

The background of the slide is a dense, 3D-rendered field of numbers. The numbers, including digits 0-9, are in various sizes and orientations, creating a sense of depth and complexity. They are rendered in a light blue/white color with soft shadows, set against a darker blue gradient background.

# **Surrogacy 101**

# **For every child born in Australia via surrogacy**

- 3 or 4 are born overseas
- Any change not likely prior to 2027, at best
- Australian Law Reform Commission inquiry

# **Criminal offences for going overseas**

- Commercial egg donation: two offences: 15 years or 6 months imprisonment
- Entering or offering to enter into a commercial surrogacy arrangement: \$110,000 fine or 2 years imprisonment or both
- Paying for overseas adoption (even if surrogacy) is an offence, fine or up to 1 year imprisonment or both

# **Benefits of local surrogacy journey**

- Much cheaper: \$50,000 to \$100,000, depending on the amount of IVF
- Certainty about parentage
- Much more convenient
- High quality IVF
- Long term connection with your surrogate

# **NSW local surrogacy process**

- Pre-surrogacy counselling
- Independent legal advice
- Signed surrogacy arrangement
- If through an IVF clinic- clinical approval
- Post-birth order, applied for 1-6 months after the birth
- Post-birth independent assessment report

## **From 1 July ...**

- NSW Supreme Court can make a parentage order for a child born through overseas commercial surrogacy
- For children born up to 30 June 2025, best interests test applies
- For children born from 1 July 2025, also show exceptional circumstances

# The devil is in the detail ...

- Test cases are very interesting, except when they're your own
- The law is untested
- There must be a *surrogacy arrangement*
- In many overseas arrangements, there won't be
- *Surrogacy arrangement* requires a post-birth transfer of parentage
- It will depend on local law, e.g., India, Mexico, Colombia

# Who are the parties to the surrogacy arrangement?

- Often the agreement will only nominate one intended parent
- A challenge is to show that there is a *surrogacy arrangement* covering *both* intended parents, even though only one is written up in the agreement
- Surrogacy arrangements are to be in writing
- However, part of it may be oral: *CDA v TRA* [2024] QChC 12



# **Only the facts, Ma'am...**

- Terms of the written agreement
- Context of broader agreement, paperwork
- Overseas law
- Can it be proved that the other intended parent was also to be covered?

# Parliament intends an extra barrier from 1 July

- Up to Supreme Court judge to determine *exceptional circumstances*
- *Out of the ordinary, unusual, special, uncommon-* matter of discretion
- *Parentage Act 2004* (ACT)
- ACT: no time limit for prosecution
- ACT: have to show *pressing disadvantage facing the child that would be alleviated by making a parentage order*

# For most intended parents through overseas surrogacy, an order is not needed

- Who is a parent under the *Family Law Act 1975* (Cth) is a question of fact: *Masson v Parsons* [2019] HCA 21
- The biological intended parent under a surrogacy arrangement is a parent: *Seto & Poon* [2021] FamCA 288 ; *Tickner & Rodda* [2021] FedCFamC1F 279
- When a California parentage order was made, both the biological and non-biological fathers were parents under the *Family Law Act 1975* (Cth): *W & T* [2019] unreported
- If an overseas adoption order has been made, then the parent through the adoption order (for example, the second parent) is a parent under the *Family Law Act 1975* (Cth)
- Though the *Adoption Act 2000* (NSW) may say otherwise: s.105



# THANK YOU

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