

# KELLEHERS AUSTRALIA

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## **SURROGACY CHECKLIST**

### **Commencing an Arrangement**

1. Am I eligible? Is the surrogate eligible? What are the consequences if the arrangement proceeds anyway?
2. What terms apply to the agreement?
3. Are donors involved? What law applies in respect of disclosure of identity, anonymity and possible parentage claims?
4. Are any permissions required (consular permissions, Patient Review Panel, etc.)? When? What are the procedures and evidence needed?
5. Is the import or export of genetic material required? Will there be any difficulty satisfying regulations, depending on the import/export jurisdictions?
6. Have all parties received legal and psychological support *prior* to commencing the agreement? Was that support independent and free from bias? What could be the consequences?
7. What if a partner changes their mind and doesn't want to proceed with the surrogacy?

### **During the Pregnancy**

1. What happens if medical complications occur?
2. If the pregnancy fails, what happens?
3. If extra medical care is required, what happens?
4. What if the treating doctor or clinic is negligent?
5. What if the surrogate is negligent?
6. Do all parties fully understand any relevant health risks to the baby or surrogate?

### **Around the Time of Birth**

1. Has adequate evidence been collected about the agreement throughout the pregnancy? (Payment, Consent, Motivations, Factual Background)
2. If abroad, has a foreign legal expert been engaged in preparation for visa or court procedures?
3. What visa and/or travel arrangements apply? Has this been organised ahead of time and are all consular officials satisfied?

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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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## **Immediately After Birth**

1. How is the birth registered? Under whose name? What is required? Will it make a difference later?
2. Has DNA evidence been obtained? Has it been correctly obtained? What if there has been a mix up with embryos?
3. If in Australia, what are my immediate legal obligations? Can the baby come home and legalities wait? Until when?
4. What are the requirements of the Public Health Authorities or Family Services and, if outside Australia, Consulate?
5. What if the law changes suddenly? What if an application to remove the child is refused? Is an appeal possible?

## **After Birth**

1. What if the surrogate changes her mind? Is there any time limit?
2. What if the commissioner(s) change their mind?
3. Who is legally responsible for the child?
4. Is this the same as who is the child's legal parent?
5. What are optional court procedures? What are compulsory court procedures? Do these make a difference?
6. What if we move States?
7. Am I entitled to paid parental leave? Other government support (incl. Medicare)?
8. What happens if a relationship between two parents breaks down?
9. What happens if the biological parent dies? Where does that leave a non-biological parent?
10. Can a party adopt if they can't get a parenting order?
11. Is the child a citizen? If parents have multiple nationalities, does that make a difference?
12. Can the child access information and records about its birth and genetic heritage? What if these records are overseas? What if the donation was anonymous?

## **THE BEST WAY TO AVOID LEGAL UNCERTAINTY AND POSSIBLE MISSTEPS IS EARLY, INDEPENDENT LEGAL ADVICE ABOUT EACH INDIVIDUAL'S PERSONAL CIRCUMSTANCES.**

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