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I HATE SURPRISES, AND SO SHOULD YOU: LEGAL PARENTAGE AFTER DOMESTIC SURROGACY ARRANGEMENTS

STEPHEN PAGE

I HATE SURPRISES- AND SO SHOULD YOU:
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By Stephen Page[1]

I want to acknowledge the Gadigal people of the Eora Nation, the traditional owners of the land in which we meet today, their elders past, present and emerging.

I come from Queensland, which like NSW, the ACT and to a degree SA, WA, and soon the NT, is a "failed experiment" state:

> "In Australia, attempts by some states to prohibit intended parents from entering international commercial surrogacy arrangements have been seen as a "failed experiment".[2] In Ireland, where a Bill has been introduced to regulate surrogacy for the first time in that country,[3] the reality of international commercial surrogacy has been recognised as a strong reason for preferring regulation of domestic surrogacy rather thanprohibition.20[4] In reality, a prohibitive approach "has simply exported the issue to other jurisdictions with a more permissive approach".[5]

[1] Stephen Page is a dad through surrogacy in Queensland. He is a principal of Page Provan, Solicitors Brisbane. He was admitted as a solicitor in 1987 and has been an accredited family law specialist since 1996. Since 1998 Stephen has advised in over 1,750 surrogacy cases for clients throughout Australia and at last count, 32 countries overseas. Amongst other memberships, Stephen is a Fellow of the International Academy of Family Lawyers and of the Academy of Adoption and Assisted Reproduction Attorneys. He is an international representative on the Assisted Reproductive Technology Committee of the American Bar Association. He lectures in ethics and the law in reproductive medicine at the University of New South Wales. He has written and published concerning surrogacy and assisted reproductive treatment throughout the world.

[2] Debra Wilson and Julia Carrington "Commercialising Reproduction: In Search of a Logical Distinction between Commercial, Compensated, and Paid Surrogacy Arrangements" (2015) 21 NZBLQ 178 at 186. See also South Australian
Law Reform Institute Surrogacy: A Legislative Framework — A Review of Part 2B of the Family Relationships Act 1975
(SA) (Report 12, 2018) at [12.3.1]; and House of Representatives Standing Committee on Social Policy and Legal Affairs
Surrogacy Matters: Inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements (Parliament of the Commonwealth of Australia, April 2016) at [1.70]–[1.71] and [1.112]–[1.113]

[3] An Bille Sláinte (Atáirgeadh Daonna Cuidithe) | Health (Assisted Human Reproduction) Bill 2022 (29) (Ireland).

[4] Conor O'Mahony A Review of Children's Rights and Best Interests in the Context of Donor-Assisted Human Reproduction and Surrogacy in Irish Law (Department of Children, Equality, Disability, Integration and Youth, Ireland,
December 2020) at 6–8.

[5] Claire Fenton-Glynn and Jens M Scherpe "Surrogacy in a Globalised World: Comparative Analysis and Thoughts on
Regulation" in Jens M Scherpe, Claire Fenton-Glynn and Terry Kaan (eds) Eastern and Western Perspectives on Surrogacy (Intersentia, Cambridge (UK), 2019) 515 at 567

> A prohibitive approach has other problems. Traditional surrogacy arrangements, where the surrogate uses her own ovum in conception, can take place privately without any official approval or medical involvement. Therefore, "[u]nless a state is prepared to police the bedrooms of the nation, surrogacy arrangements cannot be effectively outlawed, only driven underground".[6]"[7]

This paper has three parts:

- overall discussion of surrogacy in Australia
- then how the intended parents become the parents (including overcoming obstruction from a difficult surrogate)
- finally, how to reduce risk in your surrogacy journey.

OVERALL DISCUSSION OF SURROGACY IN AUSTRALIA

An illustration of our surrogacy laws is best seen by looking at our railways.

Every State of Australia has railways. When I went to primary school (more years ago than I care to remember) we were taught that there were three railway gauges in different parts of Australia:

- 3' 6" in Queensland and Tasmania and parts of South Australia and Western Australia
- Standard gauge of 4' 8½" seen particularly in New South Wales and Irish gauge or wide gauge of 5' 3" seen in Victoria

One town in South Australia had the misfortune of having three gauges side by side. As we know, from their 19th century origin, these gauges have been an impediment to having a national railway network.

In the same way, whilst there has been broad agreement by the various States and Territories about surrogacy laws, sadly there is not one uniform law across the country. Each State and Territory has quirks about its laws, which make those laws different to everyone else's. While a House of Representatives inquiry recommended back in 2016 that there be national, non-discriminatory laws about surrogacy, that hasn't happened.

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[6] Margaret Brazier, Alastair Campbell and Susan Golombok Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation — Report of the Review Team (Cmnd 4068, October 1998) at [4.38].

[7] New Zealand Law Commission, *Report 146: Review of Surrogacy*, 2022, p.33.

I'll therefore talk in broad terms. In broad terms, the model of surrogacy regulation in Australia is that surrogacy must be altruistic, not commercial, and that at birth, the surrogate (and her partner if she has one) is the parent who has plenty of time to consider whether or not to relinquish parentage.

In broad terms, the ability by intended parents to be recognised as the parents occurs only post-birth after an order has been made by a court in that State or Territory, transferring parentage from the surrogate (and her partner) to the intended parent or parents. That application is made typically between one month and six months post-birth.

Ten years ago, shortly after these laws came into effect, there were great delays on the part of doctors and counsellors in having appointments made or reports written, which would hold up intended parents making those applications.

Looking now over 10 years later, doctors and counsellors who practise in this area are normally pretty quick. The delay in making an application for a parentage order typically occurs on the part of the intended parents. My experience is that looking through the telescope from when they want to become parents, there is great anxiety on the part of intended parents to ensure that parentage orders are made as quickly as possible after the birth of the child. However, after the birth of the child, there is much less anxiety about when they apply for a parentage order. As one of my clients put it, aptly:

> *"We have our child and family now. We are getting no sleep. We will get back to you about preparing the court documents."*

Typically, my clients file at four or five months post-birth. By contrast, my husband and I filed in our matter two months post-birth. We just wanted it done.

Despite proposals in New Zealand and the UK to allow autorecognition of the intended parents upon the birth of the child, none of the Australian States and Territories have done that.

Most recently, the Northern Territory with the enactment of the *Surrogacy Act 2022* (NT) which comes into effect sometime between August this year and March 2024, adopted the same model as every Australian State and the ACT. The Territory's government's rationale for doing so is to avoid exploitation of the surrogate. It doesn't matter whether the surrogate has any genetic relationship with the child or not.

WHO ARE THE PARENTS AT BIRTH?

In every State and the ACT (and soon the Northern Territory), the parent at birth when a parentage order is obtained is the surrogate, and if she has a partner, the partner. Therefore, in order for the intended parents to be recognised as the parents, there is a process by

obtaining a parentage order to transfer parentage from the surrogate (and partner) to the intended parent/s.

There are two qualifications to this broad rule:

- Queensland, in the case of a single surrogate
- if the surrogacy arrangement goes awry, because the surrogate or her partner refuse to consent to a parentage order or to relinquish the child.

QUEENSLAND

About 30 years ago when there was not only discussion about IVF, but also discussion about sperm donors, the State and Territories Attorneys-General met together and agreed that sperm donors were not parents and the law should reflect that they had no rights or responsibilities concerning the child. Over time, the language that evolved in the *Status of Children Act* in each State and Territory changed to something different, but two jurisdictions, Queensland and Northern Territory[8] used a phrase to the effect – *"that the sperm donor had no rights and liabilities".* In Queensland where there is a single woman undertaking IVF with a donor egg *"the man who produced the semen has no rights or liabilities in relation to any child born as a result of the pregnancy happening because of the use of the semen unless, at any time, he becomes the husband of the child's mother."*[9]

In the case of *Lamb and Shaw*[10] there was a fallout between a single surrogate and intended genetic parents. The surrogate was the third cousin of the intended mother. Once it became clear that the surrogate mother would not hand over the baby following the birth, and indeed speculated about adopting the child out, the intended, genetic, parents brought an urgent application to the Family Court so that the child would live with them. They were successful.

An issue that came up at trial was whether the intended, genetic father was a parent. The court interpreted that section of Queensland *Status of Children Act* to say that he was a parent, albeit one with no rights or liabilities. The court said that given that there was no application for a parentage order under the *Surrogacy Act* (as it would unlikely to be consented to by the surrogate) then the issue is one of interpretation of the *Status of Children Act* alone and not the *Surrogacy Act*.

[8] The phrase in the Northern Territory in section 5F of the *Status of Children Act 1978* (NT) is *"the man who produced the semen has no rights and incurs no liabilities in respect of a child born…"*. When the *Surrogacy Act 2022* (NT) commences, section 5F will be replaced, so that the phrase no longer appears- in order for it to be certain that the sperm donor is not a parent.
[9] *Status of Children Act 1978* (Qld), section 23(4).
[10] *Lamb and Shaw* [2017] FamCA 769; *Lamb and Shaw* [2018] FamCA 629.

Subsequently, in cases in the Childrens Court of Queensland (which deals with surrogacy applications in Queensland) each time the issue came up about a single surrogate and the decisions in *Lamb and Shaw*, the court did not follow them. This included in my own surrogacy journey. It is at this point that I say:

> *"Test cases are really interesting, except when they're your own."*

Finally, the Childrens Court in 2019 disagreed with the decisions in *Lamb and Shaw* pointing out that if *Lamb and Shaw* had been followed it would mean under the *Status of Children Act* where children are born to lesbian couples that there could be three parents i.e. the sperm donor would be the third parent, whereas the Queensland Parliament clearly intended that there only be two parents. For the sake of consistency in interpreting the *Status of Children Act,* a sperm donor under the *Status of Children Act* should not be considered to be a parent.[11]

WHAT IF THE SURROGATE DOESN'T RELINQUISH?

As *Lamb and Shaw* made plain- a surrogate can decline to consent, and while the intended parents may not be able to be found to be the parents, they may be able to obtain orders under the *Family Law Act* that their child lives with them, irrespective of obstruction from a difficult surrogate (or her difficult partner).

Another case has shown that it is possible that the intended parents might be able to be recognised as the parents after all.

Lamb and Shaw was decided before the High Court decision of *Masson v Parsons* [2019] HCA 21. That case was not a surrogacy case. Mr Masson was a gay man who wanted to become a parent. He supplied a quantity of sperm to his friend the first Ms Parsons. On the second time he did so, Ms Parsons' girlfriend who later became her wife assisted the first Ms Parsons to become pregnant. When the child was born with his consent Mr Masson was named on the birth certificate as the father.

After the child learned to speak, she called him daddy and continued to do so for the next 10 years until trial. In the meantime, the women married and had a second child, a daughter, from a clinic-recruited sperm donor. That child also called Mr Masson daddy.

One day the women announced that they were moving to New Zealand with the children. Mr Masson applied to the Family Court to stop them.

A critical issue at trial was whether or not he was a parent. Mr Masson said that he was a parent under the *Family Law Act*. The two Ms Parsons said that he was not.

[11] *RBK v MMJ* [2019] QChC42, in which I acted for the intended parents.

Ultimately, the High Court held that he was a parent and that who was considered to be a parent under the *Family Law Act* was someone seen in the wider view of Australian society to be a parent. Mr Masson didn't supply his sperm on the express or implied understanding to have nothing to do with the child. He supplied his sperm on the express or implied understanding to be a parent. His name was registered on the birth certificate as a parent, with the intention of parenting, which he then did.

Someone who is the biological mother of a child is ordinarily considered a parent under the *Family Law Act*[12].

Whilst there could be the ability for the intended parents to have the child live with them (apart from risk factor issues), the court would have regard to the intention of the parties set out in the surrogacy arrangement and any reports that were obtained as part of the counselling process or approval process. It is unclear whether the intended parents would be recognised as parents under the *Family Law Act*. They might be.

The *Family Law Act 1975* (Cth), federal legislation, has left it to the States and Territories to legislate concerning surrogacy. Section 60HB of the *Family Law Act*[13] specifically recognises the parents of a child when a parentage order has been made in the State and Territory court. However, what if such an order can't be made? Who would then be recognised as the parents? The question is uncertain, but there is a reasonable chance that the intended parents would be recognised as the parents for these reasons:

1. One or both of them may be the biological parents.

2. Irrespective of biology, the documents revealed from the surrogacy arrangement and counselling reports would show their intention to be the parents. Following the test in Masson v Parsons, the intended parents may be recognised as the parents.

The law in this area is untested and unsettled. However, there is a real likelihood that the intended parents will be recognised as the parents of the child after it is born if the surrogate or her partner for some capricious reason decides not to consent to an order.

I mention this because if the surrogate or her partner decide to be difficult and not relinquish the baby or not consent to the making of a parentage order, then intended parents will be able to seek parenting orders under the *Family Law Act* (including that the child live with them), as the intended parents did in *Lamb and Shaw*, and may also be successful in being found by the court to be the parents. The fact that the surrogate or her partner is uncooperative is not the end of the road.

[12] *Simpson and Brockmann* [2010] FamCAFC 37.
[13] And regulation 12CCA of the *Family Law Regulations 1984* (Cth).

HOW TO MINIMISE RISK

A. Choose your surrogate carefully

In rough terms, for every child born in Australia via surrogacy, four are born overseas[14]. To suggest that one should therefore choose a surrogate carefully may not reflect reality. If you do not have a close friend or family member who was prepared to be a surrogate for you, then extreme care should be taken by you in the choice of your surrogate. Whether you use SASS or do it yourself, if you are dealing with a complete stranger, then you have to develop trust. If you cannot trust the other person, then you should not be having a baby with them. Trust your gut.

Over a few years it seemed that every surrogacy arrangement in Australia that went wrong ended up on my desk. That was not fun. In my view, the risk profile from least risky to most risky demonstrated by those cases is:

1. Minimal risk: close family member, for example, mother, sister, sister-in-law.

2. More risk: complete stranger. Just like you need to establish friendship when buying a second-hand fridge from a stranger on Facebook Marketplace, on something much more fundamental which is having a child, you would ordinarily with a complete stranger go through basic steps to establish trust – to ensure that you are in the same canoe paddling in the same direction. Don't leave things to chance.

3. Greatest risk: distant family member or friend. A distant family member or friend is someone who drifts in and out of your life. There can be blurred boundaries about what their role will be in the child's life. Are they to be an aunt? Or are they to be a very close friend? Or is there something different? What expenses should be paid?

With a very close family member, everyone's position in the firmament of stars remains the same whatever happens with the surrogacy arrangement. With a stranger everything has to be negotiated, but the boundaries are much vaguer and more fluid with a not so close family member or a friend. Often there is an assumption that things will be a certain way (for example whether the surrogate will have an ongoing relationship with the child- or not), without there having had been a communication to that effect. Things are taken for granted, when they cannot be.

While you should always be meticulous in planning a surrogacy journey, greater preparation should be undertaken when there is increased risk- in order to minimise the journey going

[14] A comparison I have done of statistics as to domestic surrogacy births and those compiled by the Department of Home Affairs as to international births.

awry. Putting the hard work into preparation at the beginning minimises things going wrong at the end.

B. Beware of higher risks with traditional surrogacy

The risk that a surrogate won't hand over the baby exists whether it is with gestational surrogacy or with traditional surrogacy. *Lamb and Shaw* was a gestational surrogacy case. It's just that the risk with traditional surrogacy is higher because she is also the genetic and birth mother of the child. My first surrogacy case back in 1988 came about when a woman was a traditional surrogate and wanted to hang on to both the baby and the money she was paid. She was successful. The matter never went to court.

Surrogacy is the most complex way to have a baby. You should be absolutely meticulous about the process of surrogacy, planning and cutting the deal. If you cut corners, it is much more likely that the deal will fall over.

Traditional surrogacy can work. I am not doom and gloom about traditional surrogacy. I have acted in many cases where there has been traditional surrogacy. Some clinics will not provide treatment, and clinical help is not available everywhere- but it is still doable. The nature of traditional surrogacy, that the woman who gives birth is also the genetic mother of the child, has inherent risks that need to be properly and carefully planner for at the beginning.

C. Have a Lawyer

Surrogacy legislation throughout Australia (and soon the Northern Territory) requires both parties to have independent legal advice. The cases in the early days that fell over were those where there were no lawyers involved and there was no counselling. Having independent legal advice greatly reduces the risk of something going wrong.

However, surrogacy is a very small niche area in family law. Most family lawyers have never dealt with surrogacy to any great degree. Please ensure that you go to someone who specialises in the area. I have had to pick up pieces from lawyers who weren't specialists in the area and then screwed it up – because they didn't know what they were doing. It is better to make sure that the surrogacy arrangement is dealt with right first time. Do not assume that everything will work. It might, but it might not.

I prefer to do it right first time, than to clean up other lawyers' messes. You should go to lawyers who specialise in this field. Those lawyers should be meticulous in their approach. This will be considerably cheaper and much less stressful than going to a lawyer who doesn't know what they are doing, something goes wrong, and you have one almighty, expensive and

stressful mess. You should assume that if things go wrong that you will be paying tens of thousands (at the least) in legals and be in the midst of a nightmare that you would not wish on your worst enemy. Do it right at the beginning and this risk should be largely avoided.

D. Make sure that the other side (if you are intended parents) go and see lawyers and preferably lawyers who know what they're doing

You can't decide for them who they go and see, but you might be able to give them some names to assist them. Again, if there are people who know what they're doing, then the chances of something going wrong are lower. Lawyers who know what they're doing lower your risk, even if they are not acting for you.

E. Counselling

Before you enter into the surrogacy arrangement, every State and the ACT require you to go and have counselling. This should not be a paint by numbers approach. This should be thorough and so nothing is left to chance. The whole point of having a thorough process is to identify risks, minimise those risks and also plan for them. For example, if it is necessary to have an abortion, the surrogate has control over her body. In what circumstances will it be agreed that she ought to have an abortion?

Who chooses the name of the child when it is born?

What hospital are you going to?

What happens if the child is stillborn?

All these basic questions and many more need to be thought through before the deal is entered into. Many of these issues, if you haven't thought of them, will be identified by a good lawyer or a good counsellor or both before the surrogacy arrangement is signed. Don't leave things to chance.

Part of the point of counselling is to ensure you are all in the same canoe, paddling in the same direction. Seeing different counsellors may be disastrous. The same counsellor should be seeing everybody (and this may mean more than one counsellor before signing-as happens in Victoria and Western Australia, and with some clinics in NSW).

My practice is not to have the surrogacy arrangement signed up until the pre-signing counselling report has been obtained. That way, if there are any surprises, these can be identified in the report.

As an example, some years ago, I was acting for a gay couple who wanted to be parents. A friend of theirs, aged 38, single and lesbian volunteered to be a surrogate. She had never had a baby before. In some places in Australia this might prevent her from being a surrogate. I was deeply concerned because of her age, that she was single and that she had never had a child before. Her biological clock had almost ticked out. There was the possibility that she may want to hang onto the child even though it wasn't genetically hers. I made sure that the counselling was undertaken by the most thorough counsellor at the time. When I got the counsellor's report, it said that the matter was *"high risk"*. It also said that there ought to be certain counselling put in place for the surrogate. When I read the words *high risk* I phoned the counsellor:

> *"Are you saying that these parties shouldn't proceed because it's just too high risk? I don't want these people proceeding if it's going to be a disaster."*

The counsellor responded:

> *"No I'm not saying that. I am recommending it but there are some issues that need to be addressed and are designed to ensure that the risk is lowered."*

The surrogacy arrangement went ahead. The measures put in place recommended by the counsellor were followed through by the parties. Everything worked. Careful planning greatly reduced the risk of the journey going catastrophically wrong.

F. Remember the basics

You want a baby through surrogacy because you haven't had a baby. You have chosen this particular surrogate because, aside from any other factors, the doctors advise that she will be able to carry a child. She's had all her own. That says to you that she is fertile and doesn't want yours.

From the surrogate's point of view, she does not want to have your child. The worry that surrogates have typically is that you won't take this child. They've had all their own children, if you don't take this child, they will be burdened potentially with this child. *They don't want any more!* Imagine the worry of living with a baby 24/7 for nine months and having a fear that at the end of that process the intended parents won't take the child, and then worrying about who is going to take the child and provide for it, and whether or not it is going to be safe and well looked after.

In my view, the risk of something going wrong in Australia is lower than that of the United States, because, with the exception of SASS which to a limited degree performs the role of an agency, we don't have surrogacy agencies here acting as moderating influences. Nevertheless, the numbers in the United States are cause for optimism if something goes wrong. As one of the leading surrogacy lawyers in the world, Mr Andy Vorzimer, a partner of Vorzimer Masserman in California, told me back in 2018:

> *"The statistics have been compiled by our office since 1994. As of last month, we have calculated that since 1979 in the United States: more than 151,000 surrogacy deliveries; 13 instances of gestational carriers manifesting an intent to keep custody of the child; 25 instances of traditional surrogates manifesting an intent to keep custody of the child and 91 instances of intended parents threatening not to take custody of their child."*

Anecdotally, the risk of intended parents not wanting to take the child has arisen in these circumstances:

1. Where the parties have separated and neither wants the child (as was seen in the case of the Japanese couple who went to India for surrogacy in the *Baby Manji* case).

2. The intended parents who wanted a single child and ended up with twins so that at least one of them doesn't take the child (as I've seen in a case involving an Australian couple who went to India).

3. The intended parents who did not want a disabled child or considered the child was of the wrong gender. In a case reported from about 2012 was an Australian couple who had twins born in India and didn't take one of the children because the child was the *"wrong"* gender.

Too often, intended parents worry that the surrogate will not relinquish the child, while they should be more worried: *"Is the child going to be healthy?"*

G. Don't micro-manage

Done well, surrogacy is an extraordinary human endeavour. It is full of magic dust. As one judge said years ago it involves a miracle of modern medicine. As that judge said earlier this month that the acts of the surrogate were *"one of the most selfless acts"* and that the child was a *"miracle of two families and cherished by them all."*

Surrogacy should not be treated as a mere transaction. Research from the United States[15] shows that surrogates in the United States would much rather be surrogates for gay couples

[15] By Dr Kim Bergmann et al published in the American Society of Reproductive Medicine 2014.

than intended parents. This seems counter-intuitive. Which woman wouldn't rather help other women who can't have children?

But then it becomes obvious why. As I once had to explain to a judge, a gay couple can't fall pregnant naturally. Surrogacy is option A only. Typically, when a surrogate comes along and can offer the gift of life to a gay couple, they worship at her feet. She is a goddess. She, alone, can offer them the gift of being parents.

More problematic are straight couples. Typically, they have tried forever and endured many rounds of up and down on the rollercoaster of IVF cycles. This has been at times crushing. She has seen all her friends and family have children and talk about them endlessly whereas despite all their best efforts, she has seen that she has failed.

By the time many straight couples undertake surrogacy, it is option D:

(a) Sex.

(b) IVF.

(c) Egg donation.

(d) Surrogacy.

So what can happen at that point? The risk for the intended mother is that she sees the surrogacy journey merely as a transaction and is extremely worried about how it will proceed. She micromanages the surrogate.

From the surrogate's point of view, who would you rather be a surrogate for – a gay couple who will celebrate you from here until eternity or someone who is going to turn your life into a living hell?

I should say that there is one category of clients I worry about. They are -single- female -lawyers. Lawyers worry about risk. That's our job. Lawyers are often deep thinkers. Combining the two and without having a partner to balance things out, and the desperation to become a parent yesterday can, at times, cause single female lawyers to so focus on all the negatives that they aren't focusing on the positives – their life appears to be one endless worry until that child is born and in their arms.

H. Counting the pennies

Too often surrogates have complained that they have been shortchanged by intended parents who have deep pockets but very short arms. By the same token, I have seen some surrogates

try to extort money out of intended parents. Unless the surrogate is a close family member, I suggest that there are four ways of managing this:

1. Set a budget. A ballpark figure for most of the country is about $70,000 for domestic surrogacy, including IVF. Allow more in Victoria and more again in Western Australia.

2. The surrogacy arrangement is in writing. Surrogacy arrangements in the ACT and Victoria can be oral. The old line that an oral agreement is worth the paper it's written on is absolutely accurate when it comes to a surrogacy arrangement. Put it in writing. Properly drafted. Having it in black and white and having it signed up with certainty of terms reduces risk enormously. By reducing things to writing means vague terms become concrete. This should focus the minds as to what is agreed, and not, and what has been unsaid - and needs to be said in the agreement.

3. State clearly in the surrogacy arrangement what is to be paid for and by whom. Is the surrogate going to be a public patient or a private patient? Care must be taken with expenses. In Western Australia, for example, paying for travel and accommodation will render the surrogacy arrangement a surrogacy arrangement that is for reward i.e. committing a criminal offence. I put caps in my surrogacy arrangements as to how much is to be paid – so that the intended parents have some idea about the budget. I have done this from long and bitter experience.

4. Subject to the requirements in your State and the State in which the surrogate lives, set up a debit card for expenses. The surrogate shouldn't be coming to you begging for every last little expense. You should be able to provide for it and ensure that she, who has the risk of death and injury and doing so for you is able to get on with her life with as minimum fuss as possible. Cherish her!

The surrogate should be told that she is cherished. This occurs in a practical manner. This includes:

1. Subject to State law, ensuring that her Will and that of her partner are updated (assuming that she has a Will in the first place) so that this child is excluded from the Will.

2. If she wants private health insurance, pay for it.

3. If she wants private cover in the hospital, ensure it's there (whether insured or not).

4. Ensure that her life is insured with adequate life insurance (for the sake of her partner and children) and that if she is able to obtain income protection insurance that that is obtained.

I cannot emphasise enough that what a surrogate is doing is special and she should be treated accordingly. Surrogates are amazing women. I have been privileged to know a few. However,

if it appears early on that your surrogate is after money or is unbalanced, or will engage in behaviour that is potentially risky for the child (or if you are the surrogate, the intended parents seem especially tight or are unbalanced), don't think that you can just sail calmly on as if there is nothing is wrong. Revisit being in a relationship (through surrogacy) with that person or persons.

I am sure that the captain of the Titanic wished he had slowed down when he knew there was a risk of ice.

The essence of any good surrogacy arrangement is that there is:

- Mutual respect.
- Flexibility.
- Communication.

Above all, surrogacy is a process of love to enable a child to be born and raised.

If you focus on that, and these things:

- Trust your gut;
- Be meticulous in your planning;
- Don't leave things to chance;
- A woman is risking her life to give someone else the gift of life. Look after her;
- Go through the relevant checks and balances. They are there for a reason;
- Comply with the law;

then it will work.

Stephen Page
Page Provan
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stephen@pageprovan.com.au