

International Surrogacy Checklist

Commencing an Arrangement

1. Are the intended parents(s) eligible for surrogacy treatment according to the laws of the destination country? Is the surrogate eligible? What are the relevant laws in the destination the arrangement is taking place in?
2. What are the laws in Australia? Is there any risk that the intended parents(s) or the surrogate are committing a criminal offence in either country?
3. Do we need a written agreement? Who is it between? Are all parties involved? Should it cover the number of embryos to be transferred? What happens in the instance of a multiple birth?
4. If the surrogate is unable to speak the language in which the documents relating to the surrogacy arrangement are written, has she been given access to a trained interpreter? Did she have an independent lawyer or advisor present? If she is unable to read, has she been read the entire document? Have all parties received a copy of all documentation?
5. What expenses are to be paid? Is the arrangement legally binding overseas? Is the arrangement binding in Australia?
6. Are the intended parents(s) commencing multiple surrogacy arrangements simultaneously? Are the surrogates aware? What if multiple surrogates conceive simultaneously?
7. Have all parties received medical, legal or psychological support required prior to commencing the arrangement? If not, what are consequences of proceeding without this?

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8. Has a foreign legal professional been engaged in preparation for visa or court procedures? Has a lawyer been engaged in Australia to monitor the procedures abroad to ensure they comply with Australian law on the recognition of foreign court judgments?
9. Are donors involved? What laws apply in respect of access to information and any possible rights and responsibilities of donors?
10. What if a surrogate, her partner or the intended parents(s) change their mind and do not want to proceed with the surrogacy?

During the Pregnancy: What happens if?

1. Medical complications occur for the surrogate or the baby? Who is responsible to ensure the surrogate fully understands what is happening?
2. The pregnancy fails?
3. Extra medical care is required? Who pays? How much? Do the intended parents(s) need to agree in advance? What if the intended parents(s) want medical care to occur in particular destination?
4. There is a dispute with the treating clinic or surrogate regarding expenses?
5. The performance of the treating doctor or clinic is unsatisfactory? What steps can be taken to ensure the competence of the clinic, that best practice is adhered to and that patient identification procedures are carried out?
6. The surrogate does not adhere to the terms of the arrangement? e.g. doesn't attend medical appointments, makes lifestyle choices of concern?

After the Child is Born

1. Has adequate, detailed documentary evidence been collected about the arrangement throughout the pregnancy? (Payment, Consent, Motivations, Factual Background).
2. What visa and/or travel arrangements apply? Has this been organised ahead of time and are all consular officials satisfied? Has travel insurance been arranged?
3. Is it clear what assistance the Australian Consulates, Embassy or High Commission can and cannot provide? What local embassy and departmental guidelines apply?

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4. What if the surrogate is unable to be located for any evidence requested by consular officials or a court?
5. How is the birth registered? Under whose name? What is required? Will it make a difference later?
6. Has DNA evidence been properly obtained?
7. Can the baby come home and legalities wait? Until when?
8. What if foreign laws change suddenly? What if an application to take the child back to Australia is refused? Is an appeal possible?
9. What if the surrogate changes her mind? Is there any time limit?
10. What if the intended parents(s) change their mind?
11. Who is legally responsible for the child? Is this the same as who is the child's legal parent(s)?
12. Whose name(s) will be on the baby's birth certificate under mother, father, or parent?
13. What nationality will the child have? Is the child a citizen of Australia? Will the child have dual citizenship?
14. What are optional court procedures? What are compulsory court procedures? Do these make a difference?
15. What if the intended parents(s) are citizens or dual citizens of a country which forbids surrogacy? What if the intended parents(s) plan to relocate later to a country where surrogacy is forbidden?
16. What if the intended parents(s) move states? Will the intended parents(s) be breaking any laws?
17. What happens if the relationship between the two intended parents(s) breaks down? Are their rights the same? Will the intended parents(s) need to seek special legal assistance?
18. What happens if a biological parent of surrogate child dies? Where does that leave a non-biological intended parent?
19. What options are available for the intended parent(s) if a Court refuses to grant a parenting order?

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20. Can the child access information and records about their birth and genetic heritage from overseas authorities?
21. What if excess embryos remain in storage overseas? Do the intended parents(s) need to make arrangements to transport these back to Australia?

THE BEST WAY TO AVOID LEGAL UNCERTAINTY AND POSSIBLE MISSTEPS IS EARLY, INDEPENDENT LEGAL ADVICE ABOUT EACH INDIVIDUAL'S PERSONAL CIRCUMSTANCES.

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