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Review of surrogacy laws – comments on Discussion Paper 89

Thank you for the opportunity to comment on Discussion Paper 89. The purpose of this submission is neither to support surrogacy, nor to call for its prohibition, but is limited to responding to certain proposals and questions put in the Discussion Paper, based on our commitment to human rights and our practice experience with families the formation and composition of which is dynamic and diverse, reflecting contemporary Australia. Relationships Australia supports the premises of the Verona Principles (ISS, 2021) that

> *…no child should be disadvantaged, suffer harm, be punished because of the circumstances of their birth, whether through discrimination, exploitation or any other action that might deprive them of a right established in international law. If the duly considered interests of any other concerned parties conflict with the best interests of a child born through surrogacy, the best interests of the child should be the determining factor for validating or invalidating any decision or course of action concerning that child…. where surrogacy occurs, it creates and severs relationships. There should be openness in these relationships and where appropriate, they should be valued and sustained.*[1]

Central to this submission is the principle, embedded in the Terms of Reference for this Inquiry as well as the *Family Law Act 1975*,[2] that the best interests of children are paramount. We also acknowledge the emphasis, in the Discussion Paper, on considerations of how to discourage 'reproductive tourism' by Australians to countries where the business model for surrogacy is predicated on the exploitation and trafficking of children and surrogates, and the exploitation of intended parents.

Relationships Australia has therefore aimed to take a circumspect approach in recommending protections and safeguards, given the relative paucity of robust longitudinal research about outcomes for children born through surrogacy arrangements, which limits the extent to which proposals can be said to be evidence-based.[3]

[1] ISS, 2021, p 8. See also Special Rapporteur, 2025, stating that 'Irrespective of its position on surrogacy, a State continues to be obliged to prioritize [sic] the best interest of the child' (paragraph 68, citing the Convention on the Rights of the Child).

[2] See, in particular, section 60CA. See also the Verona Principles (ISS, 2021), especially Principle 6.

[3] Relationships Australia acknowledges the longitudinal research led by Golombok: see, most recently, Golombok et al, 2023, which found generally positive family relationships and child adjustment into adulthood, while also recommending discussing their circumstances of birth with children early (preferably before they start school). This study was limited by a modest sample size, compounded by a loss of families to follow up.

The work of Relationships Australia Relationships

Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances. Relationships Australia provides a range of services, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, services for older people, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others.

Relationships Australia has provided family relationships services for over 75 years. Our State and Territory organisations, along with our consortium partners, operate approximately one third of the Family Relationship Centres (FRCs) across the country. In addition, Relationships Australia Queensland operates the national Family Relationships Advice Line and the Telephone Dispute Resolution Service.

In 2024-2025, Relationships Australia member organisations served more than 156,000 clients across more than 94 locations and employed 2,300 staff to offer more than 440 unique services/programs. In addition to participating in external evaluations of Government-funded services, we conduct internal evaluations of our services and auspice a National Research Network, which feeds into the publication of research in peer-reviewed journals as well as conference presentations.

The core of our work is relationships – through our programs, we work with people to enhance not only family relationships, but also relationships with friends, colleagues, and across communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships. These principles underpin our work.

Framing principles of this submission

Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all. Relationships Australia has welcomed recent family law reforms reflecting contemporary recognition of children as rights-bearers and that seek to elevate children's participation in matters affecting them. We acknowledge the work

Golombok et al note that most of those families dropped out to support their decisions to keep children's origins secret: p 1070.

undertaken by the Commission to elicit the voices of children and young people to comment on the Issues Paper.

Principle 2 – Commitment to inclusive and universally accessible services

Relationships Australia is committed to universal accessibility of services, as well as inclusive and culturally safe services. Our clients (and staff) experience stigma, marginalisation and exclusion arising from diverse circumstances and positionalities, including:

- 'postcode injustice' in accessing health, justice and other social services
- poverty
- status as users of care and support
- disability and longstanding health restrictions (including poor mental health)
- intimate partner violence, abuse or neglect as an older person, and/or child maltreatment
- family separation
- being an adult informal carer for a child or other adult
- being a young person caring for a child or an adult
- housing insecurity and instability
- employment precarity, unemployment and under-employment
- misuse of alcohol and other drugs, or experience of gambling harms
- people who come from culturally and linguistically marginalised backgrounds (including people who have chosen to migrate and people who have sought refuge)
- people affected by complex grief and trauma, intergenerational trauma, intersecting disadvantage and polyvictimisation
- survivors of institutional abuse
- people experiencing homelessness or housing precarity
- people who identify as members of the LGBTIQ+ communities, and
- younger and older people.

None of these circumstances, experiences and positionalities exists at the level of an individual or family. They become barriers to full enjoyment of human rights and full participation in economic, cultural, and social life through the operation of broader systemic and structural factors including:

- legal, political and bureaucratic frameworks
- beliefs and expectations that are reflected in decision-making structures (such as legislatures, courts and tribunals)
- policy settings that inform programme administration, and
- biases or prejudices that persist across society and that are reflected in arts, culture, media and entertainment.

Relationships Australia notes observations from the Special Rapporteur that

> *Many surrogate mothers have experienced multiple and intersecting forms of discrimination and poverty long before entering surrogacy arrangements.*[4]

This is not to say that intending parents are not subject to asymmetries of power and information, and vulnerable to exploitation and commodification.[5] Accordingly, Relationships Australia is concerned, in this submission, to articulate the need for safeguards of their rights and interests, particularly vis-à-vis intermediaries and service providers who may seek to exploit their desire to achieve pregnancy through surrogacy.

Principle 3 – An expanded understanding of diverse ways of being and knowing

Epistemologies and experiences of Aboriginal and Torres Strait Islander people

Relationships Australia is committed to working with Aboriginal and Torres Strait Islander people, families and communities. Relationships Australia is also committed to enhancing the cultural responsiveness of our services to other culturally and linguistically marginalised individuals, families and communities. Our commitment to human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing.

Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and Torres Strait Islander people as foundational to policy and programme development, as well as service delivery. Connection to Country, and context-specific experiences of kinship, parentage and child rearing, for example, can differ markedly from Western constructs of a nuclear family, bonded by genetic heritage.[6]

Valuing diversity in family formation and composition

Family formation and composition in contemporary Australia is diverse and dynamic; our legal and policy settings should reflect that, as Relationships Australia has recently emphasised in our submission to the Department of Social Services on its proposed reforms to family and relationship services.[7] Found families, families of choice, rainbow families, and blended families are very much integral to modern Australian society, and should not be problematised or pathologised. Most importantly, all children – regardless of the means of family formation and the nature of family composition – have well-recognised rights[8] not to be discriminated against on the basis of the composition and formation of the families in which they are being raised. It has been clear for several years that Australia's parentage laws do not uphold these

[4] Special Rapporteur, 2025, paragraph 23. See also Special Rapporteur, 2018 (Thematic Study), paragraph 41; UN Women, 2019, p 36; Pascoe, 2018.
[5] As acknowledged in the Verona Principles, 2021; see also UNHRC, 2018.
[6] See, eg, Ban, 2023, on child rearing practices among Torres Strait Islander people and communities, and the lengthy journey towards recognition, under Queensland law, of those practices.
[7] This submission is available at https://www.relationships.org.au/research/#advocacy
[8] See the Convention on the Rights of the Child.

crucial rights, but reflect outdated normative assumptions and, in doing so, expose children to harm, including potential deprivation of their human rights.[9]

Principle 4 - Commitment to promoting social connection and addressing loneliness as a serious public health risk

Policy, regulatory and service interventions that strengthen connections and reduce isolation are the most promising and feasible avenues for reducing the risk of abuse and exploitation of people who face structural and systemic barriers to their full participation in society. For example: Social support has emerged as one of the strongest protective factors identified in elder abuse studies:

> *….Social support in response to social isolation and poor quality relationships has also been identified as a promising focus of intervention because, unlike some other risk factors (eg disability, cognitive impairment), there is greater potential to improve the negative effects of social isolation.*[10]

Principle 5 – Intergenerational stewardship and equity

Fairness to future generations should not be viewed through a reductionist fiscal lens. Relationships Australia takes seriously obligations of stewardship for future generations, which transcend the national balance sheet and require us to invest in social infrastructure (tangible and intangible). This includes fit for purpose human rights infrastructure.

Principle 6 – Commitment to centring lived experience in policy and service design, delivery and evaluation

Centring lived experience (including through co-design) in policy and service design supports the development of policy, legislation and services that uphold human rights – especially human rights of individuals and groups who have traditionally been marginalised and excluded from policy discourse, or been the 'objects' of such discourse. In addition, centring lived experience can enhance the transparency and public accountability in policy and programme development, and the efficiency of government services, by supporting the delivery of outcomes that are valued by service users, not just administrators.

Principle 7 – Fragmentation of policy, legislation and service delivery causes harm

Almost every submission from Relationships Australia National Office over the past eight years has identified fragmentation as one of the principal barriers in getting the right services to the right people at the right time and at the right dosage. In nearly every submission, we have identified the unwillingness, or inability, of Australian governments to lift the burden of fragmentation from the shoulders of those least equipped to bear it – service users – by improving intra- and inter-governmental collaboration. In legal services and family relationships policy areas, siloes within and between governments have proved intractable, despite

[9] See, eg, Family Law Council, 2013; Sifris & Sifris, 2019.
[10] See Dean, CFCA 51, 20, Box 7; Hamby et al (2016); Pillemer et al (2016).

overwhelming evidence that fragmentation causes its own harm, compounding the harms and trauma which has led service users to seek help in the first place. Forcing service users to shoulder the burden of fragmentation is the opposite of trauma-informed and person-centred, and undermines human rights.

Our commitment to accessibility underpins our advocacy for systems and processes that lift from the shoulders of those least equipped to bear them the burdens of fragmented, siloed, complex and duplicative laws, policies, programmes, and administering entities. It also underpins our advocacy for frameworks that confer greater legal certainty about rights and obligations. The current legal frameworks dealing with surrogacy arrangements and parentage have created legal ambiguities that have adverse effects on parties to surrogacy arrangements, and most especially on children born through surrogacy arrangements.[11]

The Final Report of the HCCH Working Group on Parentage / Surrogacy[12] proposed text for a draft Convention on parentage, including parentage arising from an international surrogacy arrangement.[13] The Working Group identified that

> *…the aim of any new instrument would be to provide greater predictability, certainty and continuity of legal parentage in international situations for all persons concerned, taking into account their human rights, including, for children, those enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and in particular their right that their best interests be a primary consideration in all actions taken concerning them.*[14]

The Working Group acknowledged that the divergent views on policy matters 'present feasibility challenges and that consensus could not be reached on whether the Project should advance to a Special Commission'. While matters relating to international surrogacy are beyond the Terms of Reference for this Inquiry, which focus on reducing barriers to 'domestic altruistic surrogacy', the objectives of greater predictability, certainty and continuity of legal parentage ought nonetheless guide the Commission's response to the Terms of Reference.

Relationships Australia acknowledges recent Government initiatives to reduce the extent to which individuals and families must shoulder the burden of fragmentation across the family law, family violence and child protection systems. We have also welcomed recommendations from the Australian Law Reform Commission, the Joint Select Committee on Australia's Family Law System, the Social Policy and Legal Affairs Committee of the House of Representatives, and as well as the report on the Review of the Family Relationships Services Program that urge better integration of service delivery. In the context of this submission, Relationships Australia

[11] See, eg, ISS, 2021 (the Verona Principles); the report of the Special Rapporteur, 2025; House of Representatives Final Report, 2016.
[12] Accessible at https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy
[13] The Working Group noted that the inclusion in a convention of 'general obligations relating to the prevention of the sale, trafficking or exploitation of children, and to the preservation of and access to information about a child's origins' could not be agreed on: HCCH, 2025, paragraph 42.
[14] HCCH, 2025; see especially paragraphs 6, 24, 37, 38, 43.

is particularly concerned by the fragmentation of laws relating to parentage, and notes that Australian governments have thus far not acted on recommendations to remedy this situation.[15]

Recommendations

Recommendation 1 That any legislation made pursuant to the ALRC's report be subject to periodic statutory review, with the first review to be undertaken three years after the commencement of legislation, and then every five years thereafter. The terms of reference must include:

- a review of the extent to which legislation is increasing the availability of domestic surrogacy and limiting the use of overseas surrogacy
- the ease with which children born of surrogacy arrangements are able to access information about their origin and barriers to accessing such information
- lived experience - of children, surrogates and intending parents – of engaging with the legislation, the National Regulator, SSOs and other service providers involved in surrogacy arrangements.

Recommendation 2 That any legislation made pursuant to the ALRC's report require the National Regulator to collect data and commission independent research about:

- the experiences and developmental outcomes for children born through surrogacy arrangements, to inform ongoing policy and service development
- the short, medium and long-term health implications for surrogates[16]
- the impact and outcomes of counselling and psycho-social support services for intended parents and surrogates, to inform ongoing policy and service development
- the numbers of unapproved arrangements
- the number of intending parents who are Australia citizens and permanent residents choosing overseas surrogacy and the reasons for this, and
- the countries in which those intended parents are pursuing surrogacy arrangements, and the experiences which they have in those countries.[17]

[15] See, eg, Family Law Council, 2013.

[16] Acknowledging, for example, existing evidence of heightened risk of adverse pregnancy outcomes and complications among surrogates: see submission responding to the Issues Paper from the Department of Health, Disability and Ageing, p 11.

[17] See Discussion Paper, p 9; Special Rapporteur, 2025, paragraphs 17-18 for a range of areas in which further research is needed to ensure best practice policy and service responses.

Recommendation 3	That any legislation made pursuant to the ALRC's report be accompanied by funding support for psycho-social support for children born through surrogacy arrangements.
Recommendation 4	That any future regulation of surrogacy be done uniformly, through Commonwealth legislation.
Recommendation 5	That a National Regulator be established.
Recommendation 6	That legislation should use consistent terminology that aligns with contemporary expectations.
Recommendation 7	That Australian governments formally commit to ensuring alignment in timing of amendments of legislation.
Recommendation 8	That all regulatory functions, and powers, functions and responsibilities which affect legal rights and obligations be carried out by regulators which are independent and not funded by industry.
Recommendation 9	That the National Regulator should: • be required by legislation to make enforceable guidelines about what amounts to a complex application to approve a surrogacy arrangement (if those elements go beyond those canvassed in Proposal 5), and • have standing to take over approval of a surrogacy arrangement (if Recommendation 14 is not accepted) at the request of any party to it or of its own motion.
Recommendation 10	That legislation require a National Regulator to ensure that comprehensive, accurate and up to date information about surrogacy is publicly available and accessible by all community members.
Recommendation 11	That a National Regulator should be required to provide public information about potential legal, financial and relational risks that may arise in domestic surrogacy, particularly from the use of surrogacy arrangements that are not approved.
Recommendation 12	That a National Regulator should collaborate with relevant professional bodies in developing training and training materials.
Recommendation 13	That any regulatory body should, in addition to having the characteristics noted in Question A, be: • required to uphold human rights and, in particular, to uphold children's best interests as the paramount consideration • required to develop practices and processes that are culturally sensitive and trauma-informed, and that recognise asymmetries of information and power that may exist as between intending parents, surrogates and service providers (including SSOs)

- sufficiently resourced by Government, and in no way financially dependent on industry
- equipped with powers to compel information and materials
- empowered to act on its own motion, and not only in response to complaints, and
- equipped with an array of powers that enables it to adopt regulatory responses that are reasonable and proportionate to the degree of culpability and the gravity of consequences of wrongdoing.

Recommendation 14 That the National Regulator should be the only entity that can approve surrogacy arrangements.

Recommendation 15 If Recommendation 14 is not accepted, that legislation should prohibit SSOs from approving a surrogacy agreement that does not comply with legislative requirements, whether non-compliance occurs intentionally, recklessly or arises from a failure to take reasonable care.

Recommendation 16 That legislation creating a National Regulator should confer on that body the power to enforce the prohibition, and that Option 6.3 be implemented, providing for a full suite of proportionate regulatory responses.

Recommendation 17 That the criminal history check should be limited to offences relating to children, offences involving violence (including, where applicable, offences relating to coercive controlling behaviour), and offences involving dishonesty or abuse of a position of trust.

Recommendation 18 That legislation creating a National Regulator should be required to make a legislative instrument setting out guidance for intended parents and surrogates as to how offences will be taken into account.

Recommendation 19 That legislation:

- requires counsellors to have a reasonable belief about the party's comprehension, and
- confers on the National Regulator an obligation to make guidelines about what a counsellor should consider in forming that reasonable belief.

Recommendation 20 That any legislation intended to give effect to proposal 23 should also explicitly protect the surrogate's dignity interest which, together with the right to bodily integrity, underpins the requirement for informed consent to medical treatment.

Recommendation 21 That the money being held in a trust account managed by a body independent of the intended parents and the surrogate, and which is

	accountable to an independent regulator for its management of money held in trust.
Recommendation 22	That intended parents who have engaged in an overseas surrogacy arrangement be required to seek a court order for legal parentage.
Recommendation 23	That legislation requiring the provision of information for the Register should impose that responsibility on the legal parents.
Recommendation 24	That the National Regulator should have a discretion to allow access to origin information if it is in the best interests of the child or young person, regardless of their age.
Recommendation 25	That policy settings and service delivery responses should encourage and support parents to have early conversations with their children about their origins.
Recommendation 26	That the National Regulator be equipped with powers to impose a full suite of proportionate regulatory responses, including criminal sanctions.

Comments on proposals and responses to questions

Questions to which we propose no response have been omitted intentionally from the commentary below.

Promoting a nationally consistent approach through harmonisation

Proposal 1

1. Surrogacy should be regulated either:

    a. uniformly by Commonwealth legislation; or

    b. with substantial consistency across states and territories through a co-ordinated and harmonised set of Commonwealth, state, and territory laws.

Consistent with Framing Principle 7, Relationships Australia **recommends** that any future regulation of surrogacy be done uniformly, through Commonwealth legislation.[18] Even minor differences across ostensibly 'co-ordinated and harmonised' laws can lead to confusion and uncertainty about rights and obligations. This is an unacceptable risk in this sensitive area of policy, where poorly calibrated regulatory settings can have devastating consequences for people trying to work with them. (***Recommendation 4***)

[18] The House of Representatives Final Report, 2016, recommended a nationally consistent law, and that the ALRC should develop a model national law to regulate domestic altruistic surrogacy; see, especially, Recommendations 1, 2 and 3. We note, too, work several years ago done under the auspices of the Standing Committee of Attorneys-General to develop a national model to harmonise regulation of domestic altruistic surrogacy, which led to the development of 15 principles, agreed to by SCAG at its meeting on 5-6 November 2009.

2. This legislation should establish a National Regulator (preferred) or empower existing agencies or departments to perform the functions outlined in Proposal 2.

Consistent with Framing Principle 7, Relationships Australia **recommends** that a National Regulator be established. (***Recommendation 5***)

3. The 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 dealt with by delegated legislation, guidelines, or standards set by the National Regulator (Proposal 2).

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** Proposal 2.

4. The Commonwealth, states, and territories should enter into an inter-governmental agreement to implement nationally consistent surrogacy laws through one of the following options:

- Option 1.1 Referring powers to the Commonwealth Parliament, followed by the Commonwealth implementing federal surrogacy legislation;
- Option 1.2 Developing national mirror legislation on surrogacy arrangements, to be passed by each state and territory;
- Option 1.3 The Commonwealth, or a state or territory, passing surrogacy legislation and each other jurisdiction legislating to apply that Act in that jurisdiction; or
- Option 1.4 A hybrid of the above three options.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** Option 1.1. Option 1.4 should be strenuously avoided, as implementation would exacerbate current issues of complexity and fragmentation.

5. Legislation developed under any of the options above should adopt consistent and updated terminology.

Consistent with Framing Principle 7, Relationships Australia **recommends** that legislation should use consistent terminology that aligns with contemporary expectations. (***Recommendation 6)***

Some of the Options allow for states and territories to have their own legislation, which will no doubt be amended over time. Legislative processes and timeframes across states and territories vary. To enable people to rely, with confidence, on rights and obligations set out in legislation, Relationships Australia **recommends** that Australian governments formally commit to ensuring alignment in timing of amendments of legislation (***Recommendation 7***).

Establishing a National Regulator

Proposal 2

1. Legislation should create a regulatory framework for surrogacy, with a National Regulator holding the following functions and responsibilities:

Standard setting

a. developing and maintaining standards, guidelines, and processes on cost recovery for surrogates (see Proposals 25–27);

Relationships Australia **supports** this function for a National Regulator.

b. developing a standardised draft surrogacy agreement which parties may use as a basis for an agreement that is compliant with legislative requirements (see Proposal 22);

Relationships Australia **supports** this function for a National Regulator.

Compliance

c. setting licence conditions for Surrogacy Support Organisations ('SSOs'), licensing SSOs, and monitoring compliance with licensing conditions (see Proposal 3);

Relationships Australia has concerns over the nature, role and governance of SSOs, as they appear to be conceptualised in the Discussion Paper; in particular, the extent to which conflicts of interest may be inadvertently 'baked into' their functions by positioning SSOs as being chosen and paid by intending parents, and by potentially allowing SSOs to be profit-making ventures. Extensive evidence suggests that some of the most significant risks of exploitation and commodification of children, surrogates and intended parents are created by the conduct of intermediaries and agents,[19] motivated by the enormous amounts of money to be made in the global surrogacy markets.[20]

Relationships Australia is very concerned by various proposals in the Discussion Paper that would amount to delegating to SSOs a range of powers, functions and responsibilities that are directly related to the legal rights of children, and the legal rights and obligations of surrogates and intended parents. Such powers, functions and responsibilities, with their profound human rights implications, must not be conferred on profit-making entities the principal obligations of which may be to shareholders, or to one set of stakeholders in preference to another. For example, Proposal 17.2 refers to intended parents' 'nominated' SSO,[21] raising the possibility that SSOs will be expected (and incentivised) to advance the interests of intended parents in priority to other parties to surrogacy agreements).

[19] See, eg, Special Rapporteur, 2025.

[20] As noted in the submission from the Attorney-General's Department, commenting on the Issues Paper (p 10), referring to the 2019 Thematic Study by the Special Rapporteur on the Sale and Sexual Exploitation of Children – Study on safeguards for the protection of the rights of children born from surrogacy arrangements. A range of market estimates puts the global figure in 2024 at over US$22 billion.

[21] See also Proposal 18.3.

There is extensive and compelling evidence that, wherever profits can be made from services relating to children - and adults experiencing circumstances of vulnerability - those making the profits appear intractably unwilling to be constrained by law and ethics. This has occurred in surrogacy,[22] and in forced adoption domestically and overseas, and has been evidenced in exploitative and profoundly harmful practices in child care, aged care and the NDIS. The risks arising from fully 'commercialising' surrogacy have guided the deliberations of Australian and international inquiries, including that undertaken by the House of Representatives Standing Committee on Social Policy and Legal Affairs, which found that

> *…even if a regulated system of commercial surrogacy could be implemented, the risk of exploitation of both surrogates and children remains significant.*[23]

Any reforms emerging from this Inquiry, which reduce barriers to domestic surrogacy, must be scaffolded with proportionate safeguards to prevent the exploitations and commodification of children, surrogates and intended parents. Relationships Australia's recommendations are intended to achieve this.

Roles, functions and responsibilities of SSOs - and, indeed, of all professionals involved in surrogacy - must be developed with children's rights, interests and safety at the forefront. This demands that legislation not create perverse incentives for intermediaries to profit from exploiting or commodifying children, surrogates and intended parents. We **recommend** that all regulatory functions, and powers, functions and responsibilities which affect legal rights and obligations be carried out by regulators which are independent and not funded by industry.[24] (***Recommendation 8)***

However, were Australian governments minded to create and recognise SSOs, then setting licence conditions for them would be an appropriate function for the National Regulator.

> d. enforcing compliance under any civil penalty regime or criminal sanctions enacted by the legislation (see Proposals 8–10);

Consistent with our comments throughout this submission on the nature and role of SSOs, Relationships Australia **supports** this function for a National Regulator.

Oversight of surrogacy agreements

> e. reviewing SSO decisions not to approve a surrogacy agreement, at the request of parties to the surrogacy agreement (Proposals 4 and 5);

See ***Recommendation 14*** made in response to Question C (Relationships Australia considers that only the National Regulator should have the power to approve a surrogacy agreement).

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[22] See, eg, Special Rapporteur, 2025, especially paragraph 44, citing the Hague Conference on Private International Law, A Study of Legal Parentage and the Issues Arising from International Surrogacy Arrangements (2014).
[23] Final Report, 2016, paragraph 1.19.
[24] As occurs across a range of industry ombudsman roles created by governments, with variable outcomes for service users.

However, were Australian governments minded to create and recognise SSOs, and confer on them the power to decide whether to approve surrogacy agreements, then Relationships Australia **agrees** that reviewing SSO decisions not to approve a surrogacy agreement would be an appropriate function of a National Regulator.

> f. assessing complex applications to approve surrogacy agreements, at the SSO's request (Proposals 4 and 5);

Subject to ***Recommendation 14*** (that only the National Regulator should have the power to approve surrogacy agreements), Relationships Australia **recommends** that the National Regulator should:

- be required by legislation to make enforceable guidelines about what amounts to a complex application to approve a surrogacy arrangement (if those elements go beyond those canvassed in Proposal 5), and
- If Recommendation 14 is not accepted – have standing to take over approval of a surrogacy arrangement at the request of any party to it or of its own motion. (***Recommendation 9)***

> g. keeping records of approved surrogacy arrangements, after an SSO has lodged the approval (Proposals 4 and 5);

Subject to ***Recommendation 14*** (that only the National Regulator should have the power to approve surrogacy agreements), Relationships Australia **supports** this function for a National Regulator.

> h. registering overseas surrogacy arrangements and reviewing applications to engage in surrogacy in unapproved destinations (Proposal 37);

Relationships Australia **supports** this function for a National Regulator.

Community awareness and information provision

> i. developing information to address misunderstandings about surrogacy in the community (Proposal 7);

This function of the National Regulator needs to be broader, and more positive, than simply addressing misunderstandings. Accordingly, Relationships Australia **recommends** that legislation require a National Regulator to ensure that comprehensive, accurate and up to date information about surrogacy is publicly available and accessible by all community members. We acknowledge that the Commonwealth Attorney-General's Department maintains a webpage which provides general information (https://www.surrogacy.gov.au/). (***Recommendation 10)***

> j. providing public information about domestic and overseas surrogacy laws, processes, and requirements, including the potential risks that may arise in overseas surrogacy (Proposal 7);

Relationships Australia **supports** this function for a National Regulator. Further, Relationships Australia **recommends** that a National Regulator should be required to provide public information about potential legal, financial and relational risks that may arise in domestic surrogacy, particularly from the use of surrogacy arrangements that are not approved. In our experience, governments do not adequately fund public information, education and awareness campaigns or resources. We would urge the Commission to recommend that governments prioritise and properly resource the functions described in this and the preceding paragraph. (***Recommendation 11)***

> k. developing guidelines on the provision of healthcare to surrogates and intended parents, to be adopted by healthcare providers, including hospitals and medical professionals (Proposal 7);

Relationships Australia **supports** this function for a National Regulator.

> l. managing the surrogacy register and providing information held on the register to people born through surrogacy (see Proposals 34–36); and

Relationships Australia **supports** this function for a National Regulator. Consistent with Framing Principle 7, a national register is strongly preferable to state/territory based registers.

> m. providing or overseeing the provision of training or training materials for professionals who provide services to parties to surrogacy arrangements, such as lawyers, healthcare professionals, and counsellors.

Relationships Australia **supports** this function for a National Regulator. Further, Relationships Australia **recommends** that a National Regulator should collaborate with relevant professional bodies in developing training and training materials. (***Recommendation 12)***

2. Responsibility for administering the regulatory framework should sit within:

- Option 2.1 (preferred) A National Regulator for surrogacy, or assisted reproductive technology more broadly; or
- Option 2.2 Some responsibilities and functions placed with an existing national regulatory body or Commonwealth department, and/or some responsibilities and functions placed with state and territory health departments or other agencies, or regulated through the existing assisted reproductive technology regulatory framework.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, then consistent with Framing Principle 7 and our preceding responses and recommendations, Relationships Australia **supports** Option 2.1. In our experience of fragmented systems across family law, family violence and child protection systems, Option 2.2 is likely to lead to harmful

consequences for all parties involved in surrogacy arrangements. To deliberately create such a system would be reckless.

Question A

What are important design principles or safeguards for any regulatory body to have? You might think about measures to ensure the body is efficient, accessible, accountable, and transparent.

Multiple Royal Commissions over the past decade have clearly demonstrated that regulators, as well as service providers, should be efficient, accessible, accountable and transparent in their operations; see, for example, the exposure of the shortcomings of regulators and service providers in aged care, disability services, and banking and finance. In many instances, the nature of the relationships between regulators and providers has been unhealthily intimate, and this has led to serious harms suffered by service users.

These Royal Commissions demonstrated that regulators must be adequately resourced to avoid risk of being reduced to 'tick-a-box' regulation and/or capture. Some regulators and other government agencies have developed, or are in the process of developing frameworks to ensure that they (and the entities they regulate) have culture, practices and processes that mean they engage sensitively and responsively with people experiencing circumstances of vulnerability (eg the Australian Taxation Office, telecommunications providers).

Accordingly, Relationships Australia **recommends** that any regulatory body should, in addition to having the characteristics noted in Question A, be:

- required to uphold human rights and, in particular, to uphold children's best interests as the paramount consideration
- required to develop practices and processes that are culturally sensitive and trauma-informed, and that recognise asymmetries of information and power that may exist as between intending parents, surrogates and service providers (including SSOs)[25]
- sufficiently resourced by Government, and in no way financially dependent on industry (unlike, for example, some of the industry ombudsman offices), as a prerequisite to being 'motivated to uphold the integrity of the domestic surrogacy framework'[26]
- equipped with powers to compel information and materials
- empowered to act on its own motion, and not only in response to complaints, and
- equipped with an array of powers that enables it to adopt regulatory responses that are reasonable and proportionate to the degree of culpability and the gravity of consequences of wrongdoing. (***Recommendation 13)***

[25] The report of the Special Rapporteur, 2025, noted that 'Globally, most surrogate mothers come from lower-income backgrounds and have less social status' relative to intended parents (at 7/23), citing Attawet et al, 2024.

[26] See Discussion Paper, p 28.

Permitting and regulating Surrogacy Support Organisations

Proposal 3

Legislation should enable Surrogacy Support Organisations ('SSOs') to be established to provide the following supports and safeguards for intended parents and surrogates:

Please refer to our responses to Proposal 2.1(c), Proposal 3 and Question C about the limited range of functions that should be conferred on SSOs. Even if they are explicitly created as not for profit entities, the potential for conflicts of interest seems, as noted above, to be 'baked in' through their apparent relationship to intended parents.

1. facilitating introductions, or 'matching', of intended parents and surrogates who meet the requirements (Proposals 13–16);

Relationships Australia considers that this kind of support could usefully be provided by SSOs, subject to appropriate regulation and oversight. A useful model might be the licensing framework recently introduced in New York, as noted in the submission by Sarah Jefford OAM responding to the Issues Paper. We particularly support SSOs being set up to be independent of parties to surrogacy arrangements and to be not-for-profit entities. These features would be important safeguards against risks of exploitation and commodification of children, surrogates and intended parents.

2. determining requests to waive residency and citizenship requirements (Proposal 15);

Consistent with our responses to Proposal 2.1(c) and Question C, we **do not support** conferring these functions on SSOs. These functions should reside with (a fully independent) National Regulator, because of their broader legal and policy implications.

3. providing or coordinating the counselling and other services that need to be engaged with to meet the requirements (Proposals 17–21);

Relationships Australia considers that this kind of support could usefully be provided by SSOs, subject to appropriate regulation and oversight. Such regulation and oversight should be directed at ensuring that SSOs do not enter into arrangements with providers that are not in the best interests of children, surrogates or intended parents, but which confer improper financial benefit on SSOs and services to which SSOs might make referrals.

4. assessing and approving surrogacy agreements that are compliant with legislative requirements (Proposals 4 and 5);

Consistent with our responses to Proposal 2.1(c) and Question C, we **do not support** conferring these functions on SSOs.

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

Consistent with our responses to Proposal 2.1(c) and Question C, Relationships Australia considers that far more detail is required about the proposed nature and role/s of SSOs.

Confluence of interests, throughout the surrogacy arrangement, between intended parents and surrogates, cannot be assumed.

6. facilitating conflict resolution between intended parents and surrogates; and

Consistent with our responses to Proposal 2.1(c) and Question C, Relationships Australia considers that far more detail is required about the proposed nature and role/s of SSOs. Confluence of interests, throughout the surrogacy arrangement, between intended parents and surrogates, cannot be assumed.

7. holding funds provided by intended parents in a trust account and managing disbursement of trust account funds to surrogates (Proposal 27).

Consistent with our responses to Proposal 2.1(c) and Question C, Relationships Australia considers that far more detail is required about the proposed nature and role/s of SSOs. Confluence of interests, throughout the surrogacy arrangement, between intended parents and surrogates, cannot be assumed.

Approving surrogacy agreements

Proposal 4

Legislation should provide that:

1. parties to a surrogacy agreement must obtain approval of their surrogacy agreement before attempting to achieve a pregnancy; and

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal as a critical safeguard. *Ex post facto* regulation, which defers scrutiny, and can limit opportunities to access supportive services, until after a child is born, has failed to protect the rights of children born through surrogacy arrangements (and has jeopardised their enjoyment of fundamental rights such as the right to a nationality), as well as failing to protect the rights and interests of surrogates and intended parents. Accordingly, and consistent with Framing Principle 1, Relationships Australia **supports** reforms to create safeguards before attempts to achieve a pregnancy are initiated.

2. an assisted reproductive technology service provider may only conduct an in-vitro fertilisation procedure or otherwise facilitate an attempt to achieve a pregnancy where satisfied that there is an approved surrogacy arrangement in place.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal as a critical safeguard.

Proposal 5

Legislation should provide that:

1. the approval process (Proposal 4) should incorporate the following elements:

    a. Parties should seek approval from a Surrogacy Support Organisation ('SSO') (see Proposal 3). The SSO should review surrogacy agreements 'on the papers', and meetings with the parties should only take place when considered necessary.

Please refer to our responses to Proposals 2.1(c) and 3, and Question C (the National Regulator, not an SSO, should be the decision-maker about approvals of surrogacy agreements).

2. when a surrogacy agreement has been approved ('approved surrogacy arrangement'):

    a. approved surrogacy arrangements can proceed on the administrative pathway and intended parents will be the child's legal parents at birth (see Proposal 30); and

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal as providing an incentive to submit surrogacy agreements for approval.

    b. the SSO should lodge the approved surrogacy arrangement with the National Regulator (or alternative) (see Proposal 2).

Please refer to our responses to Proposals 2.1(c) and 3, and Question C (the National Regulator, not an SSO, should be the decision-maker about approvals of surrogacy agreements).

However, if Australian governments confer the decision-making function on SSOs notwithstanding the reservations we express elsewhere in the submission, Relationships Australia would **support** this proposal as furthering the transparency and orderly administration of the proposed regulatory scheme, as well as reducing fragmentation of access to information.

3. surrogacy arrangements that are not approved by the SSO ('unapproved surrogacy arrangements') cannot proceed on the administrative pathway to legal parentage (see Proposal 30). The judicial pathway to legal parentage will remain available (see Proposal 31); and

Please refer to our responses to Proposals 2.1(c) and 3, and Question C (the National Regulator, not an SSO, should be the decision-maker about approvals of surrogacy agreements).

However, if Australian governments confer the decision-making function on SSOs notwithstanding the reservations we express elsewhere in the submission, Relationships Australia would **support** this proposal as providing an incentive to submit surrogacy agreements for approval, having met the requirements to protect the interests of surrogates and intended parents.[27]

[27] Relationships Australia supports Principle 1.5 of the Verona Principles.

4. approval of a surrogacy arrangement should be sought from the National Regulator (or alternative) if:

a. the medical assessment does not certify that the surrogacy arrangement should be allowed to proceed (see Proposal 17), and the parties wish it to proceed;

b. the psychological assessment does not recommend that a party should be allowed to proceed with a surrogacy arrangement (see Proposal 18), and the parties wish it to proceed;

c. the SSO regards it as a complex surrogacy arrangement; or

d. the SSO denies approval and the parties to the surrogacy arrangement request a review (see Proposal 2).

Please refer to our responses to Proposals 2.1(c) and 3, and Question C (the National Regulator, not an SSO, should be the decision-maker about approvals of surrogacy agreements).

Question C

Do you think it is appropriate for SSOs to approve surrogacy agreements (where they are compliant with the legislative requirements), or should this responsibility sit with a different entity, such as the National Regulator (or alternative)?

Consistent with our observations responding to Question C, Proposal 2.1(c) and Proposal 3, Relationships Australia **does not support** conferring on SSOs to approve surrogacy agreements. Relationships Australia **recommends** that the National Regulator should be the only entity that can approve surrogacy arrangements. (***Recommendation 14)***

Ensuring compliance with operational requirements

Proposal 6

1. Legislation should prohibit Surrogacy Support Organisations ('SSOs') from intentionally or recklessly approving a surrogacy agreement which does not comply with the legislative requirements

Please refer to our responses to Proposals 2.1(c) and 3, and Question C (the National Regulator, not an SSO, should be the decision-maker about approvals of surrogacy agreements).

However, if Australian governments confer the decision-making function on SSOs notwithstanding the reservations we express elsewhere in the submission, Relationships Australia **recommends** that legislation should prohibit SSOs from approving a surrogacy agreement that does not comply with legislative requirements, whether non-compliance occurs intentionally, recklessly or arises from a failure to take reasonable care. (***Recommendation 15)***

2. Compliance with the prohibition should be enforced by:

- Option 6.1 A civil penalty regime; or
- Option 6.2 Criminal sanctions; or
- Option 6.3 A combination of civil penalties and criminal sanctions.

Relationships Australia **recommends** that legislation creating a National Regulator should confer on that body the power to enforce the prohibition, and that Option 6.3 be implemented, providing for a full suite of proportionate regulatory responses. (***Recommendation 16)***

Relationships Australia acknowledges that criminal sanctions relating to surrogacy, where they currently exist, are little used. We note the suggestion, in the Discussion Paper, that this indicates 'reticence' about the appropriateness of criminal sanctions in this area (see, eg, Discussion Paper, pp 26, 28, 66 and notes 112 and 316). An alternative explanation for this reticence may simply lie in the scarce resources afforded to police and prosecuting authorities, and the prioritisation matrices used to manage these.

In any event, we do not consider that domestic and international ambivalence about the application of criminal sanctions to intended parents and surrogates should preclude the availability of such sanctions for entities that profit from failing to comply with current and potential future regulatory arrangements or that exploit children, surrogates or intended parents (and whose business plan can be contingent on such non-compliance). As noted in response to Proposal 2.1(c), the amount of money that can be made from exploiting surrogacy arrangements incentivises egregious breaches of human rights, and it is necessary that sanctions reflect public repugnance and States' recognition of the gravity of the harms that ensue. Social stigma should not attach to children, surrogates or intended parents who have been exploited, commodified and harmed, but it most certainly should attach to those making the billions of dollars that drive surrogacy markets and abuses that occur in service of those markets.

Accordingly, we respectfully **disagree** with the proposition that '…replacing criminal sanctions with a civil penalty regime is more likely to deter behaviour and prevent exploitation…'.[28]This has not been the case in other services involving significant asymmetries of knowledge and power when money from service users experiencing circumstances of vulnerability, as amply demonstrated in Royal Commissions relating to aged care services, disability services and banking and finance services, as well as out of home care and inter-country adoption. Where large sums of money[29] can be made from people who occupy situations of relative disempowerment, civil penalties alone have consistently failed to deter, denounce and punish with any notable effect. Furthermore, such sanctions have been proven inadequate to drive ethical and client-focused practices across a range of services and industries. We therefore consider that criminal sanctions are a necessary deterrent to those who would seek to exploit intended parents, surrogates and children.

[28] Discussion Paper, p 28.

[29] See, eg, Horsey, 2024; Special Rapporteur, 2025.

Increasing awareness and education

Proposal 7

1. The National Regulator (or alternative) (Proposal 2) should publish and promote information to:

> a. address common misunderstandings in the community about surrogacy and Australia's surrogacy laws;
>
> b. inform intended parents and surrogates about surrogacy in Australia and Australia's surrogacy laws; and c. inform intended parents about surrogacy laws, policies, and practices overseas, any associated risks, and the need to register overseas surrogacy arrangements (Proposal 37).

See comments on Proposals 2 (i) and (j).

2. The National Regulator (or alternative) (Proposal 2) 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 lawyers, healthcare professionals, and counsellors.

See response to Proposal 2(k); Relationships Australia **supports** conferring this role on a National Regulator. We acknowledge that professionals such as lawyers, healthcare professionals and some counsellors will also be subject to oversight, regulation and sanctions from other regulatory and professional bodies.

Prohibited domestic surrogacy arrangements

Proposal 8

1. Legislation should prohibit intended parents and surrogates from engaging in a domestic surrogacy arrangement which is for impermissible profit or reward. Surrogacy arrangements which comply with the requirements in Proposals 25 and 26 are not for impermissible profit or reward.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

2. Compliance with the prohibition should be enforced by a civil penalty regime.

Please refer to our response to Proposal 6.2.

Unregistered overseas surrogacy arrangements

Proposal 9

1. Legislation should prohibit intended parents from intentionally or recklessly engaging in overseas surrogacy arrangements, unless they have registered the arrangement with a registration entity (see Proposal 37).

The language of this proposal is confusing. What (and whose) is the 'intent' or 'recklessness' being referred to? Is it suggested that intended parents should not engage in an overseas surrogacy arrangement that intentionally or recklessly disregards Australian legal requirements or the legal requirements of the overseas jurisdiction? Is it suggested that registration cures intentional or reckless non-compliance? Should registration even occur in the absence of compliance?

Acknowledging that this Proposal may exceed the Terms of Reference, consistent with our responses to Question C, Proposal 2.1(c) and Proposal 3, Relationships Australia **recommends** that legislation creating a National Regulator should require it to refuse to register an overseas surrogacy arrangement in circumstances giving rise to reasonable concerns relating to intent or recklessness.

2. Compliance with the prohibition should be enforced by a civil penalty regime.

Please refer to our response to Proposal 6.2.

3. Existing extraterritorial criminal offences in the Australian Capital Territory, New South Wales, and Queensland, which prohibit engagement in commercial surrogacy overseas, should be repealed.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal, subject to a national regulatory scheme having commenced.

Facilitation of prohibited surrogacy arrangements

Proposal 10

1. Legislation should prohibit individuals and organisations, including Surrogacy Support Organisations, from:

> a. intentionally or recklessly facilitating, inducing, or procuring (including by advertisement), or attempting to facilitate, induce, or procure, the involvement of a person in a prohibited domestic or unregistered overseas surrogacy arrangement (see Proposals 8 and 9); or

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

b. intentionally or recklessly coercing or attempting to coerce (by pressure, force, or fraudulent means) the involvement of a person in any surrogacy arrangement.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal, subject to the definition of coercion being broadened to include misrepresentation or misleading conduct, or exploitative conduct. 'Pressure, force, or fraudulent means' is too high a bar, given the sensitivity of the rights engaged, and the severity of harm that may arise from the relevant conduct.

2. Compliance with the prohibition should be enforced by:

- Option 10.1 A civil penalty regime;
- Option 10.2 Criminal sanctions; or
- Option 10.3 A combination of civil penalties and criminal sanctions.

Consistent with our response to Proposal 6.2, Relationships Australia **supports** Option 10.3.

Genetic connection between the parties and the child

Proposal 12

1. Legislation should treat surrogacy arrangements in the same way, regardless of whether or not a genetic connection is present between the surrogate and the child, or the intended parent(s) and the child.

In principle, and subject to considerations of cultural responsiveness, Relationships Australia **supports** this proposal.

2. Victoria should legalise and treat traditional surrogacy in the same way as gestational surrogacy, consistent with the approach adopted in other jurisdictions.

Consistent with Framing Principle 7, Relationships Australia **supports** this proposal in principle.

Proposal 15

1. Legislation should provide that at least one intended parent must be either an Australian citizen or permanent resident, unless this requirement is dispensed with by a Surrogacy Support Organisation (see Proposal 3).

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal in principle, as furthering the objective of preventing child trafficking, subject to the National Regulator and not SSOs having the responsibility of dispensing with this requirement. This is consistent with our previous recommendations about the role and functions of the National Regulator and of SSOs.[30]

[30] Please refer to our responses to Proposals 2.1(c) and 3, and Question C.

2. State or territory-based legislation imposing residency requirements should be repealed.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, and consistent with Framing Principle 7, Relationships Australia **supports** the replacement of state and territory legislation with national legislation.

Requirement for medical screening

Proposal 17

Legislation should provide that:

1. the surrogate must undergo a medical assessment by an independent medical practitioner. The independent medical practitioner must certify that the surrogacy can proceed without undue risk to the surrogate's health; and

Relationships Australia is concerned by the reference to 'undue risk'; what is meant by this? Relationships Australia **supports**, in principle, proposals to limit health risks of carrying a child. However, such risks are not always predictable in advance. Will a surrogate have a cause of action against an independent medical practitioner who fails to identify an 'undue risk' and provides certification? Will the intended parents have a cause of action against such a practitioner (and/or the surrogate), if a risk materialises and a pregnancy and live birth is not achieved?

2. the independent medical practitioner must provide their report to the surrogate, as well as to the surrogate's nominated Surrogacy Support Organisation, so that it can form part of the approval process (see Proposals 4 and 5).

See response to Question C (Relationships Australia considers that only the National Regulator should have the power to approve surrogacy agreements).

Requirement for psychological screening

Question D

Should both the surrogate and the intended parent(s) be required to undergo a psychological assessment?

In principle, yes, subject to:

- clarification about what is being assessed and for what purpose
- transparency about the methodology applied, and
- subject to each potential party to the arrangement having access to independent psychologists.

Further, Relationships Australia considers that both the surrogate and intended parent/s must have access to independent psychological support and counselling before an arrangement is entered into, during the term of the arrangement, and up to 12 months after the end of the arrangement. Such support and counselling should be explicitly separate from pre-agreement 'assessment' and should be paid for by the intending parents. We also note that access to

psychological support and counselling is currently very constrained across our communities, with demand far exceeding supply. If Australian governments seek to reduce barriers to surrogacy, and establish a regulatory scheme that supports all parties (including children born as a result of surrogacy), then there is a co-relative obligation on governments to take action to support workforce development, both generally and in this specialised area.

Requirement for criminal history check

Proposal 19

- Option 19.1 There should not be a requirement for intended parents to undergo a criminal history check before engaging in a surrogacy arrangement.
- Option 19.2 There should be a legislated requirement for intended parents to undergo a criminal history check before engaging in a surrogacy arrangement.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** Option 19.2.

Question E

If Option 19.2 is adopted:

- should the criminal history check be limited to specific offences, such as those relating to children or violent offences?
- what should be the purpose of the criminal history check? You might want to consider if it should be provided to the surrogate to facilitate informed consent to the arrangement, to the psychologist undertaking the psychological assessments, or to the Surrogacy Support Organisation to determine if the arrangement should be approved?

Relationships Australia **recommends** that the criminal history check should be limited to offences relating to children, offences involving violence (including, where applicable, offences relating to coercive controlling behaviour), and offences involving dishonesty or abuse of a position of trust. (***Recommendation 17***) Relationships Australia considers that checking for such offences is a necessary and proportionate step to mitigate risks for children born through surrogacy arrangements, surrogates, and intended parents. It is also consistent with safeguards imposed in other areas of law where the state has a role in transferring parentage and/or parental responsibility; such a role enlivens a duty of care owed by the state to the child.

The check should be provided to:

- the surrogate, as critical to ensuring that their consent is informed consent[31]
- each of the psychologists undertaking the assessments of the surrogate and the intended parents, and

[31] Relationships Australia acknowledges that a range of international instruments preclude valid consent to conduct that can be characterised as, for example, slavery or slavery-like, and that these prevent Australia from legalising surrogacy practices. We express no view on these arguments, but wish to make clear that, if governments choose to enact this Proposal, the surrogate should have access to this information.

- the National Regulator, as the decision-maker about approval of surrogacy agreements, (see ***Recommendation 14*** and our comments on Proposals 2 and 4).

In respect of provision of the checks to the decision-maker, the fact of a person having committed such offences should *not* be exclusionary in its own right. Much should depend on context to be explored by the body making a decision about approving or refusing an arrangement. Relationships Australia **recommends** that legislation creating a National Regulator should be required to make a legislative instrument setting out guidance for intended parents and surrogates as to how offences will be taken into account. (***Recommendation 18***)

Legal advice requirement for intended parents and surrogates

Proposal 20

1. Legislation should provide that all parties must receive independent legal advice before entering a surrogacy arrangement. The advice must cover the following matters:

    a. the surrogate's right to bodily integrity, reproductive autonomy, and informed consent in relation to medical treatment or procedures that directly affect them (see Proposal 23);

    b. legal parentage under the domestic administrative pathway or the judicial pathway (see Proposals 30 and 31);

    c. the enforceability of the surrogacy agreement (see Proposal 24);

    d. the operation of the reimbursement provisions (see Proposal 25) and the optional hardship payments (see Proposal 26); and

    e. the right of the child born through surrogacy to know their genetic and gestational origins, including their right to access registered information (see Proposals 33–35).

Relationships Australia welcomes the attention and weight that this Proposal accords to gestational, as well as genetic origins; children born through surrogacy arrangements have a right to 'truth and transparency', and protection of that right should be a prerequisite of any policy that reduces barriers to surrogacy arrangements.[32] Therefore, if Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal in principle, noting significant barriers to access to justice facing people experiencing circumstances of vulnerability. Implementation of Proposal 2(m) will be key in building workforce expertise among legal advisors.

In developing any legislation based on this Proposal, governments should have regard to the jurisprudence relating to binding financial agreements made under the *Family Law Act 1975*.[33] Australian courts have required strict compliance with requirements for independent legal advice, and many binding financial agreements have been successfully challenged. Given the

[32] See also Mulligan, 2024.
[33] See sections 90G (for marriages) and 90UJ (for *de facto* relationships).

importance of the rights, and sensitivity of the interests, involved in surrogacy agreements, legislation pursuant to this Proposal may invite an analogous level of scrutiny of surrogacy agreements.

2. Legislation should provide that the legal practitioner who provides the advice must provide the party with written confirmation that the matters outlined in paragraph 1 were discussed and the requisite advice provided, and that the legal practitioner believes that the party appeared to understand the advice.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal, subject to the legal practitioner's belief about the party's understanding being a reasonable belief; see also our response to Proposal 21.3).

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

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

Implications counselling requirement for intended parents and surrogates

Proposal 21

1. Legislation should provide that all parties must undergo counselling before entering a surrogacy arrangement. The counselling must:

a. be provided by a psychologist or counsellor who is a full member of the Australian and New Zealand Infertility Counsellors Association ('ANZICA'); b. include at least:

i. one independent counselling session with the intended parent(s);

ii. one independent counselling session with the surrogate; and

iii. a joint counselling session with all the parties present;

c. not be provided by a psychologist who has been involved in the parties' independent psychological assessments; 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 deciding not to proceed with the surrogacy arrangement, including the implications if the surrogate is already pregnant, or if the surrogate seeks a parentage declaration;

iv. the attitudes of the parties towards the conduct of the pregnancy, including how much input the intended parent(s) should have 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 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; and

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

Relationships Australia **supports** this proposal in principle. The current requirements of the ART Guidelines[34] should frame any legislation developed pursuant to this proposal.

As noted in previous responses, we have concerns about impact of the proposals on the well-known workforce shortages among psychologists, counsellors and mental health systems more broadly, which may create barriers to access (see, for example, our response to Question D). Nevertheless, we consider implications counselling, with its focus on the rights and wellbeing of hoped for children, and on the quality of their family relationships, to be as essential as Family Dispute Resolution has proven to be in focusing the attention of separating parents on their children's best interests.

2. 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 may be initiated at the reasonable election of any party to the surrogacy arrangement.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal (see also response to Question D).

3. Legislation should provide that the counsellor must provide each party with written confirmation that the matters outlined in paragraph 1(d) were discussed and the counsellor believes that the party appeared to understand the counselling and the personal consequences of the surrogacy arrangement.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal, subject to our **recommendation** that legislation:

- requires counsellors to have a reasonable belief about the party's comprehension – such a requirement is a more robust safeguard for the informed consent of the surrogates and intended parents, and

[34] NHMRC, 2017.

- confers on the National Regulator an obligation to make guidelines about what a counsellor should consider in forming that reasonable belief. (***Recommendation 19***)

Question F

Should the surrogate's partner (if any) be required to undergo implications counselling?

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal. If the surrogate's partner does not support the surrogacy arrangement, then we consider that there is an unacceptable risk to the intended parents that the agreement may fail. Furthermore, it is well-established that pregnancy can heighten risk of onset or exacerbation of intimate partner violence.[35] Counselling is an opportunity to identify risk and initiate an intervention. It is far better to identify any reservations or concerns held by the surrogate's partner before an agreement is entered into, and attempts to achieve a pregnancy initiated. Further, we note that Proposal 22 contemplates the surrogate's partner being a signatory to the agreement; this underlines the importance of the partner undergoing implications counselling, to support their informed consent. We note the potential for workforce shortages to create a barrier to access (see also our response to Question D).

Question G

Should there be additional counselling requirements? If so, what should these requirements be? You may wish to consider whether post-birth counselling should be optional or mandatory, or for how long after the birth the intended parent(s) should be required to cover the cost of the surrogate's counselling.

See our response to Question D.

Requirements for a compliant surrogacy agreement

Proposal 22

2. Legislation should provide that evidence that the requirements in paragraph 1(g) have been met must be attached to the surrogacy agreement.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal as promoting the transparency and accountability of the regulatory scheme and its participants.

[35] See, eg, Humphreys, 2007; Campo, 2015; State of Victoria, 2016; ANROWS, 2020.

Prohibited provisions in a surrogacy agreement

Proposal 23

1. Legislation should prohibit the inclusion of, and invalidate, any provision in a surrogacy agreement that inhibits the surrogate's right to autonomy, bodily integrity, and informed consent in relation to medical treatment or procedures that affect them.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal, subject to it being clear that the fullest interpretation should be given to the surrogate's rights to autonomy and bodily integrity, and to be subject to clinical interventions only on the basis of informed consent. Relationships Australia also **recommends** that any legislation intended to give effect to this proposal should also explicitly protect the surrogate's dignity interest which, together with the right to bodily integrity, underpins the requirement for informed consent to medical treatment.[36] (***Recommendation 20)***

2. Legislation should require that a statement confirming these rights must be included in a surrogacy agreement for the agreement to be compliant.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

Reimbursing surrogates for expenses

Proposal 25

Legislation should provide that:

1. a surrogacy arrangement that entitles surrogates to the reimbursement of payments provided for in this proposal is not, for that reason only, for impermissible profit or reward;

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

2. consistent with this proposal, intended parents must reimburse the surrogate for all expenses reasonably incurred by the surrogate or their 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 that are required for a surrogacy agreement to be compliant with the legislative requirements and eligible for approval (such as counselling, medical and psychological assessments, and legal advice);

    b. medical and wellbeing costs;

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

[36] See *Rogers v Whitaker* (1992) 175 CLR 479; *Secretary, Department of Health and Community Services (NT) v JWB and SMB* ('*Re Marion*') (1992) 175 CLR 218.

d. care of dependants;

e. additional assistance if unable to perform daily tasks (such as meal delivery and house cleaning);

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. medical expenses following:

i. the birth of a child, miscarriage, or stillbirth (such as counselling or physiotherapy); and

ii. in the case of no successful pregnancy occurring, parties agreeing to cease attempts to achieve a pregnancy.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

3. the period during which intended parents must reimburse the surrogate's reasonable expenses must be agreed upon by the parties to a surrogacy arrangement, but may be extended after commencement of the agreement if all parties agree; and

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

4. the National Regulator (or alternative) (see Proposal 2) should be empowered to develop standards and guidelines in relation to the expenses, costs, or losses which are to be regarded as reasonably incurred in relation to a surrogacy arrangement, as well as formulate a monthly allowance to cover any common incidental expenses for which receipts are difficult or inconvenient to obtain.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

Reimbursement for hardship, at the surrogate's election

Proposal 26

1. Legislation should provide that a surrogacy arrangement is not for impermissible profit or reward by reason only of the entitlement to the hardship payments provided for in this proposal.

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

Holding the funds in a trust account

Proposal 27

Legislation should provide that:

1. before parties to a surrogacy arrangement attempt to achieve a pregnancy, intended parents should pay an agreed upon sum of money (set in Proposals 25 and 26(2)(a)) into the trust account managed by their Surrogacy Support Organisation (see Proposal 3) or other body;

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal, subject to our **recommendation** that the money being held in a trust account managed by a body independent of the intended parents and the surrogate, and which is accountable to an independent regulator for its management of money held in trust. (***Recommendation 21)***

2. the sum of money should cover the full estimated cost of the approved surrogacy arrangement, excluding the hardship payment for extraordinary complications (see Proposal 26(2)(b)); and

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal, subject to ***Recommendation 21*** (see paragraph 27.1).

3. the disbursements to the surrogate are to be made by the Surrogacy Support Organisation from this trust account as costs are accrued (see Proposal 25) or in the case of the monthly hardship payment and monthly allowance, in monthly instalments (Proposals 25 and 26).

If Australian governments seek to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal, subject to ***Recommendation 21*** (see paragraph 27.1).

Administrative pathway to legal parentage

Proposal 30

1. The *Family Law Act 1975* (Cth) should be amended to provide that:

> a. where there is an approved surrogacy arrangement and a child is born, the intended parent(s) who are parties to that agreement are, upon birth (including stillbirth), the legal parent(s) of the child;

If the Commonwealth seeks to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal, subject to the surrogate being entitled protections in relation to ongoing health care related to the pregnancy and birth, as well as other social security benefits related to pregnancy and birth.

> b. within three months of the birth (or stillbirth) of the child, the surrogate may apply for a declaration that the surrogate (and the surrogate's partner, if any) are the legal parent(s) of the child; and

If the Commonwealth seeks to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

> c. the Federal Circuit and Family Court of Australia is empowered to consider and determine the application taking into account all relevant considerations, but giving paramount consideration to the best interests of the child.

If the Commonwealth seeks to reduce barriers to domestic surrogacy arrangements, Relationships Australia **supports** this proposal.

2. The Federal Circuit and Family Court of Australia should create a specialist list for dealing with surrogacy-related applications.

Relationships Australia does **not support** the creation of a specialist list to be desirable; all judicial officers and registrars should develop expertise to appropriately deal with surrogacy-related applications. Whether or not a child is born from a surrogacy arrangement, the fundamental question in such applications is the child's best interests.[37] Nor can such a list be justified on the basis that a 'fast track' system for surrogacy arrangements is more necessary than for other parenting matters. It is in the best interests of all children that all parenting matters be dealt with as expeditiously as possible. Were a convention on international parentage through surrogacy to be implemented and were Australia to be a signatory, then matters arising under that convention would most appropriately be handled by judges of the Federal Circuit and Family Court of Australia who are designated Hague Judges.

[37] See also Committee on the Rights of the Child, 2013, General Comment No. 14.

Question N

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

Relationships Australia **supports** this proposal.

Judicial pathway to legal parentage

Proposal 31

1. The *Family Law Act 1975* (Cth) should be amended to provide that where there is an unapproved surrogacy arrangement (which includes all overseas surrogacy arrangements) (see Proposals 4 and 5) and a child is born:

> a. the surrogate, and the surrogate's (if any) are, upon birth (or stillbirth), the legal parents of the child;

Relationships Australia **supports** this proposal in principle, to prevent children being stateless or being exposed to limping parentage,[38] subject to the surrogate being entitled protections in relation to ongoing health care related to the pregnancy and birth, as well as other social security benefits related to pregnancy and birth.

> b. the intended parents must make an application for a declaration of legal parentage to the Federal Circuit and Family Court of Australia, within three months of the child being born (for domestic arrangements) or entering Australia (for overseas arrangements);

Relationships Australia **supports** this proposal in principle, to prevent children being stateless or being exposed to limping parentage.

> c. the Federal Circuit and Family Court of Australia is empowered to consider and determine the application taking into account all relevant considerations, but giving paramount consideration to the best interests of the child.

Relationships Australia **supports** this proposal.

2. The application should be heard and determined in the specialist list (see Proposal 30(2)).

Relationships Australia does **not support** a specialist list (see response to Proposal 30(2)).

Proposal 32

Legislation should provide that the process outlined in Proposal 31 is retrospectively available in respect of children born through surrogacy arrangements that occurred before the proposed amendments come into effect.

Relationships Australia **supports** this proposal in principle, to prevent children being stateless or exposed to limping parentage.

[38] Which can lead to children being deprived of other rights which are dependent on parentage: see, eg, Harland, 2021.

Question P

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

If Australian governments seek to encourage domestic, rather than international, surrogacy arrangements to mitigate risks of exploitation and human trafficking, Relationships Australia **recommends** that intended parents who have engaged in an overseas surrogacy arrangement be required to seek a court order for legal parentage. (***Recommendation 22***) We envisage that there will always be a cohort of intended parents who regard Australian legislation as unduly onerous, notwithstanding any attempts to make it more appealing,[39] and who will knowingly choose to pursue surrogacy in jurisdictions for their lack of regulation. We consider that a requirement for a court order, while being *ex post facto*, is a prudent and proportionate response to further dissuade intended parents from 'reproductive tourism' and by doing so to mitigate risks of exploitation and trafficking. Where these risks materialise, women, girls and children suffer horrific consequences, as has been identified in numerous submissions, from people with lived experiences of trafficking for surrogacy, to the Special Rapporteur (2025).

Our response to this Question may change in the context of an international convention concerning parentage through surrogacy, although we acknowledge that the HCCH identified the lack of consensus around how best to include safeguards as 'the greatest feasibility challenge' for a convention.[40] See also our response to Question S.

Information available through birth certificates

Proposal 33

1. Legislation should require birth registration statements and other documents seeking to register the birth of a child born in any Australian state or territory to include a section to collect information about surrogacy-related births. Information collected should include the surrogate's identifying details such as full name, address, and date and place of birth.

Relationships Australia **supports** this proposal as promoting transparency and the rights of children to information about origins and identity.

2. Legislation should provide that where the above information has been provided to the registry of births, deaths, and marriages, an addendum — stating that additional information is available and may be obtained via the national surrogacy register (or relevant state or territory-based register) (see Proposal 35) — must be attached to either:

- Option 33.1 Every copy of the birth certificate issued to the person born through surrogacy from birth; or

[39] By, for example, reducing fragmentation and encouraging more women to become domestic surrogates.
[40] HCCH, 2025, paragraph 36.

- Option 33.2 Every copy of the birth certificate issued to the person born through surrogacy after they have reached the age of 16.

Relationships Australia **supports** Option 33.1. Option 33.2 views children and adolescents through a deficits-lens, as well as comprising a group with homogenous maturity. In doing so, it is inconsistent with more flexible and long-established rules about young persons' decision-making capacity[41] by failing to take into account varying developmental rates. We note the number of Australian jurisdictions imposing criminal responsibility on children younger than 16. It would be anomalous to legislate that a child does not have the developmental maturity to access information about their origins and identity until 16, but can be held criminally liable for their acts at earlier ages. It is a matter of strong public interest, as well as the human rights of children and young people, that Australian statute books be coherent and principled in the attribution to children and young people of decision-making maturity. Please refer also to our comments on Proposal 35.2(b).

Accessing information through a Surrogacy Register

Proposal 34

1. Legislation should require the following information to be provided to the National Regulator (or alternative) for inclusion on a surrogacy register (or state and territory donor conception register — see Proposal 35) within three months of the birth of a child through surrogacy:

a. identifying information about the surrogate, including:

i. full name;

ii. date and place of birth;

iii. home address; and

iv. ethnicity and physical characteristics;

b. whether the surrogacy was a traditional surrogacy or gestational surrogacy; an

c. details of the relevant fertility clinic and doctor (if any).

Relationships Australia **supports** this proposal because it promotes transparency and the rights of children to information about origins and identity.

2. Legislation should provide that if a parentage order is obtained (see Proposals 30– 32), it must be provided to the surrogacy register in addition to the information listed in paragraph 1(a) to 1(c) above.

Subject to our comments on Proposals 30-32, Relationships Australia **supports** this proposal because it promotes transparency and the rights of children to information about origins and identity.

[41] See, for example, *Gillick v West Norfolk AHA* [1986] AC 112; *Secretary, Department of Health and Community Services (NT) v JWB and SMB* ('*Re Marion*') (1992) 175 CLR 218.

Question R

In relation to Proposal 34:

- does it capture all the appropriate and relevant information that should be included on the surrogacy register; and
- who should be responsible for providing that information? For example, the relevant Surrogacy Support Organisation, assisted reproductive technology service provider, or the legal parents?

Relationships Australia **recommends** that legislation requiring the provision of information for the Register should impose that responsibility on the legal parents. (***Recommendation 23***)

Proposal 35

1. Legislation should require the information listed in Proposal 34 to be included in either of the following:

- Option 35.1 (preferred) A national surrogacy register established for this purpose; or
- Option 35.2 Existing state and territory donor conception registers (the Northern Territory and Tasmania, which have not established donor conception registers, should establish them).

Consistent with Framing Principle 7, and if Australian governments seek to encourage domestic, rather than international, surrogacy arrangements, Relationships Australia supports Option 35.1.

2. Legislation should provide that:

a. people born through surrogacy have a right to access the information contained in the register from age 16 (or in the case of Option 35.2, the age at which the relevant legislation allows access to information held on the register); and

See response to Proposal 33(2).

b. a person born through surrogacy who is under the age of 16 may access this information if the National Regulator (or alternative) is satisfied that such access would not be harmful to that person's welfare.

There is evidence supporting early, developmentally appropriate disclosure to children of their origins through a surrogacy arrangement, with benefits to their sense of identity and their family relationships,[42] as well as evidence that lack of access to information is harmful.[43] We note that, in its submission responding to the Commission's Issues Paper, the Law Council suggested that

> *Parents should not have the power to prevent access to such information , especially once the child enters adolescence.*[44]

[42] See, eg, Golombok et al, 2023, p 1069; Harland, 2021; O'Callaghan, 2024. This is consistent with research about disclosure of origins to children who have been adopted.
[43] See, eg, Harland, 2021, p 124, and sources cited therein.
[44] Law Council of Australia, submission 342, p 8.

Relationships Australia provides post-adoption support services (including Intercountry Adoptee and Family Support Services), as well as services supporting people who have suffered harms in institutional and other out of home care, Forgotten Australians, and members of the Stolen Generations who were forcibly removed and their connections to Country, Community and Culture abruptly severed. We are acutely mindful of the harm that can be inflicted when a person is denied access and agency in relation to their identity and origins. Indeed, these harms have been compellingly described by adoptees over recent decades and across the world, and extensively documented by researchers across a variety of social science disciplines.[45] Naming and acknowledging these harms and honouring this lived experience in policy discussions about surrogacy neither pathologises nor problematises families grown through surrogacy. Rather, we enable the development of reforms that de-stigmatise surrogacy and prioritise well-being and resilient family relationships through early and supported discussions.

If Option 33.2 is adopted (ie a person can only access the register 'as of right' once they have reached the age of 16), then Relationships Australia **recommends** that the National Regulator should have a discretion to allow access if it is in the best interests of the child or young person. (***Recommendation 24***) Such as formulation is, in our view, more consistent with contemporary recognition in Australian law of children's rights and agency, and aligns with both the Convention on the Rights of the Child and long-established common law doctrines around the developing capacities of children as they mature. The formulation in paragraph 35(2)(b) is outdated, deficit-based, and harks back to the language of the now-redundant therapeutic privilege defence.

Relationships Australia therefore **recommends** that policy settings and service delivery responses should encourage and support parents to have early conversations with their children about their origins. ***(Recommendation 25)***

The regulatory body may request that a counselling certificate or similar documentation from an accredited counsellor be provided to assist in its assessment.

Relationships Australia **supports** this proposal.

Ensuring information is collected

Proposal 36

1. Legislation should impose sanctions for the failure to collect and provide information to include in the national, or state or territory-based, surrogacy register as required by Proposal 34.

Relationships Australia **supports** this proposal.

[45] See, eg, Mulligan, 2024.

2. Legislation should provide that failure to comply with the requirement will be enforced through:

- Option 36.1 A civil penalty regime; or
- Option 36.2 Criminal sanctions.

Consistent with our comments responding to Proposal 6.2, Relationships Australia **recommends** that the National Regulator be equipped with powers to impose a full suite of proportionate regulatory responses, including criminal sanctions. (***Recommendation 26)***

Registering overseas surrogacy arrangements

Proposal 38

The *Family Law Act 1975* (Cth) should be amended to provide that intended parents who have engaged in an overseas surrogacy arrangement must make an application to the Federal Circuit and Family Court of Australia for legal parentage to be recognised (see Proposal 31) within three months of returning to Australia with the child.

Relationships Australia **supports** this proposal.

Question S

In relation to the registration process in Proposal 37:

- which entity should be responsible? For example, the National Regulator (see Proposal 2); a Surrogacy Support Organisation (see Proposal 3); or a different government department or entity?
- what factors should the registration entity consider, when determining which destinations should be 'permitted destinations'? For example, should these be destinations with laws that require the surrogate's informed consent, or transparent gamete donation?
- do you think the registration process would work in practice? Are there any changes you would suggest to improve how it works and its effectiveness?
- should intended parents be required to demonstrate, as a precondition to registration, that they have made reasonable efforts to engage in domestic surrogacy before they can engage in a registered overseas surrogacy arrangement?

Relationships Australia supports the proposal that the National Regulator be the responsible entity. We have significant reservations, however, that requirements canvassed in Proposal 37 will suffice to deter intended parents from undertaking international travel to pursue surrogacy arrangements, regardless of risks to themselves, surrogates or children born from surrogacy arrangements. We also have significant reservations that registration requirements will be enforced. On this basis, we have supported in this submission measures to encourage intended parents to engage with domestic surrogacy arrangements. See also our response to Question P. If an international convention on parentage through surrogacy were to eventuate, the relevant State Central Authority should be the responsible entity.

Consistent with our support for measures to deter overseas surrogacy that may leave parties without important protections, Relationships Australia **supports** a requirement to demonstrate that they have made reasonable efforts to engage in domestic surrogacy before they can engage in a registered overseas surrogacy arrangement.

Front-loading citizenship, passport and visa applications

Proposal 39

Federal legislation or processes should be introduced to provide that where an Australian citizen or permanent visa holder (intended parent) has entered a registered overseas surrogacy arrangement:

1. the intended parent(s) may start applying for Australian citizenship, an Australian passport, or a visa, before the child's birth, to facilitate expedited processing of such applications upon the child's birth. This streamlined process is not available for unregistered overseas surrogacy arrangements; and

Relationships Australia **supports** this proposal as protecting children's rights.

2. to access the streamlined process in paragraph 1, the intended parent(s) must provide the following documentation:

    a. before the child is born: a copy of the surrogacy agreement and the documentation required to make the application(s); and

    b. after the child is born: the surrogate's consent to relinquish the child to the intended parent(s), confirmed in a signed affidavit (in the language of the surrogate); and details of the child's birth necessary to finalise the application/s.

Relationships Australia **supports** this proposal as protecting children's rights.

Conclusion

Thank you again for the opportunity to comment on Discussion Paper 89. Should you wish to discuss this submission further, please do not hesitate to contact me at ntebbey@relationships.org.au, or our National Policy Manager, Dr Susan Cochrane, at scochrane@relationships.org.au .

Kind regards

Nick Tebbey
National Executive Officer

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