

KELLEHERS AUSTRALIA

In-House Memorandum

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Surrogacy – Emotions Clouding Murky Legal Waters

The act of entering into an arrangement with a surrogate is one covered in emotion, while at the same time rife with a raft of legal issues and pitfalls

A particularly prevalent issue has to do with contract documents through International clinics. While these documents appear formal and legally binding, they are very often difficult or impossible to enforce within Australia.

Couples looking to use an international surrogate must be careful to ensure the appropriate questions are asked before entering into contracts for surrogacy overseas. These include questions about:

- Guardianship;
- Medical Insurance;
- Legal Representation in the country of commission;
- Informed consent of the surrogate;
- Ongoing communication between the surrogate and the future child.

Certain arrangements require careful consideration during the preliminary stages of inquiry. Couples looking to use an international surrogate need to consider carefully the details of:

- The couple's relationship and marital status;
- The genetic material and intended use;
- Counselling undertaken to date in the process of preparation for IVF or surrogacy;
- Any parentage orders sought;
- The particular clinic in the country of commission.

These questions, and others, are encompassed in Kellehers Australia's ***Surrogacy Checklists***, available through the Victorian Assisted Reproductive Treatment Authority (VARTA) website at:

<http://www.varta.org.au/surrogacy-legal-checklists/>

Internationally, the law around parentage is quickly evolving. This month, in England, the House of Commons debated the question of mitochondrial donation, which would see legal recognition of 3 genetic parents to a single child. The legal landscape is constantly shifting in this area and care must be taken not to misstep.

It is important for anyone looking to engage an international surrogate to undertake an in-depth evaluation of their own intentions throughout the process of surrogacy. This includes consideration of matters that may arise before commencing an arrangement, during the pregnancy and after the child is born.

Cameron Algie
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