



Surrogacy in NSW

Kids born through surrogacy just got a better deal

Surrogacy has long been a contentious issue. While some would argue that a woman bearing a child for someone else is the ultimate sacrifice, others see it as being unethical and detrimental to the child denied their birth parents.

The laws surrounding surrogacy differ in many countries but most agree on commercial surrogacy being illegal, where a woman is paid to have someone else's child. Altruistic surrogacy on the other hand, where there is no monetary gain for the birth mother and it is a selfless act, is allowed in many countries, including Australia.

But while not illegal, the intended parents of children born through this form of surrogacy have faced an uphill battle getting full parenting rights. Until recently, the law in NSW assumed the birth mother (and her partner if one existed) was the legal parent, so the surname on the birth certificate was hers. This meant that the parents actually raising the child faced problems enrolling them in school, making decisions about their health care, and gaining access to services like Medicare. And the child was potentially denied legal rights, such as access to inheritance.

The only way parents could gain full parenting rights was to apply to adopt the child; both an expensive and lengthy process.

However, due to the Surrogacy Act being passed in NSW, it now allows the intended parents of a child born through surrogacy to apply to the NSW Supreme Court for a parentage order thirty days after the birth. If it is granted, they gain full parenting rights, and their name on the child's birth certificate.

To be eligible:

- the surrogacy must be altruistic;
- the birth mother must be at least 25;
- all parties must have received legal advice and counselling, and
- must have given informed consent to the agreement prior to conception and
- the child must be living with the intended parents at the time of application.

It also means the surrogate mother is now legally entitled to have her expenses covered by the intended parents, including medical, legal and counselling bills. The genetic information of the child must be stored on a central register, as it is for children conceived through assisted reproductive technology like IVF.



Understandably, finding a woman who will selflessly agree to carry someone else's child is difficult. One law that has received criticism is that it has now become a criminal offence to engage a commercial surrogate mother overseas. Some states in America, most notably California, allow commercial surrogacy. That's no longer an option for NSW residents.

But the changes are positive for kids born through altruistic surrogacy and their intended parents.

Please feel free to contact Oliver Hagen on 4731 5899 or email to familylaw@batemanbattersby.com.au if you require any further information or assistance.