

## **Surrogacy arrangements in Queensland**

A surrogacy arrangement is an arrangement between a birth mother and another person or couple where the birth mother agrees to become pregnant with a child for the intended parents. After the child's birth, the birth mother gives up the child permanently to the intended parents.

There are two types of surrogacy arrangement -- altruistic and commercial. Only altruistic (non-commercial) surrogacy arrangements are legal in Queensland.

Commercial surrogacy, which is illegal in Queensland, occurs where there is a payment, reward or any material benefit to anyone entering into a surrogacy arrangement or agreeing to a parentage order.

In Queensland anyone, regardless of their relationship status, can enter into an altruistic surrogacy arrangement.

The intended parent/s:

- may be a married or de facto couple (including same-sex de facto couples) or single;
- don't need a genetic connection to the child or birth mother
- may use any method for conception, including in-vitro fertilisation, artificial insemination, self-insemination or natural conception.

Surrogacy arrangements can only be made before the birth mother becomes pregnant.

If a Court order is required to transfer the parentage of a child born through a surrogacy arrangement, there are certain legal requirements that must be met before entering into the arrangement. Otherwise the Court may refuse to make the order.

The process for entering into a surrogacy arrangement and transferring parentage are:

- The parties should get independent legal advice to fully understand their rights and obligations and the implications of the arrangement.
- If there are two intended parents, both can receive legal advice from the same lawyer at the same time.
- The birth mother can receive legal advice at the same time, but the intended parents and the birth parent/s cannot use the same lawyer.
- Birth parent/s and intended parents must get counselling from an appropriately qualified counsellor before entering into a surrogacy arrangement so all parties are aware of the social and psychological implications of the surrogacy arrangement and parentage order. They can share the same counsellor.
- Counselling should address details such as how the child will be conceived and what genetic material will be used.
- The agreement should be put in writing, preferably by your lawyer, setting out the terms, including who will pay legal and other costs.
- The birth mother can decide how the pregnancy will occur and what genetic material will be used and will have control over the pregnancy.
- After the child is born, the birth parents must register the birth at the Births, Deaths and Marriages Registry.

- Birth parents and the intended parents must get a surrogacy guidance report from an appropriately qualified and independent counsellor after the child is born. This must not be the same counsellor used before entering into the surrogacy arrangement.
- The child must live with the intended parents for 28 days before they can apply to the Court for an order transferring parentage. The child must be between 28 days and 6 months old when the application is made.
- If the Court grants a parentage order, the birth parent/s no longer have a legal parental relationship with the child and the new parents become the child's legal parents.
- The parentage order can then be registered with the Registry of Births, Deaths and Marriages and it will amend the child's birth certificate to show the new parents.

Remember that surrogacy arrangements are not legally enforceable and that either party can withdraw from the arrangement at any time up to the making of the parentage order. The birth mother may decide not to give up the child to the intended parents or the intended parents may decide not to take the child. However, a Court may enforce the arrangement to pay the birth mother's reasonable surrogacy costs.

Gold Coast City's most highly recommended Law Firm

Level 4, 91 Upton Street, Bundall Gold Coast · PO Box 5193, GCMC Bundall 9726 Queensland Australia

P: +61 7 5597 3366 · F: +61 7 5597 3988 · E: [law@belllegal.com.au](mailto:law@belllegal.com.au) · W: [www.belllegal.com.au](http://www.belllegal.com.au)