



SURROGACY IN AUSTRALIA

Sarah Jefford & Simone Cureton

Sarah Jefford

- She/her
- Mum of two children, Archie & Raf
- Egg donor
- Traditional surrogate, birthed a baby for two dads in 2018
- Surrogacy & Donor Conception Lawyer
- The Australian Surrogacy Podcast
- The Australian Surrogacy Handbook
- *More Than Just a Baby: A Guide To Surrogacy for Intended Parents and Surrogates*, published 2020

Simone Cureton

- **Gestational surrogate for two different families birthing daughters for them in December 2018 and March 2021**
- **Heavily involved in the South Australian Surrogacy Community, supporting and advocating for 'teams'**
- **Mum of two teenage daughters**
- **Small surrogacy law practice but predominately an employment lawyer, specifically workers compensation**
- **Board of Directors, MRKH Australia**

Agenda

- **Language and Definitions**
- **Surrogacy Laws in Australia**
- **Criteria for surrogacy in Australia**
- **Surrogacy Agreements**
- **Pre-Conception Process**
- **Patient Review Panel and the Reproductive Technology Council**
- **Post-Birth Process**
- **Statistics and Arrangements**
- **Law Reform**
- **Panel Discussion**

Language and Definitions

- **Intended Parents:** the commissioning or arranged parents in a surrogacy arrangement
- **Birth Parents:** the surrogate and their partner
- **Gestational surrogacy:** involves an embryo created with an egg from an intended parent or donor.
- **Traditional surrogacy:** involves the surrogate's own egg.
- **Parentage Order:** the process of transferring parentage from the birth parents to the intended parents.

Surrogacy Laws – an Overview

- ***Surrogacy Act 2010*** NSW
- ***Surrogacy Act 2010*** QLD
- ***Parentage Act 2004*** ACT
- ***Surrogacy Act 2012*** TAS
- ***Assisted Reproductive Treatment Act 2008 & Status of Children Act 1974*** VIC
- ***Surrogacy Act 2008*** WA
- ***Surrogacy Act 2019*** SA
- ***Surrogacy Act 2022*** NT

Criteria

The laws vary between the States, but generally:

- **The laws that apply are where the Intended Parents live.**
- **There must be a medical or social need for surrogacy.**
- **The parties generally need to be over the age of 25.**
- **Traditional or gestational surrogacy are both permissible.**
- **The surrogate must have had her own child (WA, VIC).**
- **The child's best interests are paramount**

Criteria, continued...

- **The arrangement must be altruistic.**
- **The agreement is unenforceable other than the surrogate's expenses.**
- **There must be an agreement to enter the arrangement, and often in writing and signed by all parties.**
- **The surrogate retains her bodily autonomy.**
- **Everyone must receive independent legal advice prior to conception.**
- **Everyone must receive counselling with a qualified fertility counsellor.**

Surrogacy Agreements

- **No prescribed form other than that it be in writing**
- **Signed and dated after legal advice and counselling and before conception**
- **Heads of Agreement**
- **Execution page**
- **Lawyer certificates**
- **Counsellor certificates**

Surrogacy Agreements

HEADS OF AGREEMENT

- **Recitals**
- **Counselling**
- **Legal Advice**
- **Surrogacy costs based on legislative provisions**
- **Pregnancy care and birth planning**
- **Birth registration and parentage order application**
- **Medical treatment and termination of pregnancy**
- **Death or separation of the intended parents**
- **Dispute resolution**
- **Enforceability**

The Pre-Conception Process

- 1 QUALIFY FOR SURROGACY
- 2 MEDICAL ASSESSMENT
- 3 COUNSELLING
- 4 PSYCHOLOGICAL ASSESSMENT
- 5 LEGAL ADVICE
- 6 APPROVAL

Patient Review Panel & Reproductive Technology Council

- **Patient Review Panel (Victoria) is independent of the IVF clinics and of government, and sits within the Department of Health.**
- **The Reproductive Technology Council (WA) assists to regulate ART in WA.**
- **The PRP and RTC are the final gatekeepers for surrogacy in Victoria and WA respectively. IVF clinics cannot provide treatment for surrogacy without PRP or RTC approval.**
- **Pre-conception approval is a pre-requisite for a Parentage Order for Victoria (for gestational surrogacy only) and in WA.**

The Post-Birth & Parentage Order Process

- **The birth parents register the child's birth, with a name chosen by the intended parents. The birth parents are listed on the birth certificate.**
- **Post-Birth Counselling (QLD, NSW, NT).**
- **The Intended Parents apply for a Parentage Order in their home state.**
- **A Parentage Order is granted, transferring parentage from the birth parents to the intended parents.**
- **The Birth Certificate is re-issued with the intended parents listed as parents.**

Surrogacy Arrangements: Statistics

- **Half of surrogacy arrangements involve heterosexual infertile couples and single women,**
- **Half involve gay couples and single men.**
- **65%-75% involve existing relationships such as family or friends. 25%-35% involve new relationships, where the parties met online through dedicated Facebook groups.**

Ideas for Law Reform

- **Uniform laws.**
- **Recognition of parentage for children born overseas in the Family Law Act.**
- **Decriminalise commercial surrogacy and remove the geographical nexus clause in NSW, QLD and ACT.**
- **Compensated surrogacy.**
- **Administrative post-birth process to replace Parentage Orders.**
- **Integrated birth certificates.**

Resources

- ***More Than Just a Baby: A Guide to Surrogacy for Intended Parents and Surrogates* book available at sarahjefford.com**
- ***The Australian Surrogacy Podcast***
- **The Victorian Assisted Reproductive Treatment Authority (VARTA)**
- **The Reproductive Technology Council of Western Australia (RTC)**
- **Australia New Zealand Infertility Counsellors Association (ANZICA)**



Panel Discussion