

Family Law Fact Sheet

Steps for surrogacy arrangements for birth parents and intended parents

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Independent legal advice

Both the birth mother and her spouse (if any) and the intended parent/s must receive separate independent legal advice **before** entering into the surrogacy arrangement

Counselling

Both the birth mother and her spouse (if any) and the intended parent/s must receive counselling **before** entering into the surrogacy arrangement

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Surrogacy arrangement

The birth mother and her spouse (if any) and the intended parent/s enter into a surrogacy arrangement which should be formalised in writing and must be signed by all parties after receiving separate independent legal advice and counselling. It is unlawful for a person to enter into a commercial surrogacy arrangement where there is payment, reward or any material benefit to any of the parties. However, the birth mother is entitled to be reimbursed or paid for her reasonable expenses associated with the surrogacy such as medical, legal and counselling fees.

Child

The child is born. The birth mother has the same rights to manage her pregnancy and birth as any other pregnant woman. After the birth the birth mother and her spouse (if any) are legally the parents of the child until a Parentage Order is made deeming the intended parent/s the child's parents.

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Registration of birth

The birth mother and her spouse (if any) are to register the birth of the child and they will be the parents named on the birth certificate. The birth certificate can be changed after a Parentage Order is made in favour of the intended parent/s.

Surrogacy Guidance Report

Both the birth mother and her spouse (if any) and the intended parent/s must consult with a counsellor for the purpose of obtaining a Surrogacy Guidance Report which is required if making an application for a Parentage Order. This is a different counsellor than the one the parties consulted prior to entering into the surrogacy arrangement.

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Application for Parentage Order

To be made by the intended parent/s between 28 days and 6 months after the child's birth. The child must have lived with the intended parent/s for at least 28 consecutive days and have been living with the intended parent/s at the time of the application and hearing.

Granting of Parentage Order

If granted, the intended parent/s become the legal parents for the child and their details can be recorded on the child's Birth Certificate as the parents of the child.

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Contact:

Sarah Minnery
Partner
Accredited Family Law Specialist
T: +61 7 3002 8714
F: +61 7 3221 3068
E: sarahm@hemhart.com.au

Debra Effeney
Senior Associate
Accredited Family Law Specialist
T: +61 7 3002 8771
F: +61 7 3221 3068
E: debrae@hemhart.com.au