

KELLEHERS AUSTRALIA

In-House Memorandum

Baby Gammy

The story of baby Gammy captured public attention, highlighted the dangers of international commercial surrogacy and the complexity of legal, ethical and moral issues associated with them.

Whilst the actual facts of the baby Gammy case remain to be determined, what is clear is that baby Gammy, who has Down Syndrome, has been left in the care of his 21 year old surrogate mother, a Thai national. Australian and Thai authorities are currently investigating the case and Thai authorities have tightened departure arrangements for surrogate babies and parents.

We again note the value of the Kellehers Australia Checklist for any person interested in an international surrogacy arrangement:

<http://www.kellehers.com.au/wp-content/uploads/International-Surrogacy-Legal-Checklist.pdf>

Chief Judge Pascoe has expressed concern that the Baby Gammy case is “not an isolated one”, and cast doubt on the ability of surrogate parents to ever be fully aware of the exploitation of their international surrogate as a key regulatory issue¹. He again called for international surrogacy to be federally regulated in order to provide the appropriate checks and balances.²

Commercial surrogacy is prohibited across Australia except in the Northern Territory. The penalties for engaging someone to act as a surrogate for more than the cost of their medical expenses range from a maximum three year jail term in Queensland to a \$13,000.00 fine in Tasmania³. Despite these barriers to treatment a recent survey of Australians who have either completed a surrogacy arrangement or intend to enter into one found that more than 50% have considered an international commercial arrangement.⁴ It is clear that the current laws prohibiting compensated surrogacy do not deter those seeking surrogacy arrangements abroad.

Also at issue in the Gammy case is whether child protection checks should be introduced for intended parents. In Victoria, there is a presumption against treatment for a person charged with a sexual offence, a violent offence or, if a child protection order has been made, removing a child from custody⁵. In the remaining States no such checks exist.

Australians wishing to go abroad for commercial surrogacy should obtain legal advice and remain aware the international environment can change at any moment, leaving intended parents, surrogates and the resulting children in legal limbo.

Loretta Houlahan
29 August 2014

¹ ‘Family judge warns pedophiles exploiting surrogacy laws’ *The Australian* (online) 23 August 2014
<http://www.theaustralian.com.au/national-affairs/family-judge-warns-pedophiles-exploiting-surrogacy-laws/story-fn59niix-1227033721488>, accessed 29/8/14.

² Natasha Bitá, ‘Judge issues pedophile surrogacy warning’, *The Weekend Australian* 23-24 August 2014

³ *Ibid.*

⁴ Everingham S, Stafford-Bell M, Hammarberg K, ‘Australians’ use of surrogacy’ (2014) *Medical Journal of Australia* 201(5) 1.

⁵ *Assisted Reproductive Treatment Act 2008* (Vic), s14.

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