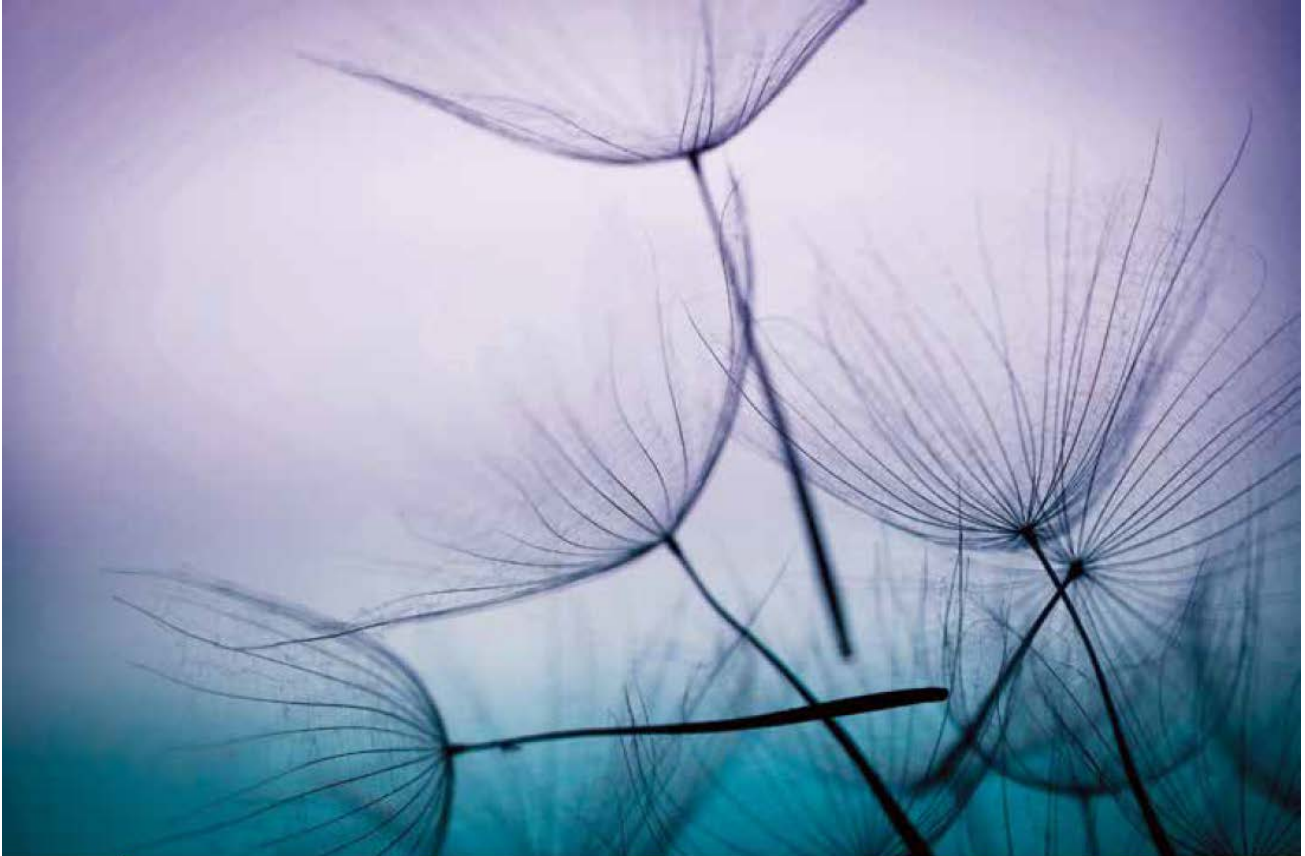


Domestic surrogacy arrangement legal checklist



When considering a surrogacy arrangement, it can be difficult to know where to begin and what to anticipate. Before entering into a surrogacy arrangement, there are key questions that all parties should ask themselves in order to avoid legal uncertainty and possible missteps.

This checklist is a useful tool to help you navigate this process.

The information in this document is for anyone who is considering a domestic surrogacy arrangement, including potential parents, surrogates, donors, interested family members or friends, medical practitioners or IVF clinicians. The checklist provides a summary and general overview of some potential legal issues. **It does not constitute legal advice.**

Any arrangement should consider all checklist items. The checklist can help provide the foundations for a more formal agreement. While surrogacy agreements are neither mandatory nor enforceable, some form of surrogacy agreement is nonetheless highly recommended, as it may be a good tool for preventing and resolving disputes later in the process.

The best way to avoid legal uncertainty and possible disputes is for all parties to seek early, independent and specialised legal advice which takes account of personal circumstances. It is also recommended that commissioning parents and their surrogate seek specialist medical advice and counselling **before** any surrogacy arrangement.

For more information about surrogacy visit www.varta.org.au/surrogacy

VARTA wishes to thank Kellehers Australia for collaborating on the modification of the checklist devised and created by Kellehers Australia, following consultation with consumers and health professionals.

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*Tax Planning, Environmental Law,
Local Government, Government Relations,
Property Law*

ABN 47 350 401 635

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Before commencing an arrangement

These questions relate to issues of eligibility and legal variations between states and other key considerations regarding treatment.

- Is the commissioning parent/s eligible for surrogacy treatment? Is the surrogate eligible? For Victorian treatment, have the surrogate and the commissioning parent had the required police and child protection checks?
- What are the relevant laws in the state/s where the arrangement is taking place?
- What if the Australian surrogate lives interstate? What if the child is born in a state different from where the procedure was carried out? How will this affect the arrangement and/or parentage order? Can the birth certificate be changed?
- Is any government permission required? For example, if the treatment is to occur in Victoria, has approval been sought from the Patient Review Panel? When is permission sought? What are the procedures? What evidence is needed for the application?
- Is medical, legal or psychological advice required prior to commencing the arrangement? Have all parties received it? If not, what are the consequences of proceeding without it?
- Are donor eggs, sperm or embryos being used? What laws apply in relation to having access to identifying information about the donor/s and the rights and responsibilities of the donor/s?
- Is the import or export of gametes (eggs or sperm) and/or embryos required, either from interstate or overseas? Will there be any difficulty satisfying regulations?
- What terms apply to the arrangement? For example, are all parties clear about:
 - The number of embryos to be transferred?
 - What happens in the instance of a multiple birth? Who will attend appointments?
 - What tests will be conducted?
 - What happens if prenatal tests show the baby has a serious abnormality?
 - Who makes decisions about the birth? Who will attend?
- What expenses can be reimbursed to the surrogate legally? (private health insurance cover, Medicare) What expenses can be reimbursed to the surrogate legally? What other support can be provided? (this differs from state to state) E.g. child minding, cleaning, complimentary or alternative therapies, vitamins etc.
- What if a surrogate, her partner, or the commissioning parent/s change their mind and do not want to proceed with the surrogacy?
- What happens if the relationship between the commissioning parents breaks down? Are their rights the same?
- What happens if a biological commissioning parent dies? Where does that leave a non-biological commissioning parent?
- Is a written agreement required?

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During the pregnancy: what happens if...?

- Extra medical care is required or wanted?
- Medical complications occur for the surrogate or the baby? What if there is a difference of opinion about treatment options?
- The pregnancy fails or is terminated?
- There is a dispute with the treating clinic or surrogate regarding expenses?
- The performance of the treating doctor or clinic is unsatisfactory?
- The surrogate does not keep to the terms of the arrangement? For instance, if she does not attend medical appointments, or makes lifestyle choices of concern?

After the child is born

These questions relate to legal obligations once the child is born.

- Has adequate, detailed documentary evidence been collected about the arrangement throughout the pregnancy? (Payment, consent, motivations, factual background etc.)
- How is the birth to be registered? What is required? Whose name/s will be on the baby's birth certificate under mother, father, or parent? Will it make a difference later?
- Other than birth registration, are there official steps that might be required by government, clinics etc.? What are the requirements of the public health authorities or family services?
- Who is legally responsible for the child? Is this the same as who is considered the child's legal parent/s?
- What are the commissioning parent/s immediate legal obligations?
- Is a parentage order application required (known as a substitute parent order in Victoria) ? What is the application process? What options are available for the intended parent/s if a court refuses to grant a parenting order?
- What if the surrogate changes her mind? Is there any time limit?
- What if the commissioning parent/s changes their mind?
- Have the commissioning parent/s decided whether to disclose to their child their origins of conception? What is the significance of open disclosure versus non-disclosure?
- If there are embryos produced as a result of the treatment, what will be done with unused embryos? What is the legislation and clinic policy about storage, disposal or donation of embryos?

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