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Secretariat
ASPIRE

By email: secretariat@aspire-reproduction.org

Dear Secretariat

RESPONSE TO DRAFT SURROGACY PAPER

I set out below my response to the draft *Global Consensus Statement on Minimal Standards for Surrogacy* dated 29 October 2026 (the draft).

1. INTRODUCTION

I welcome the work done by ASPIRE, ESHRE, ASRM and IFFS. Given the absence of an international instrument governing surrogacy, that surrogacy is the most complex form of assisted reproduction, that international surrogacy is the most complex form of surrogacy, and the vital role of the fertility industry worldwide, it is important that there be a set of standards guiding clinicians and the ART industry about how surrogacy should be practised.

Where I have not mentioned in my response a statement or method mentioned in the draft, I am generally supportive of what has been written. Where I propose a change, I have set out suggested wording in section 12.

I refer to surrogates in this response using she and her, as the draft does. I acknowledge that some people who are, or may become, surrogates are transgender men or non-binary people. Nothing in this response is intended to exclude them.

2. FAILURE TO SPELL OUT ACCESS AND NON-DISCRIMINATION

The draft does not refer to, or endorse, the IFFS 2025 Tokyo Declaration[1], even though IFFS is one of the four participating bodies. The fertility industry should be proud of that Declaration. As a member of a Board which endorsed what became the Declaration, I was proud of the industry for standing up for human rights.

The Declaration does not aim to change national laws, and some signatories recorded reservations about commercial and cross-border surrogacy. Within those limits, it states principles that apply

[1] International Federation of Fertility Societies, *IFFS 2025 Tokyo Declaration: Reproductive Health and Human Rights* (April 2025) https://www.iffsreproduction.org/wp-content/uploads/2025/08/FINAL-IFFS-2025-Tokyo-Declaration.pdf .

wherever surrogacy is lawfully practised. The draft reflects several of them only in part, and some not at all. It should endorse the Declaration, and state expressly that, where surrogacy is available, there should be:

- access to fertility education, clinical assessment, diagnosis and treatment for everyone who wishes to form a family: Tokyo *Principle 1*. The draft contains no statement of principle about access;
- equality and freedom from discrimination: Tokyo *Principle 3*. Statement 3 recognises male same-sex couples, single men and transgender women as having an indication for surrogacy, which I welcome, but the draft does not state the principle, and Statements 11 to 13 cut across it, as I explain below;
- prohibition of exploitation and human trafficking of any party, not only surrogates: Tokyo *Principle 4*;
- free and informed consent of all parties, including partners: Tokyo *Principle 5*;
- independent legal advice, counselling and the provision of information, independent of clinics and agents: Tokyo *Principle 6*;
- freedom of movement, personal autonomy and control: Tokyo *Principle 7*;
- quality of care: Tokyo *Principle 8*;
- recognition that the welfare, health and well-being of the child are paramount, including recognition of legal parentage and access to information about origins: Tokyo *Principle 9*; and
- a right to information, including the keeping of records about donors and surrogates: Tokyo *Principle 10*.

These *Tokyo Declaration* Principles are consistent with international human rights law[2], but they have not been stated in the draft. They should have been. While these principles might seem self-evident to the authors, they have not been said. I do not suggest that international human rights law confers an unqualified right to surrogacy in every country. It does not, and the Declaration itself does not aim to change national laws. My point is narrower: where surrogacy is lawfully available, access to it should not be denied on discriminatory grounds. If the consensus statement is silent about that, it will be used by those opposed to equality of access as justification that those seeking to undertake surrogacy can and should be discriminated against because of their sexuality, relationship status, gender identity or disability. Many intended parents who access surrogacy feel excluded already, either because of their already difficult fertility journey (such as women with MRKH syndrome), or because of their sexuality or relationship status.

The draft itself cuts across the principle of non-discrimination in three places:

a) Statement 11 singles out single intended parents for "special attention" to their physical health. The health of every intended parent is relevant to the welfare of the child. To single out single people is to discriminate on the basis of relationship status.

b) Statements 12 and 13 treat an eating disorder, any prior psychiatric hospitalisation or suicide attempt, and any "history of abuse or violence" as contraindications to being an intended parent, whenever they occurred and whatever the person's recovery or present capacity. Fitness to parent is not assessed that way in any other setting. A blanket exclusion of that kind is difficult

[2] *International Covenant on Civil and Political Rights*, arts. 2(1) and 26; *International Covenant on Economic, Social and Cultural Rights*, art. 15(1)(b); *Convention on the Elimination of All Forms of Discrimination against Women*, art. 16(1)(e); *Yogyakarta Principles*, principle 24.

to reconcile with the right of persons with disabilities to found a family[3] and, in Australia, would expose clinics to complaints of unlawful discrimination in the provision of services[4]. The words "history of abuse or violence", which also appear in Statement 10 for surrogates, do not distinguish between a perpetrator and a victim. No one should be excluded from surrogacy because they have been the victim of violence.

c) Statement 3 treats a serious psychiatric condition that could be exacerbated by pregnancy as an indication for surrogacy, while Statement 12 treats psychiatric history as a contraindication to being an intended parent. The two statements need to be reconciled.

I recommend that these lists be replaced by individual assessment, by an appropriately qualified professional, of present capacity and risk, and that a statement of principle about access and non-discrimination be added. Suggested wording is in section 12.

3. CITATION OF THE UN SPECIAL RAPPORTEUR

The draft cites, in its Abstract and Background, the report of the United Nations Special Rapporteur on violence against women and girls, Ms Alsalem[5]. The citation is in error: the Abstract gives reference 5 for the Special Rapporteur, but reference 5 is a 2017 book by another author, *Surrogacy: A Human Rights Violation*. The report appears to be reference 4. I do not ask you to ignore the report. It exists, and it does call for the eradication of surrogacy in all its forms. I ask that you correct the reference, describe the report accurately as the view of one independent mandate holder and not as a statement of international law, and cite beside it the material that takes a different view. An advocacy text should not be cited as an "authority" at all. My concerns about the report are that it:

1. Records that the Special Rapporteur received some 120 submissions and consulted 78 experts, including commissioning parents, surrogacy agencies and medical experts[6], but does not identify them, and does not engage with the evidence and experience put to her by those who support regulated surrogacy, including me.

2. Treats all surrogacy, including altruistic surrogacy among family members, as violence and exploitation. It says that surrogacy "can amount to or resemble slavery", that "Consent alone does not render surrogacy ethical", and recommends that States work towards "eradicating surrogacy in all its forms" under a framework "modelled on the Nordic model for prostitution"[7].

3. Does not mention that the Inter-American Court of Human Rights has held that the decision whether to become a parent, including in the genetic or biological sense, is part of the right to private life under the American Convention on Human Rights, and that this extends to reproductive autonomy and access to the medical technology needed to exercise it[8]. That case concerned a ban on IVF, not surrogacy, but its reasoning has since been applied in a surrogacy case by the Supreme Court of Justice of the Nation of Mexico[9], and it bears directly on any proposal to prohibit a form of assisted reproduction.

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[3] *Convention on the Rights of Persons with Disabilities*, art. 23(1).
[4] *Disability Discrimination Act 1992* (Cth), s.24.
[5] Report of the Special Rapporteur on violence against women and girls, its causes and consequences, *The different manifestations of violence against women and girls in the context of surrogacy*, UN Doc A/80/158 (14 July 2025) https://docs.un.org/en/A/80/158 .
[6] UN Doc A/80/158, [2].
[7] UN Doc A/80/158, [40], [61] and [70(a)]-[70(c)].
[8] *Artavia Murillo et al ("In Vitro Fertilization") v Costa Rica*, Inter-American Court of Human Rights, Series C No 257 (28 November 2012), [142]-[150] https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf .
[9] Supreme Court of Justice of the Nation (Mexico), First Chamber, Amparo en Revisión 553/2018 (21 November 2018).

Her approach, which treats a woman's consent to be a surrogate as incapable of making surrogacy acceptable, was rejected by California's Supreme Court back in 1993[10]:

> *"The argument that a woman cannot knowingly and intelligently agree to gestate and deliver a baby for intending parents carries overtones of the reasoning that for centuries prevented women from attaining equal economic rights and professional status under the law. To resurrect this view is both to foreclose a personal and economic choice on the part of the surrogate mother, and to deny intending parents what may be their only means of procreating a child of their own genes."*

In my view the report was not approached with an open mind. I attach the submission that I provided to her on behalf of the Fertility Society of Australia and New Zealand dated 15 April 2025 and, following a consultation meeting with her on 17 June 2025, my follow up letter dated 18 June 2025. The international law set out in those submissions is not addressed in her report.

Ms Alsalem gave evidence on 20 April 2026 to the New South Wales Legislative Council Select Committee on Fertility Support and Assisted Reproductive Treatment. In her evidence, she called for the eradication of all surrogacy, including altruistic surrogacy, because in her view[11]:

> *"(T)here is no meaningful distinction one can draw between so-called altruistic surrogacy and commercial surrogacy because "altruistic" surrogacy doesn't really exist. It's really just a smokescreen. The price for a female to engage in surrogacy is built into what is presented to be just the daily expenses for her to be pregnant and to carry this child to term. But the real price is often baked into or embedded into the agreement that is reached. Other than that, it's the same manifestations, causes of violence, consequences and severe human rights violations that both surrogate mother and child are subjected to."*

I am a father through altruistic surrogacy. The surrogate for my husband and me was a family member. It was a journey full of joy. I told Ms Alsalem of that journey before she wrote her report last year, but it is not reflected in her report.

When a member of the Committee asked Ms Alsalem whether she could point to any scientific or peer-reviewed evidence that prohibition improves the wellbeing of surrogates, intended parents or children, she did not identify any. She accepted that there is no evidence for the abolitionist approach she proposes, because no country has fully adopted it[12].

Ms Alsalem's report was criticised by Professor Kirsty Horsey, Professor of Law at Loughborough University[13], as one that *"seriously lacked objectivity and, for the most part, cited only those voices that echo her own"*. Professor Horsey's commentary is headed *"Biased from the outset"*. I agree with that assessment.

If the report is to be cited, the consensus statement should also cite material that takes a different view. That includes the *Principles for the protection of the rights of the child born through surrogacy* (the Verona Principles) (International Social Service, 2021), the work of the Hague Conference on Private International Law, and the peer-reviewed research on surrogates, parents and children to which I refer below.

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[10] *Johnson v Calvert* 5 Cal. 4th 84, 97 (1993).

[11] https://files.parliament.nsw.gov.au/fileapi/ParlFiles/GetArtifact/Transcript%20-%20Fertility%20inquiry%20-%2020%20April%202026%20CORRECTED.pdf?serverRelativeUrl=%2Flcdocs%2Ftranscripts%2F3719%2FTranscript%20-%20Fertility%20inquiry%20-%2020%20April%202026%20CORRECTED.pdf p.65.

[12] https://files.parliament.nsw.gov.au/fileapi/ParlFiles/GetArtifact/Transcript%20-%20Fertility%20inquiry%20-%2020%20April%202026%20CORRECTED.pdf?serverRelativeUrl=%2Flcdocs%2Ftranscripts%2F3719%2FTranscript%20-%20Fertility%20inquiry%20-%2020%20April%202026%20CORRECTED.pdf pp 65-66.

[13] https://www.progress.org.uk/the-un-special-rapporteurs-report-on-surrogacy-biased-from-the-outset/ .

4. NOT ONLY SURROGATES HAVE BEEN EXPLOITED

It is right to be concerned about, and seek to prevent, as you have done, the exploitation of surrogates. Tokyo Principle 4 is cast wider. It prohibits the exploitation and trafficking of anyone involved, and expressly protects intended parents, surrogates, gamete donors and the children born. The approach in the draft is *only* to focus on surrogates. However, it is the human rights of all concerned that should be upheld: the surrogate, surrogate's partner, donor and partner, intended parents, and above all, that of the child[14].

While there is a focus on prohibition of exploitation and human trafficking, as there should be, the underlying assumption about exploitation is that the only people who might be exploited are the surrogates and the children. There are many cases, both recent and historical, in which intended parents have been defrauded[15]. Exploitation takes different forms for different people. Trafficking, as the definition in the draft makes clear, involves recruitment or transfer by coercion, deception or abuse of vulnerability, for the purpose of exploitation. Fraud on intended parents is not trafficking, but it is a serious harm that minimum standards for clinics and intermediaries should be designed to prevent, as are coercion of any party and failures of informed consent. You should be seeking to uphold the human rights of all concerned, and therefore to protect all concerned from exploitation, fraud and coercion.

5. CRITICISM OF THE IDENTIFIED METHODS

The issues identified in the Methods are predominantly *medical* and psychosocial. They include independent legal representation for the surrogate and information about parentage orders, but little else of a *legal* kind. ART is at the centre of most surrogacy journeys, but surrogacy is not only a clinical process. It has clinical, psychological, ethical and legal dimensions, and it is the legal process that determines who are the child's parents, what is the child's nationality, and whether the child can go home. Those legal dimensions deserve more attention than the draft gives them.

While ASPIRE, ASRM, ESHRE and IFFS should be congratulated on this initiative, and the writing group included members with legal backgrounds, it does not appear that the leading legal organisations with expertise in surrogacy matters were engaged: the International Academy of Family Lawyers, American Bar Association, or the Academy of Adoption and Assisted Reproduction Attorneys. Issues concerning good surrogacy practice and regulation have now been ventilated at three International Surrogacy Forums, held in Cambridge (2019), Copenhagen (2023) and Cape Town (2025), at which, in my observation, medical practitioners were largely absent. I ask that those organisations be invited to comment before the statement is finalised.

The legal issues are well known:

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[14] For example, s.7(1)(a) of the *Surrogacy Act 2019* (SA) provides: "*the human rights of all parties to a lawful surrogacy agreement, including any child born as a result of the agreement, must be respected".*

[15] USA: Allison Layton (Miracles Egg Donation), sentenced in 2015 to 18 months' imprisonment for wire fraud: https://www.fbi.gov/news/stories/-egg-donation-and-surrogacy-scam ; USA: Gregory Blosser (The Surrogacy Group), sentenced in 2021 to 32 months' imprisonment for wire fraud: https://www.justice.gov/usao-md/pr/owner-surrogacy-group-sentenced-maryland-32-months-federal-prison-defrauding-clients-fees ; USA: Theresa Erickson, an attorney sentenced in 2012 for her role in a baby-selling scheme: https://archives.fbi.gov/archives/sandiego/press-releases/2012/prominent-surrogacy-attorney-sentenced-to-prison-for-her-role-in-baby-selling-case ; Georgia: media reports that the agency Kinderly defrauded intended parents and abandoned surrogates: https://www.thesun.co.uk/news/40129694/black-market-surrogacy-prisoner-dingy-hotels/; India: police allegations, reported in July 2025, against Dr Namratha of fraud against intended parents, and trafficking women and children: https://timesofindia.indiatimes.com/city/hyderabad/fertility-expert-kidnapped-children-to-run-baby-selling-racket-show-police-records/articleshow/122960159.cms ; Mexico: Acharyya "Rudy" Rupak (Planet Hospital), sentenced in 2017 to 24 months in custody: https://www.justice.gov/usao-sdca/pr/international-surrogacy-clients-defrauded-racketeering-scheme .

1. Access to surrogacy

2. Related to that, discrimination issues.

3. That each party entering into the surrogacy agreement, including the surrogate's spouse or partner, has given informed consent, after having had appropriate counselling and screening, and having had independent legal advice, by a lawyer qualified in the relevant jurisdiction, in the party's own language.

4. The form of the agreement that is entered into, and whether and to what extent it is enforceable.

5. How parentage is established and recognised, both in the place of birth and in the intended parents' home jurisdiction, and what must be done after the birth, including birth registration.

6. Cross-border issues, including conflicts of law and the risk that those who are the child's parents in one country are not recognised as the parents in another.

7. The child's nationality, citizenship, immigration status and travel documents.

In my view, the issues identified in the Methods otherwise cover the matters they address appropriately, except one that requires care: Item 2b, ensuring appropriate care of surrogates, b. Freedom from constraints of movement and coercion.

No one who is a party to a surrogacy agreement should be coerced. Nor should surrogates be restricted to dormitories, and told to remain there, or have their movements controlled, as has occurred in some surrogacy in developing countries. Tokyo Principle 7 rightly condemns that. However, the item should not be expressed so broadly that it casts doubt on arrangements that a surrogate freely makes, with advice, to protect her own health and the child's legal position during the pregnancy, and especially in the latter stages of the pregnancy:

a) If the surrogate is in a rural or remote area, she may agree, on medical advice, to be close to an agreed hospital, or type of hospital, late in the pregnancy, to reduce the risk to her and to the baby. Reasonable steps need to be taken to minimise the risk of death or injury to both the surrogate and baby. This is one way of doing so.

b) If the surrogate gives birth in a jurisdiction other than the one the parties planned for, this may prejudice the recognition of the intended parents as the child's parents, and the child's nationality and ability to travel. The surrogate should be alerted to this issue before entering into the agreement, and it is reasonable for the parties to agree in advance where the birth is expected to take place.

Any such arrangement must be voluntary, informed and proportionate, and must remain within the surrogate's control. She must be free to change her mind. It should not be enforced by confinement, supervision, the retention of her documents or financial penalty, and it cannot displace her right to make decisions about her own body and care. The statement should distinguish coercive restriction, which is never acceptable, from voluntary birth planning of this kind.

6. RESPONSE TO STATEMENT 1: AVOIDANCE OF HUMAN TRAFFICKING

6.1 Ensuring that the identity of the surrogate is known to the intended parents

Unfortunately, in some surrogacy the surrogate is anonymous. I have seen such cases from China, Vietnam and Thailand, and it has occurred in Nigeria[16].

When there is an anonymous surrogate, there is a higher risk that:

- the surrogate's rights are not protected, as the surrogate is not treated as an autonomous person with rights, who is risking her life for others, but merely as a vehicle to enable others to have a child;
- the child's rights are not protected (as the ability of the intended parents to have their parentage of the child recognised, or to obtain citizenship for the child, may be compromised, due to the surrogate's anonymity[17], and the child's right to an identity[18] is not upheld), and
- the intended parents will be exploited. If a clinician or agency is prepared to keep the intended parents in the dark about the identity of the surrogate, they may well also be prepared to act in other unscrupulous ways, such as defrauding intended parents and engaging in dangerous medical practice, as I have seen happen. For example, a doctor who was the surrogacy agent who insisted on the surrogate being anonymous, and to "guarantee" the intended parents a baby, transferred six embryos to each of two anonymous surrogates. The doctor did not explain to the intended parents the danger to the surrogate or child/ren from such dangerous practice. The likely inference is that the doctor did not advise either surrogate of those risks either.

Statement 1 should say that the surrogate and the intended parents must be known to each other, and that clinics and intermediaries must not arrange anonymous surrogacy.

6.2 Avoiding exploitation of intended parents and the children too

Statement 1 focuses only on the vulnerability of those who are or would be surrogates. There is nothing in this statement that concerns avoiding exploitation of intended parents, or seeking to avoid the trafficking and exploitation of the children.

Sadly, I have seen on occasion exploitation of the intended parents in developing countries. I have also seen, occasionally, exploitation of the child concerned. While these occasions appear rare, the protection of human rights is not limited to surrogates, and the statement should be redrafted accordingly. The draft as written assumes that the intended parents have power, and money, and that the surrogates are poor and weak. While that is sometimes true, often it is not.

Unscrupulous operators are happy to exploit both the intended parents (including by engaging in fraud) and the surrogates. There have been many documented examples, some of which I have cited above. At the time of the pandemic, and again after the Russian invasion of Ukraine, there was disturbing footage of a nursery full of infants in the care of one agency, whose parents could not reach them.

The narrative to Statement 1 says: "Reducing the demand for surrogacy, particularly across borders, may also be an important part of preventing human trafficking." The source cited is a 2014 United Nations publication about human trafficking generally. That sentence sits uneasily in a statement by four fertility societies whose members provide treatment for surrogacy. Demand is not reduced by discouraging those who need surrogacy to have a family. It is diverted to places with less regulation.

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[16] See *Re H (Anonymous Surrogacy)* [2025] EWHC 220 (Fam), where Sir Andrew McFarlane P said at [20] that future applicants "would be well advised to avoid engaging with an anonymous surrogate": https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Fam/2025/220.html .

[17] For example, due to an inability to verify the child's identity: *Australian Citizenship Act 2007* (Cth), s.17(3).

[18] *Convention on the Rights of the Child*, arts. 2(1), 7(1), 8(1), 16(1).

The better response is the one the draft otherwise takes, which is to set proper standards where surrogacy is practised. I suggest that the sentence be deleted or recast.

7. RESPONSE TO STATEMENT 5: AUTONOMY OF THE SURROGATE AND INFORMED CONSENT

There is no mention in the statement of the informed consent to be given by the intended parents. Nor, if the surrogate is married or cohabiting, of the informed consent of the surrogate's spouse or partner. Informed consent of the intended parents is vital. Their reproductive autonomy is vital[19]. Too often, the surrogate's spouse or partner is overlooked, as the draft has done. Where a surrogate is married or has a partner, they play a vital role:

- They may be a parent under local law.
- They provide comfort and support to the surrogate during the journey, including the care of the surrogate and the care of their children. Accordingly, they should be counselled and assessed too. If they are not supportive, this can be destructive of the surrogacy journey.

The draft tends to assume that the surrogate is the only one taking risk. She is taking a financial risk and is risking her health and her life, and that risk is of a different order from any other. But the intended parents take risks too. They are taking a leap into the unknown with their hard earned savings, often in a foreign jurisdiction, often in a language in which they are not fluent, and in a culture with which they are not familiar. In most places surrogacy agencies are not directly regulated. New York licenses surrogacy programs[20], and the United Kingdom prohibits intermediaries from acting on a commercial basis[21]. Some agencies, especially in jurisdictions where there is less judicial oversight, take advantage of intended parents.

8. STATEMENT 14: WRITTEN AGREEMENT OF ALL PARTIES PRIOR TO EMBRYO TRANSFER

I acknowledge that the agreement of the parties needs to be entered into before the surrogate becomes pregnant. To do so later increases the vulnerabilities of each of the surrogate and the intended parents, the surrogate being particularly vulnerable as she is already pregnant.

However, the statement assumes that the surrogacy must involve an embryo transfer and therefore be gestational in nature. That overlooks traditional surrogacy, including traditional surrogacy by insemination at home, where there is no embryo transfer and often no clinic. The statement should refer to "embryo transfer or insemination". The published research does not show that traditional surrogacy, properly handled, produces worse psychological outcomes for surrogates than gestational surrogacy. The longitudinal United Kingdom studies by Professors Golombok and Jadva and their colleagues, which included both traditional and gestational surrogates, found that most surrogates did not experience psychological problems up to 20 years later, and did not find differences in psychological wellbeing between the two groups[22]. Those studies are small and drawn largely from altruistic arrangements in one country, and the legal position of a traditional surrogate, who is the child's genetic mother, differs between jurisdictions. Nor is gestational surrogacy free of medical

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[19] *International Covenant on Economic, Social and Cultural Rights*, art. 15(1)(b); *Convention on the Elimination of All Forms of Discrimination against Women*, art. 16(1)(e); *Yogyakarta Principles*, principle 24.

[20] New York State licenses surrogacy programs through its Department of Health under the Child-Parent Security Act, which commenced on 15 February 2021: https://www.health.ny.gov/community/pregnancy/surrogacy/ .

[21] *Surrogacy Arrangements Act 1985* (UK), s.2.

[22] V Jadva, S Imrie and S Golombok, 'Surrogate mothers 10 years on: a longitudinal study of psychological well-being and relationships with the parents and child' (2015) 30(2) *Human Reproduction* 373; V Jadva, K Shaw, P Hall, S Ross and S Imrie, 'Surrogates 20 years on: long-term psychological health, contact with surrogacy families, and thoughts and feelings about post-birth contact' (2026) 41(2) *Human Reproduction* 239 (reference 15 in the draft).

risk: a large Canadian study found a higher rate of severe maternal morbidity among gestational carriers than among women who conceived without assistance or through IVF[23]. All of that is a reason for careful individual screening, counselling and legal advice in every case. It is not a reason for a blanket presumption against traditional surrogacy.

In my experience, recent traditional surrogacy arrangements in which I have acted have not been any riskier than gestational surrogacy arrangements. In one the sister of one of the men in a gay couple was the traditional surrogate[24]. The child was therefore genetically related to both men. The matter proceeded smoothly. There was a delay in the intended parents applying for a parentage order, as they had to wait for the law to change to enable a parentage order to be made arising from a traditional surrogacy arrangement.

The night before the court order, I had dinner with the family. This comprised the couple, the child, the surrogate, her husband and children, and both grandmothers. It was a joyous celebration of love.

In another, the best friend of a childless woman offered to be her surrogate. [25]The would be surrogate had never had a child, and nor did she want to do so- but she felt for her friend- and made the offer to be her surrogate. The two women lived under the same roof, along with the intended mother's husband. Pregnancy was achieved by an at home insemination. Despite the great care that all three had taken in considering the arrangement, they had not considered obtaining legal advice or counselling until after the surrogate was already pregnant. After I was first consulted, that legal advice and counselling was immediately arranged, and a written surrogacy arrangement, which reflected their oral arrangement, was then entered into.

The arrangement proceeded smoothly.

The judge hearing the parentage order application was concerned, as I recall the hearing, with two matters. They were whether there might have been any coercion of the surrogate, resulting in her becoming pregnant, and whether the surrogate might subsequently regret relinquishing the child when the inevitable happens, namely that the surrogate and the parents and child do not continue to live under the one roof. The surrogate was a forthright witness who made plain that she became pregnant out of love for her childless best friend. When asked about what might happen when she moved out, the surrogate was blunt: *"It's their child."*

The judge made the parentage order, after stating:

> *"Whilst ignorance of the law is no excuse, this was an arrangement carefully thought out between close friends who live under one roof. They obtained legal advice and counselling once they realised that was necessary and executed a written version of their previous oral agreement. AA has been in the care of his intended parents since birth. Although PA lives in the house with them, she does not take an active role in parenting AA and MA has been to all intents and purposes his mother from birth. PA does not have any desire to mother AA.*
>
> *Although the circumstances in which the surrogacy was initiated are unusual, it cannot be said that the arrangement was entered into without due consideration. It is clearly in the best interests of the child that the parentage order be made in favour of the intended parents."*

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[23] M P Velez and others, 'Severe Maternal and Neonatal Morbidity Among Gestational Carriers: A Cohort Study' (2024) *Annals of Internal Medicine* (published online 24 September 2024).
[24] *Re application under the Parentage Act 2004* [2025] ACTSC 294 https://www.courts.act.gov.au/supreme/judgments/re-application-under-the-parentage-act-2004 .
[25] *MA v PA* [2025] QChC 1.

I do not hold that case out as a model. The parties should have had legal advice, counselling and a written agreement before conception, and the Court had to dispense with requirements of the *Surrogacy Act 2010* (Qld) in order to make the order. I mention it for two reasons. It shows that guidelines written only around embryo transfer in a clinic will not reach the arrangements where guidance is most needed. And it shows that a traditional surrogacy, even one that began informally, can be safe and in the best interests of the child.

Would be surrogates should not be denied the bodily autonomy and reproductive freedom to be traditional surrogates, where the law permits it. Nor should intended parents be denied the ability to become parents through traditional surrogacy. Traditional surrogacy calls for the same careful screening, counselling and legal advice as gestational surrogacy, directed to the particular arrangement, including the fact that the surrogate will be the child's genetic mother. It should not be subject to additional barriers simply because it is traditional surrogacy.

9. STATEMENT 15: WRITTEN AGREEMENT ON TRANSFER OF PARENTAGE PRIOR TO EMBRYO TRANSFER

I suggest that the heading be changed to "Written agreement on legal parentage before embryo transfer or insemination". I have been critical above concerning the view that there needs to be an embryo transfer.

This statement also assumes that there will be a transfer of parentage after the birth. That is so in Australia and the United Kingdom, for example. In much of the world, there is no transfer of parentage after the birth, as the intended parents are recognised as the parents from birth, whether by operation of law, under a court order made before conception or before the birth, or by agreement. The rules differ between and within countries, they change, and they are often subject to conditions, such as a genetic link, marital status or residence. Examples, as I understand the present position, are:

- The United States, where the position differs from state to state: in many states by a court order made before the birth, and in others by statute or under a compliant agreement.
- Colombia, where there is no statute, under decisions of the Constitutional Court beginning with T-968 of 2009.
- Greece, India, and South Africa, by an order made before conception or embryo transfer, arising from statute (in Greece, article 1458 of the Civil Code; in India, s.4(iii)(a)(II) of the *Surrogacy (Regulation) Act 2021*; in South Africa, Chapter 19 of the *Children's Act 38 of 2005*).
- Iran, by contract, there being no specific statute.
- Mexico, where the Supreme Court of Justice of the Nation has recognised parentage founded on procreational will[26], although law and practice differ from state to state.
- Sri Lanka, by agreement
- Armenia, Georgia, Kazakhstan and Kyrgyzstan, by statute, for intended parents who meet the statutory conditions.

Statement 15 should therefore refer to the establishment and recognition of legal parentage, not only its transfer, and should require advice about both the law of the place of birth and the law of the intended parents' home jurisdiction. Recognition in one country does not guarantee recognition in another. The narrative to Statement 15 also says that multilateral work "will not be revisited within two (2) years". The Council on General Affairs and Policy of the Hague Conference decided in March

[26] Amparo en Revisión 553/2018 (First Chamber, 21 November 2018); Acción de Inconstitucionalidad 16/2016 (Full Court, 7 June 2021).

2026 not to advance to a Special Commission "at this stage", on the understanding that the issue may be revisited at a later stage[27]. I am not aware of a two year limit, and suggest that the sentence be checked.

10. RESPONSE TO STATEMENT 16: SINGLE EMBRYO TRANSFERS

Where embryo transfer is to be the method of achieving pregnancy, to recommend single embryo transfer is to be welcomed.

I am immensely proud that Australian and New Zealand clinics were among the earliest to adopt single embryo transfer as routine practice, to minimise risks to women and babies, and now have among the lowest multiple birth rates in the world[28]. In my experience, single embryo transfer is now the common practice in surrogacy in diverse countries, such as Australia, New Zealand, United States, Canada, Mexico, Colombia and South Africa.

11. RESPONSE TO STATEMENT 19: TRADITIONAL SURROGACY

The premise of the statement, that traditional surrogacy carries a risk of regret that gestational surrogacy does not, is not supported by the published research to which I have referred, and the statement denies care when it ought not be denied. Clinicians should decide whether to treat as to traditional surrogacy, on a case by case basis, having regard to local law. In my experience, in the last 15 years Australian clinics have changed in large part from being wary of traditional surrogacy, to providing ART with traditional surrogacy in appropriate cases, provided that thorough screening is done (as happens with gestational surrogacy, too), and making a decision about each matter on a case by case basis. Statement 19 should be replaced by a requirement for individual assessment, with counselling and independent legal advice that specifically address the surrogate's genetic relationship to the child and its legal consequences in the relevant jurisdiction.

The position is different in Victoria, where a surrogacy arrangement will not ordinarily be approved for treatment by a clinic unless the surrogate's oocyte will not be used[29]. The result? Intended parents and surrogates in Victoria are denied the choice of undertaking traditional surrogacy through their trusted IVF clinics, but must instead undertake traditional surrogacy through at home inseminations, where there are potentially higher risks, and there is not the benefit of clinical screening and support. Traditional surrogacy in Victoria has not stopped, but the risks are unnecessarily higher in Victoria, and the choice of the manner of achieving pregnancy is more restricted, than they are elsewhere in Australia.

12. SUGGESTED WORDING

New statement: access and non-discrimination. Where surrogacy is lawfully available, access to it, and to the associated assessment, treatment and legal recognition, must not be denied or restricted on the basis of sex, sexual orientation, gender identity, relationship status, disability, race, religion or other status. Eligibility criteria must be supported by evidence, proportionate, and applied by individual assessment. This statement endorses the principles of the IFFS 2025 Tokyo Declaration.

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[27] Hague Conference on Private International Law, Council on General Affairs and Policy, *Conclusions and Decisions* (3 to 6 March 2026), [3]-[5] https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy .

[28] The multiple birth rate following assisted reproductive technology treatment in Australia and New Zealand was 2.7% in 2022: https://news.unsw.edu.au/en/rates-of-ivf-twins-and-triplets-hit-record-low-new-report .

[29] *Assisted Reproductive Treatment Act 2008* (Vic), s.40(1)(ab); see also s.41.

Statement 1. All people involved in surrogate arrangements must actively avoid human trafficking and the exploitation of any party: the surrogate, her partner and family, gamete donors, the intended parent(s) and the child. Important considerations are ensuring awareness of risk factors for human trafficking; ensuring each party's ability to provide informed consent, by supporting personal autonomy; preserving the surrogate's freedom of movement; ensuring that the surrogate and the intended parent(s) are known to each other; and protecting all parties from fraud and financial exploitation by clinics and intermediaries. Building connections between the potential surrogate and intended parent(s) is an important part of ensuring that human trafficking is avoided.

Statement 5 (addition). Each intended parent, and the surrogate's spouse or partner (if any), must also give free and informed consent, after receiving information, counselling and independent legal advice of the same standard.

Statements 10 to 13. Delete the reference to single intended parents in Statement 11. Replace the lists of psychiatric and psychosocial contraindications for intended parents in Statements 12 and 13 with: "Assessment must be individual, undertaken by an appropriately qualified professional, and directed to present capacity and risk. A past diagnosis, hospitalisation or experience of abuse is not of itself a contraindication." In Statements 10 and 13, replace "History of abuse or violence" with "History of perpetrating abuse or violence".

Statements 14 and 15. Replace "embryo transfer" with "embryo transfer or insemination". In Statement 15, replace "transfer of parentage" with "establishment and recognition of legal parentage", and add: "Before any embryo transfer or insemination, each party (including the surrogate's spouse or partner, if any) must have received independent legal advice, from a lawyer qualified in each relevant jurisdiction and in a language the party understands, about: the legal requirements for the arrangement; whether and to what extent it is enforceable; how and when legal parentage will be established and recognised; the child's nationality and entitlement to travel documents; birth registration; and the steps required after the birth, including in the home jurisdiction of the intended parent(s)."

Statement 19. Traditional surrogacy requires individual assessment. Counselling and independent legal advice must specifically address the surrogate's genetic relationship to the child and its legal consequences in each relevant jurisdiction. Where the law permits, the decision whether to treat should be made case by case.

Methods, item 2(b). Freedom from coercion and from involuntary constraints on movement. This does not prevent a surrogate from freely agreeing, with independent advice, to arrangements about where she will receive care and give birth. Any such arrangement must remain within her control and must not be enforced by confinement, supervision or penalty.

Statement 18 (narrative). The maternal mortality figures are those for 2020. The latest World Health Organization estimate is 197 maternal deaths per 100,000 live births, for 2023.

Statement 20 (narrative). The United Kingdom does not license surrogacy intermediaries. It prohibits them from acting on a commercial basis

13. ABOUT ME

I am a father through altruistic surrogacy and known egg donation in Australia. I was admitted as a solicitor in 1987. I have been an accredited family law specialist since 1996. Since 1988, I have advised in over 2,100 surrogacy journeys for clients through Australia and in 39 other countries. My clients have undertaken surrogacy in Australia and in 28 other countries, including current and former surrogacy destinations in Africa, the Americas, Asia, Europe and Oceania, including 37 states in the

United States, 8 Canadian provinces, 4 Mexican states, Ukraine, Colombia, Sri Lanka, Iran, Nigeria and South Africa.

I have appeared in numerous pioneering cases concerning surrogacy and ART, including the first in the world to hold that a child is conceived when the pregnancy begins, not at fertilisation[30].

Since 2010, I have delivered over 330 presentations around the world about family and fertility law. I have written extensively about surrogacy in many articles, including for the International Bar Association, the American Bar Association, the International Academy of Family Lawyers, and the International Family Law Journal.

I wrote *When Not If: Surrogacy for Australians* (2022) and *International Assisted Reproductive Technology* (American Bar Association, 2024).

Since 2017 I have been a Fellow of each of the International Academy of Family Lawyers, and of the Academy of Adoption and Assisted Reproduction Attorneys. I serve on committees of each.

Since 2012, I have been an international representative on the ART Committee of the American Bar Association's family law section. In 2012-2016, I was the principal advocate for and co-author of the policy adopted by the Association in 2016 as to a proposed Hague surrogacy convention.

I am a co-founder of the International Surrogacy Forum.

I serve as Secretary of the Fertility Society of Australia and New Zealand.

Between 2017 and 2022 I lectured at the University of New South Wales in Law and Ethics in Reproductive Medicine, for which I received a teaching prize.

In 2020, I received the inaugural Pride in Law Award. In 2023, I received the Queensland Law Society President's Medal.

The views in this response are mine alone. I acknowledge the valuable assistance of my associate, Mr Evren Kurt, in the preparation of this submission.

Yours faithfully
Page Provan Pty Ltd

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[30] *LWV v LMH* [2012] QChC 26.