

Recommendation 19

1. As a precondition for approval (**Recommendation 9**), the surrogate and the intended parent(s) must undergo a psychological assessment where:

   a. any party to a proposed surrogacy arrangement requests such an assessment; or

   b. the Surrogacy Support Organisation (**Recommendation 8**) requires such an assessment (paragraph 3).

2. Legislation should provide that where a psychological assessment is required under paragraph 1, each party to the proposed surrogacy arrangement must undergo the assessment.

3. Legislation should provide that the nominated Surrogacy Support Organisation must refer the parties for psychological assessments where it is notified of identified risk factors through the counselling process (**Recommendation 18**).

4. Legislation should provide that unless unable to, the psychologist conducting the assessment must provide a recommendation to the nominated Surrogacy Support Organisation about whether the surrogacy arrangement is suitable to proceed so that the recommendation can be considered as part of the approval process (**Recommendation 9**). The recommendation should include any identified risk factors that may affect the suitability of the arrangement. If the psychologist is unable to make a recommendation, they must provide a list of identified risk factors.

5. Legislation should provide that if the psychologist recommends that the surrogacy arrangement should not proceed or is unable to make a recommendation but identifies risk factors in their report, the application is to be treated as a 'complex application' and must be referred to the National Regulator (**Recommendations 6** and **9**), if the parties wish it to proceed.

6. Legislation should provide that the psychologist must provide a copy of the full report to the party who was the subject of the assessment, and to the National Regulator when it is considering the application.

Chapter 7

Recommendation 20

As a precondition for approval (**Recommendation 9**), the parties must have signed a compliant surrogacy agreement. A compliant surrogacy agreement must:

a. be in writing and signed by the surrogate and the intended parent(s);

b. be entered into before the surrogate becomes pregnant;

c. contain provisions relating to permitted payments to the surrogate that are consistent with **Recommendations 23** and **24**;

d. state whether the surrogate elects to receive either or both of the optional payments for non-economic loss and extraordinary loss (**Recommendation 24**);

e. contain a provision that ongoing counselling must be available to the parties — individually and collectively — at the reasonable election of any party, and paid for by the intended parent(s) (**Recommendation 18**);

f. include the statement confirming the requirement to respect the surrogate's bodily integrity and autonomy (**Recommendation 21**); and

g. include a statement of intention setting out the parties' expectations of the arrangement, including their expectations for the relationship following the birth of the child.

Recommendation 21

1. Legislation should require a compliant surrogacy agreement (**Recommendation 20**) to contain a plain English statement provided by the National Regulator (**Recommendation 6**). The statement should clarify that, subject to compliance with reasonable medical advice in connection with the pregnancy or birth, the surrogate's bodily integrity and autonomy must be respected, in relation to all decisions and conduct, including:
    a. decisions and conduct that relate to the management of the pregnancy; and
    b. decisions and conduct that determine the circumstances in which the surrogate gives birth to the child.
2. Legislation should prohibit the inclusion of any provision in a surrogacy agreement that interferes with the surrogate's bodily integrity and autonomy, except to the extent that the provision requires compliance with reasonable medical advice in connection with the pregnancy or birth.

Recommendation 22

1. Legislation should provide that only the cost and loss recovery provisions in both compliant and non-compliant surrogacy agreements are enforceable. The criteria for enforceability should be made nationally consistent, including by:
    a. removing any requirement that costs and losses are enforceable only if the surrogate relinquishes the child or consents to the transfer of parentage; and
    b. providing that costs and losses are enforceable only where they are not recoverable under Medicare, health insurance, or any other scheme.
2. Legislation should provide that unlawful surrogacy agreements are void, but that surrogates in such arrangements are entitled to recover costs and losses as statutory entitlements to the extent provided for in **Recommendation 23**.

Chapter 8

Recommendation 23

1. Legislation should provide that a surrogacy arrangement that entitles surrogates to the reimbursement of payments provided for in this recommendation is not, for that reason only, for profit or reward (**Recommendation 1**).
2. Legislation should provide that consistent with this recommendation, intended parents must reimburse the surrogate for all costs and economic losses reasonably incurred by the surrogate or the surrogate's partner (if any) in relation to the surrogacy arrangement. This must include, but is not limited to:

a. costs related to assessments and other preconditions required for a surrogacy arrangement to be compliant with legislative requirements and eligible for approval (**Recommendations 11–19**);

b. medical and wellbeing costs;

c. pregnancy-related items, including dietary items and supplements;

d. care of dependants;

e. additional assistance where the surrogate is unable to perform daily tasks;

f. travel and accommodation for the surrogate and any necessary support person;

g. loss of earnings (including superannuation contributions);

h. health, life, and income protection insurance during the surrogacy arrangement and following the birth of a child, miscarriage, or stillbirth;

i. birth support;

j. any product or service recommended by the surrogate's healthcare provider; and

k. healthcare costs incurred following:

   i. the birth of a child, miscarriage, or stillbirth; or

   ii. where no successful pregnancy occurs and the parties agree to cease attempts to achieve a pregnancy.

3. Legislation should provide that in relation to claims for reimbursement made for costs that are incurred beyond the three-month period following the birth of a child, miscarriage, stillbirth, or the termination of a pregnancy, the only costs payable are:

   a. costs incurred in connection with a serious medical complication experienced during the pregnancy or childbirth (**Recommendation 24**); and

   b. costs incurred with prior approval from the nominated Surrogacy Support Organisation (**Recommendation 8**), unless otherwise ordered by a court.

4. Legislation should provide that the National Regulator (**Recommendation 6**) should be empowered to develop guidelines, which clarify when costs should be regarded as reasonably incurred in relation to a surrogacy arrangement, and formulate a monthly allowance to cover commonly incurred costs for which the obtaining or keeping of receipts is difficult or inconvenient.

Recommendation 24

1. Legislation should provide that a surrogacy arrangement is not for profit or reward (**Recommendation 1**) by reason only of the entitlement to the payments provided for in this recommendation.

2. Legislation should provide that where a surrogate has elected to receive a payment to recover non-economic losses and it forms part of a compliant surrogacy agreement (**Recommendation 20**):

    a. the intended parent(s) must make a monthly payment to the surrogate to redress the commonly experienced non-economic losses resulting from pregnancy and childbirth, such as the physical and psychological impacts, and loss of amenity. The monthly payment must not exceed any maximum amount set in accordance with paragraph 2(b); and

    b. the National Regulator should be empowered to set a maximum cap for the non-economic loss payment (**Recommendation 6**).

3. Legislation should provide that, where a surrogate has elected to receive a payment to recognise an extraordinary loss, and this forms part of a compliant surrogacy agreement (**Recommendation 20**):

    a. the intended parent(s) must make an additional payment to the surrogate to redress extraordinary loss arising from any serious medical complications during the pregnancy or childbirth (including, for example, stillbirth or hysterectomy). The payment must not exceed any maximum amount set in accordance with paragraph 3(c);

    b. the National Regulator should develop guidelines to identify events that would give rise to the extraordinary loss payment (**Recommendation 6**); and

    c. the National Regulator should be empowered to set a maximum cap for permitted extraordinary loss payments (**Recommendation 6**).

Recommendation 25

1. Legislation should provide that:

    a. before parties to an approved surrogacy arrangement attempt to achieve a pregnancy, the intended parent(s) must deposit the full estimated costs of the surrogacy arrangement, excluding the non-economic loss payment and extraordinary loss payment (**Recommendations 23–24**) with an accountable entity;

    b. if the intended parent(s) are unable to deposit the amount required under paragraph 1(a), they may provide a bank guarantee for these costs;

    c. reimbursements to the surrogate are to be disbursed by an accountable entity within a reasonable time of the claim being made where the claim is not disputed by the intended parent(s); and

d. any funds remaining in the account managed by the accountable entity at the end of the surrogacy arrangement must be refunded to the intended parent(s).

2. Any dispute in relation to whether a claimed cost or economic loss has been reasonably incurred by the surrogate or the surrogate's partner (if any) (**Recommendation 23**) may be dealt with through conflict resolution by a Surrogacy Support Organisation (**Recommendation 8**). If the dispute is not resolved by the Surrogacy Support Organisation, an application may be made to a court with appropriate jurisdiction.

Chapter 9

Recommendation 26

The *Health Insurance (General Medical Services Table) Regulations 202*1 (Cth) should be amended to allow Medicare rebates for assisted reproductive technology services to apply to treatment carried out for the purpose of a surrogacy arrangement.

Recommendation 27

The *Health Insurance (General Medical Services Table) Regulations 2021* (Cth) should be amended so that Medicare rebates are available for:

a. prearrangement counselling and psychological assessments, which are required for a surrogacy arrangement to be compliant with legislative requirements and eligible for approval (**Recommendations 18**–**19**); and

b. ongoing counselling undertaken during an approved surrogacy arrangement (**Recommendation 20**).

Chapter 10

Recommendation 28

1. The *Family Law Act 1975* (Cth) should be amended to provide that where there is an approved surrogacy arrangement (**Recommendation 9**) and a child is born (or stillborn):

    a. the intended parent(s) who are parties to that arrangement are, upon the birth of the child, the legal parent(s) of the child;

    b. the surrogate may apply to the Federal Circuit and Family Court of Australia, within three months of the birth of the child, for a parentage order which recognises the surrogate and the surrogate's partner (if any) as the legal parent(s) of the child;

    c. the timeframe for the application in paragraph 1(b) may be extended to six months, in exceptional circumstances, at the discretion of the Federal Circuit and Family Court of Australia; and

d. the intended parents may still apply to the Federal Circuit and Family Court of Australia for a parentage declaration, where parentage is recognised through paragraph 1(a).

2. The Federal Circuit and Family Court of Australia should be empowered, in an application under paragraphs 1(b) or 1(d), to:

   a. consider and determine the application, taking into account all relevant considerations, but giving paramount consideration to the best interests of the child, including by reference to s 60CC of the *Family Law Act 1975* (Cth); and

   b. make any other orders necessary to give effect to the best interests of the child.

3. The Federal Circuit and Family Court of Australia should establish a specialist list for dealing with applications involving surrogacy, including applications under paragraphs 1(b) or 1(d).

Recommendation 29

1. The *Family Law Act 1975* (Cth) should be amended to provide that where there is an unapproved domestic surrogacy arrangement (**Recommendation 9**) and a child is born (or stillborn) in Australia, or where there is an overseas surrogacy arrangement which has been entered into by an Australian citizen or permanent resident, and a child is born (or stillborn):

   a. the surrogate and the surrogate's partner (if any) are, upon birth, the legal parent(s) of the child;

   b. the intended parent(s) must apply to the Federal Circuit and Family Court of Australia for a parentage order, within six months of the child being born (for domestic arrangements) or entering Australia (for overseas arrangements); and

   c. the Federal Circuit and Family Court of Australia should have full discretion to dispense with the timeframe in paragraph 1(b).

2. The Federal Circuit and Family Court of Australia should be empowered, in an application under paragraph 1(b), to:

   a. consider and determine the application, taking into account all relevant considerations, but giving paramount consideration to the best interests of the child, including by reference to s 60CC of the *Family Law Act 1975* (Cth); and

   b. make any other orders the Court considers to be appropriate.

3. Applications under paragraph 1(b) should be heard and determined within the specialist list (**Recommendation 28**).

4. The *Family Law Act 1975* (Cth) should be amended to provide that the process outlined in paragraphs 1–3 is retrospectively available in respect of children born through surrogacy arrangements that occurred before the proposed amendments come into effect.

Chapter 11

Recommendation 30

1. Legislation should require that birth registration statements and any other documents used to register the birth of a child born in any Australian state or territory include a dedicated section to collect information relating to surrogacy-related births. The information to be collected should include the surrogate's identifying details such as their full name, place of birth, month and year of birth, and contact details.
2. Legislation should provide that where the information in paragraph 1 has been provided to a registry of births, deaths, and marriages, an addendum must be attached to each copy of the birth certificate issued to a person born through surrogacy.
3. Legislation should provide that the addendum in paragraph 2 must:
    a. state that additional information is available and may be obtained through the National Surrogacy Register (**Recommendation 31**) and the births, deaths and marriages register; and
    b. provide that counselling services are available to people born through surrogacy.

Recommendation 31

1. Legislation should establish a National Surrogacy Register. The Register should contain an entry for every person born through surrogacy after the relevant provision commences. Each entry should contain the information required in **Recommendation 32**.
2. To facilitate ease of access for people born through surrogacy and people born using donated gametes, consideration should be given to either:
    a. combining the National Surrogacy Register with a National Donor Register, to replace existing state and territory donor registers; or
    b. linking entries in the National Surrogacy Register with entries relating to the same person held in state and territory donor registers.
3. Legislation should provide that:
    a. a person born through surrogacy has a right to access the information contained in the National Surrogacy Register from the age of 16, by application to the National Regulator (**Recommendation 6**);
    b. a person born through surrogacy who is under the age of 16 may access

the information contained in the Register if the National Regulator is satisfied that such access would be in the child's best interests; and

c. to inform its assessment in paragraph 3(b), the National Regulator may require the person born through surrogacy to provide a counselling certificate or similar documentation from an accredited counsellor.

4. Legislation should provide that the contact details of the surrogate or the person born through surrogacy should only be disclosed to either party where the other party has consented to the disclosure.

Recommendation 32

1. Legislation should require the following information to be provided to the National Regulator (**Recommendation 6**) for inclusion on the National Surrogacy Register (**Recommendation 31**) within six months of the birth of a child through surrogacy:

   a. Identifying information about the surrogate, including:

      i. full name;

      ii. month, year, and place of birth; and

      iii. contact details.

   b. Whether the surrogacy was a traditional surrogacy or gestational surrogacy.

   c. Details of the relevant assisted reproductive technology service provider and doctor (if any).

   d. A personal statement from the surrogate, if the surrogate elects to provide one.

   e. A copy of the parentage order, if one is obtained (**Recommendations 28–29**).

2. Legislation should provide that:

   a. following registration of the birth of a child born through surrogacy, state and territory births, deaths, and marriages registries must provide any information they hold that is listed under paragraph 1 to the National Regulator;

   b. if a child born through surrogacy was conceived using the services of an assisted reproductive technology service provider, that provider must provide the National Regulator with the information listed under paragraphs 1(b) and 1(c);

   c. if a parentage order is made in relation to a child born through surrogacy (**Recommendations 28–29**), the Federal Circuit and Family Court of Australia must provide a sealed copy of that order to the National Regulator for inclusion on the National Surrogacy Register; and

d. parties to surrogacy arrangements, which includes surrogates and intended parents, may provide any additional information to the National Regulator, such as the surrogate's optional personal statement in paragraph 1(d).

3. Legislation should provide that:

   a. the provision of the information listed in paragraph 1 is mandatory for surrogacy arrangements occurring after the relevant provision commences; and

   b. parties to surrogacy arrangements that occurred before commencement of the provision may provide the information listed in paragraph 1 to the National Regulator for inclusion on the National Surrogacy Register.

Chapter 12

Recommendation 33

1. Legislation should provide that Surrogacy Support Organisations (**Recommendation 8**) are prohibited from intentionally or recklessly:

   a. approving a surrogacy arrangement that does not comply with the legislative requirements (**Recommendations 11–20**); or

   b. receiving referral fees from services that are engaged with to assist parties to meet the legislative requirements.

2. Legislation should provide that non-compliance with the prohibitions in paragraph 1 will result in liability to a civil penalty.

Recommendation 34

1. Legislation should provide that an assisted reproductive technology service provider is prohibited from transferring an embryo, or otherwise facilitating an attempt to achieve a pregnancy for the purposes of a surrogacy arrangement (whether traditional or gestational), unless satisfied it is an 'approved surrogacy arrangement' (**Recommendation 10**).

2. Legislation should provide that non-compliance with the prohibition in paragraph 1 will result in liability to a civil penalty.

Recommendation 35

1. Legislation should provide that individuals and organisations, including Surrogacy Support Organisations (**Recommendation 8**), are prohibited from coercing, or attempting to coerce (by pressure, force, or deception), the involvement of a person in a domestic surrogacy arrangement.

2. Legislation should provide that non-compliance with the prohibition in paragraph 1 will result in liability to a civil penalty or a criminal sanction.

Chapter 13

Recommendation 36

The Australian Capital Territory, New South Wales, Queensland, and Western Australia should repeal criminal offences which prohibit 'commercial surrogacy' or 'surrogacy for reward' overseas.

Recommendation 37

1. Legislation should require the National Regulator (**Recommendation 6**) to:
    a. establish and manage a registration system for all overseas surrogacy arrangements;
    b. compile and maintain the Responsible Overseas Surrogacy Guidelines; and
    c. make reasonable efforts to ensure that information about the requirement to register (**Recommendation 38**) and the Responsible Overseas Surrogacy Guidelines are publicly and readily available to intended parents.
2. The Responsible Overseas Surrogacy Guidelines in paragraph 1(b) should:
    a. specify the minimum content requirements for an overseas surrogacy agreement in order to reduce the risk that a surrogacy arrangement will involve significant risk of:
        i. exploitation of the surrogate;
        ii. the sale of a child; or
        iii. the denial of the rights of the child to identity or nationality;
    b. provide guidance (either generally or in relation to specific jurisdictions) about the nature and extent of the risks specified in paragraph 2(a), including the warning signs that indicate risks and the reasonable measures that should be taken to avoid those risks;
    c. include information about the processes and evidentiary requirements for applications which are necessary for children born through overseas surrogacy to return to Australia, including applications for Australian citizenship, an Australian passport, or an Australian visa; and
    d. include information about the limitations on the Australian Government's ability to provide assistance when difficulties arise overseas, including that the Australian Government cannot intervene in the legal processes of other countries.

Recommendation 38

1. Legislation should provide that:

    a. intended parents are prohibited from engaging in overseas surrogacy without first registering their intention with the National Regulator (**Recommendation 6**);

    b. registration must occur prior to (and within 12 months of) entry into an overseas surrogacy arrangement; and

    c. registration lapses after 12 months if no overseas surrogacy arrangement has been entered into and will need to be renewed if intended parents seek to engage in overseas surrogacy after this period.

2. Legislation should provide that non-compliance with the prohibition in paragraph 1 will result in liability to a civil penalty.

Recommendation 39

Legislation should require the National Regulator (**Recommendation 6**) to:

a. advise intended parents, upon registering their intention (**Recommendation 38**), that they must comply with the legal requirements set out in **Recommendations 41–45**, and that failure to comply with any of those requirements will result in liability to a civil penalty; and

b. provide intended parents, upon registering their intention, with the Responsible Overseas Surrogacy Guidelines (**Recommendation 37**).

Recommendation 40

1. Legislation should prohibit any person involved in promoting or facilitating an overseas surrogacy arrangement from intentionally or recklessly providing misleading or deceptive information or advice in relation to the arrangement.

2. Legislation should provide that non-compliance with the prohibition in paragraph 1 will result in liability to a civil penalty.

Recommendation 41

1. Legislation should provide that prior to (and within 12 months of) entry into an overseas surrogacy arrangement, intended parents must obtain legal advice from an Australian lawyer about:

    a. their obligations under Australian law in relation to engaging in overseas surrogacy; and

    b. the legal requirements for applications that are necessary for children born through overseas surrogacy to return to Australia, including applications for Australian citizenship, an Australian passport, or an Australian visa.

2. Legislation should provide that non-compliance with the requirements in paragraph 1 will result in liability to a civil penalty.

Recommendation 42

1. Legislation should provide that prior to (and within 12 months of) entry into an overseas surrogacy arrangement, intended parents must obtain legal advice from a lawyer in the overseas jurisdiction where the arrangement is proposed to occur about:

    a. the legality of the proposed arrangement in the overseas jurisdiction;

    b. the legal status of the intended parent(s), in relation to parentage of or parental responsibility for the child, in the overseas jurisdiction, including whether they will be recognised as the child's legal parent(s) by operation of law upon the child's birth, and if not, what steps would be required to be recognised as the child's parents;

    c. the legal status of the surrogate and the surrogate's partner (if any) in relation to parentage of, or parental responsibility for, the child; and

    d. the child's legal status, in relation to nationality (including as to any risk that the child will be stateless), and the processes and mechanisms available to support the child's right to identity.

2. Legislation should provide that to satisfy the obligation in paragraph 1, intended parents must make reasonable enquiries and be reasonably satisfied that the lawyer providing the advice is independent of any other party or person interested (such as an intermediary or agency) in the proposed surrogacy arrangement.

3. Legislation should provide that non-compliance with the requirements in paragraph 1 will result in liability to a civil penalty.

Recommendation 43

1. Legislation should provide that intended parents are prohibited from engaging in an overseas surrogacy arrangement unless a reasonable person, having taken into account the nature and extent of the risks specified and the guidance for avoiding those risks provided by the Responsible Overseas Surrogacy Guidelines (**Recommendation 37**), and having otherwise made reasonable enquiries, would be satisfied that:

    a. the surrogacy arrangement will not contravene the laws of any jurisdiction in which any aspect of the surrogacy arrangement will take place;

    b. the surrogacy agreement complies with the minimum content requirements set out in the Responsible Overseas Surrogacy Guidelines; and

c. the surrogacy arrangement will not involve a significant risk of:

i. exploitation of the surrogate;

ii. the sale of a child; or

iii. the denial of the rights of the child to identity or nationality.

2. Legislation should provide that non-compliance with the prohibition in paragraph 1 will result in liability to a civil penalty.

3. Legislation should provide that in respect of any court proceeding in which a contravention of the prohibition in paragraph 1 is alleged and, for the purpose of determining whether a reasonable person having made reasonable enquiries would not have been satisfied of the matters specified in paragraph 1, relevant information in the Responsible Overseas Surrogacy Guidelines as at the time that the surrogacy arrangement was entered into is admissible as evidence of any fact asserted in the Responsible Overseas Surrogacy Guidelines, unless rebutted.

Recommendation 44

1. Legislation should provide that intended parents must update their registration (**Recommendation 38**), within three months of entering into an overseas surrogacy arrangement, by providing:

a. confirmation that they have received the legal advice required under **Recommendations 41** and **42**, with such confirmation specifying the name and contact details of the lawyers; and

b. a copy of the written surrogacy agreement (**Recommendation 37**).

2. Legislation should provide that non-compliance with the requirements in paragraph 1 will result in liability to a civil penalty.

Recommendation 45

1. Legislation should provide that, within six months of a child born through overseas surrogacy entering Australia, parents through overseas surrogacy must provide to the National Regulator (**Recommendation 6**), for inclusion on the National Surrogacy Register (**Recommendation 31**), the following information (where known):

a. Country where the child was born.

b. Identifying information about the surrogate, including:

i. full name;

ii. month, year, and place of birth; and

iii. contact details.

c. Identifying information about genetic origins.

d. Whether the surrogacy was a traditional or gestational surrogacy.

e. Details of the relevant surrogacy agency, assisted reproductive technology service provider, and doctor (if any).

f. A personal statement from the surrogate, if the surrogate wishes to provide one.

2. Legislation should provide that, within six months of a child born through overseas surrogacy entering Australia, the intended parent(s) must apply to the Federal Circuit and Family Court of Australia for legal parentage through the judicial pathway (**Recommendation 29**).

3. Legislation should provide that intentional or reckless failure to comply with the requirements in paragraphs 1 or 2 will result in liability to a civil penalty.

4. Legislation should empower the Federal Circuit and Family Court of Australia to order intended parents to comply with the requirements in paragraphs 1 and 2. Non-compliance will result in liability to proceedings for contempt of court.

5. Legislation should provide that if a parentage order is made in relation to a child born through overseas surrogacy, the Federal Circuit and Family Court of Australia must provide a sealed copy of the order to the National Regulator for inclusion on the National Surrogacy Register.

6. Legislation should provide that:

   a. the provision of the information listed in paragraph 1 is mandatory for overseas surrogacy arrangements occurring after the relevant provision commences; and

   b. parties to overseas surrogacy arrangements that occurred before commencement of the provision may provide the information listed in paragraph 1 to the National Regulator for inclusion on the National Surrogacy Register.

Recommendation 46

Commonwealth legislation and administrative processes that govern applications for Australian citizenship, an Australian passport, or an Australian visa for children born through surrogacy should be reviewed and reformed in order to:

a. improve data-sharing mechanisms between the Department of Home Affairs and the Department of Foreign Affairs and Trade;

b. align documentary requirements, to the extent practicable, across citizenship, passport, and visa application processes;

c. allow documents to be provided to the Australian Government once, rather than requiring separate provision for each type of application specified in paragraph b; and

d. provide clear instructions and guidelines, including by way of examples, of the documentation required for each application.

Recommendation 47

Commonwealth legislation and administrative processes should be amended, where necessary, to provide that where an intended parent is recognised as a legal parent of a child born through surrogacy, either through the administrative pathway (**Recommendation 28**) or through the judicial pathway (**Recommendation 29**), the surrogate and the surrogate's partner (if any) are not considered to be parents of, or to have parental responsibility for, the child for the purposes of a passport application or passport renewal application, unless the Federal Circuit and Family Court of Australia expressly orders otherwise.

Unless otherwise stated, this Report reflects the law as at 28 May 2026.

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