

Altruistic Surrogacy Bill 2018

As passed

Senator Youmaton

Written by The Hon. Tobycool2001_1

**A Bill for an Act to legalise altruistic surrogacy.
The Parliament of AustraliaSim enacts the following**

PART 1 - PRELIMINARY

1. Short Title

This Act may be referred to as the Altruistic Surrogacy Act 2018.

2. Commencement

This Act is to commence on the 1st June 2018.

3. Objects of this Act

The objects of this act are:

- (a) To encourage the use and access of surrogacy for citizens who are unable to reproduce.
- (b) To legalise altruistic surrogacy.

4. Definitions

The definitions in this Act are:

altruistic surrogacy means surrogacy where compensation is only provided from expenses incurred due to the action of supplying surrogacy.

commercial surrogacy means surrogacy where compensation is provided beyond expenses incurred due to the action of supplying surrogacy, such that the total compensation is greater than the total expenses.

expenses means the total monetary value lost from the participation in the action of supply surrogacy.

surrogacy means the action of giving birth to a child on behalf of a party who is unable to reproduce, and then ceding legal rights to the party.

surrogate means a woman who gives birth to a child on behalf of a party who is unable to reproduce, and then ceding legal rights to the party.

adoptive party means two persons who adopt a child of a woman, who gives birth to a child on their behalf.

PART 2 – APPLICATION

5. Supply of Surrogacy

On and after the commencement date of this Act, it will be lawful for:

- 1) An individual, in all states and territories of the commonwealth, to act as a surrogate if:
 - a. The individual is over the age of 25 but less than 40 and has given birth to at least one child,
 - b. The individual is not biologically related to the donor of sperm,
 - c. A surrogacy agreement is signed 3 months prior to the commencement of the surrogacy process,
 - d. The relevant patient determination authority in the state or territory where the surrogacy takes place approves the request to be a surrogate,
 - e. The relevant legal determination authority in the state or territory where the surrogacy takes place approves the request to be a surrogate and verifies the surrogacy agreement.
- 2) A adoptive party, in all states and territories of the commonwealth, to get surrogacy if:
 - a. The adoptive party are both over 18,
 - b. The adoptive party is either married or in a civil union in the state or territory where the surrogacy takes place,
 - c. At least one of the individuals in the party are unable to conceive, with proof that all other methods of reproduction have been exhausted and failed or would be dangerous to do so or would result in deformities in the child,
 - d. The relevant patient determination authority in the state or territory where the surrogacy takes place approves the request for surrogacy,
 - e. The relevant legal determination authority in the state or territory where the surrogacy takes place approves the request for surrogacy and verifies the surrogacy agreement.

6. Surrogacy Agreement

On and after the commencement date of this Act, it will be required that:

- 1) The adoptive party and the surrogate must sign a surrogacy agreement containing:
 - a. A compensatory agreement providing compensation to the surrogate,
 - b. A declaration establishing that after the birth of the child, if the surrogate is allowed to visit the child and any conditions of contact,

- c. A declaration stating that the surrogate will immediately relinquish guardianship over the child and transfer it to the adoptive party,
- 2) This agreement be signed by both the adoptive party and the surrogate and validated by the relevant legal determination authority in the state or territory where the surrogacy takes place.
- 3) The compensation in this agreement meets the criteria of altruistic surrogacy, in which it only covers:
 - a. Medical costs incurred as a result of supply surrogacy,
 - b. Compensation for loss of income,
 - c. Other such compensation deemed by the determination authority in the state or territory where the surrogacy takes place to be justified.

7. Determination of Surrogacy

The relevant patient determination authority approving a adoptive party's or surrogate's request may only approve such a request if:

- a. Both the adoptive party and the surrogate have attended three sessions with an approved counsellor, and one combined session,
- b.
- c. The adoptive party has evidence showing that all other traditional methods of reproduction have been exhausted and failed or that it would be dangerous to do so or would result in deformities in the child,
- d. The individual surrogate is determined to be a surrogate in a safe manner by two relevant medical professionals.

8. Commercial surrogacy

On and after the commencement date of this Act, it will be unlawful for:

- 1) An individual or party to engage in surrogacy if:
 - a. The surrogacy is not approved as per section 5, or,
 - b. The surrogacy involves compensation beyond the total costs and losses incurred because of supplying surrogacy, or,
 - c. The surrogacy is completed for commercial purposes.

Maximum penalty: 50 penalty units and/or four (4) years imprisonment for an individual, or 250 penalty units and/or four (4) years imprisonment of culpable individuals for an organisation.

9. Advertisement of surrogacy

On and after the commencement date of this Act, it will be lawful for:

- 1) The advertisement of surrogacy in digital, print or audio form so long as it is not paid advertisement.