THE 28TH ANNUAL MDT/UWC GLOBAL FAMILY LAW CONFERENCE 11, 12 & 13 MARCH 2026

THE PRESIDENT HOTEL BANTRY BAY, CAPE TOWN

ART UPDATE FROM AUSTRALIA

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BY STEPHEN PAGE[1]

INTRODUCTION

Today I present a shopping list of recent events that have occurred in Australia concerning ART regulation. If there were any doubt about the complexity of Australia being a federation, let this presentation lay those doubts to rest.

MONASH IVF

Australia's IVF industry is highly concentrated, with four providers holding over 80% of the national market. Most of those clinics are fund-owned. The second largest, however, Monash IVF, is a public company traded on the stock exchange. In April 2025, news broke that at one of its Brisbane clinics that Monash IVF had used the wrong embryo. There were two couples, based in Brisbane, who had independently decided to move to another clinic. In the process of one couple doing so, Monash discovered that an embryo of the other couple which had gone somehow missing during an audit was found, being mistakenly allocated to the first couple. This error occurred a number of years ago, but was only discovered in February 2025, the news breaking two months later.

Monash IVF was immediately sold down on the stock exchange, losing a significant amount of value.

It is confronting as an Australian going abroad that the name recognition of Monash IVF is known overseas. For example, in November 2025 I spoke at the Society for Ethical Egg Donation and Surrogacy (SEEDS) conference in Las Angeles. SEEDS is the surrogacy industry association in the US. One of the speakers referred, offhandedly, to Monash IVF by name, to which there was instant recognition and some nodding by the large audience present.

An independent investigation undertaken by Monash IVF showed that the cause of the error was human error as to the labels. Despite there being a triple checking process, somehow that got missed.

[1] Stephen is a legal practice director at Page Provan, Solicitors, Brisbane. He is a father through surrogacy. Stephen was admitted in 1987 as a solicitor and has been an Accredited Family Law Specialist since 1996. He is a Fellow of the International Academy of Family Lawyers and of the Academy of Adoption and Assisted Reproduction Attorneys. Stephen has been an international representative on the American Bar Association's ART Committee since 2012. He is author of *When Not If: Surrogacy for Australians* (2022) and *International Assisted Reproductive Technology* (2024). Stephen has received a number of prizes, including the inaugural Pride in Law Award (2020) and the Queensland Law Society President's Medal (2023).

That matter has not been litigated as to the negligence of Monash IVF. I understand one of the claims has been settled. The family law issue has not been litigated.

At the time the news broke, the child concerned was a toddler. Looking at the matter, my view is that it would be most unlikely that a Family Court judge would remove the child from the couple's care, because the social science research indicates clearly that this little child's world was its sibling and parents. To sever the child's attachments in those circumstances would in all likelihood have a devastating outcome for that child, on a permanent basis, no matter how good the parenting for that child might later be.

This error by Monash IVF was the first time that use of the wrong embryo has been reported in Australia. The rate of error, over the last 40 years of IVF in Australia is extraordinarily small. There are approximately 100,000 IVF cycles in Australia per year, which demonstrates how rare this error was. Nevertheless, the error has been devastating for those concerned, including the staff who made the error.

Part of the criticism of Monash IVF, as a listed company, was that it had not made real time disclosure to the stock exchange. That changed in June. In June 2025 came the second Monash IVF error, at one of its Melbourne clinics. A lesbian couple went to undertake reciprocal IVF (with the embryo of the first one intended to be implanted into the second). The error in this case was that the embryo of the second woman was implanted into her, not the embryo of the first.

The independent investigation determined that it was through a concatenation of events through systemic error that the mistake was made. I would liken it to an airplane crash, in that if only one of those events had been out of sync, then the misfortune would not have occurred.

Unlike the previous error, Monash IVF reported this error to the stock exchange within two business days.

Within two days of the news breaking, the CEO of Monash IVF had resigned, falling on his sword. One day later, Australian Health Ministers meeting together determined that there had to be a change as to how Australian IVF clinics were accredited, to prevent a repeat of these types of errors. Accordingly, they agreed to do a rapid review.

THE RAPID REVIEW

By September, 2025, following the three month rapid review, the Health Ministers reached agreement that there needed to be a new form of accreditation of IVF clinics in Australia, and decided to remove the Reproductive Technology Accreditation Committee of the Fertility Society of Australia and New Zealand (which by law is the accrediting body) as the accreditor, and instead, replace it with the Australian Commission on Safety and Quality and Health. The Commission already sees overseas accreditation of hospitals and other health services.

The intent was to have the Commission commence accreditation by 1 January 2027. The review identified the need for clear, evidence-based standards for clinics and their staff and a more effective auditing process to pick up when there are breaches.

The new standards would align with the existing rules that govern other health services that would protect consumers with minimum standards for patient care and include measures of clinics' performance and put guardrails for add-ons. These are optional extra procedures or medications offered by fertility clinics, which can be costly and sometimes lack evidence that

they work. The review also recommended minimum requirements for qualifications and ongoing professional developments for those involved in delivering fertility care such as nurses, counsellors, embryologists and doctors.

Concern was raised also in the review process about regulation of donation.

CURRENT REQUIREMENT AS TO ACCREDITATION

IVF clinics in Australia must all be accredited with the Reproductive Technology Accreditation Committee (RTAC) of the Fertility Society of Australia and New Zealand. In addition, IVF clinics in most States must also have State based licensing or registration (Australian Capital Territory, New South Wales, Queensland, South Australia, Victoria and Western Australia)[2].

There are currently five State based donor registries, with the sixth, Queensland, about to start. None of them are coordinated with each other. None of the regulations are coordinated.

The Fertility Society of Australia and New Zealand undertook an independent report by the former Australian Health Minister, Greg Hunt and an academic Rachel Swift, that recommended that there be a national donor registry and a uniform fertility law regulating IVF clinics.

Currently, the four major IVF clinics (depending on where they operate) traverse up to eight different forms of regulation (being State and Territory based).

The Health Ministers recommended that the donor issue be referred to the Australian Law Reform Commission.

IMPLEMENTING THOSE RECOMMENDATIONS

This has been at best a glacial progress. The current news from the Australian Commission on Safety and Quality and Health is that accreditation is unlikely to be undertaken by them until 1 January 2028 or 1 January 2029.

One factor that the Health Ministers had not taken into account is that RTAC, in addition to accrediting Australian IVF clinics, also accredit overseas clinics, such as those in New Zealand and those in Singapore. It is a requirement of Singapore law for IVF clinics to be accredited with RTAC[3].

In addition, the kick into the long grass of the referral to the Australian Law Reform Commission has not been implemented. The Commonwealth Government has not yet set aside funds or given the task to the Australian Law Reform Commission to undertake the donor review. What was met with a fanfare of publicity in September last year has, six months later, resulted in no progress on that front at all. The lack of progress illustrates the problem that in a highly technical area, undertaking a rapid review by those not expert in the field often means not seeing the wood for the trees.

The same can be said to have happened in Queensland.

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[2] Only the one clinic in the Northern Territory and the two in Tasmania are not required to have state accreditation. By agreement with the Northern Territory government, the one clinic there operates on the basis as if it were South Australian compliant. By comparison, there are 30 IVF units in NSW, 24 in Qld and 20 in Victoria.

[3] *Healthcare Services (Assisted Reproductive Services) Regulations 2023*, reg. 9.

QUEENSLAND: BEWARE HOW QUICKLY YOU REGULATE

In 2023, a number of horror stories came out about some IVF practices in Queensland. Most of them concerned events of over two decades ago, when there was not a limit on the number of donor-related families[4]. One couple in particular were highly critical of their IVF clinic when they discovered, following a DNA test, that the person they were told was their donor could not have been.

The result was that the Health Minister, in a Government that was unlikely to be re-elected, decided to ensure that there was change effected before that election. This was done in two ways:

1. A regulator, the Queensland Office of Health Ombudsman, was directed to undertake an urgent report as to the state of ART in Queensland. That regulator made demands of documents from the various IVF clinics and from RTAC and wrote a report that in the main, found that ART in Queensland was well run, but was critical about certain aspects.

2. Enact legislation that would, for the first time, require State registration in Queensland of IVF clinics (in addition to RTAC accreditation). The previous promise by the Government to have a donor registry in Queensland was also bundled into the legislation.

The initial feedback for the proposed legislation was 13 days. To their credit, the relevant team at Queensland Health then engaged in significant engagement with stakeholders to ensure that in a speedy timeframe, that very complex legislation was suitable.

In rapid succession, the *Assisted Reproductive Technology Bill* was debated by Parliament ahead of the State election in 2024. Various submissions were made to the Parliamentary Committee as to teething areas with the Bill. With unanimous bipartisan support, those concerns were ignored, and the recommendation was made that the Bill be enacted in its initial form.

The Bill passed without division. The Opposition and independent members supported the Bill.

Some portions of the Bill commenced shortly before the State Election, with some provisions to commence immediately and others to commence over a period of 18 months. Within a couple of months of the Bill's enactment, the State Election was held and the previous Government duly lost.

The new Government then went about implementing the Act and then rolling it out in due course.

This has not gone smoothly. It was discovered that, due to a finetuning issue, that sperm that had been imported into Queensland was unable to be used. This sperm was imported from a US sperm bank. There were contact details given for the donor, but none of the new requirements, which were that the donor's email address and phone number had to be provided. The result was that there were some very disgruntled patients who were unable to use sperm which they had imported and acquired before the change (but which the Bill said would need to be compliant with the change).

[4] There has been a limit of 10 donor recipient families since 2004.

When the matter hit the media, then suddenly there was back peddling, with Queensland Health advising the clinics concerned that, although on the face of the legislation to use the sperm was a criminal offence, all would be forgiven.

Another requirement was that counselling services must be made available to a person proposing to undergo ART, and their spouse. What looks like a sensible provision did not include an exception for the obvious. For a married couple, a spousal relationship continues until they are divorced. Divorce can only be undertaken once the parties have separated for 12 months. This hastily drafted provision:

- Failed to take into account if a relationship had broken down;
- Imposed, by threat of criminal sanction the requirement to provide the counselling (even though to do so may have been the commission of another offence, by contravening a protection order, in cases of domestic violence);
- Was in apparent breach of the Commonwealth *Sex Discrimination Act 1984* (Cth), s.22, whereby there cannot be discrimination in the provision of a service based on the person's marital or relationship status.

Subsequently, the new Health Minister decided to pause the implementation of the Act, and to amend the Act. It was noted that because of the complexity involved in drafting such long legislation in such a short timeframe, that it was inevitable that errors would occur (as they did). He said:

> *"The Assisted Reproductive Technology Act 2024 commenced in part in September 2024 and is being implemented by Queensland Health. The act, which was developed and passed by the former government, established a state-based regulatory framework for providers of assisted reproductive technology, ART. The act and the regulatory framework it introduced were a direct response to serious and systemic failures of self-regulation in the ART sector. Regrettably, further failures have since come to light, including embryo mix-ups, that have deeply impacted members of our community. These incidents highlight the lifelong consequences such failures can have on patients and the donor- conceived people who are born through these services. They also underline the consequences of the act having been rushed through parliament by the former government without adequate consultation ortime to draft such a complex and consequential piece of legislation.*
>
> *There is no doubt that the original legislation was rushed. Developing a new regulatory framework for a previously self-regulated industry is complex. Parliamentary Counsel guidelines recommend that or legislation of this size and complexity 12 months should have been allocated for drafting. Instead, those opposite drafted the Assisted Reproductive Technology Bill in just 10 weeks—10 weeks for something that the Office of Parliamentary Counsel say should take 12 months. In this timeframe a mere two weeks of consultation was undertaken—only two weeks of consultation on such a complex and far-reaching bill. No draft bill was provided to stakeholders for review. This limited the ability of industry, patients and families to meaningfully engage and provide feedback."*

Those amendments have now been enacted, to fix these, and similar problems.

There has now been confusion about when relevant parts of the Bill are to start. Some parts of the Bill have now been put off for another six months. Draft regulations which were to have

started by 1 March 2026 have again been put off (including as to posthumous use). The Act remains a work in progress.[5]

THE NORTH CYPRUS CASE: *Lloyd & Compton* [2025] FedCFamC1F 28

A Queensland couple, husband and wife, underwent surrogacy and egg donation in North Cyprus. A child was born. According to the *"law"* of North Cyprus, the people named on the birth certificate as the parents were the biological father and the birth mother (a surrogate).

The child obtained Australian citizenship and a passport and then returned to Australia. In the meantime, to regularise parentage, it was seen that the couple needed to undertake a second parent adoption application. Adoption is a State and Territory responsibility. However, because two women some years ago separately worked out, after they had separated from their husbands and re-partnered, that if their new partners obtained a second parent adoption, then their former partners would be cut out from the child's lives, an anti-avoidance provision has been enacted to our federal *Family Law Act 1975* (Cth). This requires that before a second parent adoption occurs in a State or Territory court, that leave to adopt be obtained from what is now the Federal Circuit and Family Court of Australia.

Therefore, to undertake a second parent adoption, the couple needed to undertake two steps:

1. Apply for leave from the Federal Circuit and Family Court of Australia to adopt, and

2. To then obtain an adoption order from the Childrens Court of Queensland.

Accordingly, an application was made to the Federal Circuit and Family Court of Australia in Brisbane for leave to adopt. This application was unsuccessful. The first matter of concern to Carew J was that the surrogacy arrangement was commercial. The solicitor from New South Wales who represented the couple told the court that the surrogacy arrangement was a commercial one. The couple had similarly said so in their affidavits. It is an offence for Queensland residents to enter into overseas commercial surrogacy arrangements.

Her Honour referred the solicitor to the Legal Services Commission of New South Wales for filing affidavits disclosing that the offence had been committed and for competence.

Her Honour referred the Queensland couple to the Director of Public Prosecutions for investigation as to the offence of entering into a commercial surrogacy arrangement overseas (which, as I said is an offence in Queensland).

The solicitor did not say how much the surrogate was paid. The total that the surrogacy agency was paid (which included the surrogate, egg donor, IVF, lawyer and counsellor) was €84,000 (AUD$140,000).

The solicitor put herself forward as an expert on the law of North Cyprus (which she, as a Sydney solicitor, did not set out any qualifications about how she was an expert as well as being their solicitor, and nor did she put forward the statute in North Cyprus).

When the solicitor was told by the judge to file further material, she largely did not.

In making submissions to the court, the solicitor did not seek a hearing before the court, but opted to have the matter dealt with on the papers. For such a potentially complex matter, that

was most unusual in these circumstances, including the known views of the judge. Carew J in two previous decisions in which I had appeared, *Rose* [2018] FamCA 978 and *Allan & Peters* [2018] FamCA 1063 had made it plain her positive dislike of commercial surrogacy, and her concern that commercial surrogacy arrangements should not be favoured with the exercise of discretion from the court when they were against public policy.

The "very brief written" submissions concerned a case, *Bernieres & Dhopal* [2018] FamCAFC 180, in which the Full Court of the Family Court of Australia held that a couple who had undertaken surrogacy in India were held not to be the parents under Victorian law. Carew J noted that there were no submissions about the subsequent High Court decision of *Masson v Parsons* [2019] HCA 21. That case was not a surrogacy case. The Court found that there was not a unitary scheme of parental recognition (as had been assumed in *Bernieres*) but that where there was a conflict between the federal *Family Law Act* and a State and Territory Act as to parentage, the former prevailed. The High Court had also made plain that who was a parent under the *Family Law Act* was a question of fact, as seen in accordance with contemporary Australian standards.

Carew J then raised the concern in the judgment that because she had not been addressed about *Masson*, she wondered how *Masson* might apply, but otherwise she was bound by *Bernieres*. It is apparent that the solicitor could have and should have addressed Carew J about two cases decided in *2021* in the Family Court in which that court had held that the intended biological father through surrogacy was a parent[6]. In both of those cases, the court applied *Masson* and determined that the biological father through surrogacy was a parent. One of those cases involved domestic surrogacy[7], and one involved cross-border surrogacy[8]. Carew J was not alerted to either of those cases[9].

In the timeframe between when the written submissions were provided to the court and judgment was delivered, a third decision, *Gallo & Ruiz* [2024] FedCFamC1F 893 was decided. In that case, the court determined, following *Masson*, that an intended biological father, through commercial surrogacy overseas, was a parent for the purposes of the *Family Law Act*.

Consistent with *Bernieres*, Carew J in *Lloyd* found that as the husband had not obtained a parentage order under Queensland law, he was not a parent for that purpose under the *Family Law Act*. Because he was not a parent, therefore, there could not be a stepparent adoption in favour of the wife. Therefore, aside from public policy issues, there was no point in giving leave to adopt.

Her Honour noted that the applicants' written submissions did not address the *"fundamental jurisdictional requirement"* about whether the applicants had standing to bring an application for a parenting order.

The alternative to the husband being a parent was that the couple were concerned with the care, welfare and development of the child, and therefore had standing under section 65C(c) of the *Family Law Act 1975* (Cth). Her Honour however said[10]:

> *"While on one view it might be thought uncontroversial in the circumstances that the applicants are persons concerned with the care, welfare and development of the child, it*

[6] *Seto & Poon* [2021] FamCA 288; *Tickner & Rodda* [2021] FedCFamC1F 279.
[7] *Tickner*.
[8] *Seto.*
[9] Although Carew J referred to *Seto* as a reference for the basis of making the referrals.
[10] At [55].

seems to me that before that fact can be established there would need to be evidence before the court including the following:

(a) the current circumstances of the applicants and the child and their plans for the child in the event they are prosecuted and sentenced to a term of imprisonment to the criminal offence of entering into an international surrogacy arrangement contrary to Queensland law;

(b) Evidence that the child is an Australian citizen and has an Australian passport;

(c) A copy of the surrogacy and child bearing agreement between the surrogate, the applicants and C Ltd;

(d) A copy of the DNA report confirming that the surrogate has no genetic connection to the child;

(e) Expert evidence on the law of the Republic of Cyprus (being the only legitimate authority recognised by Australia) on commercial surrogacy in that country and the rights of the surrogate;

(f) Evidence from the surrogate about her current circumstances and what she received by way of remuneration or other benefits from the surrogacy;

(g) Medical evidence corroborating the applicants' history of inability to have a child;

(h) An assessment from an appropriately qualified Family Report writer as to suitability of the applicants as carers for the child involving a home visit and interviews with any other persons who it may be proposed will have a significant relationship with the child."

After the referral was made, Queensland Police decided not to investigate the matter further. I note that in mid-2023, according to the judgment, the applicants entered into a commercial surrogacy agreement with the agency. The judgment was delivered on 28 January 2025. There is a 12 month limitation period for prosecution of this offence in Queensland. That timeframe had already expired by the time of the referral.

COMPOUNDING THE ERROR

Noake & Chatwyn [2025] FedCFamC1F 332 concerned an application for parenting orders regarding an overseas surrogacy arrangement. The relevant couple were living in New South Wales. Like Lloyd, the substantive application before the court was for leave to adopt. Following pressure from the court, that application was withdrawn.

Anderson J said:

"The applicants' solicitor did not address the fundamental jurisdictional question, whether the applicants can make an application for a parenting order under Part VII of the [Family Law] Act."

His Honour concluded that the applicants did have standing as being concerned with the care, welfare and development of the child:

a) The first applicant was the child's biological father and is registered as the father on the child's birth certificate.

b) The child was discharged from the hospital into the care of the applicants following the birth. Each of the applicants has cared for the child since that time.

c) The child is dependent on each of the applicants for a day-to-day care and welfare.

d) The applicants have provided for the child's physical, financial, psychological and emotional needs since her birth.

e) The applicants own two properties in country B and an apartment in city F. The applicants work fulltime in businesses owned and operated by each of them. They have the capacity to provide for the financial needs of the child.

f) The respondents have each filed an affidavit expressing they wish to *"relinquish custody"* of the child.

g) The applicants have taken a sensible and logical approach to the future. Particularly, they have advised the court that they *"intend to be open with the child about her birth story, which they will do in an age-appropriate manner as she gets older"*. Additionally, the second applicant said:

> *"We have intentionally maintained contact with both ... [the] egg donor and surrogate. Our hope is that our relationship with both women continues into the future so that [the child] is able to communicate with them directly in the future if she wishes to do so."*

There were two aspects of the application which caused the court consternation. First, that the only framework for surrogacy in Country B (where they had undertaken surrogacy) is altruistic surrogacy for heterosexual parents. This was a male same-sex couple. There was no admissible evidence on the domestic law of that country where the child was born pursuant to a commercial surrogacy agreement. The court noted that maybe that the arrangements left the couple open to potential prosecution by Country B authorities, but that was a matter for them.

Second, the court was concerned that commercial surrogacy was prohibited by virtue of the *Surrogacy Act 2010* (NSW). His Honour followed the approach by Carew J in *Lloyd & Compton*, being *"anxious not to circumvent the clear intention of the legislature"*. At this point, Anderson J fell into error. He said:

> *"However, and unlike the legislation which fell for consideration by Carew J in Lloyd, the New South Wales legislation and the form of section 11 of the Surrogacy Act 2010 and section 10C of the Crimes Act 1900 (NSW) make it clear that the prohibition against commercial surrogacy does not have extraterritorial application. This being so, the arrangement entered into between the applicants and the first respondent was not unlawful under New South Wales law."*

His Honour was simply in error. The *Surrogacy Act 2010* (NSW) makes plain that offences apply overseas. That is the clear intent of the Act. The change to the Bill, to criminalise commercial surrogacy extra-territorially, which occurred in the third reading of the Bill, was controversial at the time. Section 11 of the Act provides:

> *"(1) This section applies for the purposes of, and without limiting, Part 1A of the Crimes Act 1900.*
>
> *(2) The necessary geographical nexus exists between the State and an offence against this Division if the offence is committed by a person ordinarily resident or domiciled in the State.*
>
> *Note: Section 10C of the Crimes Act 1900 also provides that a geographical nexus exists between the State and an offence if the offence is committed wholly or partly in the State or has an effect in the State."*

It is unusual to see such an error in a judgment.

Following the decision in *Bernieres*, and without there being any submissions according to the court as to *Masson*, the court expressed a preliminary view that neither of the applicants fell within the definition of *prescribed adopting parent* and accordingly, there could not be leave to commence adoption proceedings granted. As a result, the applicants withdrew that application.

If the Court had properly considered the three other decisions in which the Court has clearly found that the intended biological father through surrogacy is a parent, then one can only wonder if this had been the outcome.

A PARENT WITH NO BIOLOGICAL CONNECTION

There have been two significant cases as to who is a parent where there has been no biological connection between the father and the child.

In ***Mizushima & Crocetti (No. 3)*** [2024] FedCFamC1F 542, the case concerned twins, aged 6. Neither party was biologically related to the children, who were donor-conceived and carried to term by Ms Crocetti, who was their birth mother. The parties had a long history together. They commenced their relationship in 2003. They commenced cohabitation in 2009. Ms Crocetti contended that they separated on 1 January 2015 and remained friends thereafter. Mr Mizushima contended that although they had a period of separation, they recommenced their relationship in October 2015 until around July 2019. Between 2004 and 2010, they attempted multiple cycles of IVF **in Australia**.

In 2011, they travelled overseas and commenced IVF **in a second country** with Mr Mizushima's sperm and donor eggs. Ms Crocetti became pregnant but then miscarried.

Ms Crocetti became ill in 2012 and then underwent multiple operations and treatment. By January 2015 there were five frozen embryos in that second country.

In 2016 and 2017, Ms Crocetti underwent IVF **in a third country** using Mr Mizushima's sperm. She did not become pregnant.

In 2017, Ms Crocetti underwent two IVF procedures **in a fourth country** using donor eggs and donor sperm. On the second occasion, she became pregnant. By consent of the parties, the children's birth certificates were completed and Mr Mizushima's name was placed on the birth certificates of each child.

Ms Crocetti later submitted at trial that she had been subjected to coercion by Mr Mizushima in having him named as the father on the birth certificates, which was rejected by the court.

Although finely balanced, the court was not convinced of the composite picture, that the parties were living in a de facto relationship at the time of the artificial conception procedure in late 2017.

Curran J stated[11]:

> *"A key factor in differentiating a parent from a person concerned with the care, welfare, and development of a child under section 65C, especially noting that the Act confers on them equal rights, is that there is an intention or an understanding, that existed at or around the time of conception and continues, that a person is going to undertake a role as a parent."*

Her Honour held[12]:

> *"The respondent acknowledged that the applicant believed that he would be parenting the children and she did nothing to quash that assumption, intention or understanding of the applicant. She registered him as the father of the children on their birth certificates. As set out earlier, she communicated on numerous occasions her intention to raise a child with him, prior to their conception, after their conception, and after their birth, and regardless of their relationship status. The evidence suggests that the parties, whatever their relationship was, were co-parenting up until the respondent sought to travel to the UK with the children when there was disagreement about the length of the stay."*

Further[13]:

> *"The evidence demonstrates that the applicant has at all times acted consistently under the understanding that he is the father of the children, that is, from the words of Masson v Parsons, he has supported and cared for the children since their birth as their parent."*

***OPHOVEN & BERZINA* [2025] FedCFamC1A 97**

This had similar issues to *Mizushima*. This was an appeal judgment. The dissenting judge, Gill J was firmly of the view that to be a parent under the *Family Law Act* that there needed to be a genetic link. Gill J, in referring to *Masson v Parsons*, said[14]:

> *"It is no easy or obvious task to mark out the boundaries of the ordinary meaning of "parent".*
>
> *Although dictionary meanings may be of assistance in determining ordinary meaning, the parties in this case identified none, and to embark on a survey of them now risks unfairness to the parties who were not on notice to identify the strengths and weaknesses of the adoption of a dictionary meaning.*
>
> *The scope of the ordinary meaning is to be considered in the light of the legislation as a whole, including in its treatment of the subject of "parent".*
>
> *The general statutory framework is suggestive that the meaning is allied to the concept of "either" or "both" parents. For example, section 65C, which deals with who may*

[11] At [264].
[12] At [269].
[13] At [272].
[14] At [120]-[137].

make an application for a parenting order, identifies "either or both of the child's parents". That is not a position that negatives the potential for non-parents to be important in a child's life, as the section also empowers "any other person concerned with the care, welfare or development of the child" to make an application. It does however presume that there can be only two parents, which, subject to the specific exceptions at section 60H and in respect of adoption at section 4(1), suggests an assumption of biology.

Similarly, the provision of section 69W for the compelling of biological testing is suggestive of the centrality of biology to determining parenthood. Whilst the powers to obtain evidence more generally in respect of parentage at section 69V are not constrained to the taking of biological samples, it may be observed that establishing biological connection is not restricted to the taking of samples, nor are samples available in all cases, such as where there is a deceased parent. The breadth of section 69V is a neutral matter. It is neither suggestive of biology as determinative, nor otherwise.

Some implications may also be taken from the distinction within the Act made between a parent and a step-parent. Section 4(1) defines "step-parent" in a manner that would usually pick up the respondent in these proceedings. It further appears in the definition of "relative" and in ss 66D, 66M, 66N and 66X which each deal with child maintenance.

It can be seen that in these ways the Act distinguishes between people who are parents, and people who function as though they are parents.

Whilst these statutory features carry implications as to the scope of "parent," they do not give clarity to the boundaries of the ordinary meaning.

Against this statutory background it may be observed that many persons who are parents fail to meet any of the responsibilities of being a parent, including those things described by Baroness Hale as constituting a psychological parent. Parents can be involved or uninvolved. Parents can be beneficial or harmful. Parents can love and parents can abuse. Parents can behave self sacrificially and concern themselves with what is best for a child, and parents can be completely self-absorbed, concerned with their own rights and priorities.

It may also be observed that many persons who are not biologically parents, for example step-parents, grandparents and other persons concerned with the care, welfare and development of a child bring greater benefit to a child than those who are the biological parents. However, there is no mistaking those categories of person as parent despite the parental function that they discharge.

Neither failure in the role removes a person as a parent, nor does taking on the role make that person a parent. This points away from the ordinary meaning of parent as a consequence of the performance of what might be hoped to be the function of a parent, absent biological connection.

Further, "parent" carries with it meaning as to origin. It carries with it answers to the question of where a person comes from, which are answered differently than by reference to the family in which a person was raised. The importance of that meaning is reflected in the arrangements that are in place to enable adopted children to understand who their biological parents might be, despite the legal displacement of such persons as parents.

To enable the conferring of the status of parent, by one parent upon another person, even accompanied by good will and parent-like commitment on the part of the other, works a fundamental shift in what it means to be a parent.

In this case, the appellant invited the respondent to take on the status of parent, to which he agreed, and upon which he acted on an ongoing basis, functioning as a parent, in all of the circumstances as identified by the primary judge above. Together they engaged in parenting and recorded his name on the child's birth certificate.

As a matter of fact and degree this departs significantly from the factual situation in Masson v Parsons where the father was not only biologically connected, but also functioned as a parent and provided support for the child, consistent with the agreed approach at the time of conception.

He was a parent in the biological sense, but not merely in the biological sense. He may have provided semen to facilitate artificial conception, however he did so on the basis that he would be the child's parent, and suitably involved in the child's life. It was the combination of these circumstances that led to the conclusion of parenthood in that case.

This case raises the question of whether, as a matter of fact and degree, the agreement between the parties as to the conferral of the status of parent upon the respondent, accompanied by his discharge of that role in the circumstances identified above, are sufficient absent the biological connection.

I am unable to agree that the circumstances, in the absence of the biological connection that was present in Masson v Parsons, are of a sufficient degree to bring the respondent within the meaning of parent."

The plurality, Aldridge and Christie JJ, however held that it was not necessary to be the biological parent for there to be the biological link to be a parent. Their Honours said[15]:

"Once we recognise that legal status may be divorced from biological parentage (adoption, surrogacy, artificial conception) the question is whether the categories of persons who may be declared a legal parent are prescribed, or whether the decision of the High Court in Masson v Parsons may be read as extending the category of persons who may be declared a parent for the purpose of the Act to include those people who fall within Baroness Hale's third category of "social and psychological parenthood".

Their Honours noted the following findings were drawn from the reasons of the primary judge[16]:

"Accepting that this is a matter of fact and degree, the following findings are drawn from the reasons of the primary judge:

(a) The appellant and respondent were in a relationship (which was not a de facto relationship) between 2004 and 2014, with two brief periods of separation.

(b) Between 2008 and 2009 the parties endeavoured to conceive using IVF.

[15] At [54].
[16] At [67]-[70].

(c) Following a failed IVF procedure in Country B in 2013, the appellant became pregnant with the child via IVF in Country B in 2014.

(d) The primary judge recorded…:

> *The [appellant] returned to Sydney [in early 2014] and [shortly thereafter] told the [respondent] that she was pregnant. The [appellant] deposes that she said to the [respondent], "I will give you the choice if you want to be a father to the baby and form a family together or I will bring the baby up on my own." She further deposes that the [respondent] replied in words to the effect of, "I want to be a father."*

(e) Prior to the child's birth the parties attended a "baby intensive course".

(f) Prior to the child's birth the parties decided to live together following the child's birth.

(g) The respondent was present at the child's birth.

(h) The appellant and respondent were named on the child's birth certificate.

(i) The appellant and respondent lived together as a de facto couple from late 2014 until 11 November 2017, during which time each provided care to the child.

(j) After separation when time was not occurring between the child and the respondent, the appellant wrote to the respondent: "Please kindly confirm if you had received my message below and if you intend to organise any meeting with [the child] near future as [the child] misses you and loves to see you".

(k) No time between the child and respondent occurred for approximately a year until supervised time on 14 October 2018, 16 December 2018 and 10 February 2019.

(l) The respondent commenced proceedings on 20 May 2019 and interim orders dated 4 November 2019 provided for time between the child and the respondent which was graduated for a period of six weeks but culminated in an order which provided for the child to spend time with the respondent on three weekends in every four weekends from 1.30 pm to 5.30 pm on Saturdays and from 2.30 pm to 5.30 pm on Sundays. By the time of the final orders, these orders had been in operation for just shy of five years.

(m) The respondent was actively involved in the child's school.

(n) Apart from two best school friends, the child identified "mummy" and "daddy" to the Family Report writer as the most important people in her life.

(o) The Family Report writer, during observation sessions noted "an evident bond" between the child and the respondent.

(p) The Family Report writer concluded the child "clearly identified her family as including her, [the appellant] and [the respondent]".

In the present case the respondent lacks a biological connection to the child but was found to have both formed the intention to parent prior to the birth of the child and to

have in fact parented after the birth of the child. In addition, both the appellant and respondent registered the child's birth naming the respondent as a legal parent. Where both parties register the birth of a child and include their names on the registration of birth such that the birth certificate issues, naming them as the legal parents of the child, this creates a rebuttable presumption. It is a public declaration by those persons of the identity of the persons who are to be regarded as the child's legal parents.

It cannot be the case that the presumption created under s 69R by registration of birth must be necessarily rebutted by evidence of lack of biological connection because a non-biological parent may be a legal parent, and that information was available to the parties at the time of the registration of birth. Since the presumption was not rebutted by evidence before the primary judge (but the appellant had placed the legal status of the respondent as a parent in issue) the declaration was appropriate relief and would not attract appellate intervention.

We are comfortably satisfied that the statute imposes no requirement of biological connection to the making of a declaration under s 69VA. This leaves the primary judge free to determine the matter of parentage having regard to the evidence as a whole, providing that parentage is in issue in the proceedings. Accordingly, the primary judge did not err in making the declaration pursuant to s 69VA."

SURROGACY CHANGES IN THE AUSTRALIAN CAPITAL TERRITORY, NEW SOUTH WALES AND WESTERN AUSTRALIA

ACT

Amendments were made to the *Parentage Act 2004* (ACT) in 2024, to enable parentage orders to be made in case of overseas commercial surrogacy and to enable surrogacy to occur in a more liberal regime. Previously, the *Parentage Act*, which was the first law in Australia to allow surrogacy, required that the embryo transfer occur in the ACT, that there be no traditional surrogacy (only gestational) that the intended parents had to be a couple, and that the surrogate had to be part of a couple. Following the changes, transitional changes were brought in to enable recognition of surrogacy arrangements that would not otherwise have been recognised under the old rules.

The Act was also amended to allow the Supreme Court to make a parentage order for an overseas commercial surrogacy arrangement. However, there is no time limit for prosecution of the offence of entry into a commercial surrogacy arrangement, and no exemption for those seeking the Court's relief. It is no surprise that no such order has yet been made.

The first reported case under the transitional provisions was *Re Application under the Parentage Act 2004* [2025] ACTSC 294[17]. Muller AJ had no difficulty in making a parentage order in circumstances where:

1. The IVF had occurred in New South Wales.

2. It had been a traditional surrogacy arrangement (among family members).

The surrogacy arrangement had been a New South Wales surrogacy agreement:

[17] In which I appeared.

> *"entered into between the four adult persons … with a view to the creation of a child intended to be in a familial relationship with his genetic father and the husband of his genetic father. The husband of the genetic father and the birth mother are siblings."*

The court had no hesitation in making the order as being in the child's best interests when:

a) The child has been brought into the world after careful planning by his presumed parents and his intended parents.

b) That plan was borne of a strong desire held by both of the intended parents to have an opportunity to parent a child of their own, fully supported by the altruistic intent of the presumed parents.

c) The plan was brought to fruition with the birth of the child.

d) Since his birth, the child has resided with his intended parents in a loving family relationship.

e) That life is the only life he has known.

The parentage order was made.

NEW SOUTH WALES

The *Surrogacy Act 2010* (NSW) was amended so that from 1 July 2025, the Supreme Court of NSW can make a parentage order for a child born through overseas commercial surrogacy. Several cases are pending, but there has not yet been a parentage order made as a result of the change.

WESTERN AUSTRALIA

In December, the *Assisted Reproductive Technology and Surrogacy Act 2025* (WA) was enacted. This reforms the regulation of IVF clinics in WA and repeals the *Surrogacy Act 2008* (WA), the *Artificial Conception Act 1985* (WA) and the *Human Reproductive Technology Act 1991* (WA). Most significantly, the Act allows single men and gay couples finally to undertake surrogacy, bringing Western Australia into line with the rest of the country.

The WA Act is to commence over a period of 18 months. It remains unclear when the non-discriminatory provisions concerning surrogacy are to take effect.

In the meantime, there has been a case brought in the Supreme Court of Western Australia, heard by three judges in late 2025, challenging the *Surrogacy Act 2008* (WA) as being discriminatory under the federal *Sex Discrimination Act 1984* (Cth). The applicant's case is that the *Surrogacy Act* is in breach of the federal Act because it by prevents a gay couple living in Western Australia from undertaking surrogacy there.

Judgment in that case has been reserved.

***MA v PA* [2025] QChC 1**

I acted in this extraordinary case (with an extraordinary name) for the intended parents. The matter started with a Zoom call in which there were three parties – husband, wife and wife's female best friend. Initially, I had to sort out who I was acting for. I quickly determined that

my clients were the husband and wife. All three took part in the call, on the basis that privilege was waived by my clients, so we could get a handle on where this matter was at.

The best friend was already pregnant from an at-home insemination by the husband. The friend had never had children and had no desire of ever having children, but her best friend (who had always desired to have a child) was infertile. Therefore, the offer was made by the friend to be a traditional surrogate for the husband and wife.

Queensland, like most Australian states, does not require the surrogate to have previously carried a healthy child to term. Having a surrogate who has previously not carried a child is rare. This was only my second case.

All three parties lived under the one roof.

Unlike the usual requirements at the commencement, there had been no independent legal advice for both sides. Nor had there been any of the mandated counselling. Nor was there a written surrogacy arrangement. The thoughts focused on pregnancy, and once that was achieved, to then seek legal advice.

In my attempt to fix the leaky boat, the first thing that was done was to have a written surrogacy arrangement that merely reflected the terms of the oral surrogacy arrangement (and therefore was about one-half or one third of the usual length of one of my usual surrogacy arrangements). Before that was signed up, the surrogate received independent legal advice and the parties were referred to an expert fertility counsellor. No concerns were raised by either the other solicitor or the fertility counsellor. It was clear that the surrogate was acting of her own free wil, notwithstanding that they all lived under the one roof. The written surrogacy arrangement was then entered into.

The child was born and relinquished. On the return of the application, the court was naturally concerned about the failure of the parties to enter into the processes, but was satisfied on all the evidence before it, that a parentage order was appropriate. There was a favourable post-birth report that the best interests of the child was that an order be made.

The Court waived the requirements for:

- the written surrogacy arrangement to be entered into before the child was conceived (as an oral surrogacy arrangement in the same terms had been entered into before hand);
- independent legal advice before entering into the surrogacy arrangement;
- counselling before entering into the surrogacy arrangement.

Unusually, at the hearing, the court required the surrogate to testify. There were two issues of concern for the court:

1. Whether there had been some element of duress toward the surrogate at the time of entry into the surrogacy arrangement, and

2. What might happen when, inevitably, the surrogate went to leave the home she shared with my clients as to her connection with the child.

The surrogate gave forthright evidence that:

> *"She was a willing party in the surrogacy, that she was aware of her role in AA's birth and that she was aware that should she leave the house she would not be leaving with*

> *him. Her mental health is currently well managed and was stable at the time of entering into the surrogacy arrangement."*

Richards DCJ held[18]:

> *"Whilst ignorance of the law is no excuse, this was an arrangement carefully thought out between close friends who live under one roof. They obtained legal advice and counselling once they realised that was necessary and executed a written version of their previous oral agreement. AA has been in the care of his intended parents since birth. Although PA lives in the house with them, she does not take an active role in parenting AA and MA has been to all intents and purposes his mother from birth. PA does not have any desire to mother AA.*
>
> *Although the circumstances in which the surrogacy was initiated are unusual, it cannot be said that the arrangement was entered into without due consideration. It is clearly in the best interests of the child that the parentage order be made in favour of the intended parents. Given all the circumstances in this case, I am satisfied that exceptional circumstances exist, that it is appropriate to dispense with the compliance with the [various] requirements … and that it is in the child's best interests that the application be granted."*

AUSTRALIAN LAW REFORM COMMISSION SURROGACY INQUIRY

For those of you who attended at the International Surrogacy Forum last year, you would be aware that currently the Australian Law Reform Commission has been given the task of making recommendations about surrogacy reform[19]. That process remains under way. It remains unclear as to what the ALRC is going to recommend. However, it is likely that it will be recommending autorecognition of intended parents upon the birth of the child. It remains unclear as to what approach is to be taken with overseas surrogacy.

Reform is overdue:

- Ten years ago, the House of Representatives surrogacy inquiry recommended that on an urgent basis that there be national non-discriminatory surrogacy laws. We are still waiting. That inquiry recommended that Australians not be criminalised for undertaking surrogacy overseas. We are still waiting.
- Queensland was the first place in the world to criminalise overseas commercial surrogacy (1988), copied in the ACT (2004), Hong Kong (2007), NSW (2011), Italy (2024) and Ireland (2024).
- 55% of the Australian population live in the ACT, NSW and Queensland. Another 18% live in the Northern Territory, South Australia and Western Australia, places where the prohibition against commercial surrogacy can apply overseas by virtue of long arm laws (such as *Surrogacy Act 2008* (WA), s.8, *Criminal Code 1913* (WA), s.12).
- Since 2009, there have been over 3,500 children born via overseas surrogacy.
- In that time, not one person has been prosecuted for undertaking commercial surrogacy overseas.
- For every child born domestically through surrogacy, four are born overseas.

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[18] At [12]-[13].

[19] I am a member of the ALRC's surrogacy inquiry advisory committee, which is an unpaid position.

ALRC HUMAN TISSUE INQUIRY

In addition, the Australian Law Reform Commission was given the task of undertaking a human tissue inquiry. This relates to ART because in most States, the manner of posthumous sperm retrieval is undertaken in accordance with the relevant State or Territory *Human Tissue Act*[20].

While the ALRC initially considered that posthumous sperm retrieval should be left to the various *Assisted Reproductive Technology Acts*, that is currently being reconsidered.

NEW SOUTH WALES FERTILITY INQUIRY

If there weren't enough irons in the fire, the New South Wales Legislative Council is also undertaking a fertility inquiry, including access to fertility treatment and surrogacy. As with the ALRC surrogacy inquiry, there have been many submissions to the fertility inquiry, including some from submitters in Europe, who are clearly opposed to any form of surrogacy whatsoever. An example of such a submission is that of FINRRAGE (Feminist International Network of Resistance to Reproductive and Genetic Engineering. FINRRAGE said:

> *"FINRRAGE (Australia) is part of an international feminist network commenting critically on reproductive technologies and genetic engineering since the 1980s. We regularly write submissions on these issues to Australian states and territories. We commented on the 2024*
>
> *Greenwich Bill and also sent a submission to the ongoing Review of Surrogacy by the ALRC in July 2025.*
>
> *Looking at the Terms of Reference, it is obvious to us that the starting point of this investigation into fertility services in NSW is that they – in particular, IVF and surrogacy services – are perceived as positive interventions and therefore that an increase in the scope, size and number of these services would be welcome. This bias is expressed clearly in the Terms of Reference, namely f) barriers to accessing assisted reproductive treatment including in vitro fertilization (IVF) technology and surrogacy.*
>
> *FINRRAGE members (including those of us with PhDs and postgraduate qualifications in biology and science as well as multiple book publications) have the opposite view. We believe that in vitro fertilisation treatments cause tremendous psychological pain, are physically dangerous for the women involved, and highly unsuccessful. They also present dangers for any children born of IVF. In our view, the downsides and realities of these medical interventions are not properly understood either by participants or by the general public.*
>
> *For a start, it is necessary for women to be first put into chemical menopause with powerful drugs (coincidentally, often the same drug, Lupron, which is used as an irreversible puberty blocker for young children who are mixed up about which sex they are). Then, after the growth of their egg cells has been stopped, they are put on fertility hormones which means that the restarted growth of egg cells can be supervised. Should sufficient egg cells grow and mature to the required size, they are then 'harvested' via a hollow needle attached to a suction device. Inserted into the vagina, this needle punctures the ovary, accesses mature egg follicles and aspirates the fluid containing*

[20] For example, *Human Tissue Act 1983* (NSW). Confusingly, these have several names of these laws, including, for example, the *Transplantation and Anatomy Act*.

the egg cells. This procedure can be painful, so anaesthetics are administered. Dangers include damage to the bladder or bowel, and infection. Given the difficulty of administering an exact dose of fertility hormone, as every woman reacts differently to the drug, there is a high chance that a woman can develop life- threatening ovarian hyperstimulation syndrome (OHSS) in which her ovaries leak fluid into her chest and abdominal areas. If this happens, the IVF cycle will need to be cancelled and in severe cases, the woman is hospitalised. Women have died from OHSS. Please note that the same procedures – and the same risks – apply to women who want to freeze their eggs, and to so-called egg 'donors' who sell or provide their egg cells, for free, to be used in surrogacy for (older) women whose own egg cells have become unusable. Because IVF has become so 'normalised' these days, only a very small number of women who are contemplating starting any of these procedures, will be told by their doctors of these potential dangers….

FINRRAGE members strongly believe women should be warned and discouraged about embarking on IVF rather than being encouraged to do so. The NSW Parliament could start an education campaign that not only reveals the dangers and low success rates of these procedures, but also encourages infertile couples to find other ways of having children in their lives, be that as teachers, foster carers or by offering regular help with the children of their friends and family members so strong bonds can be forged.

Furthermore, the fact that many people lead perfectly happy lives without children needs to be emphasised much more. We are still in the thrall of old-fashioned sexist stereotypes in which a 'proper' woman is a synonym for a woman who has given birth."

It is no surprise that FINRRAGE say, *"we want all surrogacy abolished", because they consider "all surrogacy constitutes a human rights violation"*. They compare infertility to *"serious 'real' diseases- think melanomas, epilepsy, brain tumours, heart failures etc."*

The view that surrogacy should be abolished is consistent with the view expressed by the United Nations Special Rapporteur on Violence against Women and Girls, Ms Reem Alsalem who in July 2025 recommended that all surrogacy everywhere be *"eradicated"*. She recommended that surrogacy be regulated according to the Nordic model of regulation of prostitution, and that the parentage of children born through surrogacy not be recognised internationally. Those who make money out of surrogacy should have their assets seized.

Ms Alsalem's report is her own submission to the fertility inquiry[21].

I took part in a meeting with Ms Alsalem before she wrote her withering report. Ms Alsalem ignored the declaration by the International Federation of Fertility Societies, called the Tokyo Declaration in April 2025, which upheld human rights on the treatment of ART, including, where surrogacy was allowed, that surrogacy had appropriate safeguards (such as independent legal advice, counselling and the like). She also ignored other submissions, such as the one by the Fertility Society of Australia and New Zealand, written by me, which included reference to international conventions and jurisprudence that said that access to ART and surrogacy was a human right.

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21 https://www.parliament.nsw.gov.au/lcdocs/submissions/91745/0018%20Special%20Procedures%20of%20the%20Human%20Rights%20Council.pdf .

Ms Alsalem had two closed door meetings. I took part in one. I do not know of another fertility lawyer worldwide who spoke to Ms Alsalem. I do not know of any parent through surrogacy, aside from myself, who spoke to Ms Alsalem. I do not know of any fertility specialist or fertility counsellor who spoke to Ms Alsalem. Although in my session Ms Alsalem did not speak to any surrogate or child born through surrogacy, I am now aware that she has spoken to some surrogates and children born through surrogacy.

English law Professor Kirsty Horsey has called the report "Biased from the outset"[22]. Horsey says:

> *"Even the framing of the call for evidence that formed the foundation of this report was problematic. A SR whose expertise is in violence against women and girls (VAWG), asking about surrogacy in that context already demonstrated potential bias, seemingly coming from the position that surrogacy is always and inevitably linked to human rights abuses.*
>
> *Despite this, I was still surprised that the SR's report seriously lacked objectivity and, for the most part, cited only those voices that echo her own. Others, including me, submitted evidence which was ignored, including peer-reviewed studies on good practice in surrogacy and on positive outcomes for children, families and surrogates (see responses by Sarah Jefford and Stephen Page). Any evidence that was positive about surrogacy was either not mentioned or was dismissed, either out of hand or (ironically) for being methodologically flawed.*
>
> *The SR said she 'received some 120 submissions from different stakeholders' and convened online consultations with 78 experts (including parents, agencies, medical experts and women with lived experiences of surrogacy). She also reports relying on 'reputable secondary sources', but says these were 'few, given their weaknesses'. The cited submissions tended to reflect anti-surrogacy positions and those with which Alsalem agrees. The selectivity in the evidence relied on raises huge questions about how the report can justify calling for a global prohibition of surrogacy in all its forms.*
>
> *Thematic mandates such as Alsalem's have a real potential to highlight human rights abuses where they happen, and doing so means there is potential for cooperation between nations and for change. But, in lumping all surrogacy together as one concept, and starting from the very principle that it is always a human rights abuse – let alone ignoring any evidence to the contrary – Alsalem reveals that even human rights experts can be biased."*

CHANGES IN LATIN AMERICA

In three surrogacy destinationsthere have been changes concerning surrogacy regulation, or potential changes. This in turn has impacted on Australians undertaking surrogacy in those countries.

ARGENTINA

[22] https://www.progress.org.uk/the-un-special-rapporteurs-report-on-surrogacy-biased-from-the-outset/.

There have been at least two Australian couples caught up in Argentina, who have not been able to get their child, born in Argentina via surrogacy, out of Argentina, because Argentina refuses to issue birth certificates. These matters I understand are currently wending their way through Argentinian courts.

COLOMBIA

There is currently, yet again, a Bill before the Legislature to ban foreigners from undertaking surrogacy in Colombia. I am told, yet again, that the Bill is performative and unlikely to succeed. We shall see. In the meantime, Colombia is a very popular surrogacy destination with international intended parents.

MEXICO

In July 2025, the Supreme Court issued a judgment[23] upholding the human rights of the surrogate, ensuring that surrogacy agreements were fair and not oppressive of her, that she had independent legal advice, counselling and medical assistance before entering into the surrogacy arrangement, bodily autonomy during the surrogacy arrangement and counselling support during the arrangement and at the end of the process, had independent legal representation at the time of making the amparo order (by which the intended parents are recognised as the parents).

I am told that there has this year been a decision by the Mexican Supreme Court that recognises pre-birth surrogacy orders. I have not yet seen that decision.

CONCLUSION

Watch this space. While there are still moves forward as to surrogacy regulation and access, there are still attempts, such as by Ms Alsalem, to stop all surrogacy forever. This is a dynamic and ever-changing environment, which can make it very hard to keep up, even for those of us immersed in the area.

Stephen Page
Page Provan
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stephen@pageprovan.com.au

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