

KELLEHERS AUSTRALIA

In-House Memorandum

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Publication of Assisted Reproduction

Publicly advertising a willingness to enter into a surrogacy arrangement is prohibited in Victoria. However many Victorian assisted reproduction practitioners argue that there is a strong need for better education and information on the surrogacy process. Many feel that prohibition on publication about surrogacy drives the actual practice underground and towards international arrangements. Australia is a world leader in this field, with sensitive and competent counselling available for surrogate and commissioning parents. The cost of local clinics is much less than international clinics and local clinics are Medicare supported. Victorian practitioners in this field argue that there needs to be a lifting of advertising restrictions so that some way might be found to protect vulnerable members of the public provide accurate information to dispel ingrained myths.

In Victoria, publications that seek out or advertise surrogacy arrangements are prohibited and s 45(1) of the *Assisted Reproduction Treatment Act 2008* (Vic) specifies certain types of publications and the circumstances in which they are prohibited.

“(1) A person must not publish, or cause to be published, a statement, advertisement, notice or document

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- (a) to the effect that a person is or may be willing to enter into a surrogacy arrangement; or*
- (b) to the effect that a person is seeking another person who is or may be willing to enter into a surrogacy arrangement or to act as a surrogate mother or to arrange a surrogacy arrangement; or*
- or*
- (c) to the effect that the person is or may be willing to arrange a surrogacy arrangement; or*
- (d) to the effect that a person is or may be willing to accept any benefit under a surrogacy arrangement, whether for himself or herself or for another person; or*
- (e) that is intended or likely to counsel or procure a person to agree to act as a surrogate mother; or*
- (f) to the effect that a person is or may be willing to act as a surrogate mother.”*

Section 45(2) states that ‘publish’ has a meaning that includes not only internet, newspapers radio and television, but ‘otherwise disseminate to the public’.

“(2) In this section— “publish” means—

- (a) publish in any newspaper; or*
- (b) publish by means of television, radio or the Internet; or*
- (c) otherwise disseminate to the public.”*

This provision is wide and includes almost all forms of communication, including all online options. It is a unique form of censorship.

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This fact sheet is intended only to provide a summary and general overview on matters of interest. It does not constitute legal advice. You should always seek legal and other professional advice which takes account of your individual circumstances.

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