



Australian Government
Attorney-General's Department

Access to Justice Division

10/19108

/ November 2010

Ms Julie Dennett
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Dennett

Estimates May 2010 – Attorney-General's Department – Question on Notice 71

At the Estimates Hearing of 25 May 2010, Senator Barnett asked to be provided with a copy of the 15 principles (or a précis) on surrogacy agreed at the November 2009 meeting of the Standing Committee of Attorneys-General (SCAG).

An interim response was provided stating that agreement was required from other jurisdictions to release the 15 principles (or a précis) to the Committee before they could be released. The interim response stated that a copy of the principles (or a précis) would be provided to the Committee as soon as agreement to do so is given by all jurisdictions.

All jurisdictions agreed to the release of the 15 principles on surrogacy by 18 October 2010 and the Department is now in a position to table the 15 principles.

The action officer for this matter is Andrew Newman-Martin who can be contacted on (02) 6141 3107 or at andrew.newman-martin@ag.gov.au.

Yours sincerely

A handwritten signature in cursive script that reads 'Toni Pirani'.

Toni Pirani
Assistant Secretary
Family Law Branch

Telephone: (02) 6141 3158
Facsimile: (02) 6141 3248
E-mail: toni.pirani@ag.gov.au

Surrogacy principles

1. A court may grant a parentage order where the court is satisfied a surrogacy arrangement was entered into by the surrogate mother, her partner (if any) and the intended parents prior to conception
 2. A court may grant a parentage order where the court is satisfied all parties have undergone counselling with an accredited counsellor in relation to the surrogacy arrangement
 3. A court may grant a parentage order where the court is satisfied all parties have received independent legal advice about the surrogacy arrangement prior to entering the arrangement
 4. A court may grant a parentage order where an application was made to the court at least 21 days, but not more than six months after the birth
 5. The intended parents must reside in the jurisdiction in which the application is made
 6. All parties to the surrogacy arrangement must give informed consent to the granting of a parentage order
 7. The child must be living with the intended parents at the time the application is heard
 8. A court may grant a parentage order where the court is satisfied granting the order is in the best interests of the child
 9. A court may grant a parentage order where certain requirements set out in the model provisions are not met if the court is, despite this, satisfied granting the order is in the best interests of the child. The ability of the court to waive requirements is subject to mandatory requirements set out in legislation
 10. A court may take into account any other matter it considers relevant when determining whether to grant a parentage order
 11. A court may grant a parentage order to parents who are now lawfully raising children under the age of 18 years conceived through surrogacy if:
 - (a) the court is satisfied that a surrogacy arrangement was entered into prior to conception
 - (b) the court is satisfied the surrogacy arrangement was not a commercial arrangement
 - (c) all parties consent to the granting of the order
 - (d) it is in the best interests of the child
- In determining such an application the court will be required to take into account the views of the child, where appropriate.
12. After a parentage order is granted a new birth certificate can be applied for and will resemble an ordinary birth certificate recording only the names of the legal parents.
 13. The original birth record would still exist and the child would be able to obtain both records in defined circumstances
 14. The jurisdiction where the original birth certificate was issued will provide for the mutual recognition of a parentage order granted in another jurisdiction by provision of a new birth certificate. Alternately, the jurisdiction where the original birth certificate was issued should cancel the birth certificate and the jurisdiction where the parentage order was granted should issue a new birth certificate.
 15. The surrogate mother will be able to enforce an arrangement for the reimbursement of reasonable expenses.