



**ANDERSONS**  
S O L I C I T O R S

## LawTalk Blog



# Surrogacy – what is the law in Australia?

**Author:** [Eva Bailey](#)

**Email:** [enquiry@andersons.com.au](mailto:enquiry@andersons.com.au)

**Phone:** 08 8238 6634

**Date:** Thursday February 5, 2015

Surrogacy is an arrangement between intended or commissioning parents with a third party who agrees to carry a baby for them. It is an option that many people are increasingly turning to in order to become parents. This may be because the parents themselves are unable to have children for some reason or because they prefer to have someone else to carry their baby. Commercial surrogacy involves an agreement to pay someone for carrying your baby.

The law in Australia regarding surrogacy differs across the different states and territories of the country. There is a perception that it may be easier and cheaper for people to go overseas in order to put in place a surrogacy arrangement. However due to issues with overseas surrogacy, including the recent case of “Baby Gammy”, some overseas jurisdictions are now banning surrogacy arrangements and other places are charging significant amounts for commercial surrogacy agreements.

The fact is that if you are able to legally arrange a surrogate to carry your baby for you in Australia then you may find that you are able to put that arrangement in place more easily and for a much lesser cost than if you go overseas to do it. In addition to that you may then be able to be legally declared as the baby’s parents under Australian law which may not be possible if you bring a baby back to Australia from overseas.

In South Australia there are strict requirements for intended parents to meet if they are to have a legally binding surrogacy agreement in accordance with the *The Family Relationships Act 1975 (SA)*. For example in South Australia the intended or commissioning parents must be in a heterosexual relationship and the female parent must be infertile or unable for medical reasons to carry a baby or to produce a healthy baby.

Further requirements must be met if the commissioning parents want to be able to obtain an Order declaring them to be the legal parents of the baby after it is born. Commercial surrogacy agreements (that is, paying for someone to carry the baby) are not legal in South Australia however the parents to be can agree to cover the costs incurred by the surrogate in connection with the pregnancy and birth of the child.

In the other states and territories of Australia the law differs such that it is possible in some cases for people who are involved in a homosexual relationship or those who are not in a relationship at all to enter into legally binding surrogacy agreements.

It is important that proper legal advice be obtained by anyone considering surrogacy as an option. There are complicated legal issues involved with these agreements both within Australia and overseas. Our experienced Family Law team at Andersons is happy to answer any queries that you may have on this topic.

---

*Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.*