



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair), Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Parentage (Surrogacy) Amendment Bill 2023

Submission Number: 010 - ATTACHMENTS

Date Authorised for Publication: 14 February 2024

Surrogacy costs

Step 1: Assessed as suitable by fertility doctor/obstetrician

| Category | ACT | ACT 2023 | NSW |
|---|-----|----------|-----|
| Costs of GP attendance for referral, above Medicare* | | | |
| Costs of fertility specialist/obstetrician, above Medicare* | | | |
| Travel to and from those appointments | | | |
| Accommodation to attend those appointments | | | |
| Parking | | | |
| Taxi, Uber | | | |
| Childcare, to enable attendance, if child not otherwise attending that day | | | |
| Time off work for appointment if loss of income and not covered by paid leave | | | |
| Time off work by partner to care for child | | | |
| Other reasonable related costs | | | |

* Most of the time the surrogate will be an Australian citizen. SA and NT require the surrogate to be an Australian citizen or permanent resident. The other States and the ACT do not. There may be occasions that the surrogate is therefore not eligible for Medicare, in which case, the whole of the cost.

Step 2: Steps before signing the surrogacy arrangement/obtaining regulatory/clinic approval

| Category | ACT | ACT 2023 | NSW |
|--|-----|----------|-----|
| Surrogacy counselling | | | |
| Legal advice as to surrogacy arrangement | | | |
| Legal fees and filing fees for a divorce, to enable a surrogate to divorce the other birth parent ¹ | | | |
| New will for surrogate to ensure child does not inherit, enduring power of attorney/advanced health directive | | | |
| New will for surrogate's partner to ensure child does not inherit, enduring power of attorney, advanced health directive | | | |
| Maternity cover for health insurance, if not a feature of surrogate's health insurance | | | |
| Health insurance, including maternity cover, if surrogate does not have health insurance | | | |
| Life insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate life insurance or has no life insurance | | | |
| Disability insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate disability insurance or has no disability insurance | | | |
| Travel to attend counsellor, lawyer, PRP (Vic) or RTC (WA) | | | |

¹ Divorce only. Not to cover property settlement, parenting, domestic violence, child support, spousal maintenance.

| Category | ACT | ACT 2023 | NSW |
|---|-----|----------|-----|
| Accommodation to attend counsellor, lawyer, PRP (Vic) or RTC (WA) | | | |
| Parking | | | |
| Taxi, Uber | | | |
| Childcare, to enable attendance, if child not otherwise attending that day | | | |
| Time off work for appointment if loss of income and not covered by paid leave | | | |
| Time off work by partner to care for child | | | |
| Other reasonable related costs | | | |

Step 3: Becoming or trying to become pregnant

| Category | ACT | ACT 2023 | NSW |
|--|-----|----------|-----|
| Medical expenses, if not covered by Medicare or private health insurance* | | | |
| Surrogacy counselling | | | |
| Maternity cover for health insurance, if not a feature of surrogate's health insurance | | | |
| Health insurance, including maternity cover, if surrogate does not have health insurance | | | |
| Life insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate life insurance or has no life insurance | | | |
| Disability insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate disability insurance or has no disability insurance | | | |
| Travel to attend doctor, counsellor | | | |
| Accommodation to attend doctor, counsellor | | | |
| Parking | | | |
| Taxi, Uber | | | |
| Childcare, to enable attendance, if child not otherwise attending that day | | | |
| Vitamins or medication, if recommended/prescribed by doctor | | | |
| Specific categories of food, if recommended by doctor | | | |
| Time off work for appointment if loss of income and not covered by paid leave | | | |
| Time off work by partner to care for child | | | |

| Category | ACT | ACT 2023 | NSW |
|--------------------------------|-----|----------|-----|
| | | | |
| Other reasonable related costs | | | |

Step 4: During the pregnancy

| Category | ACT | ACT 2023 | NSW |
|--|-----|----------|-----|
| Medical expenses, if not covered by Medicare or private health insurance* | | | |
| Surrogacy counselling | | | |
| Maternity cover for health insurance, if not a feature of surrogate's health insurance | | | |
| Health insurance, including maternity cover, if surrogate does not have health insurance | | | |
| Life insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate life insurance or has no life insurance | | | |
| Disability insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate disability insurance or has no disability insurance | | | |
| Travel to attend counsellor, doctor | | | |
| Accommodation to attend counsellor, doctor | | | |
| Parking | | | |
| Taxi, Uber | | | |
| Childcare to enable attendance, if not otherwise attending that day | | | |
| Housekeeping, yard work, if required | | | |
| Vitamins or medication, if recommended/prescribed by doctor | | | |
| Specific categories of food, if recommended by doctor | | | |
| Maternity clothes | | | |
| Time off work due to medical grounds or up to two months related to birth | | | |
| Time off work by partner to care for surrogate/child | | | |
| Employment of a locum if self-employed | | | |
| Massages/acupuncture | | | |
| Other reasonable related costs | | | |

Step 5: Birth

| Category | ACT | ACT 2023 | NSW |
|--|-----|----------|-----|
| Breast pump and bottles- if agreed surrogate is to pump | | | |
| Medical expenses, if not covered by Medicare or private health insurance* | | | |
| Private hospital costs if agreed, and no maternity cover | | | |
| Maternity cover for health insurance, if not a feature of surrogate's health insurance | | | |

| Category | ACT | ACT 2023 | NSW |
|--|-----|----------|-----|
| Health insurance, including maternity cover, if surrogate does not have health insurance | | | |
| Life insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate life insurance or has no life insurance | | | |
| Disability insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate disability insurance or has no disability insurance | | | |
| Travel to attend hospital | | | |
| Accommodation to attend hospital | | | |
| Parking | | | |
| Taxi, Uber | | | |
| Childcare, to enable attendance, if not otherwise attending that day | | | |
| Time off work due to medical grounds or up to two months | | | |
| Time off work by partner to care for surrogate/child | | | |
| Employment of a locum if self-employed | | | |
| Housekeeping, yard work, if required | | | |
| Other reasonable expenses | | | |

Step 6: Post-birth/applying for order

| Category | ACT | ACT 2023 | NSW |
|--|-----|----------|-----|
| Surrogacy counselling | | | |
| Post-birth assessment | | | |
| Legal costs for court for parentage order | | | |
| Lawyers' costs if there is a dispute about whether or not a parentage order should be made | | | |
| Medical expenses, if not covered by Medicare or private health insurance | | | |
| Maternity cover for health insurance, if not a feature of surrogate's health insurance | | | |
| Health insurance, including maternity cover, if surrogate does not have health insurance | | | |
| Life insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate life insurance or has no life insurance | | | |
| Disability insurance- to cover the term of the surrogacy arrangement, including post-birth period, if surrogate does not have adequate disability insurance or has no disability insurance | | | |
| Travel to attend counsellor, doctor, lawyer, court | | | |
| Accommodation to attend counsellor, doctor, lawyer, court | | | |
| Parking | | | |
| Taxi, Uber | | | |

| Category | ACT | ACT 2023 | NSW |
|--|-----|----------|-----|
| | | | |
| Childcare, to enable attendance, if not otherwise attending that day | | | |
| Housekeeping, yard work, if required | | | |
| Vitamins or medication, if recommended/prescribed by doctor | | | |
| Specific categories of food, if recommended by doctor | | | |
| Maternity clothes | | | |
| Time off work due to medical grounds or up to two months | | | |
| Time off work by partner to care for surrogate/child | | | |
| Employment of a locum if self-employed | | | |
| Other reasonable related expenses | | | |

+Most NSW parentage orders are made without a court appearance

Our Ref: SRP:le

18 July 2023

By Email: civilconsultation@act.gov.au

Telephone: (07) 3221 9751
admin@pageprovan.com.au
www.pageprovan.com.au

Dear Reader

ACT SURROGACY LAWS CONSULTATION PAPER INDEX

| No | Description | Page |
|----|---|------|
| 1. | CHANGE REFERENCES IN THE <i>PARENTAGE ACT</i> TO REFER TO ‘<i>INTENDED PARENTS</i>’ ARE PARTIES OF SURROGACY ARRANGEMENTS RATHER THAN ‘<i>SUBSTITUTE PARENTS</i>’ | 3 |
| 2. | CHANGE REFERENCES IN THE <i>PARENTAGE ACT</i> TO REFER TO A “<i>SURROGACY ARRANGEMENT</i>” RATHER THAN “<i>SUBSTITUTE PARENT AGREEMENT</i>” | 3 |
| 3 | ALLOW SINGLE PEOPLE IN THE ACT TO ACCESS ALTRUISTIC SURROGACY ARRANGEMENTS | 4 |
| 4 | ALLOW TRADITIONAL SURROGACY (THAT IS, WHERE THE SURROGATE IS PERMITTED TO USE THEIR OWN EGG TO CONCEIVE THE CHILD) AND REMOVE THE REQUIREMENT FOR INTENDED PARENTS TO HAVE A GENETIC CONNECTION WITH THE CHILD | 5 |
| 5 | ALLOW ADVERTISING FOR LEGALLY COMPLIANT DOMESTIC ALTRUISTIC SURROGACY | 10 |
| 6 | CONFIRM, IN ACT LAW, THAT A SURROGATE HAS THE SAME RIGHTS TO MANAGE THEIR PREGNANCY AND BIRTH AS ANY OTHER PREGNANT PERSON | 12 |
| 7 | WHAT REASONABLE EXPENSES RELATED TO AN ALTRUISTIC SURROGACY ARRANGEMENT SHOULD BE PERMISSIBLE UNDER THE <i>PARENTAGE ACT</i> (FOR EXAMPLE, MEDICAL, COUNSELLING AND/OR LEGAL EXPENSES) | 13 |
| 8 | REQUIRE SURROGACY ARRANGEMENTS TO BE AGREED IN WRITING BETWEEN PARTIES PRIOR TO CONCEPTION | 14 |

| No | Description | Page |
|---------------------|---|------|
| 9 | REQUIRE PARTIES TO A SURROGACY ARRANGEMENT TO SEEK LEGAL ADVICE PRIOR TO AGREEING TO AN ARRANGEMENT | 16 |
| 10 | REQUIRE PARTIES TO A SURROGACY ARRANGEMENT TO UNDERTAKE COUNSELLING PRIOR TO AGREEING TO AN ARRANGEMENT | 17 |
| 11 | SET 25 YEARS AS THE MINIMUM AGE FOR SURROGATES ENTERING INTO SUBSTITUTE PARENT AGREEMENTS | 19 |
| 12 | THE OPTIMAL LENGTH OF ANY TRANSITION PERIOD TO ANY NEW FRAMEWORK FOR SURROGACY ARRANGEMENTS, NOTING THE NEED TO SAFEGUARD CHILDREN, SURROGATES AND THE INTENDED PARENTS WHO HAVE ARRANGEMENTS IN PLACE UNDER THE CURRENT LEGISLATION | 20 |
| OTHER ISSUES | | |
| A. | DEFINITION OF COMMERCIAL SURROGACY | 20 |
| B. | TIME FOR MAKING THE PARENTAGE ORDER | 21 |
| C. | PARENTAL RESPONSIBILITY | 21 |
| D. | AUTO-RECOGNITION | 24 |
| E. | BENEFITS OF AUTO-RECOGNITION | 29 |
| F. | EXPLANATION OF THE AUTO-RECOGNITION PROPOSAL | 30 |
| G. | STILLBORN CHILDREN | 34 |
| H. | DEATH OF THE CHILD | 35 |
| I. | OVERRIDING THE SURROGATE'S OR PARTNER'S REFUSAL | 36 |
| J. | FREEDOM OF CHOICE FOR PATIENTS | 40 |
| K. | JURISDICTION ABOUT WHERE THE INTENDED PARENTS LIVE | 41 |
| L. | NEED FOR SURROGACY | 46 |
| M. | LIMITATION OF PROCURATION | 47 |
| N. | THE CHILD'S RIGHT TO KNOW | 47 |
| O. | EXTRA-TERRITORIALITY | 48 |
| P. | WHY DO INTENDED PARENTS GO OVERSEAS? | 56 |
| Q. | RECOGNITION OF PARENTAGE FROM OVERSEAS | 57 |
| R. | REVIEWS OF LEGISLATION | 64 |
| ABOUT ME | | 64 |

“Governments don’t play God. Governments shouldn’t tell us when we can and can’t have children.”

I respond to the various proposals below.

1. CHANGE REFERENCES IN THE *PARENTAGE ACT* TO REFER TO ‘*INTENDED PARENTS*’ ARE PARTIES OF SURROGACY ARRANGEMENTS RATHER THAN ‘*SUBSTITUTE PARENTS*’.

The use of the term *intended parents* is recognised nationally and internationally as best practice as it better reflects the parents in the surrogacy arrangement. More to the point, intended parents see themselves as intended parents. Substitute parents connotes that they are in some way being substituted or fake. The term *substitute parents* on its face appears demeaning and not properly descriptive of their role.

I note that the term *intended parent* is used in equivalent laws in:

- Queensland.
- New South Wales.
- Victoria (following the *Gorton Review*).
- Tasmania.
- South Australia (following the *SALRI Report*).
- Northern Territory.

I have previously made submissions, which have evidently been accepted, in South Australia and Victoria, to change the terminology from commissioning parent to intended parent.

I am very much the parent of my daughter born through surrogacy in Brisbane. If someone had told me that the effect of the law was that I was her substitute parent, much like a substitute teacher, or an ersatz parent or a fake parent, I would have found the term demeaning and cheapening of my role of intending to be a parent.

I urge the Government to use the term *intended parent*.

2. CHANGE REFERENCES IN THE *PARENTAGE ACT* TO REFER TO A “*SURROGACY ARRANGEMENT*” RATHER THAN “*SUBSTITUTE PARENT AGREEMENT*”

Again, I would support this change, which is reflective of national and international terms. The term “*surrogacy arrangement*” is used in:

- Queensland.
 - New South Wales.
 - Victoria.
 - Tasmania.
-

- Western Australia.
- Northern Territory.

South Australia uses the term “*lawful surrogacy agreement*”.

3. ALLOW SINGLE PEOPLE IN THE ACT TO ACCESS ALTRUISTIC SURROGACY ARRANGEMENTS

The current approach, alone in the ACT of all Australian jurisdictions, to exclude single people from accessing altruistic surrogacy arrangements deprives them of their internationally recognised human right to reproduce, and results in single intended parents either undertaking surrogacy through New South Wales or more likely internationally. The aim of the legislation, subject to appropriate protections, ought to be enable the legitimate reproductive rights of intended parents (whether single or couple) to undertake their surrogacy journey at home – and encourage them to do so – rather than to do so abroad.

On the face of it, the requirement that the intended parents be a couple would force doctors or clinics to refuse service if a single intended parent sought treatment. On its face, this would be a breach of s.22 of the *Sex Discrimination Act 1984* (Cth) and would likely be the subject of a successful challenge, as occurred in:

- *Pearce v SA Health Commission* (1996) SASR 486, when SA law required ART only to be given to married women;
- *McBain v Victoria* [2000] FCA 1009, when Victorian law restricted ART treatment for single women;
- *EHT18 v Melbourne IVF* [2018] FCA 1421, when Victorian law prevented access to ART for a married woman without her husband’s consent.

I have acted for many single intended parents, some of whom are single men, some are single women, and one has been a single transgender female. Their journeys are unique. Their human rights of being able to reproduce (discussed at pages 7 to 9) are hindered by this restriction.

Even though it has not been mentioned by you, the *Parentage Act* also requires the surrogate to be in a couple relationship. Again, a refusal by a doctor or a clinic to provide treatment to a single surrogate, in order to comply with the Act, would appear to be unlawful, as it would be a refusal of service based on the surrogate’s marital or relationship status, a protected attribute under s.22 of the *Sex Discrimination Act 1984* (Cth).

The ACT is the only jurisdiction in Australia that has this requirement. It is common in Australian surrogacy journeys (and indeed for Australians undertaking surrogacy overseas) for the surrogate to be single.

In my surrogacy journey, undertaken with my husband in Queensland, our surrogate was single. If we had sought to undertake surrogacy in Queensland with this restriction of the *Parentage Act*, namely, that our surrogate had to be a couple, we would either have had to have moved to New South Wales to undertake surrogacy there, or undertake surrogacy overseas. Requiring the surrogate to be part of a couple smacks of what a client said to me in 2012. She and her husband were the parents of a single woman, the intended mother. My client was the surrogate for her daughter. Under proposals by Queensland’s then Attorney-General, that type of surrogacy journey,

in which the intended parents were gay, lesbian or single, would have been criminal. My client said:

“Governments don’t play God. They don’t tell us when we can and can’t have children.”

There is no rhyme nor reason as to why there is now a requirement for the surrogate to be part of a couple. Presumably the reason was to ensure that the surrogate had emotional safeguards, or out of concern that both the parents at law were parties to the surrogacy arrangement. It is clear that properly done there is no greater risk with having a single surrogate than having one in a couple relationship. Surrogates can be protected by the initial counselling, as well as the provision of counselling during and after the journey, as commonly occurs. The Parentage Act make plain that the surrogate, if single, would be the only parent. There is no requirement following the decision of the High Court in *Masson v Parsons* [2019] HCA 21 for the surrogate to be in a couple relationship.

The ACT should be proud that it was the pioneer in Australia with surrogacy legislation with the enactment of the *Parentage Act 2004*, but the Act now is need of updating, in light of practical and human rights considerations.

I am aware that these provisions in the *Parentage Act* came about through the act of lobbying at the time from Canberra Fertility Centre (the forerunner of what is now IVF Australia Canberra Clinic) which set out a model for how surrogacy should occur. That model has been largely replicated across Australia, but with the passage of time, anomalies with the original model have been identified, which the Government to its credit is seeking now to rectify.

4. ALLOW TRADITIONAL SURROGACY (THAT IS, WHERE THE SURROGATE IS PERMITTED TO USE THEIR OWN EGG TO CONCEIVE THE CHILD) AND REMOVE THE REQUIREMENT FOR INTENDED PARENTS TO HAVE A GENETIC CONNECTION WITH THE CHILD

I support the requirement to allow traditional surrogacy to occur in the ACT. The ACT is the only jurisdiction in Australia that prevents traditional surrogacy. In Victoria, traditional surrogacy cannot be accessed through IVF clinics, but instead, can occur at home. As New Zealand researchers indicated through the Law Commission Report on Surrogacy¹, Government cannot regulate the bedrooms of its people. Traditional surrogacy will continue irrespective of whether or not it can be accessed through a clinic.

It is a shame that in Victoria that traditional surrogacy cannot occur through IVF clinics because one would think that there would be greater checks and balances as to the process of surrogacy through an IVF clinic, rather than doing traditional surrogacy at home.

From my experience, most IVF clinics in New South Wales and Queensland, for example, that undertake traditional surrogacy do so on a case by case basis.

The concern about traditional surrogacy is that there is a greater risk that the surrogate will not relinquish the child. A case that is often cited in that regard is *Re Evelyn* [1998] FamCA 103, where the traditional surrogate kept the child after it was born. Three features about *Re Evelyn* that stand out are:

1. At the time Mr and Mrs Q (who lived in Queensland) could not lawfully undertake surrogacy because it was an offence under the *Surrogate Parenthood Act 1988* (Qld). Dr and Mrs S

¹ <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/Law%20Commission%20-%20Review%20of%20Surrogacy%20-%20Issues%20Paper%2047.pdf> at [6].

who lived in South Australia, with Mrs S being the surrogate and Dr S assisting in the fertilisation, were also subject to laws in South Australia that prevented surrogacy from occurring lawfully.

2. Therefore, the surrogacy journey was done in the dark, without the benefit of legal advice occurring before the surrogacy arrangement was entered into.
3. Similarly, there was no counselling of Mr and Mrs Q or Dr and Mrs S before the surrogacy arrangement was entered into because the agreement in both jurisdictions was in effect illegal.

The most recent cases that have involved the surrogate manifesting an intent not to relinquish the child have shown that this has occurred in both cases involving gestational surrogacy and traditional surrogacy:

- *Lamb & Shaw* [2017] FamCA 769 and [2018] FamCA 629 was a gestational surrogacy arrangement in North Queensland that fell apart. The single surrogate was the third cousin of the genetic intended mother who was in a de facto relationship with the genetic intended father. The court held that the genetic intended father was a parent under Queensland law. The case has been criticised for its analysis of Queensland law as being wrongly decided².
- *Seto & Poon* [2021] FamCA 288 was a case with “*unusual circumstances*”³ which involved traditional, commercial surrogacy. It appears that the IVF was undertaken somewhere in South-East Asia. Ms Yue and Mr Seto were the intended parents. Ms Yue formed a friendship with Ms Poon, whose husband was Mr Zhu. The parties spoke Cantonese. There was no written surrogacy agreement except some scratchy notes written in Cantonese and ample chat via WeChat. It was agreed that \$50,000+ would be paid to Ms Poon to assist her and Mr Zhu with migration to Australia. Four attempts were made at natural insemination between Mr Seto and Ms Poon. When they were unsuccessful, Mr Seto and Ms Poon represented to what appeared from the judgment to be an overseas clinic that they were a couple. This was false. IVF was then undertaken as a result of which Ms Poon became pregnant.

After twins were born in New South Wales, Ms Poon and Mr Zhu, through their solicitor, sought almost \$300,000 to be paid as part of “*reasonable expenses*” under the *Surrogacy Act 2010* (NSW) to them before the children would be relinquished.

Applying *Masson v Parsons*⁴, the Court found that the genetic intended father was a parent under the *Family Law Act* (even though he would not have been a parent under the *NSW Status of Children Act*).

It was no surprise when the Family Court ordered that all parties be referred to authorities for investigation as to commercial surrogacy, and that Ms Poon, Mr Zhu and their New South Wales solicitor be referred, in effect, relating to the possible crime of extortion. It is also no surprise that the solicitor was referred to the Legal Services Commission.

- *Tickner & Rodda* [2021] FedFamC1F 279 involved a single surrogate with a gay couple as the intended parents. It was gestational surrogacy, involving an egg donor. The processes under the *Surrogacy Act 2010* (NSW) were followed. Treatment was through IVF Australia.

² *RBK & MMJ* [2019] QChC 42, in which I acted for the intended parents.

³ At [1].

⁴ *Masson v Parsons* [2019] HCA 21.

On 5 October 2020 the surrogacy agreement was entered into. It is unclear from the judgment when the pregnancy occurred, but it would appear to have been in either late 2020 or early 2021. In February 2021 the intended parents moved to be closer to the surrogate, in the country. However, difficulties arose between them. By March 2021, the surrogate began to consider the possibility of terminating the pregnancy.

On 6 April 2021 the surrogate notified the counsellor that she had terminated both the pregnancy and the surrogacy arrangement. Two weeks later, the intended parents left that city and returned to Sydney.

The assertion by the surrogate that she had terminated the pregnancy was a lie. The child was born in 2021. The intended parents were told of this birth on 20 September 2021. The surrogate kept the child.

The effect of proceedings in the Federal Circuit and Family Court was that the child came to live with the intended parents. Applying *Masson v Parsons*, the court found that the intended genetic father was a parent under the *Family Law Act* (when he would not have been a parent under the *NSW Status of Children Act*), as he provided the sperm for the conception of the child, on the basis that he would be the child's parent, that he would be registered on the child's birth certificate (which indeed he was) and that he would care for the child as his parent. It would appear from the judgment that, using the cross-vested jurisdiction of the Federal Circuit and Family Court concerning the Supreme Court of New South Wales that the court was going to make a parentage order.

The case is an illustration in that regard of the benefits of keeping the current jurisdiction with the ACT Supreme Court rather than vesting the jurisdiction to a lower court.

The court noted:

“The first thing to note is that the surrogacy agreement is not enforceable because of the application of section 6 of the Surrogacy Act. Nonetheless, the proceedings inevitably have the flavour of enforcement of that agreement. These proceedings themselves highlight the difficulties that can arise from such agreements, particularly where those agreements are between strangers. One of the dangers is that all parties to the agreement can become emotionally and psychologically committed to the child which can in turn be most damaging to one side of the agreement or other regardless of whether the child goes to live with the parties who sought the arrangement with the mother who bore him or her.

It cannot be stressed too highly that a child is not to be treated as goods subject to an agreement for sale. That is so even where the agreement is altruistic, as they must be in Australia to be legal.”

I support the idea that there be a removal of the requirement for intended parents to have a genetic connection with the child. Wherever possible, intended parents want to have a genetic connection with their child.

Sadly, not everyone can conceive a child naturally or with a genetic connection. Australian law recognises that there is a freedom to reproduce under the common law⁵.

There are many human rights implicated by surrogacy arrangements:

⁵ *Re Jane* [1988] FamCA 57; (1989) FLC 92-007; *F and F Injunctions* [1989] FamCA 41.

-
- Right to equality and non-discrimination (e.g. UDHR art. 2; ICCPR art. 26; ICESCR art. 2; CEDAW art. 2, CRPD arts. 5 and 6);
 - Right to health (e.g. UDHR art. 25, ICESCR art. 12, CEDAW art. 12);
 - Right to privacy (e.g. UDHR art. 12; ICCPR art. 17);
 - Bodily autonomy (e.g. ICCPR arts. 7 and 17, CEDAW art. 12 and GR 24)
 - Reproductive autonomy (e.g. ICESCR GC 22, CEDAW art. 12 and GR 24);
 - Right to decide number and spacing of children (CEDAW art. 16);
 - Right to found a family (e.g. UDHR art. 16; CRPD art. 23);
 - Right to information (e.g. UDHR art. 19; ICCPR art. 19);
 - Right to benefit from scientific progress (e.g. UDHR, art. 27, ICESCR, art. 15 (b));
 - Rights of persons with disabilities (e.g. CRPD arts. 5, 6, 7, 12, 17, 23).

Furthermore, in respect of LGBTQIA+ people, there has been recognition of the right to found a family as set out in Principle 24 of the *Yogyakarta Principles*:

Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity;
 - b) Ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration;
 - c) Take all necessary legislative, administrative and other measures to ensure that in all actions or decisions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration, and that the sexual orientation or gender identity of the child or of any family member or other person may not be considered incompatible with such best interests;
 - d) In all actions or decisions concerning children, ensure that a child who is capable of forming personal views can exercise the right to express those views freely, and that such views are given due weight in accordance with the age and maturity of the child;
-

- e) Take all necessary legislative, administrative and other measures to ensure that in States that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners;
- f) Take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners;

Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity;
- b) Ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration;
- c) Take all necessary legislative, administrative and other measures to ensure that in all actions or decisions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration, and that the sexual orientation or gender identity of the child or of any family member or other person may not be considered incompatible with such best interests;
- d) In all actions or decisions concerning children, ensure that a child who is capable of forming personal views can exercise the right to express those views freely, and that such views are given due weight in accordance with the age and maturity of the child;
- e) Take all necessary legislative, administrative and other measures to ensure that in States that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners;
- f) Take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners;
- g) Ensure that marriages and other legally-recognised partnerships may be entered into only with the free and full consent of the intending spouses or partners.

In order to comply with s.24(b) of the Act, a doctor or clinic would have to refuse treatment to the intended parents when there is no genetic link to the child. In addition to the human rights implicated above, for that to occur may well be a breach of s.24 of the *Disability Discrimination Act 1992* (Cth), which prohibits discrimination in the provision of services based on a person's

disability, and in some circumstances, two of which are raised below, under s.22 of the *Sex Discrimination Act 1984* (Cth). The person's inability to produce viable gametes would on its face be a *disability* within the meaning of that Act. Therefore, if challenged, that refusal would also likely not survive a challenge similar to that seen in *Pearce, McBain* and *EHT18*.

Some intended parents are not able to rely on their own genes to achieve parenthood. I will give some examples:

- Joni, the 37 year old theatre nurse, who by virtue of saving the lives of others and working long hours had never been able to form a relationship. In order to be able to reproduce, she required a sperm donor, egg donor and surrogate. She required an egg donor and a surrogate because she was a cancer survivor.
- Bill and Ted were a gay couple. Contrary to the common expectation that one or both of them could produce viable sperm, neither could do so. They still wished to be parents. In order for them to become parents, they needed a sperm donor, egg donor and surrogate.
- Ann and Mary were a lesbian couple. The expectation with a lesbian couple is that one or both of them could become pregnant and have children, with the help of a sperm donor. For medical reasons, neither could become pregnant. They did not have viable eggs. Nor were they able to carry. In order to become parents, they needed an egg donor, a sperm donor and a surrogate.

These are real life examples of cases in which I have acted. None of these people whose sole desire in life was to become a parent should be denied the human right to reproduce.

Ample research undertaken amongst others by Cambridge University has shown that children from alternative family arrangements, such as surrogacy, same-sex parents, single women undertaking donation and the like, have turned out essentially the same, as for children born through a heterosexual nuclear family with a genetic connection with both parents.

5. ALLOW ADVERTISING FOR LEGALLY COMPLIANT DOMESTIC ALTRUISTIC SURROGACY

I support the idea of intended parents being able to advertise for a surrogate or for would-be surrogates advertising for intended parents for what is legally compliant domestic altruistic surrogacy.

The ability to advertise is seen, for example, in the *Surrogacy Act 2010* (NSW).

As the *Gorton Report* in Victoria made plain, advertising occurs despite the restriction otherwise. It is better to look at the reality of what is occurring, than to pretend that it is not. The restriction on advertising under the *Parentage Act* is the widest of any similar legislation in Australia. There should simply be the ability to advertise.

It is most unlikely that intended parents will place an advertisement at a billboard outside Canberra Airport, for example, seeking a surrogate. Advertising of that kind is expensive and this journey of surrogacy is an intensely private, often very painful one. Even for those who do not suffer classic infertility, such as gay couples, it means having to come out into the public and declare their sexuality for all to see.

Most of my clients do not want to advertise their private affairs.

Advertising in many ways has been allowed for egg and sperm donation. For example, under the *Human Tissue Act 1983* (NSW) there is absolutely no restriction on advertising, and yet there have been no reports of billboard advertising or such crass advertising by intended parents seeking donors, for example.

I also support advertising by third party professionals. Among my other roles, I am the pro bono solicitor for the Surrogacy Australia Support Service, which is the only altruistic agency assisting surrogacy to occur in Australia. It should be possible for a non-profit such as the Surrogacy Australian Support Service, which is run by a former surrogate, to be able to assist intended parents and other surrogates to come together and find each other.

I note that the Western Australia *Ministerial Expert Panel* recommendation 27 says:

“That proposed legislation permits licensed ART providers in WA to advertise for, and recruit, potential altruistic surrogates. Prospective intended parents and surrogates continue to be allowed to advertise their willingness to enter an altruistic surrogacy arrangement. Formal introduction through a licensed ART provider should be permitted, as should introduction of parties via informal channels, so long as the process remains altruistic and not for reward.”

I support the recommendation. There must be the means by which surrogacy is more available in Australia.

The clear message that I have seen in the consultation paper is that there is no intention to decriminalise commercial surrogacy. Every effort should be made, within that parameter, i.e., that surrogacy is altruistic only (which in itself will be restrictive of the number of surrogacy journeys by ACT residents) to enable ACT residents to undertake surrogacy at home, rather than abroad.

One of the continuing complaints that I have heard from my clients is:

1. We can't find an egg donor. I note that egg donation in Australia is altruistic. This is being addressed through the correct regulatory means by IVF clinics being able to import eggs that have been the subject of altruistic donation overseas. Since 1988, I have advised in over 1900 surrogacy journeys for clients⁶ throughout Australia and 30+ other countries. I would estimate that about half of the clients that I have seen are heterosexual couples and about half are gay couples. There is then a smattering of single men and single women, a small number who identify as transgender, non-binary or intersex and two or three lesbian couples that I have acted for. Three-quarters of my clients in broad terms need an egg donor – all the gay couples, all the single men and about half the heterosexual couples.
2. We can't find a surrogate. The data is stark. In broad terms, for every child born in Australia through surrogacy, four are born overseas. More Australian children are born via surrogacy in the United States than in Australia. These numbers are depressing. One of the log jams that prevents Australian intended parents undertaking surrogacy here is the inability to find a surrogate. Allowing advertising to find surrogates will hopefully increase the supply of surrogates and hopefully means that Australian intended parents will undertake surrogacy at home, rather than abroad where, at least in some countries, the quality of IVF is far less than that seen in Australia, and human rights protections are far less than that seen in Australia.

We should be proud in Australia that we focus on protection of the human rights of all concerned in the surrogacy journey, namely, the intended parents, the surrogate and her partner, their children, any gamete donor and their children and especially the child.

⁶ About 3800 clients.

I am the author of this provision in the *Surrogacy Act 2019* (SA)⁷:

“the human rights of all parties to a lawful surrogacy agreement, including any child born as a result of the agreement, must be respected.”

I would urge that in the drafting of any amendments to the Act, that there be such a provision added to the amendments, subject of course to not duplicating s.30 of the *Human Rights Act 2004* (ACT)⁸.

6. CONFIRM, IN ACT LAW, THAT A SURROGATE HAS THE SAME RIGHTS TO MANAGE THEIR PREGNANCY AND BIRTH AS ANY OTHER PREGNANT PERSON

I support this. This provision first appeared in the *Surrogacy Act 2010* (Qld)⁹. Even though it is part of the legal landscape in Queensland, I always include a provision to this effect in the surrogacy arrangement. I do this because one of my first surrogate clients liked seeing it in black and white. It really affirmed clearly in front of her that she had bodily autonomy, having control over the pregnancy and childbirth process. I have done that in every Australian jurisdiction in which I have assisted in the drafting of surrogacy arrangements.

I am delighted that Tasmania copied¹⁰ this Queensland provision when it enacted its *Surrogacy Act 2012*.

I was delighted that submissions by me and others to the *Gorton Review* and the *SALRI Report* resulted in changes to laws in Victoria¹¹ and South Australia¹² that recognised this right.

When I was a member of the Northern Territory Surrogacy Joint Working Group, I was delighted that the Northern Territory Government decided to also incorporate this right in the *Surrogacy Act 2022* (NT)¹³.

The only jurisdictions that now do not have this right, recognised at common law¹⁴, but not set out in statute, are:

- ACT.
- New South Wales.
- Western Australia.

⁷ S.7(1)(a).

⁸ *“So far as it is possible to do so consistently with its purpose, a Territory law must be interpreted in a way that is compatible with human rights.”*

⁹ S.16.

¹⁰ S.11.

¹¹ S.44A *Assisted Reproductive Treatment Act 2008* (Vic).

¹² S.16 *Surrogacy Act 2019* (SA).

¹³ S.10.

¹⁴ For example, *F and F* [1989] FamCA 41; *Attorney-General ex rel Kerr v T* [1983] 1 Qd R 404.

7. WHAT REASONABLE EXPENSES RELATED TO AN ALTRUISTIC SURROGACY ARRANGEMENT SHOULD BE PERMISSIBLE UNDER THE PARENTAGE ACT (FOR EXAMPLE, MEDICAL, COUNSELLING AND/OR LEGAL EXPENSES)

The Act currently is flexible as to what expenses can be included. However, there is commonsense in the ACT having a regime that in many ways mirrors that in New South Wales.

I have acted in many interstate surrogacy arrangements. These are common – where the intended parents live in one State and the surrogate (and her partner) live in another. One of the banes of my life has been that there has been differing allowances State by State as to what expenses can be included.

In the past, expenses allowed in Victoria were not flexible. The *Gorton Review* recognised submissions made by me and others and as a result, there is now more flexibility in Victoria, but not as much as could occur. Similarly, I was highly critical of expenses that were not allowed in South Australia. In each of Victoria and South Australia at one stage life or disability insurance for the surrogate could not be paid – because to do so would have been a criminal offence.

I was delighted that submissions made by me and others to *SALRI* has resulted in much greater flexibility under the *Surrogacy Act 2019* (SA). The expenses that are now allowed under the *Surrogacy Act 2022* (NT) in broad terms reflect those in New South Wales in Queensland.

I am hopeful that the restrictive expenses that are allowed under the *Surrogacy Act 2008* (WA) will in light of the recent review, be more flexible and in line with the *Surrogacy Acts* of Queensland and New South Wales.

In a practical sense, the New South Wales Act has wide discretion as to what expenses may be allowed. The key with all the expenses is that they must be reasonable. Both the New South Wales and Queensland Acts then set out various examples of expenses that are allowed. They are examples only. New South Wales also has a requirement for verification of those expenses.

The New South Wales Act in my view is flexible, reasonable and accords with the needs of the intended parents and surrogate and her partner, whilst at the same time making plain that commercial surrogacy is an offence.

I urge the Government to copy the provisions of section 7 of the *Surrogacy Act 2010* (NSW), so that for intended parents who live, for example, in Yass with a surrogate living in Belconnen, or the reverse, have the same rules about expenses.

An example of expenses

I acted for the surrogate and her husband, who lived in Brisbane. The intended parents lived in Sydney. As it was a NSW surrogacy arrangement, there needed to be compliance with the NSW Surrogacy Act. Because my clients lived in Queensland, there also had to be clear that no offences were committed in Queensland.

My client ran her own dog walking business. She would wear inline skates.

My client wanted:

- Massages. The solicitor for the intended parents argued that to supply my client massages during the pregnancy was commercial surrogacy. I thought that position was rubbish- and said so clearly. It would only be commercial if it were commercial in scope- for example luxury massages at Sheraton Mirage on the Gold Coast. Both Acts clearly allowed for such

an expense. She should have bodily autonomy – as do many other women who have massages during pregnancy who are not surrogates.

- Acupuncture. The same conversation occurred.
- To hire a locum once she was pregnant. The argument was now that it was greater than 2 months leave as specified in s.7(3)(e)(i) of the NSW Act, and the equivalent provision of the Queensland Act. I pointed out that the provision did not apply, as my client was self-employed, but in any event was only an example. Her request was a *reasonable cost* under s.7(1). I was not going to have my client, pregnant, on skates, being pulled by a bunch of dogs over the hills and dales of Brisbane.

None of these expenses were specifically addressed under either the NSW or Queensland Acts-but each is permitted, provided it is the birth mother's surrogacy costs, as defined in s.7(1) of the NSW Act and s.11(1) of the Queensland Act.

The other solicitor relented. The parties entered into the surrogacy arrangement. A child was conceived and born. A parentage order was made by the NSW Supreme Court.

In my view these two Acts offer the greatest flexibility, while maintaining the requirement to ensure that surrogacy is not commercial. To copy the NSW provisions would keep matters simpler for the parties and cut the intended parents' legal costs.

8. REQUIRE SURROGACY ARRANGEMENTS TO BE AGREED IN WRITING BETWEEN PARTIES PRIOR TO CONCEPTION

The fact that there is no requirement as to a written agreement in the ACT is because of the historical origins of how surrogacy commenced in the ACT. Victoria is the only other jurisdiction that does not require a written agreement.

Putting the agreement in writing, even if it is not legally binding, is a great clarification for the parties as to what they have agreed to and what they have not agreed to. A good surrogacy arrangement will not only cover the fact that the intended parents will be the parents of the child and that there will be a court process for that, but such other incidentals as to:

- What expenses are going to be paid and how much.
- What fertility doctor is going to be carrying out the treatment.
- What hospital the child is going to be born in.
- Whether life insurance or health insurance has to be obtained and if so, when.
- Whether the child is to be born as a public patient or a private patient.
- What is to happen in the case of the child in-utero having severe disabilities – when should an abortion occur (subject to the right of the surrogate to manage the pregnancy and childbirth as would any other pregnant person).
- Who names the child.
- What if the child is born prematurely or is stillborn.
- Confidentiality provisions.

Whilst these might be agreed to in some broad sense in an oral agreement, it is just not the same to have an oral agreement. Terms remain vague. Being written, terms have clarity. The agreement should be in writing. That policy approach has been adopted in every other jurisdiction in Australia, save Victoria.

The New Zealand Law Commission has recommended that the surrogacy arrangement be in writing¹⁵:

“There are clear benefits to requiring a surrogacy arrangement to be recorded in writing and signed by the parties. It would give the parties a record of their intentions in a single document that they can refer to over the course of the arrangement. This could provide greater certainty, minimise the risk of disagreement and assist the parties to resolve any problems in future. We think this is important given that, in some cases, a pregnancy may not be achieved for months or years following ECART approval. A record of intentions would also provide clear evidence of the parties’ original intentions in the event of any dispute.

5.44 Requiring a written record of the parties’ intentions is consistent with the approach taken in many comparable jurisdictions and would therefore futureproof the regulatory system, especially given the ongoing work by the Hague Conference on Private International Law to establish uniform laws on the recognition of legal parenthood and surrogacy.”

I endorse those comments.

The requirement that the surrogacy arrangement should be in writing should always be subject to judicial discretion to enable a parentage order to be made when there has been non-compliance with a procedural requirement, in order to protect the child. Such a provision would be like s.23 of the Queensland Act.

The Victorian example of why there shouldn’t be an oral agreement

Some years ago, I was called upon to fix a broken surrogacy arrangement. I was first engaged after the baby was born. Eventually, the arrangement was fixed by the making of a substitute parentage order, after I flew to Victoria to appear in court four times. The litigation between the commissioning parents (my client) and the single surrogate was by that time extremely bitter – not what one would expect should be a joyful experience.

Somehow, lawyers acting for both parties when the arrangement was entered into thought it a wise idea that the surrogacy arrangement should be an oral one.

After the surrogate gave birth, the hospital arranged for her to stay in a local hotel. It was cheaper for the hospital to do so for mothers who had low risk births – and much more comfortable to be in a deluxe hotel than staying in a hospital bed.

The problem arose when the surrogate left the hospital. All the quantity of the mini bar went with her. This was worth about \$1,000 (at least according to the hotel).

Someone had to pay.

Not surprisingly, the commissioning parents didn’t want to pay for the alcohol drunk or taken by the surrogate and her boyfriend. They were insistent that the surrogate pay. Her response:

¹⁵ <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-Report146-Review-of-Surrogacy.pdf> at [5.43] and [5.44].

“This was a reasonable expense incurred by me.”

The commissioning parents’ response to that assertion was:

“We never agreed to pay for that and in any event it’s against the law for us to pay that.”

The surrogate’s rejoinder was the obvious:

“An oral agreement is worth the paper it’s written on.”

The Difficult Twins Surrogacy

I acted for a gay couple living in Queensland who underwent surrogacy with a long-time friend who was a single woman living in New South Wales. She knew about pregnancy. She had already had four children. She was a traditional surrogate. An embryo was implanted. Contrary to the expectation of all parties, it split. Rather than having a straightforward trouble-free pregnancy and birth, suddenly the surrogate had a very difficult pregnancy carrying twins and, not surprisingly, a very difficult childbirth. After enduring that childbirth, the surrogate held the newborn boys, for whom she was the genetic mother, on her chest and said:

“I think I’ll keep them.”

I was contacted late at night by my clients in a panic. In the morning, they obtained a copy from me of the signed surrogacy arrangement. It was a Queensland arrangement and not legally binding. But there it was saying bluntly that they were to have custody of the child. My clients showed that signed agreement to the surrogate at the hospital bed. It was not an enjoyable moment for any of them. Nevertheless, the surrogate acknowledged, as was written and signed by her, that she had agreed that the children would be in the care of my clients.

When the children were discharged from hospital, they were in the care of my clients.

Subsequently, by consent, a parentage order was made by the Childrens Court of Queensland.

After all that drama had passed, the surrogate again became a good friend of my clients.

9. REQUIRE PARTIES TO A SURROGACY ARRANGEMENT TO SEEK LEGAL ADVICE PRIOR TO AGREEING TO AN ARRANGEMENT

It is an oversight under the Act that there is no such requirement. This is because the practice adopted by Canberra Fertility Clinic was to require each of the parties to obtain independent legal advice – and provide that legal advice to the clinic.

The current practice in Australia, following representations made by me to the Fertility Society of Australia, with the exception of Victoria and Western Australia (where in effect the legal advice must be provided to the State regulator, the Patient Review Panel or Reproductive Technology Council respectively), is not to supply the legal advice to the clinic. The lawyers provide legal clearance by appropriate letters to the clinic. Legal professional privilege is preserved. Given the commitment by the ACT to human rights under the *Human Rights Act 2004*, legal professional privilege- the privilege of the clients- should be preserved.

If there is some defect in the drafting of the surrogacy arrangement, it is upon the shoulders of the lawyers. They are the ones who hold themselves out as having expertise in the drafting, not fertility doctors at a clinic.

Every other Australian jurisdiction requires independent legal advice to be provided prior to entering into the surrogacy arrangement. As I said, it is because of the origins of the *Parentage Act* and the practices of Canberra Fertility Clinic that this requirement is not in the Act. Given there are now three IVF clinics in the ACT, and under my proposal, IVF should be able to occur anywhere, this should be a requirement of the Act.

The point of obtaining independent legal advice is to enable a party upon entering into an agreement to do so with informed consent, and thereby minimises duress and undue influence. There is a particular risk of duress and undue influence where the surrogate is a friend or family member of the intended parents.

If parties have entered into a surrogacy arrangement where for some special circumstance independent legal advice has not been obtained, then, given the fundamental obligation to protect children, in the discretion of the court there should be the ability to dispense with the requirement, as exists in s.23 of the Queensland Act, for example. There should be a catch all provision like s.23 of the Queensland Act in the Act, so that children are not disadvantaged because some procedural step has not been undertaken by the adults concerned¹⁶. *Lowe & Barry* [2011] FamCA 625, for example, was a case where conception occurred naturally. This was a family arrangement between NSW and Tasmania. While the Family Court made an order for parental responsibility and related orders, it did not make a parentage order, as it was not empowered to do so. There should be the ability in such a case for a parentage order to be made.

10. REQUIRE PARTIES TO A SURROGACY ARRANGEMENT TO UNDERTAKE COUNSELLING PRIOR TO AGREEING TO AN ARRANGEMENT

I support this. This is a requirement throughout Australia.

In the words of the *ANZICA surrogacy guidelines*:

“Family formation through the process of surrogacy is a complex psychological social process. A surrogacy arrangement is one in which before the child is conceived, the intended parent/s and the surrogate mother (and her partner, if she has one) agree that the surrogate will become pregnant with the intention that the child will, at birth, be given into the care of the intended parent/s to raise as their own. The most common reasons for surrogacy are absence of the uterus (such as after surgery for women, or for men who may be in a same sex relationship or may be single), congenital malformation of the uterus, or a medical condition that compromises pregnancy making it unsafe for the woman or her prospective baby.

Potentially, there are a number of situations that could be encompassed within the definition of surrogacy. A surrogate conception may occur where the genetic material is provided by both intended parents or by one only of them, by both of the surrogate parents, or by one only of them, or by third-party donors who are not involved in the actual surrogacy arrangement.

It follows that conception in a surrogacy arrangement has the potential to come about naturally, through assisted reproductive technology, or through the surrogate’s self-

¹⁶ As an example, see case 3 on p.43.

insemination. Surrogacy as practised in Assisted Reproductive Technology (ART) clinics is primarily IVF or gestational surrogacy, which does not involve any genetic material of the surrogate or her partner; with insemination surrogacy (also known as traditional or partial) being less common; and natural conception surrogacy being extremely rare.”

Further:

“Pre-surrogacy counselling requires a formal structured counselling process to gather and assess relevant information about the functioning and motivation of all involved in the proposed surrogacy. This includes structured clinical interviews of all involved (as individuals, as couples and as a group) and may include the use of an objective measure of psychopathology as part of the psychosocial screening process. In some jurisdictions there is a legislated requirement for the independent counsellor to give their written opinion as to the suitability of the parties to participate in a surrogacy arrangement...”

A comprehensive biopsychosocial evaluation of a proposed surrogacy arrangement, often done by an independent counsellor, includes consideration of the connections between the parties to the arrangement, reproductive history and any history of trauma or loss, the possibility of coercion or financial inducement (explicit or implicit) and expectations of a surrogacy pregnancy and delivery and the implications of potential medical or psychological complications.

The pre-surrogacy counselling process must give time, space and intensity for a thorough consideration of the implications of the proposed treatment and the opportunity for a change of mind, minimising possible rupture of relationships which may be longstanding. Comprehensive pre-surrogacy counselling is an integral part of ensuring full informed consent as well as assessing surrogacy suitability.”

Counselling has several purposes:

- To ensure that the parties give informed consent in entering into the arrangement. Like independent legal advice, counselling minimises duress and undue influence;
- That any differences between the parties are identified and addressed before the parties enter into the arrangement;
- All parties are aware of the need for openness and honesty with the child about the child’s birth parentage and genetic origins;
- To ensure that there are thorough checks and balances undertaken for the parties and the fertility clinic, before treatment is to be provided by the fertility clinic.

I encourage the ACT Government to copy the provisions of the New South Wales *Surrogacy Act* and regulations so that for those counsellors who practice between both the ACT and New South Wales there is a consistent regulation of the practice.

The SCAG surrogacy discussion paper¹⁷ that led to the current national approach noted¹⁸:

¹⁷

https://www.justice.tas.gov.au/_data/assets/pdf_file/0003/116166/Surrogacy_consultation_paper_FINAL_2_.pdf

¹⁸ At p.13.

“The counselling requirement, together with the rule against commercial surrogacy, will preclude exploitative arrangements with third-world surrogates.”

The Act requires that the parties have received appropriate counselling and assessment from an independent counselling service: s.26(3)(e). That counselling will necessarily have to be by an ANZICA eligible counsellor, because of the requirements for the clinic in clause 2.8(b) of the RTAC *Code of Practice*, which is required to be complied with in order for the clinic to maintain RTAC accreditation. Clause 2.8 (b) provides:

“2.8 Donor and surrogacy requirements (Critical Criterion 8)

The ART Unit must ensure gametes, embryos and tissues are safe for donation and use in surrogacy arrangements and that appropriate counselling has been provided. It must provide evidence that:

- b) counselling has been undertaken by a counsellor who is eligible for membership of ANZICA. For donor and surrogacy arrangements, counselling is mandatory for all donors, partners, recipients and surrogates and their partner's (sic).”*

In the absence of change in the Act as to who undertakes counselling, any counsellor could provide counselling for the purposes of a traditional surrogacy that occurs at home.

The requirement for “*an assessment*” includes, without saying it, the views expressed by the counsellor for the surrogacy to proceed if there is no need for the surrogacy. I address this further at L. Need for Surrogacy on p.45 below.

The need for counselling was supported by the NZ Law Commission¹⁹, which it described as an “integral part” of the surrogacy process. I agree. The Commission noted that there were issues specific in counselling for Maori people. No doubt there are issues that ANZICA can address concerning surrogacy counselling in Australia that are unique to Aboriginal or Torres Strait Islanders.

If parties have entered into a surrogacy arrangement where for some special circumstance counselling has not been obtained, then, given the fundamental obligation to protect children, in the discretion of the court there should be the ability to dispense with the requirement, as exists in s.23 of the Queensland Act, for example²⁰.

11. SET 25 YEARS AS THE MINIMUM AGE FOR SURROGATES ENTERING INTO SUBSTITUTE PARENT AGREEMENTS

I would support this. In order for a surrogate to be able to give informed consent, she must have the requisite maturity to understand the implications of a surrogacy arrangement. Having a floor of age of 25 assumes that the surrogate has that requisite maturity. She should also be aware by that point as to whether she wants to have children, or has had all her own children. It is common with surrogacy agencies in the United States that they screen out surrogates under the age of 25 for those reasons.

¹⁹

<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-Report146-Review-of-Surrogacy.pdf> at [5.48] and following.

²⁰ See case 3 on p.43 as an example.

Similarly, there should be a floor under the age of the intended parents of 25.

Both of these requirements i.e. an age of 25, should be the subject of flexibility. I draw your attention to sections 27-29 of the *Surrogacy Act 2010* (NSW) and section 18 which allows for flexibility where there are exceptional circumstances²¹.

In my view, the floor of 25 should be flexible for both the surrogate and her partner, and the intended parents if their maturity is demonstrated and they are younger than 25.

In practice, the way that this would work for those going through IVF clinics is that they would be assessed by the pre-signing counsellor, and then referred to the clinic for consideration. The clinic, in my experience, would deal with the matter cautiously to determine whether or not the surrogate, her partner or the intended parents have the requisite maturity. If that maturity has not been demonstrated, then approval would not be given.

In the case of New South Wales, for example, if the clinic gave approval where it was evident that the relevant person did not have demonstrated maturity under the age of 25, then, aside from any implications of the clinic's RTAC licence, then this would be a licence event issue under section 57 of the *Assisted Reproductive Technology Act 2007* (NSW). I note that section 57(3)(a)(vi) specifically empowers the Secretary of the Ministry of Health to prohibit a person from carrying on a business that provides ART services if the Secretary is satisfied that there are reasonable grounds to do so and in particular, believes on reasonable grounds that there has been a contravention of the *Surrogacy Act 2010* (NSW).

If the ACT is continuing to propose that there be an ART Act, then I would envisage there would be a similar provision in that Act.

12. THE OPTIMAL LENGTH OF ANY TRANSITION PERIOD TO ANY NEW FRAMEWORK FOR SURROGACY ARRANGEMENTS, NOTING THE NEED TO SAFEGUARD CHILDREN, SURROGATES AND THE INTENDED PARENTS WHO HAVE ARRANGEMENTS IN PLACE UNDER THE CURRENT LEGISLATION

The legislation when enacted should commence as soon as possible. Those who have entered into substitute parent agreements before the commencement of amendments should have time to grandfather out those arrangements. A typical surrogacy journey from beginning to end takes between 2-4 years. In my own case, the surrogacy journey took in excess of four years. If the amendments do not act retrospectively, they will not be prejudiced.

Under a typical savings provision for legislation, those who entered into their substitute parent arrangement before the commencement of the amendments would continue their journey under that pre-amended legislation until conclusion.

OTHER ISSUES

A. DEFINITION OF COMMERCIAL SURROGACY

The definition of commercial surrogacy or, as it is put under the *Parentage Act*, commercial substitute parent agreement, in section 41, is different to that contained under the *Surrogacy Act 2010* (NSW). The definition of a commercial surrogacy arrangement is very similar or if not almost

²¹And s.23 of the Qld Act. I again note case 3 on p.43 as an example.

identical under both the *Surrogacy Act 2010* (NSW) section 9, and the *Surrogacy Act 2010* (Qld), section 10.

Given the small size of the ACT and that it is in effect an island in New South Wales, it would be of benefit for the sake of consistency if the definition of commercial surrogacy arrangement under the ACT Act were the same as the New South Wales Act.

B. TIME FOR MAKING THE PARENTAGE ORDER

The common timeframe around the country for making a parentage order following the birth of the child is between one month and six months. Section 25(3) makes this between six weeks and six months. It is suggested that it be changed to one month and six months, so that it is consistent with the rest of the country.

There ought to be the ability to move that timeframe forward in case there needs to be a resolution of parental responsibility post-birth.

There is the ability under the Queensland Act to move that one month period forward. The period for making the application is contained under the Queensland Act in sections 21(1)(a) and 22(2)(b)(i). These requirements are able to be dispensed with under section 23, which is similar in scope to section 18(2) of the New South Wales Act.

In circumstances where a child needed ongoing medical care, I am aware of a case in Queensland where a colleague obtained an urgent order post-birth dispensing with the one month period, so that parental responsibility could be provided in the hands of the intended parents.

It is suggested below that there be auto-recognition in non-contentious cases.

C. PARENTAL RESPONSIBILITY

Sometimes children are born with ongoing medical requirements. A recent example of such a case was where the child was born at 26 weeks and survived. The parentage order was made precisely on the six month anniversary of the child's birth, but the child remained in hospital. He had a series of life-threatening episodes and significant medical intervention. Even six months after his birth, he remained in intensive care.

The issue facing the intended parents at birth in that case was that they did not evidently have parental responsibility. Our clients instructed us that the reason that the genetic father was named on the birth certificate (when, according to parentage presumptions he should not have been²²) following the birth of the child was because of advice given by the hospital lawyer, so that one of them at least had parental responsibility.

There are ongoing issues with ensuring that a child has someone who has parental responsibility. As research undertaken by the Law Commissions of England and Wales and Scotland,²³ as well as other research undertaken, most recently by fertility counsellor Narelle Dickinson of Brisbane²⁴, surrogates do not identify themselves as the parents, but consider that the intended parents are the parents. To paraphrase the words of the California Supreme Court²⁵, but for the acted-on intention of the intended parents, the child would not exist²⁶.

²² As seen in NSW, for example, in *S v B; O v D* [2014] NSWSC 1533.

²³ <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/06/Surrogacy-consultation-paper.pdf>.

²⁴ Presented at the recent FSANZ conference.

²⁵ *Johnson v Calvert* (1993) 5 Cal. 4th 87.

²⁶ P.93.

The intended parents are therefore faced with a number of options as to how they are able to provide parental responsibility to make decisions whilst the child is in hospital. Those options are:

1. Where possible, bring the court proceedings forward to enable a parentage order to be made. This is possible as I said, in Queensland, but is not possible in the Northern Territory under its *Surrogacy Act 2022* (NT), for example. This is an expensive and stressful option. Immediately after the child's birth, the costs that might have been staggered in time suddenly have to be done urgently, which means that legal fees of the intended parents' lawyers will be necessarily increased to cope with the emergency. When the intended parents are seeking to focus on the medical needs of their child, their time is focussed instead on preparing for court.
2. In the alternative, obtain an order under the Supreme Court's *parens patriae* jurisdiction. Again, this is doable, but expensive.
3. Obtain an order in urgent circumstances for parental responsibility under the *Family Law Act 1975* (Cth). This is also an expensive, time consuming and stressful exercise for all concerned, but particularly the intended parents.
4. Name the intended father or one of the intended genetic parents on the birth certificate as the parent. Whilst this may be done, as seen in that recent case described above, an offence might be committed in the process, and is a practice of which the judiciary has been rightly critical, at least in NSW²⁷.
5. If the surrogate is part of a couple or is considered to be parent under the *Family Law Act*, and at least a genetic intended father would be considered to be the other parent under the *Family Law Act* (consistent with the recent decisions in *Seto & Poon* described above and *Tickner & Rodda* described above) then a parenting plan can be entered into under the *Family Law Act*, which requires two parents to enter into the plan²⁸. Others can also be parties²⁹.

Example of a parenting plan

The child Max was born in South Australia. The intended parents, husband and wife, were a married couple living in Queensland. The wife's sister was married and was the surrogate. The wife's sister and brother-in-law lived in Adelaide.

The parties entered into a parenting plan which provided for parental responsibility to the intended parents. The parenting plan was used for decisions concerning parental responsibility for care in the hospital in Adelaide, for the Medivac service to Queensland and for the hospital in Queensland.

A difficulty with a parenting plan is that both parents have to be identified. Who is a parent under the *Family Law Act*, following the decision in *Masson v Parsons* [2019] HCA 21, remains uncertain.

In my own case, a parenting plan might have been entered into, but it did not appear to be appropriate (having been considered prior to either the decisions in *Seto & Poon* or *Tickner & Rodda*), as it was unclear whether there was one, two or three parents, a matter subsequently

²⁷ See footnote 14.

²⁸ S.63C(1)(ba).

²⁹ S.63C(3)(c).

determined in the Childrens Court in my matter after 30 pages of submissions by me on the point, then confirmed in a subsequent case in which my submissions were accepted³⁰.

After my daughter was born

My daughter was born at 1.15 a.m. in Brisbane, in Queensland's busiest maternity hospital, which had had many surrogacy births before. My husband and I were the intended parents under a Queensland surrogacy arrangement. Our surrogate was single.

At about 6 p.m. that night, our surrogate was cleared to go home, until she mentioned that she had been a surrogate. Our daughter had to remain in overnight. This was the first time that the hospital encountered the possibility that the surrogate would be leaving before the child.

The decision to allow the surrogate to leave was considered by one, then two, then three midwives and then referred to one, then two, then three hospital executives, before heading to the hospital lawyer.

While my husband was caring for our newborn baby in our room, I was standing in a hospital corridor with our surrogate and an officer of the hospital, in one of those scenes that we have seen in umpteen TV dramas. Why it could not occur in an office or a private space, I do not know. The surrogate and I were told that the advice from the hospital lawyer was that our surrogate was the "*only parent*" and that it was "*advisable*" (with the hospital official doing quotation marks with her fingers in the corridor as she said *advisable*) that our surrogate not leave.

The implications for our surrogate and me were obvious – if she left at that moment, then she was abandoning the child and, by implication, the hospital would notify child safety – with all that flowed from that.

Our surrogate felt violated, ran to her room, cried the night and refused to speak to anyone.

I felt completely gutted. Even though I was one of the two driving forces to have a child and that my husband and my daughter were in the next room, the law did not recognise either of us as a parent – at least in the eyes of the hospital's lawyer.

It was a thoroughly demeaning and humiliating experience, but even worse for our beloved surrogate.

I do not want anyone else to go through that process – but the current legislative settings requiring intended parents not to be able to apply to court for up to six weeks (or a month) after the birth of the child will necessitate a repeat of that conversation in hospital rooms around the country, including in the ACT.

Following that experience by me, I am now firmly of the view that there ought to be, in non-contentious cases or cases where the intended parents do not require a parentage order, the ability to have auto-recognition of the intended parents as the parents.

³⁰ *RBK v MMJ* [2019] QChC 42.

D. AUTO-RECOGNITION

Although this is a novel concept for Australia, auto-recognition occurs in the US in Illinois and Pennsylvania and in three Canadian provinces: British Columbia (the first), then Ontario and most recently Manitoba. Under the *Assisted Human Reproduction Act*, surrogacy in Canada must be altruistic.

Auto-recognition has been recommended by the Law Commissions of England and Wales and Scotland to occur in the UK³¹. It has also been recommended in its surrogacy review by the Law Commission of New Zealand. One of the reasons is obvious- the law is getting in the way, in non-contentious cases, as to what all the parties have agreed: that the intended parents are the parents of their long awaited miracle (and that the surrogate is not a parent).

United Kingdom

The UK Law Commissions in their surrogacy consultation report stated³²:

“Our key provisional proposal is for the creation of a new surrogacy pathway which, when followed, would mean that the intended parents of a surrogate-born child are the child’s legal parents from birth, unless the surrogate objects. The consequence of this provisional proposal is that the surrogate would not be the legal parent of the baby or babies to whom she has given birth. As we explain, in making this proposal we had paid particular regard to the views of both intended parents and, importantly, surrogates, who have spoken to us. The overwhelming view of intended parents and surrogates is that recognising the intended parents as legal parents from birth reflects the wishes and intentions of all the parties to a surrogacy arrangement. We take the view that the law should reflect what the parties intend in terms of legal parenthood and that it can do so because, as we explain in this chapter, we think that this will best promote the welfare of the child.”

The UK Law Commissions in their final report said³³:

“We think that the most effective way of tackling the problems with the current law is to introduce a new surrogacy pathway. The new pathway will introduce essential safeguards before conception, so that state regulation comes before, not after, the birth of the child. If these safeguards are complied with, and eligibility conditions are met, then the intended parents and surrogate will be eligible for admission to the new pathway, which will enable the intended parents to become the child’s legal parents at birth.

There was much support for this change among consultation responses, as well as much concern and objection. We think that recommending the new pathway is justified by the need to protect the best interests of the child. The safeguards we propose on the new pathway are intended to address the concerns and objections raised by some consultees.

Under the new pathway there will be no requirement for an application to be made to the court for a parental order. Instead, the new pathway will be overseen by non-profit-making surrogacy organisations who will be regulated by the Human Fertilisation and Embryology Authority. We refer to these organisations as Regulated Surrogacy Organisations (“RSOs”). The new pathway represents a significant shift from the current regime, from a judicial to an

³¹ Which I have called “UK Law Commissions” but did not include that for Northern Ireland.

³² <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/06/Surrogacy-consultation-paper.pdf> at [7.3].

³³ <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2023/03/1.-Surrogacy-core-report.pdf> at [2.1]-[2.5].

administrative process. It is a shift which prioritises the child's best interests and respects the intentions of all the parties when they enter into the surrogacy agreement.

We hope that a system which recognises the intended parents as the child's legal parents from birth should ensure that surrogacy parties follow the new pathway.

Where they do not (or are not eligible for admission to the new pathway), it may be possible for the intended parents to seek a parental order instead.... We have sought to make our recommendations on payments, eligibility and other areas consistent between the new pathway and parental orders.

We recommend that the new pathway be available to all domestic surrogacy agreements, where the surrogate and intended parents are based here and assisted reproduction procedures take place here, whether they involve traditional or gestational surrogacy. We heard no evidence that traditional agreements break down more frequently, and we view both types of agreement as based on the same shared intentions. RSOs alone will be able to authorise a surrogacy agreement to access the new pathway. International surrogacy arrangements will not be eligible for the new pathway."

The Law Commissions' recommendations have not been legislated. Australia has only one organisation comparable to RSO's- Surrogacy Australia Support Service. Given the size of Australia, the size of the ACT, and our federation, and that there is only one such organisation, the RSO model is not proposed by me.

New Zealand

The New Zealand Law Commission stated, in its review³⁴:

"This Report recommends a new legal framework for determining legal parenthood in surrogacy arrangements. Surrogacy should be recognised as a legitimate method of family building that is distinct from adoption. Our recommendations accommodate all forms of surrogacy arrangements as we think that this will best promote the paramountcy of children's best interests.

Alongside a new framework for determining legal parenthood, we recommend a surrogacy birth register to preserve information for surrogate-born people about their genetic and gestational origins and whakapapa. We know from the experiences of adopted and donor-conceived people that such information is fundamental to a person's identity and wellbeing."

In the words of the New Zealand Law Commission³⁵:

"The legal assumption that the surrogate and her partner are the parents of a surrogate-born child at birth is said to create a "legal fiction", especially if they are not the child's genetic parents."

Further:

"Many people who enter surrogacy arrangements will be open with the resulting child about the circumstances of their conception and birth. However, the law's failure to reflect the

³⁴ <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-Report146-Review-of-Surrogacy.pdf> at foreword.

³⁵ <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-Report146-Review-of-Surrogacy.pdf> at [6.20].

reality of surrogacy arrangements obscures the child's genetic and gestational origins and their whakapapa and enables legal fictions to be maintained. This is contrary to the child's rights and best interests. As the Verona Principles state, the child's ability to preserve their identity, including their genetic, gestational and social origins, "has an on-going, lifetime impact on the child and future generations, in particular from the perspective of the child's right to identity, health and cultural rights"."

The NZ Law Commission stated, (also reflecting, in large part in my view, the position in the ACT)³⁶:

"As well as the risk of obscuring a child's genetic and gestational origins and their whakapapa³⁷, the law's failure to reflect the reality of surrogacy arrangements is also problematic for the following reasons:

- (a) ***The law fails to promote the child's best interests.*** *The current law creates a split between the intended parents' social (and often genetic) parenthood and the surrogate's legal (but often not genetic) parenthood until such time as the adoption is finalised. We do not think it is in the child's best interests to have no legal relationship with the intended parents during this time. It leaves the intended parents without any legal responsibilities to the child. Likewise, it may not be in the child's best interests that their only legal relationship is with the surrogate and her partner when they have no intention to raise the child themselves.*
- (b) ***The law does not respect the intentions of the surrogate and intended parents.*** *Their joint intention is that the child should, from birth, be raised by the intended parents. The law is out of step with the weight given to the parties' intentions in donor gamete conception. Recipients of donated gametes are the legal parents of any donor-conceived child rather than the donor(s). This gives priority to the intentions of parties who have created children using donor gametes rather than genetic parenthood. In contrast, the law does not produce the legal and social result intended in the case of surrogacy.*
- (c) ***The law is confusing and capable of being misapplied.*** *The rules in the Status of Children Act were designed to clarify legal parenthood in situations of donor gamete conception rather than in surrogacy arrangements. The fact that the surrogate's partner is a legal parent is particularly inappropriate, and there are several examples where an intended father rather than the surrogate's partner is recorded on the child's birth certificate as the child's legal father even though that is inconsistent with the law.*
- (d) ***There is a disconnect between the regulation of surrogacy and the recognition of legal parenthood.*** *In Chapter 4, we outline the robust regulatory framework that requires prior approval of gestational surrogacy arrangements by ECART. Given the existence of this regulatory framework, it is problematic that there is no corresponding downstream recognition of surrogacy as a process that creates a legal parent-child relationship between the intended parents and the surrogate-born child.*
- (e) ***The law may be inconsistent with public attitudes.*** *The Surrogacy Survey asked respondents an open question about who the legal parents in a surrogacy arrangement should be. The most common answer given was the "intended parents" (52 per cent), while others gave a range of responses, such as the genetic parents of the child (11 per*

³⁶ At [6.27].

³⁷ Genealogical descent of all living things from God to the present day.

cent) or some form of joint parenthood (five per cent). Only five per cent of respondents who answered this question thought that the surrogate should be the child's legal parent."

The New Zealand Law Commission recommended that there be an administrative pathway (Pathway 1) under which the intended parents would be recognised as the legal parents of the surrogate-born child by operation of law provided two key conditions are met:

- (i) The surrogacy arrangement was approved by ECART.
- (ii) After the child is born, the surrogate confirms her consent to relinquish legal parenthood.

[I note that Australia does not have a similar regulatory environment to that of ECART in New Zealand, other than in Victoria and Western Australia. The two recent reviews in WA have recommended the abolition of the Reproductive Technology Council. There was significant criticism of the Patient Review Panel by stakeholders in the Gorton Review, even though that was outside the terms of reference³⁸.]

- (b) A court pathway (Pathway 2), which would apply whenever the administrative pathway does not apply. The surrogate would be the legal parent at birth, and an application can be made to the Family Court to transfer legal parenthood to the intended parents.

The Commission also explored the alternative options of a pre-birth judicial model and a contractual model, but discounted these options.

In the words of the Commission³⁹:

"Both pathways would have the same effect. The child would become the legal child of the intended parents and cease to be the legal child of the surrogate.112 This would mean the surrogate would cease to have any legal parental rights or responsibilities in respect of the child that flow from legal parenthood and the child will be considered, with regard to all the legal rights and responsibilities of parents and children in relation to each other, as the child of the intended parents."

Further⁴⁰:

"Providing an administrative pathway to determine legal parenthood in surrogacy arrangements recognises surrogacy as a legitimate form of family building that, like other forms of assisted reproductive procedures, should not require judicial oversight if appropriate safeguards are in place. Our recommendations for an administrative pathway also:

- (a) ensure the surrogate-born child can be cared for from birth by those who intend to raise the child and confer legal parenthood on the intended parents at an early opportunity;*
- (b) reduce the administration, cost and delay intended parents face when seeking to be recognised as the surrogate-born child's legal parents;*
- (c) give greater weight to the parties' shared intentions;*

³⁸ Gorton Review, *Interim Report* (2018), pp.123-125.

³⁹ At [6.95].

⁴⁰ At [6.96]-[6.97].

- (d) *provide greater clarity and certainty about the parties' rights and obligations;*
- (e) *remove cases from the court system where judicial oversight is not required;*
- (f) *provide a clear incentive to utilise the ECART process, which may reduce the risk of problems arising during and after the pregnancy; and*
- (g) *promote consistency with international best practice and with developments in comparable jurisdictions, including law changes in Canada and proposals currently being considered in England, Wales and Scotland.*

6.97 *Our expectation is that the administrative pathway will be the primary means of establishing the intended parents' legal parenthood in domestic surrogacy arrangements."*

The court pathway would reserve judicial oversight for cases that require greater scrutiny. The Commission rejected a pre-birth judicial model as it considered it problematic because it raised public policy concerns in relation to the timing of the surrogate's consent⁴¹, and that those surrogacy arrangements that do not fit the usual model "*are best accommodated by a post-birth ...Court process.*"⁴²

The Law Commission endorsed pathway one also being for traditional surrogacy because while intending to safeguard the parties may expose them to a higher degree of risk⁴³. This may discriminate against those who are unable to contribute their own gametes.

The Law Commission's recommendations have not been legislated.

My proposal

Recently, I was asked by Rainbow Families New South Wales to prepare an outline for auto-recognition in the ACT for children born via surrogacy. I do so below. It is consistent in broad terms with the proposals by both the UK and New Zealand Law Commissions and consistent with best practice internationally. It also meets the test of parentage as set out in *Masson v Parsons*.

The requirements would be:

1. Before the parties entered into the surrogacy arrangement:
 - a. independent legal advice from separate Australian legal practitioners was given respectively to:
 - i) the intended parent or intended parents; and
 - ii) to the birth mother (and, if she has a partner, the birth mother's partner).
 - b. all of the parties have undertaken counselling with a qualified counsellor.
2. The parties have entered into a surrogacy arrangement:
 - a. when each of them was aged 25 years or older;

⁴¹ At [6.99].

⁴² At [6.100].

⁴³ At [6.101]- [6.102].

- b. was in writing;
 - c. was signed by each of them;
 - d. before the child was conceived;
 - e. which was an altruistic surrogacy arrangement, in accordance with the provisions of the Act;
 - f. which provided that the birth mother will be the birth mother of a child conceived through assisted reproduction (including artificial insemination) and that, on the child's birth:
 - i) the birth mother (and, if she has a partner, the birth mother's partner) will not be the parents of the child; and
 - ii) the birth mother (and, if she has a partner, the birth mother's partner) will surrender the child to the intended parent or parents; and
 - iii) the intended parent or parents will be the child's parent or parents.
3. Before the child is conceived, no party to the agreement withdraws from the agreement.
 4. The child was born in the ACT.
 5. After the child's birth:
 - a. notice is given by the intended parent or parents in the prescribed form to the central registry advising of the birth of the child, providing relevant particulars;
 - b. the birth mother (and, if she has a partner, the birth mother's partner) gives written consent to surrender the child to the intended parent or parents; and
 - c. the intended parent or parents take the child into his or her or their care.

E. BENEFITS OF AUTO-RECOGNITION

There are several benefits of auto-recognition:

1. Most importantly, certainty as to who is a parent is determined by agreement. It is intended that this will occur in only the most straightforward, compliant, non-contentious cases. It is intended that this would be by using relevant forms to be prescribed by the Registrar of Births, Deaths and Marriages both as to the intended parents and for the surrogate and her partner.
 2. Auto-recognition will mean less of a burden on the judicial resources of the ACT. It will also mean that intended parents save considerable money in legal fees for lawyers to draft the relevant material before the court. My experience over the last 12 years is that two-thirds of the money paid by intended parents for their legal process is at the end of the process, not at the beginning.
 3. It reflects the wishes of the parties- namely that all of them are of the view that the only parents are the intended parents.
 4. It is no fuss, and is cheap, simple, quick and efficient.
-

5. While being pioneered in Australia, consistent with the ACT's leading role in surrogacy law in Australia, the auto-recognition model proposed is based on a tried and true method in place in British Columbia since 2011, since copied elsewhere in Canada, an altruistic surrogacy country.
6. Consistent with the approach of the High Court in *Masson*, the process is consistent with who is a parent under the *Family Law Act*, being based on a number of factors, including intent, without the need to obtain an order.

There will be cases where intended parents wish to obtain a parentage order from the court. Typically, they would be:

1. Where the intended parents want their parentage to be recognised overseas, for example, if they intend to live overseas, or wish their child to be able to take up other citizenship than Australian. My experience is that officers of the Department of Home Affairs, for example, are more likely to recognise a parentage order made overseas than to have to give them an opinion about autorecognition under a statute of an overseas State or Province. An order on its face clearly sets out what it achieves as opposed to a lengthy letter about an arcane statutory scheme. Clients of mine have undertaken surrogacy in British Columbia, Ontario, Manitoba, Pennsylvania and Illinois. While auto-recognition has been used by them on occasion, typically I would recommend obtaining a court order, given issues in applying for Australian citizenship by descent and passports. As seen in *Re Family Law Act*, 2016 BCSC 22, the courts in British Columbia have made orders when needed, despite the auto-recognition model. In that case, a couple from Quebec sought that an order be made, as there was uncertainty under Quebec law about whether they would be recognised as parents in Quebec. Parentage law in Canada is determined province by province. The order was made.
2. More complex matters which require judicial oversight- for example, one of the parties is under 25, or the child is born interstate (as commonly occurs), or there is an issue that requires dispensation, much like case 3 on p.43.
3. Where the surrogate or her partner have withheld consent to the making of a parentage order, then there ought to be the power of the court to override that. In circumstances where the surrogate or her partner withhold consent, auto-recognition will not be available. As seen in the cases of *Lamb & Shaw*, *Seto & Poon* and *Tickner & Rodda* the surrogate has withheld consent for whatever reason (including in *Seto* for the purposes of extortion). I deal with the issue of overriding the refusal below.

F. EXPLANATION OF THE AUTO-RECOGNITION PROPOSAL

The intention is to make the requirements, whether by auto recognition or court order the same. The requirements in paragraphs 1 and 2a, b, c, d and e are in effect requirements of the *Parentage Act* currently or may soon be.

The reference in requirement 1b, namely, to be a *qualified counsellor* is a reference to the term used in the *Surrogacy Act 2010* (NSW). It is intended by use of that term that who is a qualified counsellor in the ACT be the same person as to who is a qualified counsellor in New South Wales, given in effect that the ACT is an island in New South Wales. The expectation would be that the counselling provided most commonly would be by someone who is either practising in the ACT or New South Wales or both.

The requirement in 2a, namely, that all the parties are 25 years or older, is on the assumption that the Act would require this. Although there should be the ability, as discussed above, to enable with

requisite maturity to decrease the age below 25 for any of the parties, that should not be a straightforward matter and should be plain to the parties that in order to achieve parentage, there will necessarily be judicial oversight.

The requirement in paragraph 2d “*before the child was conceived*” is taken from section 22(2)(e)(iv) of the *Surrogacy Act 2010* (Qld) which provides that the surrogacy arrangement “*was made before the child was conceived*”.

Conceived is not defined under the Queensland Act or indeed in any Australian *Surrogacy Act*. The New South Wales Act which requires a preconception surrogacy arrangement, although referring to pregnancy in section 5 does not clarify what is conception. The intention in the original SCAG surrogacy discussion paper was for surrogacy arrangements to be pre-conception surrogacy arrangements- so that the surrogate can give informed consent, and not be the subject of duress or undue influence when entering into the arrangement when already pregnant.

Conception was decided in *LWV v LMH* [2012] QChC 26 as being the act of pregnancy. It was the first case in the world to decide what was conception. My submissions on point were accepted. I acted for the surrogate.

The requirement in 2f that the birth mother will be the birth mother of a child conceived is taken from section 29 of the *Family Law Act 2011* from British Columbia. I have used the similar provisions in 2f(i)-(iii) and in 3 and in 5b and 5c.

As I said above, British Columbia is one of the three Canadian provinces that have auto-recognition for surrogacy and was the first. Section 29 of the *Family Law Act SBC 2011*, c.25, which commenced in 2013⁴⁴, provides:

- “(1) In this section, “**surrogate**” means a birth mother who is a party to an agreement described in subsection (2).
- (2) This section applies if,
 - (a) before a child is conceived through assisted reproduction, a written agreement is made between a potential surrogate and an intended parent or the intended parents, and
 - (b) the agreement provides that the potential surrogate will be the birth mother of a child conceived through assisted reproduction and that, on the child’s birth,
 - (i) the surrogate will not be a parent of the child,
 - (ii) the surrogate will surrender the child to the intended parent or intended parents, and
 - (iii) the intended parent or intended parents will be the child’s parent or parents.
- (3) On the birth of a child born as a result of assisted reproduction in the circumstances described in subsection (2), a person who is an intended parent under the agreement is the child’s parent if all of the following conditions are met:

⁴⁴ S. Carsley, *Surrogacy in Canada: Lawyers’ Experiences, Practices and Perspectives* (2020) at p.60.

-
- (a) *before the child is conceived, no party to the agreement withdraws from the agreement;*
 - (b) *after the child's birth,*
 - (i) *the surrogate gives written consent to surrender the child to an intended parent or the intended parents, and*
 - (ii) *an intended parent or the intended parents take the child into his or her, or their, care.*
 - (4) *For the purposes of the consent required under subsection (3)(b)(i), the Supreme Court may waive the consent if the surrogate:*
 - (a) *is deceased or incapable of giving consent, or*
 - (b) *cannot be located after reasonable efforts to locate her have been made.*
 - (5) *If an intended parent dies, or the intended parents die, after the child is conceived, the deceased intended parent is, or intended parents are, the child's parent or parents if the surrogate gives written consent to surrender the child to the personal representative of the person acting in the place of the deceased intended parent or intended parents.*
 - (6) *An agreement under subsection (2) to act as a surrogate or to surrender a child is not consent for the purposes of subsection (3)(b)(i) or (5) but may be used as evidence in the parties' intentions with respect to the child's parentage if a dispute arises after the child's birth.*
 - (7) *Despite subsection (2)(a), the child's parents are the deceased person and the intended parent if*
 - (a) *the circumstances set out in section 28(1) [parentage if assisted reproduction after death] apply,*
 - (b) *before a child is conceived through assisted reproduction, written agreement is made between a potential surrogate and a person who is married to, or in a marriage-like relationship, with the deceased person, and*
 - (c) *subsections (2)(b) and (3)(a) and (b) apply."*

In 2f, I note that the Act prevents traditional surrogacy, requiring conception to be via a procedure, i.e. embryo transfer. This language that I have written includes procedure as well as artificial insemination, so as inclusive of traditional surrogacy occurring at home. It does not include natural insemination, which is more appropriately dealt with by adoption or judicial determination. There has been a surrogacy case in Australia where the child was conceived naturally, from Tasmania: *Lowe & Barry* [2011] FamCA 625. Surrogacy legislation is able to deal with natural insemination if needed, as seen, for example, in section 6, *Guiding Principles* of the Queensland *Surrogacy Act*.

Requirement 4 is an obvious one, namely, that the ACT will not have jurisdiction for auto-recognition for a child born outside the ACT. In that case, an order will be needed.

If (and I am not advocating for this, but drawing it to your attention as an option), the ACT wished to widen its jurisdiction (which is not proposed under the auto-recognition proposal), it could do

so by copying, with appropriate changes, what is contained in the *California Family Code*, s.7962(e), which relevantly provides:

“An action to establish the parent and child relationship between the intended parent or parents and the child as to a child conceived pursuant to an assisted reproduction agreement for gestational carriers may be filed before the child’s birth and may be filed in the county where the child is anticipated to be born, the county where the intended parent or intended parents reside, the county where the surrogate resides, the county where the assisted reproduction agreement for gestational carriers is executed, or the county where medical procedures pursuant to the agreement are to be performed.”

Such a measure may encourage intended parents to undertake their IVF in the ACT. However, if the child is not born in the ACT, such a proposal may also require more judicial resources.

The requirement in clause 2f(i) that the birth mother and her partner will not be the parents of the child is not only significant for copying what is contained in the section of the British Columbia law, but it is also important in the Australian context because of the effect of the High Court decision in *Masson v Parsons* [2019] HCA 21. Who is a parent under the *Family Law Act 1975* (Cth) is a question of fact, determined in each case, as to who is seen in the wider view of Australian society to be a parent. The High Court held in that case that intention was one of the factors that was determinative of whether Mr Masson was or was not a parent. In bringing intention into the mix as one of the factors in determining parentage, the High Court followed the approach of the Federal Court concerning citizenship⁴⁵, and rejected the approach of the Family Court which had refused to consider intention as one of the factors⁴⁶.

The drafting of this proposal is consistent with the approach by the High Court in *Masson*. The High Court held that where there was a conflict between the *Family Law Act* and the State or Territory *Status of Children Act* (in this case, the *Parentage Act*), the former prevailed. By signing a surrogacy arrangement whereby the intention was demonstrated for someone to be or not to be a parent would be a powerful factor, consistent with *Masson*, about who is, or who is not a parent, a factor that was clearly identified under section 29(6) of the British Columbia *Family Law Act* in determination of a later dispute.

I have drafted the requirement for the prescribed form to be given to the Central Registry in requirement 5a because of the desire of the ACT Government to have a Central Registry. This is a mandatory requirement under section 37 of the New South Wales *Surrogacy Act*. The existence of a central register in the ACT for this clause has been assumed. I have copied the New South Wales approach.

With that auto-recognition, cases such as mine should be able to be avoided. There should be a clear direction given to hospitals and doctors as to who has parental responsibility for a child who is in hospital or who needs urgent medical care without the need of expending significant resources and significant judicial resources determining that issue. As was said about the British Columbia law⁴⁷, legislation will provide for greater certainty and ensure that parties are adequately informed about the effects of these arrangements.

The auto-recognition model would ensure that the child was an Australian citizen, because the child would be born in Australia, and at least one parent of the child (i.e. an intended parent) would

⁴⁵ *H v Minister for Immigration and Citizenship* [2010] FCAFC 119; *Minister for Immigration, Citizenship and Multicultural Affairs v Lieu* [2023] FCAFC 57.

⁴⁶ E.g., *Parsons & Masson* [2018] FamCAFC 115.

⁴⁷ British Columbia, *Official Report of Debates of the Legislative Assembly*, 39-4, Vol 28, No 2 (17 November 2011) at 8854.

be an Australian citizen or permanent resident: *Australian Citizenship Act 2007* (Cth), s.12. A genetic link to the child is not required for the child to be a citizen under s.12⁴⁸.

If neither intended parent is an Australian citizen or permanent resident, then an order would be needed. I have never come across such a case. It would be extremely rare.

For cases that fall outside pathway 1- auto-recognition, there remains pathway 2- post-birth judicial determination. Courts should be given discretion in matters that are non-conforming, so that the child is protected, enabling the court to make a parentage order if it considers it appropriate to do so in the special circumstances and in the best interests of the child. I have suggested a provision along the lines of s.23 of the Queensland Act⁴⁹.

G. STILLBORN CHILDREN

The UK Law Commissions have carefully considered the position of stillborn children. In its consultation paper, it considered that the intended parents should still be recognised as the parents of the stillborn child. In the final report, they moved to the surrogate being the parent⁵⁰:

“On reflection, we consider that this approach does not sufficiently respect the connection between the surrogate and the stillborn child.”

Instead, they recommended⁵¹:

“ that following a stillbirth, the surrogate will be the legal parent of the stillborn child regardless of whether the agreement was on the new pathway, or one for which a parental order would have been required. The surrogate will be able to affirmatively consent, after birth, to the intended parents being the legal parents. If the surrogate does not provide that consent, her decision is final; to take a position otherwise, in our view, would not sufficiently respect the bodily autonomy of the surrogate.

If the surrogate consents to the intended parents being the legal parents of the stillborn child, they will be able to register the stillbirth, and, in Scotland, will be able to make arrangements for burial or cremation.”

They also recommended that only the surrogate be the person to consent to a post-mortem of the stillborn child.

I endorse these carefully considered recommendations. While there is some utility, instead of there being auto recognition of the intended parents, and instead having a court order:

- Before conception authorising the surrogacy arrangement (by which the intended parents are automatically recognised as the parents on the birth of the child)⁵², or
- an order before the birth of the child by which the intended parents are recognised as the parents of the child upon birth⁵³,

⁴⁸ *H v Minister for Immigration and Citizenship* [2010] FCAFC 119; *Minister for Immigration, Citizenship and Multicultural Affairs v Lieu* [2023] FCAFC 57.

⁴⁹ See case 3 on page 43.

⁵⁰ <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2023/03/2.-Surrogacy-full-report.pdf> at [4.172].

⁵¹ At [4.173]-[4.175].

⁵² As occurs in Greece, Virginia and South Africa, for example.

⁵³ As occurs in many US States, such as California, several Mexican States and Buenos Aires, for example.

neither model in my view adequately deals with a child who is stillborn, which the proposed UK model does. The NZ Law Commission also rejected pre-birth orders⁵⁴.

H. DEATH OF THE CHILD

The UK Law Commissions also considered what might occur with the death of the child. They stated⁵⁵:

“Where the surrogacy agreement has proceeded on the new pathway, we take the view that the death of the child more than six weeks after birth is covered by the general proposal we make regarding the legal parental status of the intended parents. That is, in the new pathway, where:

- (1) the child dies having survived beyond the six-week period of the surrogate’s right to withdraw her consent; or*
- (2) dies within six weeks but the surrogate does not exercise her right to withdraw her consent during the six-week period then the child will, for all purposes, be the legal child of the intended parents.*

In these circumstances, in our preferred model of birth registration the intended parents can simply register the child’s birth and there is no need for a separate recommendation on this point. In the alternative model of birth registration, the surrogate would need to register the birth, and a parental order certificate would still be automatically produced in the names of the intended parents after six weeks.

A specific issue arises in respect of cases outside the new pathway where the child is born alive but subsequently dies before the parental order is made. In this case, the child may have died very shortly after birth, possibly as a result of complications or significant health issues; or alternatively, they may have had a healthy start to life and have been living with the intended parents in an established family for many months before their death. Whenever the death happens, it will be a tragedy for the parents and wider family, as it is where any child of a family dies. In the Consultation Paper, we provisionally proposed that where the child died before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents (before the expiry of the period allowed for registration of the birth), provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.”

Instead, they⁵⁶:

“ now recommend that, where the child has died, there be a post-mortem parental order process. This would be available where the child has died:

- (1) following an agreement which was never on the new pathway, and a parental order would in any event have been required in order for the intended parents to be the child’s legal parents;*

⁵⁴ See page 29 of my submission.

⁵⁵ At [4.178]-[4.180].

⁵⁶ At [4.187]-[4.193].

- (2) *following an agreement in the new pathway where the surrogate had withdrawn consent prior to the birth, so that the surrogate would be the legal parent at birth and the intended parents would need to seek a parental order; or*
- (3) *following an agreement in the new pathway where the child has died, and the surrogate had withdrawn her consent within the six-week period after birth (regardless of whether the surrogate withdrew consent before or after the child's death). In this situation, the intended parents would be the legal parents.*

In these first two situations (that is, where the surrogate is the legal parent at the time

of the child's death), it should be possible for the intended parents to apply for a post-mortem parental order so that they can be recognised as the parents of the deceased child. We recommend that the court be obliged to make such an order where the agreement meets relevant criteria for a parental order to be granted in the case of a living child. Clearly, in the instance of the child's death, the criterion that the child's home be with the intended parents would simply not be relevant. The best interests of the child test would also not apply.

For an order to be made, the surrogate would need to consent. There would be no power for the court to dispense with her consent, in contrast to the position that we recommend in respect of a living child, because the test for doing so would be the best interests of the child, which cannot apply.

In the new pathway situation set out above at (3), where the intended parents are the legal parents and the surrogate then withdraws consent, the surrogate would be able to apply for a post-mortem parental order. Again, the court may only make the order with the consent of the intended parents. Where this consent is forthcoming and the relevant criteria for an order to be made in the case of a living child are met, we recommend that the court be obliged to make an order.

We are conscious that all these options place grieving parties under a burden to make a parental order application. There is no easy solution here, given the very distressing nature of the circumstances. However, there is also no compulsion on any party to seek a post-mortem parental order.

The system of birth registration in relation to surrogacy that we recommend ... below would apply in these circumstances in the same way as it would if the child had not died. With regard to the registration of death we recommend that the intended parents and surrogate, whichever is not the legal parent, should be added to the list of those able to act as informants of a death ..., if they intend to apply for a parental order or have such an application pending."

I endorse this carefully considered approach.

I. OVERRIDING THE SURROGATE'S OR PARTNER'S REFUSAL

Although *Lamb*, *Seto* and *Tickner* all involved the surrogate not handing over the child, the more common case is for the surrogate to hand over the child, and then if there is an issue between the surrogate and the parents, decline to consent to the making of an order.

These withholding of consent cases should end. There will be cases where surrogates have legitimately withheld consent. Those matters typically resolve. But in cases where the surrogate or her partner have withheld and continue to withhold consent, and there appears no legitimate reason

for doing so, then the court should, in the exercise of discretion, be able to override that refusal, but always subject to the caveat that to do so is in the best interests of the child.

*Johnson v Calvert*⁵⁷ from California was such a case. Anna Johnson was paid US\$10,000 by the intended parents, Mark and Crispina Calvert, to be the surrogate. An embryo comprising Mark and Crispina's DNA was implanted into Anna. The deal fell apart. Anna maintained that she was the mother, and was therefore entitled to keep the child. The Calvert's maintained that because they intended to be the parents, therefore they were the parents- which was agreed to by the California Supreme Court.

Therefore, the Court was able to overcome Anna Johnson's intransigence to allow the child, who was genetically related to Mark and Crispina, and not Anna, to live with Mark and Crispina. The critical point for the court was what was the point of the agreement. It was not to implant an embryo into Anna to enable her to become a parent, but for Mark and Crispina to become the parents.

Without going to the Federal Circuit and Family Court, such an outcome is not possible in the ACT. As *Seto* and *Tickner* demonstrate, even if the intended genetic father is recognised under the *Family Law Act*, that only solves half the puzzle. To be able to ensure that the other intended parent is recognised as a parent (assuming the intransigence of the surrogate and or her partner remains) might require a step-parent adoption application, part of which would require the dispensation of consent of the surrogate and her partner⁵⁸. That step is costly, slow and painful. It is much better to allow the court that determines parentage under surrogacy legislation to be empowered to sensitively deal with and allow the intended parents to be recognised as the parents.

My 2014 South Australian case

In 2014 I was asked to act for a South Australian gestational surrogate and her husband. Prior to my involvement, the processes in South Australia had been followed, and a child had been born and handed over to the intended parents.

However, at birth, my client's placenta had not given way for 1 ½ hours. After she returned home, she kept collapsing, on one occasion when she walked to her letterbox.

My client had to go back to hospital for surgery. While she was in hospital, my client was called by the intended mother, asking her when she was discharged, to collect the paperwork from the court so that the court case transferring parentage could be decided as quickly as possible.

My client was evidently traumatised from the birth. She was not ready to make any decisions. The intended parents, keen to get things done, somehow forgot the impact on my client. During the call from the intended mother, not once was my client asked:

"How are you?"

The parties engaged in counselling. The counsellor was not of the surrogate's choosing. She felt that she was being pressured in counselling just to say yes.

The matter came to court. My clients refused their consent. The applicants solicitor, based on the earlier consent given, sought to proceed. The judge declined to do so, and sensibly adjourned

⁵⁷ *Johnson v Calvert* (1993) 5 Cal. 4th 87.

⁵⁸ See *W & T* referred to at footnote 75.

the matter away, so as to enable the dust to settle, and to allow my clients to attend counselling of their choice, paid for by the intended parents.

The child was before the court.

The judge dealt with the matter in the most sensitive manner, noting the legitimate concerns of all parties:

- The recovery from surgery and a bad birthing experience of the surrogate.
- The impact on her husband.
- The legitimate desires of the intended parents to be recognised as the parents.
- Above all, the needs of the child to have his parents recognised.

When the matter was next before the court, my client's body had recovered. She and her husband had had the ability to process matters, through the passage of time, reflection, and the assistance of counselling.

The judge, again sensitive to the needs of all parties, travelled to my clients' hometown and sat there. The second hearing was held by the judge sitting in the body of the court at the same level as the parties and baby, all sitting in a circle.

The matter resolved amicably.

I have no doubt that other judges, faced with such a difficult case, would have taken a similar approach- even if empowered to override the refusal to consent of the surrogate and/or her partner- given the particularly sensitive issues concerned.

The case resulted in law changes in South Australia, so that:

- Prior to signing the surrogacy arrangement there is one fertility counsellor who sees all parties. South Australian law required that there be two. The difficulty was that there was no requirement that the counsellors act in unison- and they had not. The change required counselling to comply with NHMRC⁵⁹ and ANZICA⁶⁰ requirements.
- The surrogate could at her election have counselling after the birth, paid for by the intended parents. This remains a worthy objective.

My 2014 Victorian case

This occurred at the same time as my South Australian case. This was the case where there was an oral agreement, referred to on page 13. I was only engaged after the damage was done, after the child had been born, and the parties had fallen out.

⁵⁹ Comply with the National Health and Medical Research Council, *Ethical Guidelines on the use of assisted reproductive technology in clinical practice and research* (current edition, 2023).

⁶⁰ Australian and New Zealand Infertility Counsellors Association has issued surrogacy guidelines, which are mandatory for ANZICA members to follow. I assisted in the drafting of those guidelines.

The matter continued to spiral. The judge ordered that the parties attend a counsellor, who was to provide a report to the court. That report was not provided to the parties. However, it was clear that report recommended that the intended parents be recognised as the parents.

The difficulty for the court (and my clients) was that the court did not have the power to order that my clients become the parents. It could not make an order to that effect, after three court hearings, because the surrogate had not consented.

The pressure and acrimony between the parties, with allegations and counter-allegations, continued. It was only after the surrogate attempted suicide that she gave instructions to consent to the making of an order. The order was made only after her lawyer advised the court that they were confident that the surrogate had capacity.

It should not have come to this. If there had been a clear written agreement at the beginning, with clear expectations written in that agreement about who did what, what was to be reimbursed, and what was to occur after the child was born, such ugliness should have been avoided.

Given the need to protect the child's identity under art. 8 of the *UN Convention on the Rights of the Child* (the child being the product of the acted on intention of the intended parents' reproductive journey, most of the time being genetically related to one or both parents, and not to the surrogate and her partner), there should be the clear ability of the Supreme Court to make a parentage order when the surrogate and her partner have not consented, if the court is satisfied that there are special circumstances and in the best interests of the child. There is simply no ability under the *Parentage Act*, or under any *Surrogacy Act* nationwide to enable that judicial override to occur, except where the surrogate cannot be found or does not have relevant capacity. While the Supreme Court could exercise cross-vested jurisdiction under the *Family Law Act*, and make a determination in favour of the genetic intended father⁶¹, there is no reported Federal Circuit and Family Court has not yet held that the other intended parent is also a parent under the *Family Law Act*. The Court should have the clear ability to make a parentage order in those special cases, rather than leave the child's parentage uncertain.

J. FREEDOM OF CHOICE FOR PATIENTS

The Commonwealth has, since 1991, funded a subsidy towards the cost of assisted reproductive services through the Medicare rebate. The Commonwealth does not require where intended parents obtain medical help. They are able, under the *Health Insurance Act 1973* (Cth), to do so anywhere in Australia.

There has always been an exception, since 1991, as to the funding of assisted reproductive services for surrogacy if:

*“At the time of the service, the subject of the [pregnancy or intended pregnancy] the subject of an agreement, or arrangement, under which the patient makes provision for transfer to another person of the guardianship of, or custodial rights to, a child born as a result of the pregnancy.”*⁶²

The effect of the exception is that intended parents can create embryos today, prior to undertaking their surrogacy arrangement, knowing that they will be able to claim the Medicare rebate for the

⁶¹ As occurred in *Seto and Tickner*. By contrast see *W & T* referred to in footnote 75.

⁶² *Health Insurance (General Medical Services Table) Regulations 2021* (Cth), clause 5.2.6.

IVF cycle, but will not be able to claim the rebate for the transfer. Some clinics, however, will not grant the rebate when they know or suspect that the intended parent/s will later engage in surrogacy.

The Commonwealth Government indicated to me last year that the Medicare Reference Group three years ago recommended the abolition of this exception. The Government advised that the Health Minister, Mark Butler, was awaiting the outcome of the Senate Inquiry into Universal Access to Reproductive Healthcare and suggested that I make a submission.

That Senate Report has recommended the abolition of this exception. It is therefore likely that this exception, which is an historical anomaly from the days when all surrogacy was banned, in 1991, will be abolished.

Whether that be the case or not, there is really no justification for the restriction currently contained in section 24(a) of the Act:

“The child was conceived as a result of a procedure carried out in the ACT.”

Consistent with their human rights, intended parents should have freedom of choice in their autonomous reproductive journey about which doctor they wish to engage with and where they create their embryos. That decision might be influenced by a number of factors, such as:

- The doctor or clinic in whom they have confidence. This in turn might be guided by a number of factors, including the reputation or scientific innovation of the clinic, or how the clinic rates with yourivfsuccess.com.au .
- Cost.
- The location of the proposed egg donor.
- The location of the proposed surrogate.
- The location of family members who will be able to provide them with emotional and other support during their IVF journey.
- Whether the clinic is perceived as welcoming to LGBTQIA+ people.

There would appear to be no rhyme nor reason as to the current restriction, other than it is a model based on what the Canberra Fertility Clinic proposed when surrogacy was not occurring anywhere in Australia.

The current requirement means that intended parents can, for example, create embryos in Queensland, but must undertake the transfer in the ACT. If they make that choice, they are necessarily subjected to higher costs (relating to having two clinics and the transport costs) and the risk in transporting the embryos between the two clinics that the embryos could be lost. Whilst the risk of loss of embryos through transport is low, nevertheless I have had clients who have had that experience. The general view taken by fertility doctors, not surprisingly, is to minimise transport of embryos or gametes wherever possible because of that low risk.

No low-cost clinic operates in the ACT, but they do operate interstate. I note that when the ACT was considering an ART Act, some of the feedback it received was as to the issue of cost, and issues of access for LGBTQIA+ people.

Freedom of choice as to where IVF and any transfer is to occur is currently available under the surrogacy laws in Queensland, New South Wales, Tasmania, South Australia and the Northern

Territory. Only the ACT and Victoria restrict the transfer or procedure to occur in that jurisdiction. By implication, the transfer or procedure is also in Western Australia under its scheme.

Significantly, South Australia, when reviewing this issue, decided to remove its restrictions on the transfer occurring in South Australia, following a submission by me to the then Attorney-General Vickie Chapman, after release of the exposure bill, and prior to the enactment of the *Surrogacy Act 2019* (SA).

K. JURISDICTION ABOUT WHERE THE INTENDED PARENTS LIVE

There is no obvious reason why the intended parents must live in the ACT for the whole of the journey. Australians move around. Australian society is one⁶³:

“whose members enjoy a high measure of freedom of movement, which is not lost by reason only of the responsibilities which go with custody and guardianship of a child.”

The laws in Queensland, New South Wales and the Northern Territory allow the jurisdiction to arise only when the intended parents live there at the conclusion of the journey i.e. after the child is born. This allows flexibility as to changed circumstances and also allows surrogacy to occur in those jurisdictions where it can't occur somewhere else. I will give some examples:

Case 1

A heterosexual couple, Australian citizens, living in London were desperate to become parents. They needed to undertake surrogacy. They had the means to undertake surrogacy anywhere in the world. However, the sister-in-law of the husband offered to be their surrogate. The brother and sister-in-law were also Australian citizens and lived in Brisbane. The intended parents, although they had everywhere in which they could undertake surrogacy, only wanted to undertake a family surrogacy arrangement, for obvious reasons given the generosity of the offer and that it was made by a very close family member.

The surrogacy arrangement was drafted as a Queensland surrogacy arrangement. The evident requirement was that in order to exercise jurisdiction under the *Surrogacy Act 2010* (Qld) the intended parents, my clients, had to move to Queensland. They did so shortly after the birth of the child. This meant upending the husband's career in London. They did this willingly.

At the time of the making of the order, the Childrens Court judge had tears in his eyes, noting that *“most cases before the court involve a paucity of parenting but this case, as with other surrogacy cases, involved an abundance of parenting”*. He also noted that the child in question would likely go to the same childcare centre as his granddaughter.

⁶³ *AMS v AIF* [1999] HCA 26; 199 CLR 160 per Kirby J at [111].

Case 2

A gay couple, living in the United States received an extraordinary offer from the sister of one of them. That man was an Australian citizen. His sister lived in New South Wales. She offered to be their surrogate.

A surrogacy agreement was entered into in New South Wales. The IVF was conducted in New South Wales. The child was born in New South Wales. The intended parents travelled to Sydney for the purposes of the birth. They then filed an application for a parentage order in the Supreme Court of New South Wales. Due to their personal circumstances, they needed to leave Australia before the matter was heard. The Supreme Court determined that it had jurisdiction, given the evident ties with New South Wales.⁶⁴

Given that they were living in the United States, the home of surrogacy, one would have expected that the couple would ordinarily have undertaken surrogacy there. No doubt, because of the family connection, it was decided that it was better that the surrogacy be undertaken in NSW following the generous offer of the sister.

Case 3

Husband and wife lived in New South Wales. They needed to undertake surrogacy because the wife had leukemia as a child. Thankfully, she survived but had no ability to carry a child.

The wife's parents, who also lived in New South Wales were supportive of the surrogacy arrangement. They had separated 20 years before. The wife's mother offered to be the couples' surrogate. The couple and the mother obtained independent legal advice and underwent counselling pursuant to the *Surrogacy Act 2010* (NSW). The IVF clinic in New South Wales approved treatment.

After the surrogacy arrangement was entered into, an embryo transfer occurred. The mother became pregnant and gave birth.

In the meantime, the intended mother's father, who lived in Queensland, became seriously ill. Out of concern for his health and welfare, the intended parents and the mother all moved to Queensland to help care for him. He died.

After he died, the mother gave birth in Queensland to the eternal joy of her daughter and son-in-law.

The parties were able to exercise jurisdiction of Queensland because the intended parents were resident in Queensland following the birth of the child. This is because the *Surrogacy Act 2010* (Qld) allows that flexibility⁶⁵, as do the equivalent Acts in NSW and the NT.

It became apparent to me that there were difficulties with the surrogacy arrangement. The first was that the requirement in New South Wales ordinarily was that the intended parents be not less than 25 years of age at the time of entering into the surrogacy arrangement. The intended mother was 22 or 23 when she entered into the surrogacy arrangement. Given her battle with leukaemia, and her support of each of her parents during their divorce and her management of

⁶⁴ *Surrogacy Application by a Couple from the United States of America* [2017] NSWSC 1806.

⁶⁵ S. 22(2)(g)(ii).

the family company following that divorce and then the illness of her father, it was immediately apparent that the intended mother had the requisite maturity.

The lawyers who had acted for the mother and for the intended parents in New South Wales, as well as the counsellor, had overlooked one aspect of the surrogacy arrangement. Despite them having been separated for 20 years, the mother and father had never divorced. Under the provisions of the *Status of Children Act 1996* (NSW) and the *Status of Children Act 1978* (Qld), the father was presumed to be a parent of the child at birth (although by that stage he had died). He was required to have had independent legal advice prior to entering into the surrogacy arrangement. He also was required to have had counselling. He was also required to have consented to the surrogacy arrangement.

My clients were able to locate documentary evidence that demonstrated beyond doubt that the father consented to the surrogacy arrangement.

Under the dispensation provisions of section 23 of the *Surrogacy Act 2010* (Qld), the other requirements, namely, the failure of the father to enter into the surrogacy arrangement, or to have independent legal advice, or to have counselling, were dispensed with in the exceptional circumstances and in the best interests of the child.

It was clearly in the best interests of the child that the parentage order be made. It was clearly a special circumstance whereby both lawyers in New South Wales had overlooked the fact that although the parents had been separated for over 20 years, they had never divorced and that as a result, the father would be deemed to be a parent of the child.

The Childrens Court of Queensland made a parentage order.

Fly in, fly out workers are common in Australia. It is difficult, as a lawyer, to advise a party as to whether they are resident in a particular jurisdiction when for half the time they reside somewhere else due to work requirements. Do they reside here? Or there? Or both?

In early iterations when there was a requirement for residents, there was also a difficulty of access to surrogacy for two clients, one of whom was a doctor in the outback. His time was spent one-third each in outback South Australia, the Northern Territory and Queensland. The only place that he and his wife could undertake surrogacy was Queensland, because of its jurisdictional requirements. To undertake surrogacy in South Australia at the time, they needed to be resident in South Australia. Given that they were only in South Australia for a third of their time (rotating between the three jurisdictions), I could not be confident that the jurisdiction of South Australia would arise. Northern Territory jurisdiction was not available at that time, as it was prior to the enactment of the *Surrogacy Act 2022* (NT).

There have been moves in the *Surrogacy Act 2019* (SA) and *Surrogacy Act 2022* (NT) to restrict the intended parents to Australian citizenship for permanent residents or at least one of them to be domiciled in that jurisdiction. Under section 10(3)(c) the surrogate mother must be an Australian citizen or a permanent resident of Australia. Under section 10(4)(c) each intended parent must be an Australian citizen or a permanent resident of Australia and under section 10(4)(d) at least one intended parent must be domiciled in South Australia at the time the lawful surrogacy agreement is entered. In the Northern Territory under section 17(b) the surrogate mother must, when she enters into the surrogacy arrangement, be an Australian citizen or a permanent resident of Australia. Under section 18(1)(b) each intended parent must, when they enter into the surrogacy arrangement be an Australian citizen or a permanent resident of Australia.

With respect to the Parliaments of each of South Australia and the Northern Territory, these restrictions are unnecessary because of the Commonwealth legislative framework, and because of the stringent requirements for legal advice and counselling⁶⁶.

It is most unusual to have a surrogate who is not an Australian citizen or permanent resident. This is because of the effect of Schedule 2 of the *Migration Regulations 1994* (Cth), that sets out the classes of visas for those who are able to enter Australia. Clause 602.212 of Schedule 2 sets out the requirements for a visa for medical treatment. Subclass 602 for medical treatment requires compliance with a subclass 602 visa.

There is a specific exclusion for foreign surrogates to come to Australia for medical treatment. Clause 602.211 provides:

“The applicant seeks to seeks to visit Australia, or remain in Australia temporarily, for the purposes of medical treatment or for related purposes.”

Clause 602.212 provides relevantly:

“(1) The requirements in one of subclauses (2) to (8) are met.

Medical treatment

(2) All of the following requirements are met:

(a) the applicant seeks to obtain medical treatment (including consultation), other than treatment for the purposes of surrogate motherhood, in Australia ...”

As a result, it is very difficult for surrogates to come to Australia from overseas.

Example- the surrogate was not an Australian citizen or permanent resident

It is a very rare case in which a surrogacy would be living permanently in Australia but not be an Australia citizen or permanent resident. I acted in such a case. The intended parents, my clients, lived in Brisbane. They were Australian citizens. The surrogate and her husband lived in Brisbane. The husband was, from recollection, a New Zealand citizen. Being a New Zealand citizen, he did not need to be an Australian permanent resident or an Australian citizen. He could live in Australia as of right. The surrogate was a citizen of Zimbabwe. She was able to live in Australia by virtue of her marriage with her husband. When the child was born, the child did not have Australian citizenship. If the surrogate or her husband had been either an Australian citizen or an Australian permanent resident, then the child would automatically have attracted Australian citizenship under section 12 of the *Australian Citizenship Act 2007* (Cth).

Because the child did not then have Australian citizenship, Australian citizenship was obtained by the making of the parentage order.

There was no difficulty in that case in a parentage order being made. As would be expected, I advised the court in my submissions of the effect of the statutory scheme.

Parentage orders are recognised for the purposes of parentage in two ways:

⁶⁶ As to the latter, see the comment from the SCAG discussion paper in p.19 above.

1. They are recognised as between the States to identify who is a parent by virtue of section 118 of the *Commonwealth Constitution* – the full faith and credit clause. There is also recognition as between the States and Territories under the related provision of section 185 of the *Evidence Act 1995* (Cth).
2. However, neither of those Acts will then convert the child’s citizenship from a foreign citizenship to Australian citizenship. That occurred because of the effect of section 60HB of the *Family Law Act 1975* (Cth), which gives recognition to parentage orders made under a prescribed State or Territory law. That prescription is set out under regulation 12CAA of the *Family Law Regulations 1984* (Cth). Australian citizenship in turn is taken up under section 8 of the *Australian Citizenship Act 2007* (Cth).

Section 8 of the *Australian Citizenship Act 2007* (Cth) will not be triggered because:

- In most cases, at the time that the parentage order was made, at birth the child already had Australian citizenship because the surrogate or the surrogate’s partner was either an Australian citizen or an Australian permanent resident. Therefore, the child already had Australian citizenship *before* the making of the parentage order, by virtue of section 12 of the *Australian Citizenship Act 2007* (Cth).
- Occasionally, section 8 will not arise as section 8 only contemplates intended parents through surrogacy being a couple (not single):

“(1) *This section applies if a child is:*

(a) *a child of a person under section 60H or 60HB of the Family Law Act 1975; and*

(b) *either:*

(i) *a child of the person's spouse or de facto partner under that section; or*

(ii) *a biological child of the person's spouse or de facto partner.*

(2) *The child is taken for the purposes of this Act:*

(a) *to be the child of the person and the spouse or de facto partner; and*

(b) *not to be the child of anyone else.”* (emphasis added)

I note that the Ministerial Expert Panel in Western Australia has stated:⁶⁷

“The Surrogacy Act requires that intended parent(s) must reside in WA with no stipulation of the surrogate reside in WA. The MEP notes that an unintended consequence of a strict residency requirement is that many Western Australians who temporarily live or work outside the state may not be granted a parentage order. The MEP recommends that intended parent(s) be ordinarily resident in WA at the time an application for parentage is made. In any case, the MEP recommends that the Family Court have the discretion to dispense with the residency requirements.”

That recommendation appears quite sensible.

⁶⁷ At page 77.

L. NEED FOR SURROGACY

The current requirement that there be a *procedure* for surrogacy to occur in the ACT⁶⁸ means that surrogacy must necessarily be undertaken by an ACT IVF clinic. Those working in IVF clinics, who have typically been obstetricians and midwives, do not need reminding about the risk of maternal death. For five years I was a member of a national clinic's surrogacy and donor committee, charged with responsibility for recommending whether or not the clinic provided treatment. Aside from the legal requirements of various *Surrogacy Acts*, clinicians would avoid, based on the do no harm mantra, of undertaking surrogacy unnecessarily, given the risk of maternal death.

Although Australia has a low maternal death rate, nevertheless maternal deaths still occur⁶⁹, being 5.5 deaths per 100,000 women giving birth⁷⁰.

The Act is silent about the need for surrogacy. Presumably, the reasons for the Act being silent about this issue are:

- The model of the Act came about from Canberra Fertility Clinic approaching the Government. Some years ago I spoke with the then medical director, and one of the founders of that clinic, Dr Martyn Stafford-Bell, who said that the clinic would not undertake surrogacy “*unnecessarily*”, being well aware of the issue of maternal death.
- The requirement is for a procedure to occur in an ACT clinic.
- The requirement in s.26(3)(e) that the counsellor has provided appropriate counselling and assessment.

My experience, having seen counselling reports prepared for surrogacy journeys in New South Wales, Queensland, South Australia, Victoria, and based on the Queensland framework in a journey in Nigeria, is that counsellors, too, always are concerned about the issue of the need for surrogacy. No Australian fertility doctors or fertility counsellors that I have dealt with have wanted to assist with a surrogacy journey unless there is a need for surrogacy. Counsellors, too, do not want to put the life of a would be surrogate unnecessarily at risk.

It is evident that any intended parent who lacks a uterus requires surrogacy. The difficulty is defining what is that need. The thinking behind provisions requiring a medical or social need, such as s.14 and s.22(2)(d) of the *Surrogacy Act 2010* (Qld) and s.30 of the *Surrogacy Act 2010* (NSW), is to ensure there is a need for surrogacy, so as to minimise maternal death. It is to avoid the situation which has been seen in both the US and India where Hollywood and Bollywood actresses, among others, have undertaken surrogacy to maintain their looks, and thereby put the life of a third party, the surrogate, unnecessarily at risk.

Those sections use the word “*likely*”. *Likely* does not mean more probable than not, but that there is a real or significant risk. It is a word that has been considered judicially, for example in *Tillmans Butcheries v AMIEU* [1979] FCA 85. Therefore, by way of example, matters concerning the intended mother is likely to have her health significantly affected by a pregnancy or birth⁷¹ include:

⁶⁸ S.24(a).

⁶⁹ For example, in a non-surrogacy case the mother died in Brisbane from birth complications in 2021 three days after giving birth to twins: *Wickham & Toledano (No 2)* [2022] FedCFamC1F 32. I acted for the successful applicants for parenting orders in that matter, the mother's sister and sister-in-law.

⁷⁰ <https://www.aihw.gov.au/reports/mothers-babies/maternal-deaths-australia>, viewed 17 July 2023.

⁷¹ Queensland: s.14(2)(b)(ii)(B); NSW: s.30(3)(c).

- That the intended mother is on anti-psychotic medication. For her to be pregnant would require her to cease taking that medication, which would therefore put her life and that of the unborn child at risk.
- That the intended mother is on heart medication. For her to be pregnant would require her to cease taking that medication, which would also put her life and that of the unborn child at risk.
- That the intended mother is on medication to reduce or control her blood pressure. There are mixed views by doctors whether this medication is safe to take during pregnancy. Some view the medication as safe. Others view some medication as being safe. The medication that might be safe to take may not be able to be taken by the intended mother.

In cases that require the views of other treating specialists, such as these three examples, fertility specialists seek reports from those doctors in order to be able to assess risk, before deciding whether or not to proceed. This would be the case whether the journey is traditional or gestational surrogacy.

There ought to be a section in the ACT Act similar to sections 14 and 22(2)(d) of the Queensland Act and s.30 of the NSW Act, especially if treatment is to occur outside the ACT, and if traditional surrogacy (which may be occurring at home) is to be included.

The provisions such as s.14 of the Queensland Act and s.30 of the NSW Act have been criticised as they are written on a binary basis. It would be preferable that there be a section similar to these sections in the ACT Act, but that it is inclusive of all intended parents.

I have seen a surrogacy arrangement considered by a clinic when the intended parents were a cis man and a trans woman. Both the Queensland and NSW *Surrogacy Acts* had to be considered, because the treatment was to be by a Queensland clinic, concerning a NSW arrangement. This cross-border treatment is common, given how close Brisbane and the Gold Coast are to the NSW border, and given the NSW Act does not require treatment to occur in NSW. The clinic's ethics committee had no difficulty in assessing that the couple was eligible. Clearly the cis man was both medically and socially in need. So far as the trans woman was concerned, the ethics committee considered her to be a woman, and clearly eligible, but also took the view that if the trans woman were considered by the law to be male, then she was clearly in need- she had no uterus.

M. LIMITATION OF PROCURATION

There is currently one altruistic surrogacy agency in Australia- Surrogacy Australia, a charity, which matches intended parents and surrogates. I act for Surrogacy Australia pro bono. This submission is written in my personal capacity.

No commercial agencies are based in Australia, but it is commonplace for overseas agencies to seek to entice Australians to go there for surrogacy.

Given the recommendation of the UK Law Commissions noting the role of altruistic agencies in the UK, and the overwhelming need to encourage Australians to undertake surrogacy at home, and not go abroad, it would seem that s.42, which makes procurement illegal, should either be abolished, or limited to for profit agencies. Community organisations that advocate for surrogacy, including connecting surrogates and intended parents, should be encouraged, not criminalised.

N. THE CHILD'S RIGHT TO KNOW

It is a fundamental right of each of us to know how we were conceived. This is consistent with the child's right to an identity in art. 8 of the *UN Convention on the Rights of the Child*. Birth

certificates issued in the ACT for children born via surrogacy, as I understand the process, do not disclose that the child was born via surrogacy.

Some children will be keenly aware that they were born via surrogacy- children of male couples or of single men, for example. My daughter Elizabeth at the age of 18 months recognised that she alone, of all the children in a 165 families childcare centre in inner Brisbane, had two dads. Other children, for example, those of heterosexual couples, may never know that they were born via surrogacy.

The practice, as I understand it, in Victoria is that the birth certificate issued for a child born through surrogacy contains two versions. The first names the parents and mentions briefly that there are more details. The second contains details of gamete donors and the surrogate. The first, which looks like any other birth certificate, would be used for the usual purposes- related to enrolling at daycare and school, obtaining employment etc., without the need to disclose to various others the most private information about the child that belongs to the child. However, it contains a clue for the child in case the second is not provided to the child by the parents that there is more information available to the child.

That practice balances the child's right to privacy and the child's right to know. I seek that the ACT have a similar practice.

O. EXTRA-TERRITORIALITY

It is clear that offences under the *Parentage Act 2004* (ACT) can be committed extra-territorially, both by the specific extension of jurisdiction under section 45 of the Act, and also in the alternative by the longarm provision contained in section 64 of the *Criminal Code 2002*.

The current landscape as to extra-territoriality nationally is:

- ACT – extra-territorial and longarm laws.
- New South Wales – extra-territorial and longarm laws.
- Northern Territory – longarm laws only.
- Queensland – extra-territorial and longarm laws.
- South Australia – longarm laws only, although it is unclear whether it is intended to apply to surrogacy offences overseas, as seen in the *SALRI Report*.
- Tasmania – no extra-territorial or longarm law.
- Victoria – no extra-territorial or longarm law.
- Western Australia – longarm law.

Queensland was the first place in the world, with the enactment of the *Surrogate Parenthood Act 1988* (Qld), to criminalise surrogacy extraterritorially, if the relevant person was ordinarily resident in Queensland. That approach was copied next in the ACT with the enactment of the *Parentage Act 2002*, then in Hong Kong with amendments to the *Human Reproductive Technology Ordinance*, then in New South Wales with the enactment of the *Surrogacy Act 2010* (NSW). Queensland repealed the *Surrogate Parenthood Act 1988* (Qld), but the extraterritorial ban remained with the enactment of the *Surrogacy Act 2010* (Qld).

These bans have not worked. Not one person in any of these four jurisdictions (Queensland, ACT, Hong Kong and New South Wales) has ever been prosecuted for undertaking commercial surrogacy overseas or indeed, any other offence overseas.

In Hong Kong, in theory, surrogacy is available to heterosexual married couples under the *Human Reproductive Technology Ordinance*, to be provided by a licensed clinic. No licence has ever issued, with the result that every child born to Hong Kong residents via surrogacy must have been born overseas. The advice from Hong Kong practitioners is that when the application is made for the resident's visa, disclosure is made to Hong Kong officials that the child was born overseas via surrogacy. There is then an inconvenient dance undertaken in which if, police are being polite, they invite the applicants to attend at the police station for an interview. If they are being impolite, they arrest the applicants at their home and take them to the station for an interview.

At the station, after the initial formalities are undertaken to identify the person being interviewed, the intended parents then claim the right to silence, with the result that the interview is terminated. No other evidence is forthcoming and no prosecution ever results. It is a farce.

New Zealand researchers, cited by the New Zealand Law Commission in its review on surrogacy, described the Australian approach of extraterritorial laws as a "failed experiment"⁷². The data demonstrates that that statement is true. One might think that the approach of the law must be to discourage Australians from undertaking surrogacy overseas. From that point of view, it would be argued, that the law is worthwhile. However, as seen from the data, these laws have been an utter failure. They have not discouraged Australians from undertaking surrogacy overseas. If anything, they have achieved the opposite. The resultant controversy concerning surrogacy has meant that intended parents who otherwise did not know that they could undertake surrogacy, have willingly gone overseas, notwithstanding the risks.

Reviews considering this ban have not recommended its continuation:

1. The House of Representatives in its *Surrogacy Inquiry* did not recommend having an overseas ban.
2. Under the *Gorton Report*, although this issue was raised, it was outside the terms of reference so the *Gorton Report* did not deal with it.
3. The *SALRI Report* did not recommend having an overseas ban because it didn't work.
4. Professor Sonia Allen in her review for the Western Australian Government did recommend having such a ban. However, the Ministerial Expert Panel has not recommended such a ban in its recent review.
5. The New Zealand Law Commission has not recommended such a ban, because it did not work. Rather the emphasis is on making the surrogacy process easier at home, including having auto-recognition.

In 2014 the then heads of Family Law in Australia, Chief Justice Diana Bryant AO of the Family Court of Australia and Chief Judge John Pascoe AO CVO of the Federal Circuit Court of Australia called for the repeal of these laws, which they said did not work and because they were not being enforced and were not capable of enforcement, were making a mockery of the law.

⁷² <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/Law%20Commission%20-%20Review%20of%20Surrogacy%20-%20Issues%20Paper%2047.pdf> at footnote 7.

A review undertaken by the New South Wales Department of Justice of the *Surrogacy Act 2010* (NSW) (2018) called for this ban to remain in place, waiting for Commonwealth leadership (which never came) but noted that there were difficulties in enforcement of these laws.

As I said, in none of the four jurisdictions has one person ever been prosecuted for undertaking commercial surrogacy overseas, whilst it is obvious that many have done so.

The data, as I said, demonstrates beyond doubt that these bans do not work. Any preventative effect claimed for these bans is illusory.

The sources of data that I have obtained primarily are:

- freedom of information searches undertaken of the Department of Home Affairs concerning applications by children for Australian citizenship by descent where they have been born overseas through surrogacy, and
- ANZARD for domestic data.

There will be a small number of children born overseas through surrogacy not captured by the Department's data:

1. Children born to heterosexual couples overseas where those couples have falsely told the Department that the children were born naturally. I expect that those numbers are very low. My experience is that the Department has internal guidelines concerning fraud of that nature and seeks clear verification as to when intended parents travelled overseas and the like. I have seen children refused citizenship where they appear to have been born overseas via surrogacy because there was an inability, despite having a genetic link with the Australian intended parent, to establish the child's identity, as the surrogate's identity was unable to be established for the purposes of section 17(3) of the *Australian Citizenship Act 2005* (Cth). My experience is that the Department of Home Affairs is rightly vigorous in enforcing the rights of children and women to ensure that neither are trafficked.
2. There is also a small number of children born to Australia resident visa holders. Because the parents are not Australian citizens, then the children, who although being known to the Department of Home Affairs, necessarily will not appear in the data for Australian citizenship by descent (because no application is being made for Australian citizenship).

The data from the Department of Home Affairs is produced on a financial year basis.

It is very hard to collate accurate figures as to the number of children born via surrogacy in Australia. Every Australian and New Zealand IVF clinic must report to the Australian New Zealand Assisted Reproductive Database (ANZARD), run by the University of New South Wales, as to the number of children born via gestational surrogacy through IVF. However, there is no reporting of the number of children born via traditional surrogacy.

State data is limited. No Registrar of Births, Deaths and Marriages anywhere in Australia reports the number of children born via surrogacy. Data as to the number of children born via parentage orders or via surrogacy is limited currently to only Queensland, Victoria and Western Australia. The sources of that data are:

- Annual reports of the Childrens Court of Queensland.
 - Annual reports of the County Court of Victoria.
-

- Annual reports as to the number of children born via surrogacy (which in broad terms correlates with the number of substitute parentage orders made in Victoria) by the Victorian Assisted Reproductive Treatment Authority.
- The number of births via surrogacy in Western Australia from the annual reports of the Reproductive Technology Council of Western Australia.

In respect of Western Australia, the number of children born via surrogacy each year there has been one child, although I am informed by a Western Australian colleague that in 2023, three children have been born there via surrogacy, a record.

ANZARD does not break down the number of gestational surrogacy births between Australia and New Zealand. However, the New Zealand ACART (Advisory Committee on Assisted Reproductive Technology) has had the New Zealand specific data compiled by ANZARD, from which it is possible to calculate the Australian number of gestational surrogacy births through IVF clinics.

ANZARD data is compiled on a calendar year basis. The last two years it is not possible to calculate that data because the New Zealand data has not been provided. I have given estimates on a per capita basis.

I ask that there be legislation in the ACT reporting the number of births via surrogacy or parentage orders made that have been made. There is no data at the moment. There is no data from the Supreme Court of the ACT to indicate the number of parentage orders made. There is no data compiled by the Registrar of Births, Deaths and Marriages as to the number of children born via surrogacy. If there is to be a central register, then this data should be published.

Table 1 shows the top six countries for surrogacy for Australians in 2021, compiled from the Department of Home Affairs data.

Table 1: top 6 surrogacy destinations for Australia: 2021

| Rankings- | Country | Number of Australian surrogacy births |
|-------------------------------------|----------|---------------------------------------|
| 1 | US | 76 |
| 2 | Ukraine | 38 |
| 3 | Canada | 28 |
| 4 | Georgia | 27 |
| 5 | Mexico | 9 |
| 6 | Thailand | 8 |
| Total births top 6 countries | | 186 |
| Total births all countries | | 223 |

As will be seen, 83% of surrogacy births of Australians occurred in these surrogacy destinations. The data from the Department of Home Affairs shows a disparate group of countries of the other 17%. My experience is that the other 17% typically reflects Australian intended parents who have

migrated from those countries returning to those countries for the purposes of surrogacy. That journey is to be expected, given the strong cultural linguistic and familiar relationships. The countries that clients of mine have returned to, to seek to undertake surrogacy, have included Ghana, Nigeria, Iran, Bangladesh and Sri Lanka. I have also had clients who have migrated from surrogacy destinations go back to those surrogacy destinations for their surrogacy journey, including Brazil, Canada, United States, Ukraine and Russia.

I note that of the six destinations, there is likely to be changes in the landscape because of international events. Ukraine stopped offering surrogacy following the invasion last year but has restarted. Not surprisingly, most international intended parents do not wish to return to Ukraine and have gone to other destinations. Georgia has announced that from 1 January 2024 international intended parents are not to access surrogacy there.

Table 2 shows the number of Australian children born via surrogacy in Thailand between 2015 and 2021. The data is from the Department of Home Affairs.

Table 2: Australian children born via surrogacy in Thailand 2015-2021

| Year | Births |
|------|--------|
| 2015 | 97 |
| 2016 | 199 |
| 2017 | 12 |
| 2018 | 9 |
| 2019 | 10 |
| 2020 | 11 |
| 2021 | 8 |

Not surprisingly, in 2015 the number peaked at 97 and then trailed off. What is initially surprising about the data is that there remained a significant number of births to Australian intended parents in Thailand. Following the *Baby Gammy* saga and the *Thai Baby Farm* saga in 2014, Thailand enacted laws to greatly restrict surrogacy. Changes included:

- The intended parents must only be heterosexual couples, of whom one holds Thai nationality, and they must have been married for at least three years.
- The surrogate must be a sibling of one member of the couple, being married, had the permission of her husband to be the surrogate and have already birthed at least one child.

Although there are Australians of Thai origin, one would surmise that the number of Australian children born via surrogacy in Thailand from 2016 would be minimal.

Anecdotal evidence from my clients and news reports indicates that sperm donation has occurred in Cambodia and fertilisation of embryos in Laos, with Thai egg donors travelling to Laos to donate their eggs and Thai surrogates travelling to Laos to become pregnant. Porous borders have helped. Thai surrogates have given birth for Australian parents in Thailand, Malaysia and China.

In February 2022 the Thai Government announced that it was considering allowing commercial surrogacy, as this would allow it to regulate the practice and reduce the risk of the trafficking of women and children. I am not aware of enactment of those laws yet.

Table 3 shows Australian children born via surrogacy in the United States between 2016 and 2021. The data again comes from the Department of Home Affairs compared with data from ANZARD.

Table 3: Comparison of Australian children born via surrogacy in the US and Australia 2016-2021

| Year | Australian surrogacy births: US | Australian surrogacy births: domestic |
|------|---------------------------------|---------------------------------------|
| 2016 | 49 | 38 |
| 2017 | 66 | 51 |
| 2018 | 67 | 71 |
| 2019 | 95 | 61 |
| 2020 | 120 | 76 |
| 2021 | 76 | N/A |

The estimates given for domestic births in 2019 and 2020 have been estimated by me on a per capita basis, in the absence of the New Zealand data.

It appears that more Australian children are being born through surrogacy in the US than through surrogacy in Australia.

Table 4 shows a comparison of international and domestic births via surrogacy in Australia between 2009 and 2021.

As seen, over 2,327 children in that period were born to Australian intended parents overseas, whereas 462 were born domestically. The ACT population is about 1.5% of the national population. On a per capita basis, 35 children were born to ACT residents overseas, and 7 domestically.

The most extraordinary data shown is in the period between 2010 and 2012, when there is a jump of between less than 10 children born overseas through surrogacy, to 266. Ever since then, approximately 200 or more children have been born each year to Australian intended parents overseas.

The jump in numbers can be explained by one event. When the New South Wales *Surrogacy Bill* made its way through Parliament, there was no mention in the consultation process, in the Bill or even earlier in the Upper House report about there being an extraterritorial ban. That extraterritorial ban was not even proposed in the second reading speech but was proposed in the third reading stage by the then Minister Linda Burney. The Bill was then enacted. There was immediate community uproar, followed by an intense media storm. Those who were halfway through their journeys were outraged that suddenly what they were doing, which had been legal,

was now criminal. The community and media firestorm meant that there was an enormous amount of publicity concerning surrogacy. Many intended parents who were not aware that they could become parents through surrogacy, suddenly became aware.

In reaction to the ban on overseas commercial surrogacy, Surrogacy Australia was set up and commenced running seminars (and has done so ever since, more recently by Growing Families), about how to undertake surrogacy overseas.

The whole point of the ban was to prevent Australians going to developing countries and potentially exploiting surrogates there. The place that Australian politicians were concerned about in 2010 was the then international hub for surrogacy, India.

Table 4: Comparison of Domestic and International Births via surrogacy in Australia: 2009-2021

| Year | Domestic Births | Overseas births |
|-------------|------------------------|------------------------|
| 2009 | 14 | 10 |
| 2010 | 11 | < 10 |
| 2011 | 19 | 30 |
| 2012 | 17 | 266 |
| 2013 | 28 | 244 |
| 2014 | 29 | 263 |
| 2015 | 44 | 246 |
| 2016 | 38 | 204 |
| 2017 | 51 | 164 |
| 2018 | 74 | 170 |
| 2019 | E61 | 232 |
| 2020 | E76 | 275 |
| 2021 | N/A | 223 |

Table 5 shows Australian surrogacy births in India.

Table 5: Australian surrogacy births in India 2009-2021

| Year | Number of births |
|------|------------------|
| 2009 | < 10 |
| 2010 | < 10 |
| 2011 | < 10 |
| 2012 | 227 |
| 2013 | 191 |
| 2014 | 108 |
| 2015 | 74 |
| 2016 | 54 |
| 2017 | 14 |
| 2018 | < 5 |
| 2019 | < 5 |
| 2020 | < 5 |
| 2021 | 0 |

From a low of less than 10 Australian surrogacy births in India in 2011, suddenly in 2012 there were 227 births. In other words, of the 266 births of Australian children through surrogacy overseas in 2012, 85% were in India. The actions taken in New South Wales can only be classified as an own goal, or as the New Zealand researchers comment, a “*failed experiment*”.

The trickling down of numbers of Australian births in India from 227 in 2012 to zero in 2021 is not from any change that occurred in Australia. India started clamping down on Australians undertaking surrogacy there commencing 2012. There was further tightening in 2014 following statements by Chief Justice Bryant of a couple from Western Sydney who were supposed to have abandoned one of two twins in India because the child had the “*wrong*” gender which her Honour stated, correctly, that if the reports were true, amounted to child trafficking. After that, it became extremely difficult to say the least for Australian intended parents to undertake surrogacy in India. The Indian Government reacted with fury about that alleged conduct, making it almost impossible for Australians to undertake surrogacy there. There was further tightening following 2014, which is reflected in the numbers. More recently India has legislated about surrogacy, restricting it to Indian heterosexual couples or single women, and to be altruistic only.

As I said, nothing that was done in Australia made any difference to those numbers. The decrease in the number of Australian children being born in India was because of steps taken by the Indian government.

There has been a belief by some that Australian intended parents when coming home to Australia end up in what is now the Federal Circuit and Family Court of Australia. That is very much the exception. Only a very small number of intended parents have ever gone to the Family Court and sought orders. Most don't. I have advised in 1,900 surrogacy journeys since 1998. I have had seven of those journeys end up in the Family Court, six of them being overseas journeys. I have also appeared as independent children's lawyer in a case involving domestic surrogacy that was before the Federal Circuit Court.

P. WHY DO INTENDED PARENTS GO OVERSEAS?

Among other reasons, my clients have told me:

- They did not know surrogacy was available locally. A criticism that has been made in surrogacy inquiries such as the *House of Representatives Inquiry* and the *Gorton Inquiry* is a lack of accurate, reliable information in the public domain. It would be helpful if the ACT Government published data about how to undertake surrogacy locally.
- A local surrogate or egg donor or both cannot be found. For policy reasons, we do not allow the payment of a fee in Australia for surrogates or egg donors. Not surprisingly, given that both egg donors and surrogates have the risk of death arising from their donation, in the absence of a fee, there will always be a shortage of each. In rough terms (and I have not kept precise statistics), three-quarters of my clients have needed an egg donor. About half my client group are heterosexual couples and about half are gay couples. There is a smattering of small number of single women, single men and a few identify as transgender or non-binary and two or three lesbian couples. All the gay couples and single men require an egg donor, most of the single women require an egg donor and about half the heterosexual couples require an egg donor. If there is not an available egg donor, then there is a trigger point for intended parents to go overseas.
- Surrogacy overseas is welcoming, and able to be done. I have long been told by clients about how difficult the barriers are here (particularly in Western Australia, for example) and how they are told that really they are to be questioned about their motives in undertaking surrogacy (as also seen extensively in Victoria with the approval process through the Patient Review Panel) as opposed to going overseas where they are positively welcomed and cherished.
- They have been advised by other parents through social media or attended seminars of how it can be done.
- Surrogacy overseas is perceived as quicker than at home and at least doable.
- They want to access surrogacy in their country of origin – where they are familiar with the laws, processes and cultural norms. They are discriminated against under local laws – which are evident, as I said, under the *Parentage Act*, as well as currently in Western Australia under the *Surrogacy Act 2008* (WA) and a requirement for everyone to be resident in Tasmania at the commencement under the *Surrogacy Act 2012* (Tas).

An example of how not to regulate surrogacy is that in Western Australia. Admittedly half the likely intended parents are excluded (gay couples and single men), but even so, in devising the

“perfect” regulatory model, undertaking surrogacy in WA is so difficult that the vast bulk of intended parents do so overseas- recognised by the Ministerial Expert Panel recommending a more liberal approach there.

Table 6 shows a comparison of domestic and international births for WA residents via surrogacy, the former being from Reproductive Technology Council data, and the latter from a per capita calculation by me of overseas surrogacy births (as per the Department of Home Affairs).

Table 6: Comparison of local and international births via surrogacy for Western Australian residents: 2017-2021

| Year | Local births | Overseas births |
|------|--------------|-----------------|
| 2017 | 1 | 16 |
| 2018 | 1 | 17 |
| 2019 | 1 | 23 |
| 2020 | 1 | 27 |
| 2021 | 1 | 22 |

As both the Ministerial Expert Panel and the NZ Law Commission have recognised, the regulatory environment for surrogacy should be such that it encourages intended parents to do surrogacy at home, rather than go overseas.

Q. RECOGNITION OF PARENTAGE FROM OVERSEAS

Prior to the decision of the High Court in *Masson v Parsons*, whilst it was clear that a child had a parent for the purposes of Australian citizenship through an overseas surrogacy journey, it was unclear whether that person was a parent under the *Family Law Act*. The decision of the Full Court of the Family Court in *Bernieres & Dhopal* [2017] FamCA 180 made plain that a heterosexual married couple in Victoria who had undertaken surrogacy in India (and obtained Australian citizenship for the child without difficulty) with the help of a surrogate and egg donor, were not or unlikely to be, the parents.

The effect of *Masson*, however, has meant that in many cases where both the parents are recognised overseas as the parents, they are recognised as the parents here. This is because:

- In many jurisdictions⁷³, a court order is made naming the intended parents as the parents. If they resided there while they undertook surrogacy here, then based on the comity principle, they would be recognised as the parents here⁷⁴, irrespective of the order being made before the birth or after the birth. If, however, they underwent surrogacy there, while living here, and then obtained a court order by which they are recognised as the parents in that

⁷³ For example, most US jurisdictions, most Canadian jurisdictions, Greece, United Kingdom, South Africa, National Capital District of Buenos Aires in Argentina, some Mexican States.

⁷⁴ *Carlton & Bissett* [2013] FamCA 143.

jurisdiction, the effect of *Masson* is commonly that they are the parents under the *Family Law Act*⁷⁵.

- In some jurisdictions⁷⁶, the person is a parent by virtue of an adoption order, and is therefore a parent under the *Family Law Act*⁷⁷.
- In some jurisdictions, the intended parents couple are recognised as the parents by operation of law⁷⁸.

Prior to *Masson*, there was a disconnect about parentage. It was clear that the intended parents were parents for the purposes of citizenship⁷⁹, for which there did not need a genetic connection, an approach then criticised by the Family Court⁸⁰, but they were, or were not⁸¹, or might not have been parents⁸² for the purposes of the *Family Law Act*.

A work around was for those parents who had obtained orders in the United States to register them with the Family Court. The Court, in its exercise of discretion, raised concerns about commercial surrogacy⁸³ and in two cases declined to register when it could not exclude commercial surrogacy from occurring⁸⁴. Application of *Masson*, however, is a fact based inquiry to determine whether the parents would be commonly seen in the wider view of Australian society to be the parents. Therefore, in two cases post-*Masson* where it was clear that there was commercial surrogacy, in *Seto* the genetic intended father was found to be a parent under the *Family Law Act*, and in *W & T*⁸⁵, the Court viewed both the genetic father and the non-genetic father to be parents under that Act. The Court was clear in the latter case that there was no utility in registering the US surrogacy order, as both men were the parents.

However, there are Australian couples who have undertaken surrogacy overseas where only one of them is recognised as the parent on the overseas birth certificate. That has occurred in a number

⁷⁵ *W & T* [2019] an unreported matter before the Family Court of Australia. The intended parents were a gay couple who underwent surrogacy in the US. I acted for the non-genetic father. He applied to have the US surrogacy order registered by the Family Court (the effect of which, if successful, was that both parties would be recognised as parents under Australian law). That application was opposed by the other party. One month before the hearing of that application, the High Court decided *Masson v Parsons*. Rees J opined, in light of *Masson*, that both men were the parents under the *Family Law Act*. In light of that statement, my client withdrew the application for registration. Given the comments by the judge, there was no point proceeding with that application. He had achieved what he had set out to achieve- that he was a parent. The other party then sought an order for costs against my client. That application was refused.

⁷⁶ For example, New Zealand, Florida (if there is no genetic connection), and for the second parent in Minnesota and Hawaii.

⁷⁷ S.61C parental responsibility, and s.4: “parent”, “child”, “adopted”.

⁷⁸ For example, Ukraine, Republic of Georgia, Kazakhstan.

⁷⁹ *H v Minister for Immigration and Citizenship* [2010] FCAFC 119.

⁸⁰ For example, *Farnell & Chanbua* [2016] FCWA 17 (the Baby Gammy case) at [349]- [351], and from [386] per Thackray CJ. His Honour’s judgment in *Parsons & Masson* [2018] FamCAFC 115 that Mr Masson was not a parent was overturned by the High Court in *Masson*.

⁸¹ For example, a Queensland couple underwent surrogacy in Thailand, resulting in the birth of three children. In *Dennis & Pradchaphet* [2011] FamCA 123, the intended genetic father was recognised as the parent. In *Dudley & Chedi* [2011] FamCA 502, the Court dealt with the same couple. Watts J declined to find that the intended genetic father was a parent. His Honour referred the couple to Qld authorities, as he did in *Findlay & Punyawong* [2011] FamCA 503. Neither couple was prosecuted.

⁸² *Bernieres & Dhopal* [2017] FamCAFC 180. The approach in *Bernieres* that the intended genetic father is not a parent is clearly incorrect now, in light of *Masson*.

⁸³ *Re Halvard* [2016] FamCA 1051; *Re Grosvenor* [2017] FamCA 366; *Sigley & Sigley* [2018] FamCA 3. I acted for the intended parents in *Grosvenor* and *Sigley*.

⁸⁴ *Rose* [2018] FamCA 978; *Allan & Peters* [2018] FamCA 1063. I acted for the intended parents in both matters.

⁸⁵ See footnote 57.

of jurisdictions. In the initial overseas surrogacy boom when Australians were undertaking surrogacy in India, surrogacy was available to two groups of Australian intended parents:

- Heterosexual couples.
- Single men.

It was common that gay couples underwent surrogacy in India, where only one of the men was identified in the surrogacy agreement and therefore on the birth certificate. Following the birth, the intended father was the only parent shown on the birth certificate. The surrogate was not.

The result was that that man was identified as *the* parent⁸⁶ on the birth certificate. The child obtained Australian citizenship and was then able to return home to Australia, but the parentage of the child was always half done. The other parent of the child, being the other father – the man whom the child identified as dad, and who did all the things of parenthood, aside from providing for the child, making breakfast, changing nappies, feeding, taking to daycare and school and all the extracurricular activities such as soccer – is not recognised as a parent.

Australians have also gone to overseas destinations where the surrogate remains on the birth certificate as a parent. In those destinations when the Australian couple have brought their child home, then the genetic father has been recognised as a parent. The other parent named on the birth certificate has been the surrogate from that country⁸⁷. The other Australian parent has not been recognised as a parent on the birth certificate. Again, parentage has been half done, where one of the Australian parents has been recognised and the other has not. This has occurred for Australians who have undertaken surrogacy in countries including Thailand, Malaysia and Mexico.

There ought to be a way in which the parentage of the other parent is able to be recognised. This is consistent with Australia's human rights obligations. Australia is a party to the *UN Convention on the Rights of the Child*.

Articles 3.1 and 3.2 provide:

- “1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
2. *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”*

Article 4:

“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

⁸⁶ See, for example, *Blake and Anor* [2013] FCWA 1.

⁸⁷ As an example, see footnote 63.

Article 5:

“States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

Article 6.2:

“States Parties shall ensure to the maximum extent possible the survival and development of the child.”

Article 7.1:

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”

Article 8:

“States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”

Article 14.2:

“States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”

Article 16.1.2:

- 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
- 2. The child has the right to the protection of the law against such interference or attacks.”*

I note section 11 of the *Human Rights Act 2004*:

“Note: Family has a broad meaning (see ICCPR General Comment 19 (39th session, 1990)).

- (1) The family is the natural and basic group unit of society and is entitled to be protected by society.*
- (2) Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.*

Examples of distinction or discrimination

Distinction or discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

Note : A child also has the other human rights set out in this Act.”

A child should not be discriminated against because of the actions taken by its parents when only one of them is recognised.

Ellison & Karnchanit [2012] FamCA 602 concerned a Queensland couple who underwent commercial surrogacy in Thailand.

Justice Ryan stated⁸⁸:

“Because the argument is so well articulated in the [Australian Human Rights Commission’s] written submissions, it is appropriate that these are recorded in full. The AHRC submitted:

22. *There are a number of articles of the CRC that are relevant to determine the best interests of the child on the present proceeding.*
23. *As a starting proposition, ART 2(2) of the CRC relevantly provides that State Parties shall take all appropriate measures to ensure that children are protected against all forms of discrimination on the basis of the status of their parents, legal guardians or family members. The commission submits that children born of surrogacy arrangements should not be subjected to a disadvantage or detriment as a result of any difference in legal status conferred on their parents or guardians.*
24. *Secondly, there are a number of articles of the CRC that deal with particular rights that involve the relationship between children and their parents or guardians. For example:*
 - 24.1 *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures (Art 3(2)).*
 - 24.2 *States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of their rights (Art 5).*
 - 24.3 *States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern (Art 18(1)).*
25. *These rights recognise the importance of parents in safeguarding the interests of children. However, the language used in the CRC is not limited to parents, and recognises that in some circumstances these responsibilities will also fall on other legal guardians.”*

⁸⁸ At [85].

Further, her Honour stated⁸⁹:

“The AHRC is demonstrably correct in its submission that “the court is faced with having children in front of it and needs to make orders that are in the best interests of those children, and at that stage it’s probably too late to ask whether – or to inquire into the legality of the arrangements that had been made. The court really needs to take children as it finds them”.”

The question of article 8 of the *UN Convention* was taken up by an English Court in *Re X (a child) (Surrogacy: Time Limit)* [2014] EWHC 3135 (Fam). The court in that case drew on article 8 of the *UN Convention* as the child’s right to an identity with the intended parents, as being a fundamental right.

The court then dealt with section 54 of the *UK Act*, which is the equivalent of section 26 of the *Parentage Act*:⁹⁰

*“Section 54 goes to the most fundamental aspects of status and, transcending even status, to the very identity of the child as a human being: who he is and who his parents are. It is central to his being, whether as an individual or as a member of his family. As Ms Isaacs correctly puts it, this case is fundamentally about X’s identity and his relationship with the commissioning parents. Fundamental as these matters must be to commissioning parents they are, if anything, even more fundamental to the child. A parental order has, to adopt Theis J’s powerful expression, a transformative effect, not just in its effect on the child’s legal relationships with the surrogate and commissioning parents but also, to adopt the guardian’s words in the present case, in relation to the practical and psychological realities of X’s identity. A parental order, like an adoption order, has an effect extending far beyond the merely legal. It has the most profound personal, emotional, psychological, social and, maybe in some cases, cultural and religious, consequences. It creates what Thorpe LJ in *Re J (Adoption: Non-patrial)* [1998] INLR 424, 429, refer to as “The Psychological Relationship of Parent and Child with all its far-reaching manifestations and consequences”, these consequences are life long and, for all practical purposes irreversible: see *G v G (Parental Order: Revocation)* [2012] EWHC 1979 (Fam), [2013] 1 FLR 286, to which I have already referred. And the court considering an application for a parental order is required to treat the child’s welfare throughout his life as paramount: see in *Re L (A Child Parental Order: Foreign Surrogacy)* [2010] EWHC 3146 (Fam), [2011] Fam 106, [2011] 1 FLR 1143. X was born in December 2011, so his expectation of life must extend well beyond the next 75 years. Parliament has therefore required the judge considering an application for a parental order to look into a distant future.”*

The Childrens Court in Queensland in *CRB & BFH v RKH & BJH* [2020] QChC 7 at [9] referenced article 8 of the *Convention* in considering the child’s right to an identity when it was considering making a parentage order.

The Ministerial Expert Panel in Western Australia stated⁹¹:

“The MEP recognises that the historic limitation of access to surrogacy in WA has previously presented many Western Australians with stark choices:

- *The state of the complex, lengthy, burdensome and expensive system which was unlikely to result in a child being born*

⁸⁹ At [87].

⁹⁰ At [54].

⁹¹ At page 44.

- *Not have children, despite the powerful desire to do so*
- *Travel overseas and engage in overseas surrogacy arrangements, the majority of which are commercial arrangements.”*

Further, the Ministerial Expert Panel stated⁹²:

“The MEP is of the view that improving and expanding access to altruistic surrogacy in WA will reduce the demand for international commercial surrogacy. In NSW, Queensland and the ACT there are extraterritorial provisions prohibiting Australians from engaging in international commercial surrogacy. The Allan Review noted that these provisions had never been used as they are deemed not to be in the best interests of the child. Extraterritorial provisions are not recommended by the MEP for inclusion in proposed legislation for WA.

Legal Recognition of Parentage for Western Australian Children

In line with the principle that all children have the right to have their parentage recognised, and to reflect the reality that altruistic surrogacy has not previously been available to single men, people in same-sex relationships and transgender people, the MEP recommends:

- *Recognition for children already born who have been granted citizenship by descent.*
- *Such recognition to extent to those born overseas and granted citizenship up to 2 years after commencement of the proposed legislation.*

This recognition will by operation of law permit and authorise BDM to issue a birth certificate recognising the biological parent and their partner at the time of birth as the legal parents of the child.

Thereafter, the MEP recommends that the parents of children born via overseas commercial surrogacy arrangements be required to apply to the Family Court for parentage.”

I endorse the recommendation for the ability for the parents born overseas where only one of them is recognised on the birth certificate for both of them to be recognised on the birth certificate.

I note that the Western Australian Government responded to that recommendation:

“Supported in principle. Noting limitations on the Department of Justice and existing legislation international best practice that will need to be considered.”

I ask, in the best interests of the child, that there be a similar ability in the ACT to recognise both parents of children who have been born overseas via surrogacy where the child has already obtained Australian citizenship. My concern about the machinery, but not the substance, of the WA proposal is that Australia is a party to a number of international conventions, such as the *UN Convention on the Rights of the Child*, where the surrogate has been named on the overseas birth certificate as a parent. The WA proposal is doable, and while there would be some judicial resources taken up, it would not be considerable. If there have been 35 children born overseas through surrogacy in the ACT, then only a proportion of those would fit within this parameter- say 9.

It is suggested that there be two different pathways, by which with the consent of both the Australian intended parents:

⁹² At page 45.

1. In which only person is named on the birth certificate and seeks to add the other parent - a process is undertaken with the Registrar of Births, Deaths and Marriages. A copy of the surrogacy arrangement be supplied with the application to the Registrar, so as to minimise fraud (of the surrogate being removed improperly as a parent).
2. Where the surrogate is shown on the birth certificate, along with one of the Australian parents, then by application in the Magistrates Court to add the other parent as a parent and to remove the surrogate as a parent. This would allow the court, in the exercise of discretion, if her consent is not forthcoming, after reasonable efforts had been made to locate the surrogate, to dispense with service, and then to recognise the second Australian parent as a parent. The process should be simple, quick and cheap.

Given that overseas births can now be registered in the ACT under the *Births, Deaths and Marriages Registration Act 1997*, s.7, there is no jurisdictional reason why this process could not be legislated. Following either pathway is consistent with the approach of the High Court in *Masson*, namely that it was always the intention of the parties that they be the parents, in most cases one or both of them will be the genetic parents, and they have parented the child following its birth. The second pathway would be brought under a provision of the Act that would need to be prescribed for the purposes of reg. 12CAA of the *Family Law Regulations 1984* (Cth)⁹³, so that it is recognised under the *Family Law Act 1975* (Cth), s.60HB and the *Australian Citizenship Act 2007* (Cth), s.8.

R. REVIEWS OF LEGISLATION

I ask that there be regular reviews of the Act. There has been no review of this Act since 2004 until now, almost 20 years later. The drafters of this Act could never have imagined the current state of affairs concerning ACT residents undertaking surrogacy. Surrogacy journeys are at the cutting edge of society, medicine, science and the law. It would be a wise idea to have regular, legislated reviews every few years, say every five years, of this Act to ensure that it meets the needs of ACT residents.

ABOUT ME

I am a solicitor admitted in Queensland in 1987 and in South Australia as a solicitor and barrister in 2013. I **attach** my CV, which is not entirely up-to-date. I have done a number of presentations since then, including a lecture to embryology students at Monash University, an article about Maeve's Law (concerning mitochondrial donation) for the New South Wales Law Society, and a presentation for the International Academy of Family Lawyers Asia-Pacific Chapter about trans, non-binary and intersex people's family law issues in Australia.

I am:

- A Fellow of the International Academy of Family Lawyers, including a member of its Parentage Committee, its Sexuality and Gender Identity Committee, and its Forced Marriage Committee.
- A Fellow of the Academy of Adoption Assisted Reproduction Attorneys, the first Fellow outside the US and Canada, including a member of its ART Committee.
- A member of the LGBT Committee of Australian Lawyers for Human Rights.

⁹³ As s.26 of the Act is currently prescribed.

- A Board Member of the Fertility Society of Australia and New Zealand, as the consumer representative.
- I am, and have been, an international representative on the Artificial Reproductive Technologies Committee of the Family Law Section of the American Bar Association. In that role, I was responsible for what became the adoption by the 400,000 plus member American Bar Association of a resolution concerning a proposed Hague Surrogacy Convention [2012-2016].
- The recipient of the 2023 Queensland Law Society President's Medal.

The views in this letter are mine and mine alone.

I am, with my husband, a father through surrogacy in Queensland, which also necessitated egg donation. I have also suffered infertility.

Since 1988, I have advised in over 1900 surrogacy journeys for clients throughout Australia (including the ACT) and 30+ countries overseas.

If there is any way in which I can assist the Government in its deliberations as to the form of any Bill, I am happy to do so. I was a member of the Northern Territory Government's Joint Surrogacy Working Group and played an active part, both on that working group and subsequently, in giving advice to officials of the Health Department in the Northern Territory, right up until the date of enactment of the *Surrogacy Act* in May 2022.

If there is any way in which I can help, please ask.

Yours faithfully



Stephen Page
Page Provan
family and fertility lawyers
Accredited Specialist Family Law
2023 Queensland Law Society President's Medal recipient

Individual liability limited by a scheme approved under Professional Standards legislation.

page
provan

**family and
fertility lawyers**

Our passion: helping you on your journey to parenthood

We have the honour and privilege of helping our clients achieve their dream of becoming parents.

How we can help

To become a parent, you may need an egg donor, a sperm donor or a surrogate, or maybe all three. The very complex law in this area is not handled by most family lawyers. There is a lot of inaccurate information on the internet. If not done correctly, you may not have a child. You may not be recognised as a parent. You may fight it out in the Family Court. You may end up committing several criminal offences. We work with our clients and with experts here and overseas to ensure that our clients can become parents as quickly, cheaply and hassle free as possible. This includes looking at alternative solutions to solve the problem or problems – solutions often not thought of by our clients or by others.

Our team

Our team is led by Director Stephen Page.

Stephen has been named by the media as one of Australia's leading surrogacy lawyers. Stephen is one of three international representatives on the ART committee of the American Bar Association, a member of the Parentage/Surrogacy and LGBT Committees of the International Academy of Family Lawyers, a Fellow of the Academy of Adoption and Assisted Reproduction Attorneys, a director of the Fertility Society of Australia and New Zealand Ltd as well as being a member of various family law associations. Stephen has presented extensively at local, national and international conferences (and written widely) about surrogacy and fertility law. His first surrogacy case was in 1988. Career highlights include presenting at the world's first international surrogacy conference in Las Vegas in 2011, and obtaining a *world first precedent* in 2012 as to what constituted "conception". He was the convenor of Queenslanders for Equality which successfully lobbied to stop the Queensland government enacting discriminatory changes to Queensland's surrogacy laws.



Stephen Page

Curriculum Vitae

Stephen is the author of *When Not If. Surrogacy for Australians* (2022). Stephen graduated with Bachelor of Laws (Honours) in 1985 from the then Queensland Institute of Technology (now QUT).

In 1987 Stephen was admitted as a solicitor of the Supreme Court of Queensland. In 1989 Stephen was admitted as a solicitor of the High Court of Australia. In 2013 Stephen was admitted as a Barrister and solicitor of the Supreme Court of South Australia.

Stephen is a legal practitioner director of Page Provan, family and fertility lawyers, Brisbane.

Stephen is the 2023 Queensland Law Society President's Medal recipient.

In 1988, Stephen made a decision to specialize in family law. Since that time, his practice has consisted solely or predominantly of family law, and increasingly over time the sub-specialty of fertility law. Stephen has represented clients in fertility matters from throughout Australia over 30 countries overseas.

In 1996, the Queensland Law Society introduced a scheme of Queensland Law Society Accredited Family Law Specialists. Stephen became accredited in 1996. He has remained accredited ever since. In 2021 Stephen was recognised by the Queensland Law Society for being an Accredited Family Law Specialist for 25 years. Between 2017 and 2022, Stephen lectured at the University of New South Wales in *Ethics and the Law in Reproductive Medicine*.

Stephen has practised in all areas of family law. Stephen has three sub-specialties in family law:

- surrogacy/assisted reproductive technology
 - domestic violence
 - acting for LGBTI people
-
- ✓ Chaired the South Brisbane Immigration Community Legal Centre (now RAILS)
 - ✓ Chaired the management committee of a domestic violence refuge for some years
 - ✓ Co-founded a domestic violence service (WAVSS)
 - ✓ Been the chairperson or secretary of the Mt Gravatt committee of Relationships Australia Queensland from 1996 to 2003
 - ✓ Been a board member of Relationships Australia Queensland 2000-2003
 - ✓ Been a committee member of a court based domestic violence service (Beenleigh DVAP) 1999-2013
 - ✓ Been a member of the City Fertility Centre, National Surrogacy and Donor Committee from 2015 to 2020
 - ✓ Been the Honorary Solicitor for the Gay and Lesbian Welfare Association and the Brisbane Gay and Lesbian Business Network.
 - ✓ Acted as the pro bono solicitor for the Queensland AIDS Council (2017)
 - ✓ Spoken at the launch of Diversity in Gender and Sexuality in 2014.
 - ✓ Lobbied the Queensland Government in 2011, 2012, 2015, 2017 to legislate to remove gay panic defence and to add hate crime legislation
 - ✓ Attended at Queensland Government roundtables about domestic violence in LGBTI relationships (2015); and LGBTI issues (2016)
 - ✓ Lobbied the NSW and Victorian Attorneys-General in 2013 to alter practices to allow Victorian birth records to be altered for children the subject of NSW parentage orders.
 - ✓ Queensland Law Society, including as a member of the Equity and Diversity Committee (2017-2022)

Presented papers and spoken at numerous conferences and presentations including:

| Year | Place | Conference | Subject |
|-------------|--------------|---|--|
| 1999 | Gold Coast | State Conference on Domestic Violence | Domestic Violence |
| 2001 | Gold Coast | National Conference on Domestic Violence | Domestic Violence |
| | Brisbane | State Men's Conference | Family Law |
| 2002 | Townsville | Far North Queensland and North Queensland Law Association | Domestic Violence |
| | Brisbane | Financial Counsellors Conference | Property Settlement |
| 2003 | Gold Coast | International Conference on Domestic and Sexual Abuse | Family Court and Sexual Abuse |
| | Brisbane | Queensland Magistrates Conference | Domestic Violence |
| | Brisbane | Family Law Practitioners Association | Domestic Violence |
| | Gold Coast | Gold Coast Practitioners | Domestic Violence |
| | Brisbane | Queensland Law Society | Domestic Violence |
| 2004 | Brisbane | Family Law Masterclass | Property Settlement |
| 2005 | Brisbane | Queensland Law Society | Domestic Violence |
| 2006 | Brisbane | Queensland Law Society | Domestic Violence |
| 2007 | Denver | National Conference on Domestic Violence | Domestic Violence and Immigration |
| | Brisbane | Australia's CEO Challenge | Domestic Violence |
| | Brisbane | 5th National Health in Difference Conference | Gay Marriage; Same Sex Domestic Violence; LGBTI Property and Estate Issues |
| | Brisbane | National PFLAG Conference | LGBTI family law issues |
| | Brisbane | Australia's CEO Challenge | Family Court and Child Abuse |
| 2008 | Brisbane | LexisNexis | Property Settlement |
| | Brisbane | Multicultural Family Law Workers' Forum | Family Law, especially how it impacts on NESB people |

| | | | |
|-------------|------------|---|---|
| 2009 | Brisbane | Australia's CEO Challenge | Property Settlement |
| 2010 | Brisbane | Australia's CEO Challenge | Domestic Violence; Same Sex Domestic Violence |
| | Brisbane | LexisNexis | Chaired, Family Law |
| | Caboolture | Family support network | Training about file notes |
| | Brisbane | Multicultural Family Law Workers Forum, Multicultural Development Association | Family law/domestic violence |
| | Brisbane | Legalwise | Chair, Family Law Session |
| | Sydney | Surrogacy Forum | Surrogacy |
| 2011 | Sydney | Surrogacy Forum | Surrogacy |
| | Gold Coast | City Fertility Centre national training | Surrogacy |
| | Gold Coast | Fertility Nurses of Australasia conference | Surrogacy |
| | Brisbane | LexisNexis | Surrogacy |
| | Brisbane | Legalwise | Surrogacy |
| | Brisbane | Life Fertility | Surrogacy |
| | Gold Coast | Qld Law Society/Family Law Practitioners Association Family Law Residential | Surrogacy |
| | Sydney | Westmead Foundation Fertility Symposium | Surrogacy |
| | Las Vegas | American Bar Association Family Law Section ART conference | Surrogacy |
| | Melbourne | World Congress on Reproductive Medicine | Surrogacy |
| 2012 | Brisbane | Legalwise | Domestic Violence |
| | Brisbane | City Fertility Centre | Surrogacy |
| | Brisbane | Australia's CEO Challenge | Domestic Violence |
| | Brisbane | Australia's CEO Challenge | Family Law Act Amendments |
| | Brisbane | Queensland Family Law Pathways Network | Domestic Violence |
| | Melbourne | Surrogacy Australia conference | Surrogacy |

| | | | |
|-------------|---------------|---|--|
| | Brisbane | LexisNexis | Surrogacy |
| | Brisbane | Family Law Practitioners Association | Domestic Violence |
| | Boston | International Commission on Couple and Family Relations | Family Law Collaboration Between the Professions |
| | Glendale, AZ | Arizona State University | Guest lecturer to law students about domestic violence |
| | Brisbane | Caxton Legal Centre | Domestic Violence |
| | Brisbane | Life Fertility Clinic | Surrogacy |
| | Sydney | NSW ANZICA meeting | Surrogacy |
| | Brisbane | Queensland Domestic Violence Conference | Domestic Violence and Immigration |
| | Port Stephens | Hunter Valley Family Law Conference | Surrogacy |
| | Kingaroy | South Burnett Child Protection network | Domestic Violence |
| | Sydney | Presentation to NSW MP's | Surrogacy |
| | Sydney | Surrogacy Forum | Surrogacy |
| 2013 | Brisbane | Legalwise | Surrogacy |
| | Melbourne | Australian Psychological Society Family Law and Psychology Interest Group | LGBTI Family Law |
| | Melbourne | Surrogacy Forum | Surrogacy |
| | Melbourne | Surrogacy Australia | Moderating legal panel |
| | Sydney | Surrogacy Forum | Surrogacy |
| | Brisbane | Surrogacy Forum | Surrogacy |
| | Anchorage | American Bar Association Family Law Section Spring Training | Surrogacy |
| | Townsville | North Qld Law Association | Domestic Violence |
| | Brisbane | Presentation to Save the Children Fund | Keeping file notes |
| | San Francisco | LGBT Family Law Institute | Credentialed attendee |
| | Brisbane | Life Fertility Clinic | Surrogacy/ART issues |

| | | | |
|-------------|----------------------------|---|---|
| | Sydney | Fertility Society of Australia | Ethical and moral dilemmas of surrogacy |
| | Brisbane | Australian Association of Social Workers Professional Practice Group meeting | Keeping file notes |
| | Charleston, South Carolina | American Academy of Assisted Reproduction Technology Attorneys | The dirty dozen rules in international ART |
| 2014 | Brisbane | Queensland Counsellors Association | Keeping file notes |
| | Brisbane | Television Education | Presentation on behalf of Adam Cooper as to addbacks in property settlement |
| | Brisbane | Merck Sorono satellite conference to Asia Pacific Initiative on Reproduction Congress (ASPIRE) conference | US surrogacy law and practice |
| | Brisbane | So you want to make a baby forum, in conjunction with the LGBTI Legal Service | Surrogacy, egg and sperm donation |
| | Melbourne | Surrogacy Australia conference | Hague, NSW, WA and NHMRC surrogacy reviews; panelist as to State surrogacy laws |
| | Mooloolaba | Fertility Nurses of Australasia conference | Ownership of eggs, sperm and embryos after donation |
| | Brisbane | LGBTIQ families planning day | Egg and sperm donation, family formation, surrogacy |
| | Brisbane | Qld Program to Assist Survivors of Torture and Trauma | Keeping file notes |
| | Melbourne | Association of Family and Conciliation Courts inaugural Australian chapter conference | LGBTIQ people and the Family Law Courts |
| | Brisbane | Scientists in Reproductive Technology conference | Import and export of gametes and embryos |
| | Brisbane | College of Law | Lecture to graduate students about surrogacy |
| | Brisbane | College of Law | Lecture to graduate students about family formation |
| | Brisbane | Legalwise | Chair of Managing Financial Issues after Family Breakdown |

| | | | |
|-------------|----------------------|---|--|
| | Queensland webinar | University of Southern Queensland, School of Psychology, Counselling and Community | Keeping file notes-avoiding the Rottweiler's bite |
| | Stowe, Vermont | Presentation to American Bar Association Family Law Section council | Concerning co-authored paper concerning proposed Hague Convention on private international law concerning children |
| | Brisbane | Domestic and Family Violence Summit | Attendee/participant at invitation of Dame Quentin Bryce |
| | Adelaide | Law Society of South Australia | Presentation about surrogacy in South Australia |
| | Brisbane | Community seminar on ethical surrogacy | |
| | Melbourne | Community seminar on ethical surrogacy | |
| | Sydney | Community seminar on ethical surrogacy | |
| 2015 | Canberra | Canberra Fertility Centre | Facilitated discussion concerning surrogacy and fertility issues |
| | Brisbane | Donor seminar | Presentation about implications of egg, sperm and embryo donation |
| | Brisbane | Legalwise | Children across borders |
| | Sydney | NSW ANZICA meeting | Surrogacy/fertility update |
| | Sydney | Canadian surrogacy seminar | |
| | Queensland | QAILS webinar | Surrogacy |
| | Brisbane | College of Law | Guest lecturer- surrogacy and fertility |
| | Brisbane | Australian Association of Women Judges-inaugural lecture: Whose rights are they anyway?-with Chief Justice Bryant | Panellist-surrogacy |
| | Carlsbad, California | American Bar Association family law section/ART stream | Ownership of eggs, sperm and gametes |
| | London | LGBT Family Law Institute | Session moderator |

| | | | |
|-------------|--------------------------------|---|---|
| | London | International Academy of Matrimonial Lawyers surrogacy symposium | Surrogacy law in Australia |
| | Gold Coast | Television Education Network 9th Annual family Law Conference | Who is a parent |
| | Dunsborough, Western Australia | Family Law Practitioners Association of Western Australia | Surrogacy panel discussion with Chief Justice Bryant and Justice Crisford |
| | Canberra | Fertility Society of Australia | Post-Baby Gammy Surrogacy Regulation |
| | Queensland | Queensland Family Law Pathways Network | Webinar on ART and Family Law |
| | San Francisco | Bar Association of San Francisco surrogacy seminar | International surrogacy |
| | Chicago | American Academy of Assisted Reproductive Technology Attorneys (AAARTA) conference | Australian surrogacy update |
| | Brisbane | Families Through Surrogacy seminar | Queensland and Australian surrogacy |
| | Brisbane | Australian Community Workers Association | The courage to effect change |
| 2016 | Online | Television Education Network audio interview | Who's a parent |
| | Melbourne | Television Education Network | Who's a parent; chaired afternoon session |
| | Brisbane | Legalwise family law conference | Dirty dozen rules of international family law |
| | Brisbane | LGBT Family Law Institute | Host-and moderator for sessions on surrogacy, and what's next |
| | Cape Town | University of Western Cape law school | Guest lecture as to surrogacy |
| | Cape Town | Miller du Toit Cloete Inc and University of Western Cape 19th family law conference | Keynote speaker as to surrogacy |
| | Sydney | Marbury Chambers (my paper was delivered in my absence by Natalie Moffatt) | Qld and NSW surrogacy |
| | Online | Circle Surrogacy webinar | Surrogacy/egg donation |
| | Denver | American Academy of Assisted Reproductive Technology Attorneys annual meeting | Moderating panel of international surrogacy lawyers |

| | | |
|-------------------|---|--|
| Nassau, Bahamas | American Bar Association Family Law Section/ART stream | Australian surrogacy overview |
| Australia-webinar | Family Court of Australia | The ART of family law |
| Brisbane | Out for Australia-legal panel | How the law relates to parenting and relationship recognition for LGBTI people |
| Brisbane | US surrogacy seminar | |
| Brisbane | Australian Surrogacy Conference | Moderated panel on role of lawyers, moderated panel discussion on role of surrogacy agencies |
| Canada | Canadian Fertility and Andrology Society webinar | Australians behaving badly-Australian surrogacy |
| Gold Coast | Television Education Network LGBTI family law seminar | Understanding the de facto relationships rules in the context of LGBTI relationships |
| Melbourne | City Fertility Centre | Inhouse training on surrogacy and donor issues |
| Brisbane | Launch of Rainbow Fertility | Speech/question and answer session on surrogacy and fertility issues for LGBTIQ people |
| Brisbane | City Fertility Centre national conference | A six point guide to surrogacy |
| Brisbane | Association of Family and Conciliation Courts Australian Chapter conference | Panellist on Family Violence in Interim Hearings in the Federal Circuit Court |
| Melbourne | Television Education Network | TV taping of Who is a parent |
| Brisbane | Legalwise family law seminar | Makin' and breakin': LGBTIQ people and family law |
| Brisbane | College of Law | Workshop on advanced family law |
| Brisbane | LGBTI Legal Service | Presentation about families-civil partnerships, adoption, sperm donation, surrogacy |

| | | | |
|-------------|---------------|---|--|
| | Sydney | Rainbow Fertility | Speech/question and answer session on surrogacy and fertility issues for LGBTIQ people |
| | Lismore | Rainbow Fertility | Speech/question and answer session on surrogacy and fertility issues for LGBTIQ people |
| 2017 | Gold Coast | Rainbow Fertility | Speech/question and answer session on surrogacy and fertility issues for LGBTIQ people |
| | Brisbane | Legalwise Family Law Forum | Third party property matters |
| | Brisbane | Out for Australia mentoring discussion | Panellist on how to mentor |
| | Sydney | Television Education network live webinar | De facto relationships in the context of LGBTI relationships |
| | Brisbane | LGBTIQ parents to be information night | Panellist |
| | Australia | Circle Surrogacy: Surrogacy in the US-for Aussies-webinar | Presenter |
| | Hong Kong | Hong Kong University, Department of Social Work and Social Administration | Guest lecture on international ART, surrogacy and egg donation |
| | Hong Kong | Inaugural Asia-Pacific Rainbow Families Forum | Three presentations about international surrogacy, egg donation, ART issues |
| | Brisbane | Queensland Law Society seminar | Learning from the leaders-pursuing diversity in the legal profession-panellist |
| | Melbourne | Television Education Network-1st LGBTI Legal and Regulatory Conference | Access to IVF, ART and stored genetic materials |
| | International | American Bar Association: Commonwealth babies: international ART update | Webinar as to aspects of Australian surrogacy law especially as to Re Halvard and Re Grosvenor |

| | | | |
|-------------|--------------------|---|--|
| | Brisbane | Queensland Law Society Essentials Conference | How to build a courageous career |
| | Gold Coast | Queensland Law Society/Family Law Practitioners Association Family Law Residential | Who's ya Daddy?- parentage presumptions |
| | Australia | Canadian Fertility Consulting webinar | Surrogacy in Canada for Aussies-when, not if you're parents |
| | Brisbane | University of Queensland Pride Alliance-function as to domestic violence | Keynote speaker/ panellist |
| | Australian webinar | San Diego Fertility Center-US surrogacy for Australian intended parents | Speaker |
| | Sydney | LGBT Family Law Institute Australia | Director and moderator |
| | Sydney | International Bar Association conference | Presenter on surrogacy |
| | Brisbane | Pride in Law launch, Banco Court | Speech at launch |
| | Australia | US surrogacy for Australians webinar | Presenter |
| | Phnom Penh | Asia-Pacific Rainbow Families Forum | Presenter |
| 2018 | Melbourne | The Equality Project, Better Together conference | Presenter:The ten barriers to becoming parents through surrogacy; panellist: Queer Families; panellist: Queer Families and the Law |
| | Brisbane | Iris Education | Presenter: Transgender legal issues |
| | Queensland webinar | Queensland Law Society | Presenter: The impact of the Marriage Act amendments in family law issues |
| | Sydney, webinar | Television Education Network | Presenter: Defining best interests of children in family law parenting matters |
| | Cape Town | Miller du Toit Cloete Inc and University of Western Cape 21st family law conference | Presenter: Australian and world developments in ART law |
| | Brisbane | Queensland Law Society Symposium | Chairing of two family law sessions |

| | | | |
|--|------------|---|--|
| | Brisbane | Legalwise | Presenter: Lifting the corporate veil in family law: Revisiting Salome |
| | Brisbane | Queensland Law Society Careers Expo | Panellist: "Oh the places you'll go!" as to career issues |
| | Nashville | American Bar Association ART Conference | Presenter, co-author *ART* The Long Road Home: Overcoming Legal, Cultural, and Practical Challenges to International Surrogacy in the Pacific Region |
| | Sydney | College of Law conference | Presenter: Who's ya Daddy? |
| | Brisbane | Legal Aid Queensland training | Presenter: Marriage Act amendments and recent fertility law cases |
| | Gold Coast | Fertility Nurses of Australasia conference | My dance card is full-surrogacy |
| | Brisbane | Queensland Law Society | Family law 101-parenting |
| | Adelaide | Association of Family and Conciliation Courts Australian Conference –Pre-Conference Institute | Presenter: Workshop leader with Dr Philip Stahl –Domestic Violence and Alienation |
| | Queensland | Queensland Law Society Live Cast | Re Cresswell -death and reproductive technology-panellist |
| | Brisbane | Pride in Law | Pride and Prejudice-making the legal profession truly inclusive-panellist |
| | Sydney | Monash IVF | Training as to surrogacy and fertility law issues |
| | Brisbane | LGBT Family Law Institute Australia meeting | Chaired all sessions, co-moderated session on family formation including surrogacy |
| | Brisbane | Greater Brisbane Family Law Pathways seminar | Who is a parent? |
| | Adelaide | City Fertility Centre | Update on surrogacy and assisted reproductive treatment law |

| | | | |
|-------------|---------------|---|--|
| | Brisbane | Australian Human Resources Institute, Diversity and Inclusion Section | How workplaces can tackle domestic violence |
| 2019 | Sydney | Better Together conference | Surrogacy 101 |
| | USA | American Bar Association webinar | Where there's a will, there's a way: minimising the risk of international surrogacy arrangements |
| | Melbourne | LGBT Family Law Institute Australia meeting | Chair of the meeting, co-facilitator on session on surrogacy/family formation |
| | Sydney | Independent Parents Advisory Network | Presentation about surrogacy options for intended parents |
| | Melbourne | Surrogacy presentation | Presentation about legal issues for intended parents |
| | Sydney | Surrogacy presentation | Presentation about legal issues for intended parents |
| | Brisbane | Surrogacy presentation | Presentation about legal issues for intended parents |
| | Brisbane | Qld Law Society Symposium | Facilitator, Achieving respectful and inclusive workplaces |
| | Gold Coast | Scientists in Reproductive Technology conference | Presentation about surrogacy and post-humous use of gametes; panellist as to future ethical and legal trends |
| | Brisbane | Queensland Law Society, Family Law Fundamentals | Presentation about parenting matters |
| | Gold Coast | Simonidis Steel 2019 CPD conference | Presentation about surrogacy |
| | San Francisco | International Academy of Family Lawyers, Introduction to International Family Law | Presenter-International parenting agreements |
| | San Francisco | International Academy of Family Lawyers, USA and Canadian Chapters meeting | Panellist about assisted reproductive treatment law |

| | | |
|---------------|---|---|
| San Francisco | National Family Law Advisory Committee, National Center for Lesbian Rights | Facilitated discussion about surrogacy issues |
| Brisbane | Rainbow Families Queensland-Making Rainbow Babies | Surrogacy, egg and sperm donation issues for LGBTIQ intended parents and donors |
| Sydney | Legalwise seminar, LGBTI people and the law | Who's ya daddy-parentage presumptions |
| Brisbane | Life Fertility | Presentation with Karen Gough about surrogacy and donor issues |
| Brisbane | Greater Brisbane Family Law Pathways Network | Panellist in a seminar on warrants and subpoenas for counsellors and family lawyers |
| Brisbane | Pride Brisbane Network | Presentation about donor and surrogacy issues |
| Brisbane | Queensland Fertility Group egg and sperm donor seminar | Presentation about legal issues with egg, sperm and embryo donation |
| Sydney | Association of Family and Conciliation Courts Australian Chapter 6th conference | Presentation-Ethical issues in surrogacy: contradiction or conundrum |
| Sydney | LGBT Family Law Institute 5th meeting | Chaired the meeting, co-facilitator of session on surrogacy and family formation |
| Hobart | Fertility Society of Australia conference | Presentation-Surrogacy snapshot |
| Seoul | International Bar Association conference | Panel member: From East to West: developments and issues in the advancement and protection of the rights of transgender and non-binary people |
| Melbourne | Guest lecture to Monash University post-graduate embryology students | Ethics and law in embryology in context |

| | | | |
|-------------|------------------------|---|---|
| | Brisbane | Presentation to Monash IVF Group Queensland doctors, nurses and technicians | Current donor and surrogacy issues |
| | Brisbane | Workshop for Encircle counsellors | Avoiding the rottweiler's bite: keeping good file notes |
| | Brisbane | Growing Families seminar | Current surrogacy and donor issues |
| | Brisbane | Queensland Fertility Group | Time for a cold shower after Masson v Parsons |
| | Brisbane | Greater Brisbane Family Law Pathways Network - moderator | The future of family law - after the ALRC report |
| | Brisbane | Legalwise | Legal issues related to supporting students who are transgender and gender diverse or who have transgender and gender diverse parents |
| | Brisbane | IPAN | Current surrogacy issues |
| | Sydney | Legalwise | Who is a parent? What are the implications of Masson v Parsons? |
| 2020 | Cape Town | University of the Western Cape/Miller du Toit Cloete family law conference | Surrogacy issues |
| | Monash University | Guest lecturer to embryology students | Surrogacy and ethics issues |
| | Queensland | Webinar for Fertility Solutions | Egg, sperm and embryo donor issues |
| | Webinar | Canadian Fertility Consulting | Surrogacy issues for Australians going to Canada, being impacted by Covid-19 |
| | Australian webinar | Television Education Network | First return dates in family law |
| | Queensland webinar | Queensland Law Society | Family law fundamentals- parenting matters |
| | Melbourne- via webinar | City Fertility Centre | Victorian ART and surrogacy issues |
| | Australian webinar | Legalwise | Interim parenting hearings |

| | | | |
|-------------|-----------------------|--|--|
| | Australian webinar | Fertility Society of Australia | Simplifying and summarising surrogacy: how to keep your patients safe and your clinical practice legal and ethical |
| | Australian webinar | Corrs Chambers Westgarth | Demystifying surrogacy in Australia |
| 2020 | Australian webinar | National Mental Health Resilience Summit | Panellist in four sessions |
| 2021 | International webinar | International Academy of Family Lawyers | Panellist: When children and adults transition: challenges for the families and the law |
| | Australian webinar | Television Education Network | First return dates in family law |
| | Webinar | Greater Brisbane Family Law Pathways Network | Clayton v Bant (host) |
| | Brisbane | Legalwise Advanced Family Law | Presented paper on behalf of Guy Waterman about recent property settlement cases, including addbacks |
| | Webinar | Page Provan/San Diego Fertility Center | Surrogacy in the US for Australian intended parents |
| | Webinar | Australian Jewish Fertility Network | Egg, sperm, embryo donation and surrogacy |
| | Webinar | Page Provan | Surrogacy in Canada for Australian intended parents |
| | Webinar | University of Southern Queensland Law Association | Presentation about my career |
| | Webinar | Miller du Toit Cloete Inc/University of Western Cape virtual family law conference | Sperm donation |
| | Podcast | Amber Daines | The Politics of Family Law |
| | Zoom Meeting | LGBT Family Law Institute in Australia | Chair and moderate session on family formation |
| | Webinar | Page Provan | Surrogacy in Queensland |

| | | | |
|-------------|--|---|---|
| | Webinar | Page Provan | Surrogacy in New South Wales |
| | Conference | Growing Families Domestic Surrogacy | |
| | Virtual meeting | All about Fertility Expo | Surrogacy/ART Issues |
| | Virtual Conference | International Federation of Obstetricians and Gynecologists (FIGO) World Congress and Chair Session | Posthumous Use |
| | Webinar | Page Provan obtaining Australian Citizenship through Surrogacy | |
| | Webinar | International Academy of Family Lawyers Asia Pacific Chapter/Law Asia | Surrogacy in Asia Pacific |
| | Seminar | Rainbow Families Queensland. Making Rainbow Babies | Surrogacy |
| | Monash University | Guest Lecturer | Surrogacy Legislation |
| 2022 | Podcast | Greater Brisbane Family Law Pathways Network - New Way Lawyers | Surrogacy |
| | Webinar | Television Education Network | First Return Dates in Family Law |
| | Zoom Meeting | Interviewed | 'Inter-country adoption is in decline. Discuss. What is your point of view about this statement?' |
| | Television Education Network | Court Room Strategies in Family Law Online Conference | First Return Dates Maximising Returns from the Get Go |
| | Television Education Network | Drafting Binding Financial Agreements that Withstand the Test of Time | Drafting Binding Financial Agreements |
| | Legalwise | 19th Annual Family Law Conference Brisbane | The Duty of Disclosure and Discovery Rules |
| | Legalwise | Family Law Financial Settlements: Key Issues Webinar | Can Embryos be Property? |
| | Law Faculty of the University of the Western Cape and Miller du Toit Cloete Incorporated | 25th Annual Family Law Conference Cape Town | ART with a particular focus on surrogacy and the rights of the parties and the child |

| | | | |
|-------------|---------------------------------------|--|--|
| | Monash IVF | Monash IVF Qld Clinical Day | Legal Aspects of Donor and Surrogacy |
| | Growing Families | National Surrogacy & Egg Donation Conference | Legal Parentage after Domestic Arrangements |
| | Northern Territory Family Law Section | | Surrogacy Act |
| | Monash University | Surrogacy Legislation | Ethics and Law in Embryology in context |
| | Gold Coast | Television Education Network national family law conference | Costs as the weapon of choice by the courts |
| | Sydney | Fertility Society of Australia and New Zealand conference | Embryos as property in family law |
| | Sydney | Fertility Society of Australia and New Zealand conference | Posthumous use of gametes and embryos |
| | Sydney | Fertility Society of Australia and New Zealand conference | Poster presentation: Throuples as parents |
| | Queensland | Queensland launch of book: Surrogacy Stories | Sam Everingham |
| | | Presentation | Fertility Nurses Training Session Paper |
| | Brisbane | Fertility Nurses of Australasia | Donor and surrogacy issues |
| 2023 | Sydney | Sydney WorldPride human rights conference | Panellist in rainbow families session |
| | Cape Town | 25th Miller Du Toit Cloete Inc/ University of Western Cape international family law conference | 1. Presentation: 1980 Hague Convention issues in Australia 2. Presentation: sperm donation in Australia. 3. Chair: LGBTQIA+ family law session |
| | Brisbane | Adora Fertility national conference | Presentation: egg, sperm and embryo donation |
| | Las Vegas | American Bar Association: Family Law/Assisted Reproductive Treatment Conference/Surrogacy and Donor Issues of Australia; | Chair: International Surrogacy Panel |
| | Sydney | Specialist Sharing Expertise Education and Data (SEED) 2023 Surrogacy | |
| | Webinar | Television Education Network | Costs as the weapon of choice by the courts |

| | | | |
|--|----------------|---|---|
| | Gold Coast | Fertility Nurses Association of Australasia and National Conference Donor and Surrogacy | |
| | | Copenhagen International Surrogacy Forum | Australian Surrogacy |
| | Webinar | MERCK Australia Pride Month | |
| | Melbourne | Growing Families: Australian Surrogacy Agreements | |
| | Melbourne | Growing Families: Establishment of Parentage for Children born overseas through Surrogacy | |
| | Remote lecture | Monash University, embryology course | Surrogacy and ART issues |
| | Webinar | International Academy of Family Lawyers, Asia-Pacific Chapter | Family law issues for transgender, non-binary and intersex people |
| | Sydney, remote | The Law Society of New South Wales specialist accreditation conference | Family law issues for transgender, non-binary and intersex people |
| | Webinar | The Education Network | Till Death Us Do Part: s.79(8) issues concerning death and property settlement |
| | Webinar | Corrs Pride Network: Inclusive Parenting | Panellist |
| | Webinar | The Law Society of South Australia | Unravelling the Maze of Surrogacy |
| | Manly, NSW | Australasian Sexual and Reproductive Health Conference 2023 | Speaker: Access by members of the rainbow community to reproductive healthcare |
| | Webinar | Legalwise Family Law Seminar | Family Law Amendment Bill 2023 panellist Speaker: Who is a parent after Masson |

Submissions to Parliamentary/Government inquiries

| Year | Inquiry | Form of evidence | Subject |
|-----------|---|--------------------------------------|--|
| 2011 | Tasmanian Legislative Council, Government Administration A Committee | Written, oral | Surrogacy |
| 2013 | Family Law Council | Written | Status of children |
| 2014 | Western Australia Surrogacy Act 2008 review | Written | Surrogacy |
| | Queensland Parliament | Written | As to a bill to continue advertising restrictions as to egg and sperm donors |
| 2014-2015 | New South Wales Surrogacy Act 2010 review | Written | Surrogacy |
| 2015 | Queensland Parliament, Legal Affairs and Community Safety Committee | Written, oral | Civil partnerships |
| | House of Representatives Standing Committee on Social Policy and Legal Affairs | Written; oral | Surrogacy roundtable |
| 2016 | South Australian Law Reform Institute | Written; participation in roundtable | LGBTI discrimination, especially as to surrogacy and ART |
| | House of Representatives, Standing Committee on Social Policy and Legal Affairs | Written | Surrogacy |
| | Queensland Adoption Act 2009 review | Written | Adoption |
| 2017 | Senate inquiry as to proposed Marriage Act amendments | Written | Marriage |
| | Queensland Parliament, Legal Affairs and Community Safety Committee | Written, oral | Amendments to Criminal Code to abolish gay panic defence |
| | Queensland Parliament, Legal Affairs and Community Safety Committee | Written, oral | A Bill for the expungement of homosexual acts convictions. |
| 2018 | Queensland Parliament, Legal Affairs and Community Safety Committee | Written | A Bill to amend Births, Deaths and Marriages Registration Act so that trans people no longer need to divorce to change their gender marker |

| | | | |
|------------------|--|---------------|---|
| | Australian Law Reform Commission, family law review | Oral | Family law review- submissions made in conjunction with LGBTI Legal Service |
| | Western Australian surrogacy review | Written, oral | Submissions about surrogacy and ART regulation in Western Australia |
| | South Australian surrogacy review | Written, oral | Submissions about surrogacy regulation in South Australia |
| 2018-2019 | Victorian assisted reproductive treatment review | Written, oral | Submissions about ART regulation in Victoria, including regulation of surrogacy |
| 2020 | Victorian government, following the assisted reproductive treatment review | Written | Submissions concerning further changes proposed arising out of the ART review |
| 2021 | Northern Territory Government Surrogacy Joint Working Group | Member | |
| | ACT Government Equality Australia | Panelist | Workshop as to intersex law reforms |
| 2022 | Queensland Parliament, Legal Affairs and Community Safety Committee | Written, oral | Submissions concerning the rights of donor conceived adults |
| | WA donor and surrogacy review | Written, oral | Response as to surrogacy data on request from the review |
| 2022-2023 | Senate inquiry into universal access to reproductive healthcare | Written, oral | |
| 2023 | ACT Government | Written | Whether the ACT should have an Assisted Reproductive Treatment Act |
| | ACT Government | Written | Proposals for change to the Parentage Act 2004 (ACT) re surrogacy |

Stephen currently is a member of:

- ✓ Family Law Section of the Law Council of Australia (1994-)
- ✓ Family Law Practitioners Association of Queensland Ltd (1994-)
- ✓ Fertility Society of Australia (2012-)
- ✓ International Academy of Family Lawyers, including as a member of the Forced Marriage Committee, the LGBT Committee and the Parentage Project Committee (as a Fellow, 2014-)
- ✓ American Bar Association, (associate), and one of three international representatives on the Assisted Reproductive Technologies Committee (2012-)
- ✓ Fellow, Academy of Adoption and Assisted Reproduction Attorneys (2014-) including as a member of the ART Resources Committee
- ✓ Member Australian Lawyers for Human Rights, LGBTIQ+ Committee
- ✓ Founder, LGBT Family Law Institute Australia (2016-)
- ✓ the Legal Aid Queensland panel for Independent Children's Lawyers (2007-)
- ✓ Asia-Pacific Rainbow Families Forum (2017-)
- ✓ Queensland Alliance for Kids (legal advisor and member) (2018-)
- ✓ Director, Fertility Society Australia and New Zealand Limited (2021-)

Authored works:

These include:

| Year | Work | Periodical/Organisation |
|------|--|---|
| 2009 | Changes to Stamp Duty for Family Lawyers | Proctor/Queensland Law Society |
| | Update –child protection chapter | Queensland Practice Manual/ Thomson Reuters |
| 2011 | Co-author and principal researcher–State by State surrogacy guide–with Alexandra Harland | Family Law Review |
| 2012 | Trends as to International Surrogacy | Family Law Review |

| | | |
|------------------|---|---|
| 2013-2016 | Co-author with Bruce Hale and principal advocate-Resolution 112B: Position paper as to proposed Hague surrogacy convention-adopted by House of Delegates, American Bar Association, February 2016 | Artificial Reproductive Technologies Committee/ American Bar Association |
| 2015 | The right to be a parent-regulating surrogacy in Australia | Rightnow |
| | Principal author-Think Local-Act Global, 10 must-knows about International Surrogacy-with Brian Esser | Family Advocate/ American Bar Association, Family Law Section |
| | Avoiding Another Baby Gammy | Australian Family Lawyer/Family Law Section, Law Council of Australia |
| | Surrogacy Down Under | American Society for Reproductive Medicine Newsletter |
| | The patchwork quilt: the surrogacy landscape in Australia | Family Law News, Special Edition on International Surrogacy,International Bar Association |
| | Review of Surrogacy, the Law and Human Rights | Alternative Law Journal |
| 2016 | Surrogacy in Australia-a missed opportunity | BioNews |
| | Is surrogacy legal in Australia? | O & G Magazine (magazine of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists) |
| | Whose rights are they, anyway?(with Bruce Hale) | The SciTech Lawyer, American Bar Association, Science and Technology Section |
| | Family Court requires wife to refund over AUD\$200,000 in spousal maintenance to husband | Family Law Update, International Bar Association |
| | Queensland allows LGBTI couples, singles to adopt | Alternative Law Journal (2016) 41(4) AltLJ 287 |
| 2017 | Family Court recognizes parents under US surrogacy order | Proctor, Queensland Law Society |
| | Family Court tells Australian couple they are not the parents | Family Law Update, International Bar Association |
| 2018 | Australian Family Law in a State of Flux | Family Law Update, International Bar Association |

| | | |
|-------------|--|--|
| | Zoe Durand, Inside Family Law: Conversations from the Coalface”, Longueville Media-interview”Stephen Page: family lawyer with expertise in surrogacy” | |
| 2019 | Snapshot of domestic violence in Queensland | Social work focus, Australian Association of Social Workers |
| | For the love of...gametes | Proctor, Queensland Law Society |
| | International Comparison of LGBT Laws (co-author) | International Academy of Family Lawyers |
| | Masson v Parsons the practicalities: but for their acted on intention the child would not exist | Australian Family Lawyer, Family Law Section, Law Council of Australia |
| | Who is a parent is not esoteric rocket science | Ex Curia, Family Law Practitioners Association of Western Australia |
| 2020 | The impact of Covid-19 on family law in Australia | Family Law Update, International Bar Association |
| 2021 | Special ART edition of Family Court Review- guest co-editor with Gary Debele, and author Decoding the Jargon: Article on Terminology, and International Law Concerning ART | Family Court Review, Association of Family and Conciliation Courts |
| | The Australian surrogacy landscape- what have the last 10 years taught us? | International Family Law Journal |
| | Co-Author – Critical Perspectives on Human Rights Law In Australia – Volume 2 | |
| 2022 | Review of Fertility and Cancer | Cancer Council of Australia |
| 2023 | Precedent Surrogacy in Australia: The ‘Failed Experiment’? | Australian Lawyers Alliance |
| | Review of Biological Parenthood and Reproductive Technologies | queios.com |
| | Planning to Resolve: ADR in ART | American Bar Association, <i>Family Advocate</i> |

Media

Stephen has spoken extensively in the media about family law, domestic violence and surrogacy issues including to:

TV

International

- ✓ XinhuaTV(China)
- ✓ Deutsche Welle (Germany)
- ✓ Fuji TV (Japan)
- ✓ Russia Today

Network Seven

- ✓ Sunrise
- ✓ The Morning Show
- ✓ 7 News

Nine Network

- ✓ National Nine News
- ✓ Today
- ✓ A Current Affair
- ✓ 60 Minutes

Network Ten

- ✓ The Project
- ✓ Wake Up(pilot episode)

Australian Broadcasting Corporation(ABC)

- ✓ ABC News
- ✓ The 7.30 Report
- ✓ ABC 24

SBS

- ✓ SBS News
- ✓ Insight: "Baby Business" (2011),
"Surrogacy" (2014)

Sky News

- ✓ Paul Murray Live
- ✓ The Kenny Report

Newspapers/Websites/Magazines

International

- ✓ The New York Times
- ✓ The Wall Street Journal
- ✓ The Guardian
- ✓ Reuters
- ✓ The Daily MirrorAustralia
- ✓ The Daily Beast
- ✓ Abovethelaw.com
- ✓ Phnom Penh Post
- ✓ The Cambodia Daily
- ✓ Der Spiegel
- ✓ Stuff.co.nz
- ✓ The Australian
- ✓ News.com.au
- ✓ The Herald Sun
- ✓ The Daily Telegraph
- ✓ Huffington Post Australia
- ✓ The Courier-Mail
- ✓ The Western Australian
- ✓ Lawyers Weekly
- ✓ Crikey.com.au

Australia/New Zealand

- ✓ The Age
- ✓ Sydney Morning Herald
- ✓ The Sun Herald
- ✓ Brisbane Times
- ✓ Brisbane Lawyer
- ✓ ABC Online
- ✓ Cosmopolitan
- ✓ Australia.creditcards.com

Radio

International

Radio NZ

- ✓ Afternoon drive
- ✓ Checkpoint (current affairs show)
- ✓ Nine to noon

Australian Broadcasting Corporation (ABC)

- ✓ News Radio
- ✓ PM
- ✓ The Law Report
- ✓ The World Today
- ✓ Radio National's Life Matters
- ✓ Radio National's Background Briefing
- ✓ Triple J'sHack
- ✓ ABC Toowoomba
- ✓ ABC NSW
- ✓ ABC Gold Coast
- ✓ BC Brisbane
- ✓ ABC Mt Isa
- ✓ ABC Perth
- ✓ ABC Darwin

Sydney radio

- ✓ 2GB
- ✓ Hope FM *Open House*
- ✓ 2SM

Brisbane radio

- ✓ 4BC
- ✓ B105
- ✓ 101FM
- ✓ Kiis 93.7 FM
- ✓ 99.7FM

Melbourne radio

- ✓ 3AW
- ✓ MMM
- ✓ Mix101.1

Adelaide radio

- ✓ Radio Adelaide

Perth radio

- ✓ 6PR

LGBTI media

- ✓ 4ZZZ Queer Radio
- ✓ JoyFM
- ✓ Samesame.com.au
- ✓ Qld Pride
- ✓ Star Observer
- ✓ QTV
- ✓ Qnews and before that Brother/
Sister (for which Stephen
contributed a column from
2000 to 2015)

Podcasts

- ✓ Inside Family Law
- ✓ I Want to Put a Baby in You
- ✓ Let's Talk IVF
- ✓ Politics of Everything

Media recognition

Stephen has been recognized by the media for his expertise:

| | | |
|--|---|--------------------|
| "One of Brisbane's most respected gay and lesbian friendly lawyers." | Brisbane Lawyer | April, 2008 |
| "Stephen Page is one of Australia's leading surrogacy lawyers." | National Nine News | 9 April, 2013 |
| "Stephen Page, a leading Australian surrogacy lawyer" | Daily Telegraph | 4 April, 2014 |
| "Stephen Page, one of Australia's leading surrogacy lawyers" | Sydney Morning Herald | 1 August 2014 |
| "Prominent Australian surrogacy lawyer Stephen Page" | Sydney Morning Herald | 3 August 2014 |
| "Stephen Page, one of Australia's most eminent surrogacy lawyers" | Sun Herald | 10 August, 2014 |
| "Stephen Page, one of Australia's leading surrogacy lawyers" | Mix 101.1 FM | 11 August, 2014 |
| "Stephen Page, a leading Australian surrogacy lawyer" | The Age | 11 August, 2014 |
| Leading Australian surrogacy lawyer Stephen Page" | The Guardian | 15 August, 2014 |
| "Leading surrogacy lawyer Stephen Page" | The Courier-Mail | 7 September, 2014 |
| "Brisbane-based lawyer, Stephen Page, a family law expert" | Star Observer | June, 2015 |
| "An internationally regarded expert on family law" | Brisbane Times | 17 July, 2016 |
| "A leading Australian surrogacy lawyer, Stephen Page" | The Guardian | 11 September, 2016 |
| "Seasoned practitioner...family law expert" | Lawyers Weekly | 16 September, 2016 |
| "Leading family law expert" | 60 Minutes | 18 September, 2016 |
| "Australia's foremost expert in surrogacy laws" | Radio National, Background Briefing | 12 February, 2017 |
| "leading Australian surrogacy lawyer Stephen Page" | Essential Baby | 6 April 2017 |
| "Australia's most prominent surrogacy attorney Stephen Page" | The Public Discourse, Witherspoon Institute | 19 April, 2017 |
| "Stephen Page, an Australian lawyer specializing in surrogacy" | The Cambodia Daily | 4 August, 2017 |

| | | |
|--|---|--------------------|
| "prominent Australian fertility attorney Stephen Page" | Abovethelaw.com | 9 August, 2017 |
| "Australian surrogacy attorney Stephen Page" | Abovethelaw.com | 16 August 2017 |
| "family lawyer Stephen Page, who is an expert on surrogacy" | The Australian | 21 September, 2017 |
| "Stephen Page, a prominent Australian family law attorney" | Abovethelaw.com | 8 November, 2017 |
| "family law expert Stephen Page" | The Australian | 11 November 2017 |
| "surrogacy lawyer Stephen Page" | ABC Perth | 15 January 2018 |
| "Stephen Page, who is an internationally recognised family lawyer based in Australia.." | H.Hendrix, Desperately Seeking Semen, 2018 | 2018 |
| "family lawyer Stephen Page" | The Australian | 28 July 2018 |
| "this column's favorite assisted reproductive technology-specialized Aussie solicitor, Stephen Page" | Abovethelaw.com | 8 August 2018 |
| "family partner Stephen Page" | The Australian | 4 January 2019 |
| "Lawyer Stephen Page is one of Australia's leading legal voices on donor conception." | 60 Minutes Australia: "Babies at first sight" | 17 February 2019 |
| "Stephen Page leading surrogacy lawyer" | ABC24 | 9 July 2019 |
| "As one of Australia's main surrogacy lawyers, Mr Page..." | ABC online | 29 July 2019 |
| "renowned surrogacy advocate Stephen Page" | The Australian | 7 December 2019 |

Peer recognition

Stephen has been endorsed as the leading surrogacy lawyer in Australia by:

| When | Who | Role |
|-------------|------------------------------|---|
| April, 2014 | Mr Steve Snyder, Minneapolis | Then Chair, Artificial Reproductive Technologies Committee, American Bar Association |
| April, 2014 | Mr John Weltman, Boston | Founder and President, Weltman Law Group and Circle Surrogacy, one of the world's oldest and largest surrogacy agencies |

| | | |
|------------------------|---|---|
| December, 2014 | Dr Kim Bergman, Los Angeles | Psychologist, co-founder and co-owner, Growing Generations, one of the world's oldest and largest surrogacy agencies |
| January, 2015 | Mr Rich Vaughn, Los Angeles | Chair, Artificial Reproductive Technologies Committee, American Bar Association |
| May, 2015 | Hon John Dawkins MLC | "South Australian Legislative Council: "A lawyer who has extraordinary expertise in surrogacy legislation". |
| June, 2015 | John Gardner MP | "South Australian Legislative Assembly: "An expert surrogacy lawyer from Queensland." |
| May, 2017 | Scott Buckley, Weltman Law Group | "world renowned attorney in Australia" |
| July, 2017 | Rodney Chiang-Cruise, convenor, Gay Dads Australia | "Stephen Page is one of Australia's and the world's most respected and knowledgeable lawyers when it comes to Surrogacy." |
| August, 2017 | Andy Vorzimer, Vorzimer/Masserman | "Stephen is universally regarded as the preeminent legal expert in Australia when it comes to surrogacy" |
| September, 2017 | Sara Cohen, Fertility Law Canada | "Stephen is the leading lawyer in Australia working with parents through surrogacy." |
| October 2017 | South Australian Law Reform Institute Surrogacy: a legislative framework | "an experienced Queensland lawyer who practises in this area" and "a leading lawyer in this field" |
| August, 2019 | Dr David Molloy, medical director, Queensland Fertility Group; Chair, IVF Directors Group, Fertility Society of Australia | "Australia's leading assisted reproduction lawyer" |
| November 2019 | Judge Dearden, in the application for a parentage order made by Stephen and his husband | "A widely acknowledged expert in the field" of surrogacy" documents were, as usual, meticulous" |
| November, 2020 | Proctor, Queensland Law Society magazine | Headline: "Surrogacy law leader named inaugural Pride in Law Award recipient". Opening statement: "Leading Queensland and internationally renowned surrogacy solicitor Stephen Page has been named winner of the inaugural Pride in Law award in recognition of stellar contribution of LGBTIQ+ practitioners in the profession." |
| December, 2020 | Roundtable, Family Law Practitioners Association of Queensland magazine | "He is internationally regarded as one of the leading surrogacy lawyers in Australia and one of Brisbane's most respected LGBTIQ+ friendly lawyers." |
| May, 2021 | Kathleen DeLisle, Nichols, DeLisle and Lightholder, Boston | "Attorney Page is everyone's go-to person for all matters in Australia." |

| | | |
|---------------------|-----------------------------------|--|
| January 2023 | Bill Houghton, Sensible Surrogacy | Stephen Page “the leading surrogacy lawyer for LGBT couples in Australia” |
| January 2023 | Scott Swanberg, Egghelpers | Stephen Page- “the top fertility lawyer in Australia” |
| March 2023 | Queensland Law Society, Proctor | When it comes to surrogacy law, Stephen Page sets the bar internationally. |

Doyle’s Guide

| Year/s | Ranking | Category |
|------------------|----------------|--|
| 2018, 2019 | Recommended | Leading Parenting and Children’s Matters Lawyers- Queensland |
| 2020, 2021 | Leading | Leading Parenting and Children’s Matters Lawyers- Brisbane |
| 2018, 2020, 2021 | Recommended | Leading Family and Divorce Lawyers- Brisbane |
| 2022 | Recommended | Leading family and divorce lawyers – Brisbane |
| | Recommended | Leading parenting and children’s matter |
| 2023 | Recommended | Lawyers - Brisbane |

White Ribbon activities

Stephen has been a White Ribbon Ambassador from 2008 to 2019. His activities include speaking extensively to community groups about domestic violence. He has been a partner of Australia’s CEO Challenge from 2003, and a director and deputy chair between 2008 and 2019.

Awards

| | |
|-------------|---|
| 2001 | Certificate of appreciation, Gold Coast Sexual Assault Support Service |
| 2005 | Co-recipient, Prime Minister’s Awards for Excellence in Community Business Partnerships, State and Territory Business Award |

| | |
|-------------|---|
| 2010 | Certificate of appreciation from the Queensland Program of Assistance for Survivors of Torture and Trauma |
| 2011 | Finalist, White Ribbon Ambassador of the Year |
| | Winner, Professional Services, Quest Business Awards |
| 2015 | LGBTIQ Activist of the Year, Brisbane Queen's Birthday Ball, Brisbane Pride Awards |
| | Rainbow Key Award by LGBTI Legal Service, for five years volunteering service |
| 2016 | Queensland Law Society, Equity and Diversity Awards to Harrington Family Lawyers for Small Firm Practice Initiative |
| 2018 | Certificate of appreciation, World Bank, Women, Business and the Law 2018 |
| 2019 | Post-Graduate Teaching Award 2019, School of Women's and Children's Health, University of New South Wales |
| | Certificate of appreciation, World Bank, Women, Business and the Law 2019 |
| 2020 | Inaugural recipient, Pride in Law Award |
| | Certificate of appreciation, World Bank, Women, Business and the Law 2020 |
| 2021 | Certificate of appreciation, World Bank, Women, Business and the Law 2021 |
| | Queensland Law Society 25 years as a Queensland Law Society Accredited Family Law Specialist |
| | Judge, Lawyer's Weekly Champions of Pride Award 2021 |
| 2022 | Judge, Australian Law Awards |
| | Contributor, Organisation for Economic Co-operation and Development (OECD), Social Institutions and Gender index |
| | Certificate of appreciation, World Bank, Women, Business and the Law 2022 |
| 2023 | Queensland Law Society President's Medal recipient |
| | Certificate of appreciation, World Bank, Women, Business and the Law 2023 |
| 2024 | Certificate of appreciation, World Bank, Women, Business and the Law 2024 |

Queensland Law Society representative as to domestic violence matters

Stephen has represented the Queensland Law Society in relation to the following domestic violence issues:

| | |
|-------------|---|
| 2011 | Queensland Law Society representative and White Ribbon Ambassador representative to two day intensive as to community consultation as to draft domestic violence laws |
| 2014 | Queensland Law Society representative on a panel as to proposed Domestic and Family Violence Protection Rules |
| | Queensland Law Society representative as to research undertaken by the Department of Justice and Attorney-General concerning private protection order applications |

Career highlights

These have included:

| | |
|------------------|---|
| 1985 | Helping keep clients and their children safe |
| 1994 | Co-founding a domestic violence service |
| 1998 | Obtaining protection in a domestic violence trial, having been the subject of stalking |
| 2002 | Successfully lobbying singlehandedly to change domestic violence laws to protect children |
| 1999-2002 | Assisted Queensland Association of Gay and Lesbian Rights in drafting proposed laws to remove discrimination. The efforts culminated in the repeal of most discriminatory laws in Queensland in 2002. |
| 2011 | Giving evidence at Tasmanian Parliament inquiry as to its Surrogacy Bill. The evidence resulted in changes to the bill. |
| 2011 | Speaking at the world's first international surrogacy legal conference (in Las Vegas) |
| 2012 | Being the lawyer for the surrogate in the world precedent case as to what constituted "conception": LWV v.LMH[2012] QChC 26 |
| 2012-2013 | Convening Queenslanders for Equality, and stopping proposed discriminatory surrogacy laws |
| 2012 | Being appointed as one of two international representatives on the Executive Council, American Bar Association, Family Law Section, Artificial Reproductive Technologies Committee. |
| 2014 | Becoming a Fellow of International Academy of Matrimonial Lawyers [now International Academy of Family Lawyers], and first international Fellow of the American Academy of Assisted Reproductive treatment Attorneys [now American Academy of Adoption and Assisted Reproduction Attorneys] |

| | |
|-----------------------------|---|
| | In one week appearing in surrogacy cases in courts in three States: Victoria, Queensland and South Australia |
| Nov 2014-Jan 2015 | In three months I obtained parentage orders in four States: Queensland, New South Wales, Victoria and South Australia |
| May 2015 | I attended two history making conferences back to back in London: the first meeting of the LGBT Family Law Institute outside the US (including moderating a session), and the first surrogacy symposium of the International Academy of Matrimonial Lawyers (including speaking at) |
| September, 2015 | Speaking at the Brisbane Pride Rally, and then being one of the leaders in the Brisbane Pride March |
| February, 2016 | The ruling body of the American Bar Association, the House of Delegates, unanimously endorsed resolution 112B, as to a proposed Hague convention about private international law, including surrogacy, in accordance with a position paper of which I was co-author and principal advocate. Subsequently the working group of The Hague conference adopted the same philosophical position. |
| May, 2016 | I gave expert evidence on Australian surrogacy law in <i>In the matter of Z (A Child) (No 2)</i> [2016] EWHC 1191—which ruled that UK law that prohibited singles from obtaining surrogacy orders was incompatible with human rights law. |
| August, 2016 | I spoke at the announcement by the Queensland Government to amend the Adoption Act 2009 to allow same sex couples, singles and those undergoing IVF to be able to adopt. |
| August, 2016 | The Hon. Michael Kirby and I were the speakers at the 6th anniversary of the LGBTI Legal Service, held in the Banco Court of the Supreme Court of Queensland |
| May, 2017 | Acting for the parents in <i>Re Grosvenor</i> [2017]—the first registration in Australia of a US surrogacy order when there was commercial surrogacy |
| October, 2017 | Organising Lawyers Marching for Equality—the first time lawyers marched as a group in Brisbane Pride March |
| November, 2017 | Speaking at the launch of Pride in Law, Australia’s first LGBTIQ lawyers networking association |
| May, 2018–June, 2019 | A member of the organising committee, International Surrogacy Forum, held at the University of Cambridge (UK), June, 2019. |
| November 2019 | Obtained a parentage order for him and his husband. |
| 2021 | Stephen’s falling in love was written by Trent Dalton, <i>Love Stories</i> , 4th estate AU |
| | First lawyer to be appointed to the board of the Fertility Society of Australia and New Zealand |
| 2021–2023 | Member of the Organising Committee for the Second International Surrogacy Forum, Copenhagen (June 2023) |
| 2023 | Queensland Law Society President’s Medal |
| | First lawyer to be elected to the board of the Fertility Society of Australia and New Zealand |

Nominee by Queensland Law Society for Law Council of Australia
President's Award

Volunteering

Stephen has volunteered providing advice at community legal centres:

| | |
|------------------|---|
| 1988-1990 | South Brisbane Community Immigration Legal Centre |
| 2005-2010 | Caxton Legal Centre |
| 2010-2015 | LGBTI Legal Service |

Other

Stephen has trained counsellors on many occasions about keeping file notes and risk management with file notes.

For several years Stephen was a guest lecturer at Griffith University to post-graduate law students about domestic violence issues. Stephen has previously lectured counselling students at the Ashby Allan Institute about counselling and ethics.

Stephen was for some years the chair of the QUT Law Alumni Group.

Current as of 21 September 2023



RUSSELL SHAKESPEARE

Stephen and Mitch Page with daughter Elizabeth at home in Brisbane

Surrogacy law settled at just six months old

EXCLUSIVE

STEVE JACKSON
NSW EDITOR

It's natural for parents to want their children to follow in their footsteps — but for one of the nation's leading surrogacy lawyers, his newborn has already achieved that.

At just six months old, Elizabeth, the daughter of renowned surrogacy advocate Stephen Page, has helped set a legal precedent and closed a loophole that could have allowed up to four people to

be recognised as the parents of a child born via a surrogate.

The achievement came after Mr Page and his husband Mitch Page welcomed their baby girl with the help of a surrogate in July before applying to have the parental rights for their daughter transferred to them in November.

"It was the most nerve-racking experience to appear in court (with my own family)," the 56-year-old lawyer said.

"I have been an advocate for over 30 years and the only experience which has been more terrifying was the first one in 1985 when I was an articled law clerk."

The court action involved clarifying who Elizabeth's parents were in the eyes of the law.

Prior to the action, the surrogate and her partner, as well as Mr Page and the genetic father, which in this case was Mitch, could be deemed a parent.

Mr Page's application narrowed who Elizabeth's parents were down to just the surrogate and her partner. This left the way clear for a clean transfer of parentage to Mr Page and Mitch.

"There was an uncertain point of law and we happened to be next and needed clarity for our daughter, Elizabeth, before there could

be an order transferring parentage," Mr Page said. "For that to happen, there had to be a finding in who was the parent before the order was made."

Mr Page said his case distinguished a previous ruling in the High Court in June that suggested each surrogacy case could be judged on its own merits, leaving it open for the surrogate, her partner, the genetic father and his partner to be deemed parents.

He said this could prove contentious if the surrogacy arrangement broke down.

"The High Court in *Masson v Parsons* made plain that every

case is decided on its own facts and that there might be more than two parents," Mr Page said.

"We wanted certainty for our daughter. For those in Queensland, (our precedent) makes it plain that before an order is made, a single surrogate is the only parent."

"The case shows that before a parentage order is made, the only parents are the surrogate — and if she has a partner, her partner — not the genetic dad."

He said the case also made it clear that federal laws on who a parent was did not apply to state proceedings.

Where our fertility law clients have come from

| Australia | |
|------------------|------------------------------|
| 1 | Australian Capital Territory |
| 2 | New South Wales |
| 3 | Northern Territory |
| 4 | Queensland |
| 5 | South Australia |
| 6 | Tasmania |
| 7 | Victoria |
| 8 | Western Australia |
| Overseas | |
| America | |
| 1 | Bahamas |
| 2 | Brazil |
| 3 | Canada |
| 4 | USA |
| Europe | |
| 5 | Belgium |
| 6 | Denmark |
| 7 | France |
| 8 | Germany |
| 9 | Greece |
| 10 | Ireland |
| 11 | Italy |
| 12 | Luxembourg |
| 13 | Netherlands |
| 14 | Poland |

| 15 | Russia |
|--------------------|------------------|
| 16 | Spain |
| 17 | Switzerland |
| 18 | UK |
| 19 | Ukraine |
| Middle East | |
| 20 | Iran |
| 21 | Israel |
| 22 | UAE |
| Asia | |
| 23 | China |
| 24 | Hong Kong |
| 25 | India |
| 26 | Indonesia |
| 27 | Japan |
| 28 | Malaysia |
| 29 | Philippines |
| 30 | Singapore |
| 31 | South Korea |
| 32 | Thailand |
| Oceania | |
| 33 | New Caledonia |
| 34 | New Zealand |
| 35 | Papua New Guinea |
| 36 | Solomon Islands |
| 37 | Samoa |

page
provan