
Surrogacy

As medical technology has advanced, the way that we have families has also changed. Assisted reproductive treatment has allowed many parents to have children who would not have been otherwise able to do so.

One of the more controversial legal developments has been the legalisation of altruistic surrogacy arrangements. Changes to the law surrounding surrogacy have gained a lot of media attention and been at the centre of debates, with some seeing it as the thin end of the wedge in a move towards commercial surrogacy.

What is surrogacy?

Surrogacy occurs when a woman, the surrogate mother, has a child with the intention of handing over the child at an agreed time to other people to raise it. These people are called the "commissioning parents".

Surrogacy can be "altruistic" or "commercial", the former being where the surrogate mother is not paid in money (or in kind) other than being reimbursed for actual expenses that are allowable under the law, and the latter where the surrogate mother is paid a fee or reward in addition to being reimbursed for expenses.

There are also different types of surrogacy which depend upon whose egg is used to form the embryo. In "traditional" surrogacy, the surrogate mother becomes pregnant using her own egg. Most fertility clinics in Australia assist with what is called "gestational" surrogacy, which is where the surrogate mother's egg is not used. An egg from an egg donor or possibly the commissioning mother's egg is used, so the surrogate mother is not biologically related to the child. The surrogate mother "gestates" the other woman's egg.

Commercial surrogacy is illegal in all States and Territories of Australia. In Queensland and New South Wales, it is also illegal to engage in commercial surrogacy whether within those states, elsewhere in Australia or overseas.

Altruistic surrogacy in Victoria

As a result of changes to Victorian legislation in 2008, it is now possible for commissioning parents to have a child using an altruistic surrogacy arrangement and to have an order made naming them as the child's parents on a newly issued birth certificate.

Most surrogacy arrangements are proceeding through registered clinics such as Melbourne IVF and Monash IVF. The commissioning parents and the surrogate mother are provided with information, counselling and require approval from the Patient Review Panel, an independent Statutory body, before the surrogacy can proceed. Once the child is born, the child is normally handed over to the commissioning parents and then no earlier than 4 weeks after the birth and no later than 6 months after the birth, the commissioning parents can apply to the County Court for a substitute parentage order. If made, this order substitutes the commissioning parents for the surrogate mother and her partner/spouse (if any) on the birth certificate and a new birth certificate is issued.

Overseas commercial surrogacy

As commercial surrogacy is illegal in Australia, commissioning parents have to use overseas services such as those in the United States, Canada and India.

Services vary greatly and it is worth spending time making contact with other people who have used different agencies. Once parents choose any agency, it is important to obtain legal advice in the jurisdiction to ensure that they understand the contracts and any migration issues. It is also useful to discuss immigration issues with an immigration lawyer to ensure that there are no problems in bringing the child back to Australia.

Once the child is in Australia, the commissioning parents can apply for parenting orders from the Family Courts. While they are

not the same as having a birth certificate issued in both commissioning parents' names, parenting orders can provide for the commissioning parents to have all of the rights and responsibilities of parents under the *Family Law Act*. However the rights and obligations in relation to child support differ significantly.

We work in the area of both altruistic and overseas commercial surrogacy. We have worked with both Melbourne IVF and Monash IVF, and have lawyers on the panel of lawyers that Melbourne IVF has appointed to assist their clients.