INTERNATIONAL PARENTING AGREEMENTS: PERILS AND ENFORCEMENT

INTERNATIONAL ACADEMY OF FAMILY LAWYERS

INTRODUCTION TO INTERNATIONAL FAMILY LAW SAN FRANCISCO 15 MAY 2019

By Stephen Page

INTERNATIONAL PARENTING AGREEMENTS: PERILS AND ENFORCEMENT

INTERNATIONAL ACADEMY OF FAMILY LAWYERS

INTRODUCTION TO INTERNATIONAL FAMILY LAW SAN FRANCISCO 15 MAY 2019

By Stephen Page[1]

Introduction

There are two basic forms of international parenting agreements, which I will cover in turn:

- To have a child;
- Concerning an existing child.

To have a child

"Governments don't play God. Governments shouldn't tell us when to have children."[2]

Rule 1 – Don't believe everything you read on the internet

> *"It seems clear that prohibition of surrogacy does not work and in Australia, most States approach this difficult policy issue by way of regulation. Such regulation is difficult in a globalised world where travel from continent to continent is no longer difficult. Added to this, in some parts of the western world, there is wealth to the extent that funding of surrogacy (whether commercial or altruistic) is easily achieved…*
>
> *Modern science and medical skill surrounding the creation of life are now well ahead of legal, social and legislative policy. In Australia the creation of effective policy will be difficult particularly on a State by State basis. These policy issues probably need to be dealt with on a national, whole of continent consistent basis, including having regard to Australia's international treaty obligations."*[3]
>
> *"There are many and varied paths to parenthood. Where the path involves an international surrogacy arrangement, it is long and difficult. As this case*

[1] Stephen Page is a partner of Page Provan, family and fertility lawyers, Brisbane, Australia. Stephen was admitted as a solicitor in 1987 and has been a Queensland Law Society accredited family law specialist since 1996. He is a Fellow of the Academy. He is a Fellow of the Academy of Adoption and Assisted Reproduction Attorneys and is also an international representative on the ART Committee of the American Bar Association. Stephen is the founder of the LGBT Family Law Institute Australia.

[2] Statement by client to the writer.

[3] *Lowe and Barry* [2011] FamCA 625, [4]-[6] per Benjamin J.

> *demonstrates, the commissioning parents' goal of the safe arrival of a longed for child often results in them overlooking or underestimating the legal issues involved. From the children's perspective at least, in the pursuit of parenthood, it is important that the commissioning parents and those who assist them give proper regard to ensuring that parental status is possible once the children are born."*[4]

An international parenting agreement to have a child is typically entered into by those who wish to have a child by surrogacy. This will be my focus for those who wish to have a child. I note that Emily Haan and Ming Wong are separately talking about international issues concerning same-sex parents.

My father, who was a very cynical man, used to say to me jokingly that if something were in the newspaper then it must be true. He frequently said to me that it was good to look at things with a sceptical eye to judge whether in fact what might be said might be the truth.

Unfortunately what I'm still too often seeing are intended parents who have entered into a surrogacy arrangement somewhere and realised that they are in a mess, usually when the surrogate is pregnant. They often end up there by having read something on the internet, believing it all to be true.

It sounds really basic, but it is absolutely essential that any intended parents (or for that matter surrogate or her partner or donor) contemplating entering into a surrogacy arrangement of some kind get good legal advice from all the places involved before wandering down the garden path of a surrogacy arrangement.

It is much easier to plan for matters than to try and dig clients out and save them.

I think it is imperative upon us who engage in the practice of surrogacy, particularly international surrogacy, that we publicise issues of concern and emphasise repeatedly that those contemplating surrogacy ought to get legal advice before they start the process – not advice from their friends or the people they have talked to on the internet or other intended parents who have avoided going to lawyers. It may be that their friends were very fortunate and had a dream run by somehow walking through a minefield and avoiding stepping on any of the mines. However if they get stuck then they'll get stuck big time.

Rule 2 - What is legal there may result in jail here.

This applies both ways, see Rule 1. There is a common misconception that because commercial surrogacy, for example, is legal in California therefore it is legal elsewhere.

There are four jurisdictions in the world that beyond doubt make it a criminal offence to enter into a commercial surrogacy arrangement overseas:

- Hong Kong
- Queensland
- New South Wales
- Australian Capital Territory

[4] *Ellison and Karnchanit* [2012] FamCA 602, [104] per Ryan J.

Not handled right, it is also an offence in Western Australia to enter into a commercial surrogacy arrangement overseas.

Of course before getting to that point, intended parents will often create embryos overseas. Not handled correctly, those intended parents may be committing an offence (at least in Australia) punishable by up to 15 years imprisonment. It is absolutely vital that those who wish to be parents get expert legal advice from both jurisdictions. If they have a multi-jurisdictional issue, they need to get advice or ought to consider getting advice from all places.

To give examples of this problem:

- in seven out of eight jurisdictions in Australia it is a criminal offence to enter into a commercial surrogacy arrangement in Australia;

- in all Australian jurisdictions it is a criminal offence, punishable by up to 15 years imprisonment, to engage in the commercial trade in eggs, sperm or embryos.

All parties involved in a surrogacy arrangement need to know before the arrangement commences as to the lie of the land with the law and practice in all relevant jurisdictions. What may be perfectly acceptable practice, indeed industry best practice in one jurisdiction may be a criminal offence somewhere else.

Example

Fred and Ethel live in Sydney. They were born in Sydney. Due to their international careers, they have left Sydney and moved to New York. They contemplate undertaking surrogacy in California. Although they own a property in New York in reality they don't live there. Their lifestyles are so busy they live as nomads throughout the world. They contemplate moving to London.

Thankfully, they haven't entered into a surrogacy arrangement yet. While Queensland, New South Wales and the Australian Capital Territory make it a criminal offence to enter into a commercial surrogacy arrangement overseas, the scope of the New South Wales legislation is the broadest because it covers not only those who are *ordinarily resident* in New South Wales but also those who are *domiciled* in New South Wales. Australian law recognises both domicile of origin and domicile of choice. Domicile of choice overrides domicile of origin unless there is no domicile of choice, in which the reversion is to domicile of origin.

Fred and Ethel are currently domiciled in New South Wales by birth. If they enter into a commercial surrogacy arrangement whilst living as nomads somewhere in the world then they may have committed an offence in New South Wales! If they later come to New South Wales, for example returning for a family Christmas then bizarrely they could be prosecuted there. The offence may be prosecuted on indictment, an effect of which means that there is no time limit for prosecution.

If Fred and Ethel reside in New York then they need to get advice from a New York lawyer as well as an Australian and Californian lawyer. If they move to England they need to get advice there first before making the move.

It is possible to register overseas child orders under the *Family Law Act 1975*(Cth). Section 70G provides:

> *"The regulations may make provision for and in relation to the registration in courts in Australia of overseas child orders, other than excluded orders."*

The *Family Law Regulations* allow for orders made in prescribed overseas jurisdictions, primarily the United States[5], to be registered under the Family Law Act, which then have the effect by virtue of sections 70H and 70J of the Act as if they were made by the overseas court under Part VII of the Family Law Act .

I deal with registration matters below.

Rule 3 - You say tomato…

Probably one of the easiest overcome issues, but nevertheless frustrating ones is that of language. I am not talking of accents! I am talking about jargon. When your counterpart or client is not an English speaker then things become even more interesting. Patience is a virtue.

Examples of language differences- from *within* Australia

You may call them	**I call them**	**Others call them**	**Others call them**	**Or even**
Intended parents	Intended parents	Commissioning parents	Substitute parents	Parents
Bio and non-bio dad	Intended parents	Commissioning parents	Substitute parents	Father and parent
Bio and non-bio mum	Intended parents	Commissioning parents	Substitute parents	Mother and parent
Surrogate	Surrogate	Surrogate mother	Birth mother	Mother
Surrogate's husband	Surrogate's husband	Birth father	Birth parent	Father
Surrogacy agreement	Surrogacy arrangement	Surrogacy arrangement	Registered surrogacy agreement	Substitute parent agreement

Rule 4 - Citizenship and residence are not the same.

Often citizenship and residence are the same, but sometimes they are not. This necessarily adds to complications.

[5] Except for Missouri; New Mexico and North Dakota.

Two older examples of problems

Georgina lives in England. She is single and an Australian. She wants to have a baby via surrogacy in India (before the changes occurred last year) and, have the baby live with her in England but to ensure that the baby has Australian citizenship. Georgina is ultimately successful in her quest but in the process engaged the following:

Lawyer
Surrogacy agent and surrogacy agency in India
Surrogacy lawyer and migration agent in Australia
Surrogacy lawyer and migration lawyer in England

Lucy and Ricky live in Singapore. Lucy is Italian. Ricky holds Australian UK citizenship. They wish to undertake surrogacy in India. They have heard that it's pretty straight forward.

On 9 July 2012 the Indian government issued a decree specifying that intended parents needed to obtain a surrogacy visa. In order to be eligible they needed to be married for 2 years and surrogacy needed to be legal in their country. Ricky comes from New South Wales. Lucy and Ricky live permanently in Singapore so the issue of domicile in New South Wales doesn't arise. The Indian government requires a letter from the country of the applicant for the medical visa to say that surrogacy is legal.

Is the relevant country for Ricky and Lucy Singapore, Italy, the United Kingdom or Australia? Singapore won't write the letter. The UK will write a letter. Italy almost certainly won't write the letter. Australia will write the letter. If Ricky is considered to be *"ordinarily resident"* in Queensland, New South Wales or the Australian Capital Territory, or domiciled in New South Wales, then he will not be eligible under Australian rules. Ricky and Lucy are obtaining advice from an Indian Surrogacy lawyer and a Singaporean lawyer.

Rule 5 - No one may know what happens there (or here)

All too often clients assume that the answer must be known and it must be obvious. Because surrogacy is so new in many parts of the world or so few lawyers if any are undertaking surrogacy work often it is impossible to determine what is the state of law. Sometimes the state of practice is opposite that of the state of law- and often what is to happen is not known.

Example

Even within Australia there is a harmonised "system" of surrogacy laws. If you have clients from one part of Australia, you may think that the laws affecting that client are the same for every other Australian client.

In an interstate surrogacy arrangement, the payment under the arrangement of life insurance for a surrogate, whilst laudable would be lawful for example if the intended parents lived in Queensland but a criminal offence for the surrogate if she lived in Victoria.

Example

Clients of mine were the first to obtain a Queensland parentage order in 2012 which took effect with the NSW Registrar of Births, Deaths and Marriages. The NSW legislation quite clearly allows interstate parentage orders to take effect. That may be, but instead of a relatively quick process, the process took 5 months, because officials did not know what to do.

A constant problem that I am striking is as to the state of law in other countries and trying to find lawyers who know anything about surrogacy law in those countries. Despite my best efforts I've not yet had responses from possible lawyers who can advise about surrogacy in much of Asia. Lawyers there simply don't want to touch it.

It is essential that we try and arm our clients with as much information as possible so that they can make an informed decision.

I see that as also essential that given that surrogacy is so new in so many parts of the world that we try and engage and network with other lawyers and professionals in those countries so that there is a system of knowledge about surrogacy and the laws concerning surrogacy throughout the world.

Rule 6 - In different parts of the same country, different rules might apply.

You saw my examples above about New South Wales and Victoria, and New South Wales and Queensland.

There is an assumption by many in Australia that the only place that undertakes surrogacy in the United States is California. There is also a common assumption in Australia that the rules throughout the United States are the same.

There is also a common assumption in Australia that surrogacy rules throughout Australia are the same. To give you an idea of the complexities in Australia:

- We have nine systems of law concerning surrogacy, namely at the Federal level (Commonwealth) and in the eight States and Territories;

- The Northern Territory has no laws concerning surrogacy, which has the bizarre effect that to all intents and purposes surrogacy can't be practised there and Territorians must go interstate or overseas;

- Queensland and New South Wales, ACT, Tasmania and South Australia have a model involving legal advice and counselling;

- Victoria and Western Australia each have a State regulator requiring pre-approval before the surrogacy arrangement can proceed;

- To be an approved surrogacy arrangement in ACT, Victoria, South Australia and Western Australia the medical treatment must occur in that jurisdiction. There is no such requirement in for example Queensland and New South Wales;

- For that state, with an exception for the best interests of the child, all parties to the surrogacy arrangement must reside in Tasmania;

- In these States, the intended parents must reside in Western Australia, South Australia, Victoria and the ACT before the surrogacy arrangement commences. They can reside in New South Wales or Queensland until later, which can have an impact on overseas intended parents who are Australian expatriates;

- Singles need not apply in the ACT or South Australia. Single men and gay couples need not apply in Western Australia, but for some reason single women and lesbian couples are okay. There is currently a bill before the Western Australian Parliament to remove this discrimination, but that Bill is currently being considered by an Upper House Committee.

My triumph: world first case concerning conception

In 2012, I obtained a decision from a Queensland judge which is the first case in the world in which conception has been defined[6]. Conception was defined by Judge Clare, SC as the time of pregnancy. Her Honour stated:

"The meaning of the term "conceived" as used in s 22(2) (e) (iv) [of the Surrogacy Act] is critical to the court's jurisdiction in this case. This is because the embryo was created years before the surrogacy arrangement, then frozen and not implanted in the uterus until months after the written arrangement was settled. The question now is whether the reference to pre conception as the cut-off point in s 22(2)(e)(iv) means before the creation of the embryo or simply any time before the transformation of the embryo into a pregnancy. If it were an earlier point in time, the court would have no power to make a parentage order for [the child].

What does "conceived" mean?

The act offers no definition. It seems this is the first time a court has been asked to interpret s22 (2) (e) (iv). Nonetheless, the answer seems obvious. Whatever approach to statutory interpretation is applied, whether it be to view "conceive" as a technical term, or it its everyday meaning, or the meaning that best advances the purposes of the Act, the result is the same. The point of conceiving a child is the commencement of the pregnancy, which involves an active process within a woman's body.

The everyday meaning

The phrase "conceived a child" is in common usage. It is commonly understood to refer to an actual pregnancy.

One must examine the context of the provision [1]. This is a provision about surrogacy. As expressed in s.5, the purpose of the Act is to safeguard the interests of the child and regulate surrogacy agreements. There is an underlying intention to protect the birth mother from duress to surrender her child. Such issues only emerge after a pregnancy occurs. The Act applies to all forms of conception. The use of in vitro fertilisation is now widespread. In my

[6] LWV v LMH [2012] QChC 026 viewable at: http://www.sclqld.org.au/qjudgment/2012/QChC/026

experience when lay people talk about IVF treatments they tend to reserve the term "conceive" for the circumstance where an embryo actually takes to the uterus and the woman succeeds in becoming pregnant as distinct from the procedure of implantation. I am satisfied that in the ordinary everyday language of the community, the term "conceive a child" means more than what can be achieved in a test tube and refers to the commencement of a pregnancy in a woman's body. This is consistent with the current editions of both the Oxford English dictionary and the Macquarie Dictionary. They define "conceive" as, inter alia. "to become pregnant". The former publication also defines "conceived", the adjective, as "brought into embryonic existence in the womb".

To construe the cut off point in s 22 (2) (e) (iv) as the point of pregnancy (and therefore after fertilisation) is also consistent with the definition of "surrogacy arrangement" in s 7 of the Act.

The (intended mother's) eggs were fertilised and preserved before she underwent the emergency procedure that saved her life but left her unable to carry her own children. This was before the Surrogacy Act had come into existence. It was therefore impossible for her to enter into an arrangement under the Act before the embryos were created. The same situation is readily foreseeable for any woman undergoing emergency procedures even after the commencement of the Act. A woman desirous of having a baby, would little hope of securing a compliant surrogacy arrangement in advance of an emergency hysterectomy, given the requirements for the identification of a willing surrogate, proper counselling and legal advice with time to reflect on all of the implications. The Act is intended to help such people in genuine need of surrogacy. Therefore to interpret the preconception condition as a condition to be satisfied before fertilisation would not only be contrary to the ordinary language of the provisions, it would frustrate the underlying intention of the Act. There is no reason to reach beyond the common language for the interpretation of s 22 (2) (e) (iv).

The expert evidence

The Court has an affidavit from Dr Nasser an obstetrician and gynaecologist involved in the case, as well as various definitions from medical dictionaries. Of course the construction of the statute is a matter for the court, not doctors, but the expert evidence of the biological processes is relevant to that task. According to Dr Nasser:

"The creation of the embryos in 2008 was an act of fertilization. Fertilization is a step on the path way to conception. Many eggs fertilize but many fewer pregnancies are conceived. The act of conception or the act of conceiving the pregnancy was the actual embryo transfer and the subsequent implantation of that embryo into the uterus of [the birth mother] over the next couple of days with the eventual positive pregnancy test approximately two weeks after …July 2011… The act of conceiving in this case is viewed as the act of achieving a pregnancy. Therefore, I view the conception of [the child] as occurring from the embryo transfer on … July 2011."Dr Nasser's professional distinction between the processes of fertilisation and conception is consistent with the common understanding of what it means to conceive a child. The same can be said of the preponderance of definitions from the medical dictionaries cited. Despite extensive research, the parties have found only one case in which the meaning of conception was considered. This is the English case of R (John Smeaton on behalf of the Society for the Protection of Unborn children) v the Secretary of State for Health.[2] It was about the morning after pill and therefore considered conception through sexual intercourse rather than scientific intervention."

The three models of surrogacy regulation in Australia

There is little commonality as to regulation of surrogacy in Australia. There appears to be little if any recognition that other parties may be outside State boundaries, and little commonality of approach. The best that can be said is that the then Standing Committee of Attorneys-General came to draft guidelines as to surrogacy. These guidelines have never been finalised, and nor have the laws been harmonised.

There are three models of surrogacy regulation throughout Australia:

Model 1: No laws: NT

The Northern Territory has no laws about surrogacy. This means that it is legal to engage in surrogacy in the Northern Territory. In reality, all that is available is:

- Traditional, altruistic surrogacy
- Traditional, commercial surrogacy

As there are no laws, there is no ability to obtain a parentage order. This then impacts on any potential surrogates who live in the Northern Territory when the intended parents live interstate: if the surrogate gives birth in the Northern Territory, then a parentage order made interstate will not be able to name the intended parents as the parents of the child, as there is no ability to alter the birth register.

For the same reason, namely the inability to obtain an order, the only IVF clinic will not provide surrogacy services. Because of licensing requirements the clinic cannot offer commercial surrogacy services.

Example

Benny and Belinda live in Cairns. They need to undertake surrogacy. Belinda's sister, Bella lives in Darwin. Bella offers to be their surrogate. Bella operates her own business. If Bella gives birth in Darwin, Benny and Belinda cannot ever be named as parents on the birth certificate. The ability to privately adopt in Queensland for example is highly circumscribed. If Bella travels to Queensland to give birth, this might have a devastating effect on her business.

Example

Jack and Marjory wish to undertake surrogacy. They live in Darwin. They are both in secure employment. They would prefer to undertake altruistic surrogacy. Given the barriers facing them, they either have a choice of moving interstate, or undertaking surrogacy overseas. They choose to undertake commercial surrogacy in the Ukraine.

Model 2: Light regulation: Qld/NSW/ACT/SA/Tas

The key feature about this model is the need to have a surrogacy arrangement. The arrangement is not required to be in writing, but if not obtained, doctors will not treat and courts will not make parentage orders.

The common feature is that there is mandatory counselling and legal advice before the surrogacy arrangement is signed and that before a parentage order is obtained, an independent report is obtained, similar to a family report, to ascertain if the making of the order is in the best interests of the child .

Queensland requires counselling beforehand, and an independent assessment after.

NSW, when it followed the Queensland model, requires this too, but also requires relinquishment counselling of the surrogate and her partner after having given over the child.

ACT requires counselling and assessment from an independent counsellor which can have occurred before or after the surrogacy arrangement is entered into.

SA requires counselling before the surrogacy arrangement is signed up, and counselling offered to the surrogate post-birth.

Tasmania largely follows on the Queensland model, with some additions from SA and NSW. While a magistrate can order an independent report, the requirement is that a counsellor see the parties before and after the process.

My views as to best practice:

- Have one counsellor undertake pre-signing counselling for all parties, who provides a written report to the IVF clinic, which is also made available to the parties and their lawyers, and if the matter proceeds to court, to the court. It is essential in my view for issues of difference to be sorted out in counselling, and that the parties although they have different perspectives have a common shared vision for the child and the surrogacy arrangement.

- There ought to be a post-birth independent assessment much like a family report, so that the court can be assured that the orders it makes are in the best interests of the child.

I am of the view that it is essential that any possible difficulties are likely to be ironed out through counselling. Given that it is likely that the surrogate and her partner will play a part in the child's life for the rest of their lives, a smooth start for that child's life is essential.

Model 3 Heavier regulation: Vic and WA

Both Victoria and WA have a State regulator. The perception of intended parents is that the system is very slow, costly, and invasive. I am told that the process to obtain approval from the Patient Review Panel in Victoria takes about 2 months, but I have had clients who spent 18 months going through the bureaucracy of their IVF clinic before treatment could commence. They gave up, and decided to go overseas instead.

The most damning words about what has happened in Western Australia were those of the Tasmanian Leader of Government Business in the Legislative Council, Mr Farrell, when rejecting the Western Australian model as a model for Tasmanian laws on surrogacy:

> *"I have been provided with a report that shows that when debating the surrogacy reforms in Western Australia the Attorney-General stated there were between 40 and 50 couples awaiting the passing of surrogacy legislation and that the government anticipated approximately 25 applications per year for parentage orders. After the legislation was passed it was nearly two years before any applications were received by the approval body. By November 2010, two applications for surrogacy had been approved and a further one was under consideration. The author of the report surveyed those people who had identified as wishing to utilise surrogacy but who had not done so. Overwhelmingly, the response was that the people simply could not meet the requirements of the legislation. Of those surveyed the majority were still intending to pursue surrogacy but outside the parameters of the legislation. The result of this is that there will continue to be children being raised by people who do not have legal parentage of them. As I outlined earlier, this is not in the best interests of the child."*

Example

George and Mildred are itinerants. Due to George's highly desired work skills, they move from workplace to workplace. They are not "ordinarily resident" in any State as a result. This means that although at all times they are living in Australia (and are Australian citizens) they cannot access surrogacy in Australia as State (and ACT) laws in effect require them to reside in that jurisdiction.

Example

Barney and Betty are married. Betty lives in Brisbane, Queensland. Barney works on a fly in fly out basis in the Pilbara, Western Australia. He works 3 weeks on, and one week off. On his week off, Barney returns to Brisbane. Is Barney "ordinarily resident" in Queensland or Western Australia? Barney may or may not be ordinarily resident in Queensland or Western Australia and therefore may be unable to access surrogacy in either place. Betty because she is resident in Queensland, can only undertake surrogacy in Queensland. Barney may be unable to access surrogacy in WA, and will have to show that he is resident in Queensland.

If they wish to undertake surrogacy in the US:

- They have to make sure that they are not committing an offence in Queensland of entering into a commercial surrogacy arrangement as defined under its *Surrogacy Act 2010* (Qld).

- They have to make sure that Barney is not committing an offence of entering into a commercial surrogacy arrangement for reward, where some or all of the elements of the offence are committed in Western Australia under its *Surrogacy Act* (WA) and *Criminal Code 1913* (WA).

Example

Bill and Ben live at Griffith Street, Coolangatta, Queensland. They are a gay couple. Griffith Street is a border street. On the north side of that street is Coolangatta, Queensland. On the south side of that street is Tweed Heads, New South Wales. The street runs east west. As Australian traffic is on the left hand side of the street, drivers who drive east are in Queensland but drivers who drive west are in New South Wales. They wish to undertake surrogacy. They decide to undertake commercial surrogacy overseas. Bill and Ben have committed offences in Queensland of entering into a commercial surrogacy arrangement, and of making payment under a commercial surrogacy arrangement. By the time they bring the baby home, they cannot be prosecuted for the entering into a commercial surrogacy arrangement offence, as the time limit has expired. However, they are liable to up to 3 years imprisonment for the offence of making payment under a commercial surrogacy arrangement, for which they could be prosecuted for up to a year after payment, i.e., when their child is a year old.

By contrast, Bill and Ben move to live on the other side of the street in Griffith Street, Tweed Heads, New South Wales. The offence in NSW is entering into the commercial surrogacy arrangement. They have not been prosecuted. Their son is by now 16. During a show and tell, he tells the class that his dads paid for commercial surrogacy overseas. Another class member goes home and tells his dad of what happened in the class room. That dad complains to police. Bill and Ben are prosecuted for the offence- for which there is no time limit in NSW.

Example of absurdity

Fred and Ethel are high school teachers in the NSW school system. They live and work in Albury. They wish to undertake commercial surrogacy overseas. To do so in NSW they run the gauntlet of a triple penalty: not only possible conviction, but loss of jobs in the public service and deregistration as teachers.

They make a decision. They rent a house in Wodonga in Victoria, about 15 minutes' drive away. They remain employed as NSW high school teachers and commute between Wodonga and Albury. Albury is on the north bank of the Murray River, and is therefore in New South Wales. Its twin town of Wodonga is on the south bank of the Murray River and therefore in Victoria. After moving, and now being ordinarily resident in Victoria, they enter into a commercial surrogacy arrangement in Guatemala. It is legal for them to do so.

Example of absurdity

Although surrogacy was legal in NSW it was not legislated for. It was not possible to obtain parentage orders. In 2010, then NSW Attorney-General John Hatzistergos announced that NSW would have laws based on the Queensland model.

One would think that this would involve copying the drafting of the Queensland legislation. It didn't. No apparent thought was given to those who live across State borders. One might have thought that this was obvious, given that IVF clinics on the Gold Coast (in Queensland) are the only clinics providing services to the far north coast of NSW. No, it was not to be.

Mike and Tyson live in Queensland. They want to undertake surrogacy. Mike's friend Polly living in NSW offers to be the surrogate. When I looked at the equivalent section of the NSW

Bill to that in the Queensland Act covering allowable expenses, it appeared to be comparing chalk with cheese. I could not tell whether they were the same or different. The drafting was quite different. It was important to know: otherwise the surrogate might be inadvertently committing a serious criminal offence in NSW by entering into a commercial surrogacy arrangement. Two paralegals in my office were given the task of reading the two provisions side by side. The verdict: they were the same!

Mike, Tyson and Polly's children are born in NSW. Because Mike and Tyson live in Queensland they must apply for a parentage order in Queensland. The judge questions why the application is brought there, until it is pointed out that they cannot bring an application in NSW and must bring the application in Queensland, in accordance with the scheme. A parentage order is obtained. It is forwarded to the NSW Registrar of Births, Deaths and Marriages in accordance with the procedure outlined by that office. It is the first interstate matter before the NSW Registry. It took 5 months to have the children's birth register altered! This is despite NSW and WA being the only States to specifically provide for alteration of birth records resulting from interstate parentage orders. By contrast, processing time for a parentage order made in the Children's Court of Queensland by the Registry in Queensland is 2 to 3 days!

The officer of the Registry suggested to me:

- The order should have been made by the Supreme Court of NSW. I pointed out that the Supreme Court could not do so as the intended parents reside in Queensland.

- The order should have been transmitted to the NSW Registry by the Queensland Registry of Births, Deaths and Marriages. It was pointed out by me that the view of the Qld Registrar was that because the children were not born in Queensland, the Queensland Registrar has no interest in them and will therefore not transmit.

- The order should have been transmitted by the Queensland court as the official could not be satisfied that the order was made by the court. I pointed out that the court does not transmit orders as a matter of practice, In any case the registry had the duplicate sealed order!

- The order should have been sent to the Supreme Court of NSW for transmission. I pointed out that that court would not want the matter as it lacked jurisdiction.

- The matter should be dealt with in Queensland because it was akin to adoption. I pointed out that it was surrogacy, not adoption, and that there was specific NSW legislation on point.

Example: Victoria: outrageously failing to care for the surrogate

Pam and Martina are sisters. Pam lives in Melbourne, Victoria, Martina in Brisbane, Queensland. Both are married. Pam offered to be Martina's surrogate. It is my invariable practice that intended parents provide adequate life insurance, health insurance and disability insurance for the surrogate. If she dies or is severely injured in childbirth, what impact will that have on her husband and children?

Luckily, Pam had adequate insurance anyway and did not need to be covered. If she had insurance provided by Martina and Martina's husband, Pam would have committed a criminal offence because under Victoria's *Assisted Reproductive Treatment Act*, that payment was not allowable, which would have been the commission by Pam and her husband of a criminal offence.

Example: NSW and Queensland

Roger and Venus live in NSW. They are the intended parents. Rod and Yvonne live in Queensland. Yvonne is the surrogate. The child is born in Queensland, and therefore her birth is registered in Queensland. Because Roger and Venus live in NSW, they must necessarily make a parentage order application in NSW. The application is heard in the NSW Supreme Court, but is dealt with on the papers, in accordance with the process of the adoption list of that court. The result? The order refers to adoption, even though it is a surrogacy case. If the matter had been heard in open court, this might have been avoided.

It is the second or third interstate matter to be processed by the Queensland Registrar of Births, Deaths and Marriages. The Registrar proposes to deal with the alteration of the birth record as an adoption matter because of the word "adoption" on the order. The previous matter, also marked "adoption" from a NSW Supreme Court parentage order, has resulted in the birth record being sealed, to the potential detriment of the child. The same sealing would not occur in a surrogacy case. The Supreme Court ultimately removes the word "adoption" from the form of order, allowing the alteration of the register to recognise a parentage order.

Rule 7: Children have a right to know who they are, and where they come from.

> *"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."*[7]

> *"It is important to remember, when looking at surrogacy from a legal point of view, that each surrogacy arrangement involves real people with real emotions. Most important of all is the child, who must be assured of their safety, citizenship and identity."*[8]

[7] International Covenant on Civil and Political Rights (1966), Article 24

[8] Then Chief Federal Magistrate Pascoe, speech viewed at http://www.federalcircuitcourt.gov.au/pubs/docs/Speech%20-%20Pascoe%20-%20LawAsia%20-%202011.pdf on 28/4/13

I believe that it is the right of every child to know where they've come from, and that this is a fundamental human right.

In our country there was a shameful practice which peaked in the 1960's and 1970's and which has resulted in apologies from State and Federal governments. It was the removal of children from their mothers, typically single women, at birth or within a couple of days of birth to be adopted by *"good families"*. This was often undertaken by religious organisations. It copied a practice that was undertaken for many decades when children were forcibly removed from indigenous mothers and adopted out to *"deserving"* couples. We are still dealing with the ramifications of those policies today. What has been obvious in listening to the stories of those who were adopted is that often they don't know who they are or where they came from.

I recall many years ago acting for a husband in a Family Court custody dispute. The husband and wife had three children aged 5, 7 and 8. The dispute was bitter. The key event that led to the breakdown of the marriage and the bitterness of the dispute occurred many years before the marriage. It was the night before the future wife's 21st birthday. On that night her mother called her in and said: "*Darling, there's something we need to tell you."* The 21 year old sat down and was told, for the first time, that she was adopted. She was devastated and from that point on when her parents had told her such a fundamental lie she was never able to trust anyone ever again. That pattern of behaviour ultimately led to the breakdown of the marriage and no doubt lifelong impact on their children and probably their grandchildren.

It is essential in my view that intended parents are honest with their children about where they came from. It is essential that they identify for their children that there was a magical woman who was a surrogate. The ideal outcome is to have an ongoing relationship with the surrogate. I am extremely concerned about the model that is being adopted by many Westerners, but particularly by many Australians going to developing countries. I call this model the set and forget model. If they meet the surrogate it is only briefly. Often the surrogate does not speak English and after the transaction is done she goes back to her own home never to be seen from again.

What will happen to this child later on when he or she wants to find out who the magical woman was who carried him or her for the first critical 9 months and without whom he or she would not be in existence?

I am also deeply troubled that in some jurisdictions there is an insistence on anonymity of donors. Australia has pursued a model, after rigorous inquiry, of donors either being known or open identification once the child turns 18, giving the child the option of having on going contact. What if as a matter of practice the child doesn't have that choice and can never know who was genetically the parent and may never know their full family medical history?

Rule 8 - A birth certificate may not make you a parent.

You may be a parent for some purposes but not others. It seems like a remarkable proposition, but some laws may recognise you as a parent in your home jurisdiction but other laws do not. It can be extremely distressing to clients to hear that their home country recognises them as parents only for some purposes and not others.

It is an absurdity worthy of Sir Humphrey Appleby[9] that s.69R of the *Family Law Act 1975* (Cth) states the possibility of recognising overseas birth certificates, but no overseas jurisdictions are prescribed! Intended parents are stunned to learn that their name on the birth certificate is not, on the face of it, recognised in Australia.

However, as they are keen to point out, that same birth certificate is recognised by the local school, Medicare[10] and Centrelink[11] offices as to parentage and identity for the child. As clients have pointed out to me, it enables the payment of money to them on the basis of parenthood by the same Government that says that they are not parents!

The impact of the failure to prescribe any jurisdiction is also felt at the State level, as part of the statutory scheme, for example, section 25 of the *Status of Children Act 1978* (Qld). It seems extraordinary that no jurisdiction in the world, such as California or the UK, for example, is recognised in Australia.

Australia has a schizoid way of saying who is a "parent".

In essence, there are three ways to say who is a "parent":

- Birth
- Genetics
- Intent

Australia, confusingly, has chosen all three! It has done so this way:

- Under *the Status of Children* legislation in each State and Territory, adopted by the *Family Law Act*, the approach has been that of defining by birth. That definition in turn has in part made its way to the *Australian Citizenship Act*. This has been the approach taken in most Family Court cases concerning overseas surrogacy.

- The approach of the Department of Immigration and Citizenship, which has largely relied on genetics.

- The approach of two recent court decisions, which have relied on intent, and the reality of who was parenting the child concerned.

Therefore, a person might be recognised as a parent of a child for the purposes of citizenship, but because that person was not the birth parent of the child or married to or a partner of a birth parent of the child, is not a parent for State law purposes, and may not be a parent under the *Family Law Act*.

It is obvious that there may be a difference between a parent as a matter of law and a parent as a matter of genetics. If a "child" is born to an Australian citizen who is a "parent" then by virtue of the *Australian Citizenship Act 1997* (Cth), the child is taken to have acquired Australian citizenship by descent. If a child is born overseas where the child has been conceived naturally, there is no question who is the parent and who is the child. Genetics apply.

[9] From the BBC's *Yes Minister*. A triumph of bureaucratic obfuscation.
[10] National Health Insurance.
[11] What was previously the Department of Social Security.

Example – *Groth and Banks* [2013] FamCA 430

Mr Groth had been in a relationship with Ms Banks. They had split up 4 years before. She was single. She approached him as she wanted to have a child and believed that he would have good quality sperm. It was agreed that he would have some distant relationship from time to time with the child.

Mr Groth and Ms Banks went to an IVF clinic and said that they were a couple. They were not. A child was conceived and born.

Mr Groth wanted to be recognised as a parent.

Ms Banks said that under *State* laws she was the only parent.

Mr Groth said that under *Federal* laws there was flexibility as to who was the parent, that the relevant legislation said that there were ordinarily two parents and that as the category of who was a parent was open, that he was one of the two biological progenitors of the child and had intended to have a child and parent the child in some respect, therefore he was a parent.

Example – *Masson v. Parsons* HCA 56/2019[12]

Mr Masson was a gay man who wanted to have a child. The first Ms Parsons agreed with him to co-parent a child. Mr Masson supplied a quantity of sperm, which resulted in an at home insemination. A child was conceived and born. Subsequently the first Ms Parsons found her soulmate and then married her, the second Ms Parsons.

The two Ms Parsons sought to move to New Zealand with their child. Mr Masson obtained an order injuncting them from removing the child. The court found, consistent with *Groth and Banks* that he was a parent because:

- He had intended to have a child;
- He was biologically a parent;
- He had parented the child.

The two Ms Parsons appealed. The Full Court of the Family Court of Australia held that Mr Masson was **not** a parent because:

- Federal law did not have the flexibility that had been seen by the trial judge or in *Groth and Banks*.
- Therefore State law applied.
- Therefore the first Ms Parsons was the *only* parent.
- Biology otherwise did not make Mr Masson a parent.
- Intention did not make Mr Masson a parent.
- *Parenting* did not make Mr Masson a parent.

[12] Full Court of Family Court of Australia. Citation: *Parsons v. Masson* [2018] FamCAFC 115.

Mr Masson appealed to the High Court of Australia. The hearing was just before Easter. Judgment was reserved.

Three parties (Mr Masson, Commonwealth Attorney-General and the Independent Children's Lawyer) submitted that the appellate court was in error and that Mr Masson is a parent.

The two Ms Parsons and the Victorian Attorney-General submitted that the appellate court was correct, and that Mr Masson is not a parent.

We shall see.

Not the parents:

Mr and Mrs Bernieres[13] were a couple living in Melbourne, Victoria. They decided to undertake surrogacy in India. In doing so, they were acting lawfully. It is a criminal offence in Victoria to pay a birth mother in a surrogacy arrangement anything other than prescribed expenses. Payment of a fee for surrogacy is therefore outlawed. However that offence applies only within Victoria and not extraterritorially.

Mr and Mrs Bernieres went to India where they entered into a surrogacy agreement with the surrogate and her husband. A child was conceived from the sperm of Mr Bernieres and egg from an anonymous donor. A child was conceived and born and handed over.

Mr and Mrs Bernieres obtained Australian citizenship for the child in India. For that to have occurred, one or both of them must have been recognised as a parent under the *Australian Citizenship Act 2007* (Cth).

Things were going well so far. Therefore they decided to make an application to the Family Court of Australia. They sought three things:

1. That they have equal shared parental responsibility for the child. This was immediately granted.

2. That the child live with them. This was immediately granted.

3. That they be declared to be the parents. This was refused.

One could imagine that in light of the genetic link, the intention and parenting, but particularly that they were recognised under Australian citizenship laws as the parents, they thought that they were going to be successful with that application.

The trial judge refused to make a declaration that they were the parents because:

- The Federal legislation recognised someone as a parent if there had been an order made under a State court transferring parentage. Of course, they had undertaken surrogacy in India, not Victoria and therefore were unable to obtain an order from a Victorian court. The judge said, in essence, there was a gap in the law, but he

[13] *Bernieres and Dhopal* [2017] FamCAFC 180 – the names are pseudonyms.

couldn't fix it.

- Mr and Mrs Bernieres appealed. The appeal court in essence agreed with the trial judge.

- Remarkably, it appears that there was no submission put the court about Australia's obligations under the *International Convention on the Rights of the Child*. Every country other than the United States is a party to the Convention. Under Article 8 a child has a right to an identity. Under English authority this has been held to include a right to a legal identity.

- Following a decision of our High Court of Australia, a parent and child have a *legitimate expectation* that the government and courts will comply with the obligations under the *Convention*, even though it is not part of our domestic law. This includes under Article 3 to take into account the best interests of the child.

- The court found in effect that Mr and Mrs Bernieres were not the parents essentially for the reasons advanced by the trial judge.

The effect of this decision is that there are hundreds or thousands of children in Australia who do not have a secure family law/estate legal relationship with their parents.

As a result of this decision, the appointment of a testamentary guardian in most places in Australia by such a *"parent"* in favour of the child is unlikely to be valid.

The logical conclusion of the Family Court decision can only be either:

- The child has no parents (which cannot be correct as a matter of public policy); or

- The parents of the child are therefore the surrogate and her husband, people who:

    - are not recognised at law in their home jurisdiction as the parents;

    - contracted not to be the parents;

    - have no genetic relationship with the child;

    - have never intended to be the parents;

    - have never parented;

    - will never parent the child.

Whether the ruling in *Bernieres and Dhopal* will survive the outcome in *Masson and Parsons* remains to be seen.

It was noted in submissions in *Masson and Parsons* that as a matter of public policy there must be a parent of a child at birth – and yet *Bernieres and Dhopal* seemingly achieved this absurdity.

A parent by genetics: the usual approach taken by the Department of Immigration and Citizenship

I understand that the approach taken by the Department varies from country to country and specifically:

- In developing countries the approach of the Department is to insist that there is a genetic connection.

- For those intended parents going to the United States the approach appears to depend on the officer of the Department. Some are insistent on DNA testing. Others are satisfied with the making of custody orders, consistent with *H v Minister for Immigration and Citizenship* (see below for discussion of this case).

The formal position of the Department is as follows:

> *"A parent-child relationship is a question of fact to be determined by the department with regard to all the relevant circumstances.*
>
> *In the majority of surrogacy arrangements, at least one of the intended parents is also a biological parent of the child. Normally, the biological parentage can be readily determined through medical records and/or DNA testing. Provided that DNA testing is carried out to approved standards the result of DNA testing is given substantial weight when determining if a person is a parent of another person.*
>
> *See: Fact Sheet 23 – DNA Testing*
>
> *Where there is no biological connection between an Australian citizen who is the intended parent and the child born through an international surrogacy arrangement, or where such a biological connection has not been satisfactorily established, it is necessary for an Australian citizen to provide other evidence to demonstrate that the Australian citizen was in fact the parent of the child at the time of the child's birth. The type of evidence that would support such a claim is likely to require greater scrutiny and verification than DNA evidence. Consequently, an application based on such evidence may take significantly longer to decide.*
>
> *Evidence that the parent-child relationship existed at the time of the child's birth may include, but is not limited to:*
>
> - *A formal surrogacy agreement entered into before the child was conceived*
> - *Lawful transfer of parental rights in the country in which the surrogacy was carried out to the Australian citizen before or at time of the child's birth*
> - *Evidence that the Australian citizen's inclusion as a parent on the birth certificate was done with that parent's prior consent*
> - *Evidence that the Australian citizen was involved in providing care for the unborn child and/or the mother during the pregnancy, for example, emotional, domestic or financial support and making arrangements for the birth and prenatal and postnatal care*

- *Evidence that the child was acknowledged socially from or before birth as the Australian citizen's child, for example, where the child was presented within the Australian citizen's family and social groups as being the Australian citizen's child.*

- *Evidence that the Australian citizen treated the child as his or her own from some point in time after birth would not by itself be evidence that the Australian citizen was the child's parent at time of birth, but it would lend weight to evidence of the types previously listed."*

A parent by intent: *H v. Minister for Immigration and Citizenship (2010)*[14]

The Federal Court rejected the approach taken by the Department of Immigration and Citizenship. The Department argued that the relevant test for who is a *"parent"* and who is a *"child"* under the *Australian Citizenship Act* was determined by genetics or determined by the relevant definitions under the *Family Law Act*.

In two cases decided side by side (neither of which was a surrogacy case) the Federal Court determined that with the poor drafting under the *Australian Citizenship Act*, who was the "parent" would be determined by fact in each case.

The Full Court of the Federal Court held:

> "*Today, the fundamental consideration in acquiring citizenship is the strength of the connection between a person and Australia; it is this which provides the basis for the 'common bond' mentioned in the preamble. Within this framework, there is, however, little contextual support for the proposition of the word 'parent' has some restrictive meaning, signifying only a biological parent, as opposed to a parent, whoever that may be, within ordinary meaning of the word. Biological parentage can scarcely be the sine qua non of a meaningful connection to the Australian community…..Bearing this in mind, the more rational approach is not to attribute some technical meaning to the word 'parent' in s16(2), but instead to attribute to the word its ordinary meaning as evident in ordinary contemporary English usage."*

The Court went on to say:

> *"There is nothing in the legislative object, the legislative text, or the legislative structure of the Citizenship Act that requires the Court to conclude that, in the specific context of the s16(2), has the meaning it bears in ordinary contemporary English usage. Indeed legislative history confirms that this approach is most in keeping with the development of citizenship legislation over time and with the spirit and intendment of the current Citizenship Act. No sound reason has been advanced to warrant a more limited reading of the word.*
>
> *The word 'parent' is an everyday word in the English language, expressive of both the status and the relationship to another. Today, in the Citizenship Act it self-recognizes, not all parents become parents in the same way….This is not to say that parents do not share common characteristics; an everyday use of the word indicates that they do.*

[14] [2010] FCAFC 119.

Being a parent within the ordinary meaning of the word may depend on various factors, including social, legal and biological. Once, in the case of an illegitimate child, biological connection was not enough; Today, biological connection in specific incidences may not be enough……. Perhaps in a typical case, almost all the relevant considerations, whether biological, legal, or social will point to the same person as being 'the parents' of a person. Typically, parentage is not just a matter of biology but of intense commitment to another, expressed by acknowledging that other person is one's own and treating him or her as one's own.

The ordinary meaning of the word 'parent' is, however, clearly a question of fact, as is the question of whether a particular person qualifies as a parent within that ordinary meaning, implying s16(2)(a) the Tribunal is bound to determine whether or not, at the time of the applicant's birth, he or she had a citizen parent. In deciding whether a person can be property described as the applicant's parent, the Tribunal is obliged to consider the evidence before it, including evidence as to the supposed parents' conduct before and at the time of birth and evidence as to the conduct of any other person who may be supposed to have had some relevant knowledge. Evidence as to conduct after the birth may be relevant as confirming that parentage at the time of birth. For example, evidence that a person acknowledges the applicant as his own before and at the time of birth and, thereafter treated the applicant as his own, may justify a finding of that person as a parent of the applicant within the ordinary meaning of the word 'parent' at the time of the birth…….

*We can discern no relevant justification for holding…….that a person can only be a 'parent' within the meaning of s16(2) where it can be established that he or she has a relevant link to the applicant. If the Minister's arguments in this case were accepted, a person could be treated as a citizen from birth and believe himself to be a citizen, only to find years later, based on a DNA test undertaken for other reason, that under the law he is not and never was a citizen……..As a practical matter, we do not consider that Parliament would have intended the likely unfortunately results of the Minister's construction……..The practical effect of this construction would be to accord the science of genetics a status Parliament has not given it."(*emphasis added*)*

Significantly, the court found that:

- An Australian man who met a Chinese woman when she was pregnant to a Chinese man, and agreed to marry her, have his name on the birth certificate as the father of the child and raise the child as his own, was a parent. On this point the court took a similar approach to the US Supreme Court; and

- An Australian man who for 30 years had believed he was the father of a child, but was not, but had acknowledged paternity, brought the child into his family including paying child support, and he and his wife and children visited the child, was also a parent.

The significance of the case is:

- It sets the benchmark for who is or who is not a "parent" of a child for the purposes of the Australian Citizenship Act;

- It sets out clearly that rigid definitions of who is or who is not a parent can fail because they do not take into account unusual or unexpected cases.

In neither case was there any DNA link between the two men and their children. Neither did the *Family Law Act* definitions apply.

Clearly, if an intended parent enters into a surrogacy arrangement with the intention of raising a child of their own (even if they do not supply their own DNA) then they may well be a *parent* having regard to the facts of the case as decided in *H*.

Rule 9 - You may be a parent for some purposes but not others

It is a weird concept that someone can be a parent for some purposes but not others.

Example:

Margaret and Dennis

Margaret and Dennis live in Sydney. They have decided to undertake surrogacy in Minnesota. They are both aged 45. As luck would have it, Dennis's sperm is viable, but Margaret's eggs are not. They need the help of an egg donor.

Embryos are created. Margaret and Dennis enter into a surrogacy agreement in Minnesota with Cherie and Tony. Everything works. A child is conceived and born.

At birth, Cherie and Tony are recognised under Minnesota law as the parents. Dennis then obtains an order in Minnesota declaring him to be the parent (as he is the putative father and genetic father). That order then terminates the parental relationship by Tony and Cherie with the child. A second birth certificate then issues in favour of Tony.

Five minutes after that order is made, a second order is made, namely a second parent adoption order in favour of Margaret. A third birth certificate issues showing Dennis and Margaret as the parents.

Both the United States and Australia are parties to the *1993 Hague Intercountry Adoption Convention*. The adoption is not a Hague compliant adoption.

Bizarrely, Australia does not recognise the US as a *1993 Hague Convention* country. It seems that the reason this is so is because the regulations have not been updated since 2006. The Convention became domestic law in the US in 2008.

Even if the adoption seemingly complied with the Convention, because of this gap in the regulations, it *cannot* be recognised that way in Australia.

Adoption law in Australia is primarily State based law. Under the *Adoption Act 2000* (NSW) the adoption is *not* recognised for any purpose under New South Wales law.

However, the parental relationship arising from the adoption, which has been in accordance with the law of any place is specifically recognised under the federal *Family Law Act 1975* (Cth). Therefore Margaret is a parent for the purposes of family law and inheritance.

It would appear, if the appellate decision in *Parsons and Masson* and *Bernieres and Dhopal* remain the law, that Dennis is not a parent. This is despite the fact that:

- Dennis intended to be the father;
- Dennis is the genetic father, whereas Margaret is not the genetic mother;
- The second parent adoption order can only have been made in favour of Margaret because there was a first parent, i.e. Dennis.

It is a great surprise to intended parents to be told that although in the overseas jurisdiction they were recognised as parents, for example in the gestational carrier agreement, the court order or the birth certificate, that they might be recognised under the *Australian Citizenship Act* as parents, that the overseas birth certificate is disregarded for these purposes and that for parenting presumptions under State and Territory laws they are not parents.

They wonder, quite rightly, how they can be parents for some purposes of Australian law, and not others.

Rule 10 – There is insurance and there is insurance

Travel agents are insistent that when Australians travel to one country in the world they must have travel insurance. That one country is the one that you know and love, i.e. the one with the world's most expensive health system, the US of course.

Insurance is one of those tricky things that need to be covered for those undertaking surrogacy. In 2018 I advised two couples who had undertaken surrogacy in Canada and for some reason, before they engaged me, had not obtained health insurance.

Example

Couple 1

The surrogate was pregnant with twins. One of the children in utero had been discovered to have a hole in the heart. The costs of birth for intended parents via surrogacy in Canada is met by the Canadian taxpayer.

However, doctors advised that the child needed to be operated on at birth or it would immediately die. The estimated cost of the operation was CAD$200,000.

Luckily, the couple were able to bring the surrogate and her husband to Australia to spend several months before the child was born. One could imagine that that was not a cheap exercise. In doing so, they were able to have the costs of the operation and birth covered by the Australian taxpayer.

Example

Couple 2

This couple discovered on the birth of their baby daughter in Canada that she had a split sternum. All that was protecting her heart was a flap of skin. Canadian doctors estimated that the cost of operating was CAD$100,000. It looked grim as to the cost, because they were unable to have any relief from insurance in Canada (as they had not obtained it).

Luckily, they were able to obtain medical clearance for the child to fly to Australia, where the operation was to be carried out at the expense of the taxpayer.

Rule 11 – A lawyer in one place may be useless somewhere else

In July 2010 after 20 odd hours of travel I arrived in Memphis from Brisbane. Within a few hours of getting out of the plane, I was walking down Beale Street. I am a keen photographer. I was approached by a teenage girl wearing what appeared to be two tea towels which I then recognised were skimpy items of clothing. She asked if I were the official photographer for Beale Street. I said that I was a tourist from Australia. To my complete bemusement, she insisted that I take her photograph and those of her friends.

After the photos were taken, this girl asked me what I did for a living. I said that I was a lawyer. She then said *"Can you help me? I'm in trouble with the county? I might go to jail."* I protested that I was from Australia and that I was not a local lawyer. Her friend said: *"No Lurline he ain't a local. You need a local lawyer."*

What Lurline's friend understood but many intended parents don't understand and indeed some lawyers undertaking surrogacy work clearly don't understand is that the law is different in different places. Therefore if there is a matter which touches different jurisdictions then advice should be obtained from lawyers in that jurisdiction.

Example of what not to do

Fred and Wilma live in New South Wales. Barney and Betty live in Vermont. Betty is to be Fred and Wilma's surrogate. Betty is Wilma's sister. Because Fred and Wilma live in New South Wales the surrogacy arrangement will necessarily be a New South Wales surrogacy arrangement. The intention is for Betty to give birth in New South Wales.

Fred and Wilma saw a relative who is a lawyer for the purposes of legal advice. She had not undertaken surrogacy work previously. They then drafted a surrogacy arrangement which they had cobbled together from the internet. It was awful drafting. My instructions were terminated after I insisted that the surrogacy arrangement be redrafted and that Barney and Betty get advice from lawyers who are familiar with the law in Vermont and New Hampshire (as they wanted to give birth if necessary in New Hampshire out of the two) in case for medical reasons Betty couldn't travel and would have to give birth in the United States. I wanted to make sure that the surrogacy arrangement could comply with the law in those jurisdictions. Perversely, if the child were born in New South Wales then a parentage order could be obtained in New South Wales and Fred and Wilma would be shown ultimately as the parents of the child. If the child were born in Vermont or New Hampshire assuming it was possible to engage in surrogacy and that a custody order could be obtained then as a

matter of then Fred and Wilma would be the parents for the purposes of Australian citizenship and would be parents in that US jurisdiction but it is questionable as to whether they would be parents for other purposes under Australian law. Same DNA. Same parties. Different jurisdictions. Different outcome.

Luckily, the child was born in New South Wales. The intended parents obtained an order in New South Wales. They were the parents.

Rule 12 – Lawyers and other professionals should work as a team

Rule 2 stated that what is legal there may result in jail here. It is essential so far as possible that lawyers are able to work as a team so that, as far as possible the clients are able to have a seamless approach. If there is a network with a surrogacy agency and with doctors and other associated professionals, all the better.

I say *"so far as is possible"* because for my clients undertaking commercial surrogacy overseas who ordinarily reside in Queensland, New South Wales, the ACT or are domiciled in New South Wales, I can't encourage them or facilitate them to commit the act of commercial surrogacy. The relevant jargon in Queensland is aid, abet, counsel, procure or conspire with and the relevant jargon in New South Wales is to induce or conspire with. As an officer of the court I'm obliged to remind my clients that what they are proposing to do is illegal and that I must to everything as a lawyer to discourage them from doing so.

My number one gripe with international surrogacy matters is being kept out of the loop. The number one complaint I have received from clients about international matters is that the process is not seamless- that different people do different things for different parts of the journey, but no one follows them through all the way, to make sure that each part goes smoothly. By far the easiest way to ensure that the process is as seamless as possible is to be included in communications. Just because I'm a lawyer in another jurisdiction doesn't mean I'm an idiot or a yokel. The easiest way to include me in communications is to cc any email to me and to have systems in place in your office to ensure that occurs. I will extend the same courtesy.

The cost to a client of the lawyers doing so is minimal but the benefit is that the client hopefully will not fall between the cracks; issues will be identified and dealt with quickly and efficiently, and that above all the client will feel that they are being looked after (which they are) and that they are not a number (they are not).

The essence as to how I undertake business is that subject to my professional duties, particularly the duty to my client, I believe that the essence in doing business is having long-term trusting relationships with others. This means we can refer work to and from each other and also mean that we can trust each other to get the result right.

Several years ago, I heard psychologist Dr Kim Bergman from Growing Generations speak of the mantra which is required for a successful surrogacy arrangement. I would say that it's the essence also of a relationship between lawyers and others involved in a successful surrogacy arrangement:

1. Mutual respect
2. Communication

3. Flexibility.

Registration of US and Canadian orders in Australia

Aside from those limited occasions when there is a second parent adoption, the usual process in the US and Canada of being recognised as a parent is that there is a court order stating that you are a parent.

It would be a mistake to think that that order will automatically be recognised overseas.

In Illinois, British Columbia and Ontario there is an alternative process by which intended parents become parents as a matter of operation of law through a declaration process. If you have clients who undertake surrogacy in those States, please oh please get them to obtain an order rather than a declaration, but do not make the mistake of assuming that the order will be recognised overseas.

Starting point of this discussion: The Baby Gammy case

You may well remember the Baby Gammy case. Mr and Mrs Farnell were a couple living in the small town of Bunbury in Western Australia. They underwent surrogacy in Thailand, apparently against the law in Western Australia. Two children were conceived, subsequently Gammy and Pypah. At the time of the birth of the children, Bangkok was the subject of riots, resulting in a coup.

Mr and Mrs Farnell went home to Bunbury only with Baby Pypah.

Subsequently when the story broke, the surrogate Ms Chanbua claimed that Mr and Mrs Farnell had abandoned Baby Gammy because he not only had Downs Syndrome but subsequently it was discovered he had a heart defect. Not child support had been paid by them for him.

It was then discovered that Mrs Chanbua had put her age up improperly and that Mr Farnell was a convicted paedophile.

When the matter played out in court in *Farnell and Chanbua* [2016] FCWA17, the court found that Ms Chanbua had fallen in love with the idea of having a son, and she decided to hang on to him. The court found that Mr and Mrs Farnell had not sought an abortion of the child, quite the contrary – they wanted him. The only reason they didn't take him was because of Ms Chanbua's insistence and the riotous situation in Bangkok at the time. Ms Chanbua had no knowledge that Mr Farnell was a convicted paedophile. Nor did Mr and Mrs Farnell have any knowledge that Ms Chanbua had put her age up improperly.

The court ordered that Baby Pypah remain with Mr and Mrs Farnell.

The key points in the trial for these purposes were:

1. Which law applied as to who was a parent? Five of the six parties (Mr and Mrs Farnell, the Independent Children's Lawyer, the Western Australia Attorney-General, the Australian Human Rights Commission and Western Australia's child protective services said that the law that applied as to who was a parent was the law of Western

Australia, not Thailand. Ms Chanbua alone argued that the law of Thailand applied. The judge ruled that the law of Western Australia was the applicable law.

2. Were Mr and Mrs Farnell the parents? Not surprisingly, they argued that they were. Most other parties submitted that they were not. The judge ruled that under the parentage presumptions in Western Australia, they were not the parents.

Carlton and Bissett [2013] FamCA 143

Mr Bissett was a South African citizen and resident. He entered into a surrogacy arrangement in South Africa. A pre-birth order was made recognising him as the parent. The children were born. In the meantime, Mr Bissett had fallen in love with Mr Carlton, a South African citizen resident in Australia. Mr Bissett and the children migrated to Sydney. Mr Carlton and Mr Bissett applied to the court for Mr Bissett to be recognised as a parent. One of the grounds that was sought, unsuccessfully, was under the *Hague Child Maintenance Convention*. Another ground that was relied upon was to seek to register the South African surrogacy order in Australia. It is possible to register overseas child orders with the Family Court of Australia and other courts. Whilst the judge found that the order was the right kind of order to meet the definition of *overseas child order*, the Court refused to register, because South Africa was not a prescribed overseas jurisdiction.

Ultimately, the Court found that the parentage presumptions under Australia's *Family Law Act* did not apply to this relationship where Mr Bissett, a citizen and resident of South Africa, compliant with the law of South Africa was recognised by a court in South Africa. Therefore under the comity principle, he should be recognised as a parent in Australia.

Re Halvard [2016] FamCA 1051

The parties lived in the United States and underwent surrogacy in the United States. A child was born, who obtained both US and Australian citizenship. The parties sought to register that US surrogacy order in Australia. The solicitor for the parties argued that the surrogacy arrangement was a commercial one within the meaning of the *Surrogacy Acts* of Queensland and New South Wales. This submission was rejected by the judge, who found that it was an altruistic surrogacy arrangement and therefore capable of being registered. The judge accepted that a pre-birth order was within the definition of overseas child order. The US State was a prescribed overseas jurisdiction and the order was current.

The effect of registration meant that people who had been recognised as parents in the United States were therefore recognised as parents in Australia.

Re Grosvenor [2017] FamCA 366[15]

The parties were an Australian couple living in Washington DC. They had come from the Australian Capital Territory where it is illegal to engage in commercial surrogacy overseas. They had engaged in what was found to be a commercial surrogacy arrangement when they were living in Washington. Their doing so was lawful. Forrest J (who had decided *Re Halvard* and taken the view in that case that registration as a matter of discretion should not occur in a commercial surrogacy case) found in this case that it should be registered. His

[15] I acted in that matter.

Honour said:

> *"Given that the applicants and their solicitor tell the Court that the child in this case was brought into the world with the assistance of an arrangement regulated by a commercial surrogacy agreement, I am clearly required to more deeply consider that proposition expressed by me only six months ago. The public policy context within which this consideration is set includes the fact that in Queensland, New South Wales and the Australian Capital Territory entry into commercial surrogacy arrangements abroad by persons ordinarily resident in those jurisdictions is a criminal offence. Of course, I have already observed that Mr and Mrs Grosvenor reside in the USA and not one of those jurisdictions. Nevertheless, they have entered into a commercial surrogacy agreement and they seek the registration of the Court order that gives them the parenting rights over their child in this Court.*
>
> *Having considered the matter further, particularly having regard to:*
>
> - *the unique circumstances of this couple and their inability to biologically parent and carry their own baby;*
> - *the well-regulated nature of the surrogacy arrangements entered into between the applicants and the surrogate, notwithstanding its commerciality;*
> - *the judicial oversight to the arrangements given by the Court in the USA, including the procedural fairness offered thereby to the woman who carried the baby for the applicants;*
> - *the acceptance by the Australian Government of that US jurisdiction as a prescribed jurisdiction for the purposes of the registration of 'overseas child orders' made in Courts of that jurisdiction, thereby, I am satisfied, signifying the Australian Government's satisfaction with the standard of the judicial processes that would have occurred in the making of the order; and*
> - *the fact that the arrangements entered into, regardless of their nature, brought into the world a child who is the biological child of at least one of the applicants, the legal child of both of them, who has been loved and raised as their child, who as an Australian citizen, like her parents, will be coming back to live in Australia in the near future, and who has every right to expect that the legal nature of her relationship with both of her parents is appropriately recognised in this country of hers;*
>
> *I am satisfied that the commercial nature of the surrogacy agreement alone in this particular case should not determine the exercise of discretion against the applicants."*

Not surprisingly, his Honour ordered that the US order be registered.

His Honour took a similar approach in *Sigley and Sigley* [2018] FamCA 3[16].

[16] I acted in that matter.

In *Rose* [2018] FamCA[17] another judge, Carew J refused registration. One of the grounds that her Honour did so was because:

> *"I would nevertheless decline to exercise my discretion in favour of registration of the Court order because I am not satisfied the Agreement is not a commercial surrogacy. This is of significance because in Queensland commercial surrogacy arrangements are prohibited, attracting penalties of up to 3 years imprisonment. To register an order which recognises a commercial surrogacy would be contrary to public policy because it would give curial approval to something that is prohibited by law."*

Her Honour took a similar approach in *Allan and Peters* [2018] FamCA 1063[18].

What is a prescribed overseas jurisdiction?

The list of overseas jurisdictions which are prescribed for this purpose are contained in schedule 1A of the *Family Law Regulations 1984* (Cth). In essence, it is a shopping list created by the Commonwealth Government. Every US jurisdiction is prescribed, save three:

- New Mexico;
- Missouri;
- South Dakota.

I simply do not know why they have not been included. I have raised it directly with the office of the Commonwealth Attorney-General and through the Family Law Section of the Law Council of Australia, but nothing has changed.

No Canadian province and Canada as a whole is not a prescribed overseas jurisdiction. Therefore it is not possible to register a Canadian order under the *Family Law Act*.

1996 Hague Child Protection Convention

I had considered whether it is possible to register a Canadian order under this Convention. Even though Canada is not a party to the Convention, Australia is. The guide to the Convention (which recognises overseas parenting orders) published by the Permanent Bureau, makes plain that the Convention does not apply to international surrogacy arrangements. Therefore, it appears not possible to register a Canadian parenting order in Australia under this Convention.

International *parenting* agreements concerning an existing child

To have a child the subject of an international parenting agreement is highly problematic. Somewhere has to have jurisdiction. Agreements concerning children in turn fall into two broad categories:

1. Agreements as to adoption;
2. Agreements as to parenting, for example as to custody arrangements.

[17] I acted in that matter.
[18] I acted in that matter.

Adoption agreements

International agreements as to adoption often are subject to great scrutiny, for example:

- laws in the child's home country;
- laws in the parents' receiving country, such as not paying for the adoption,[19] which laws might apply extra-territorially;[20]
- overview by an organisation such as International Social Services;
- court and/or administrative scrutiny in one or both countries (including migration issues);
- *1993 Hague Intercountry Adoption Convention* on bilateral agreements.

When undertaking international adoption work, take the time to thoroughly research the law and practice. It is extremely tricky.

Parenting agreements

It is critical to work out which is the appropriate jurisdiction for the child. That place is the place where any order or agreement should apply. If the child is habitually resident in that jurisdiction, and the provisions of the *1996 Hague Child Protection Convention* apply, then that is the place that has jurisdiction.

Assuming that one of the parties, for example the mother, and the child live in country A but the father lives in country B, how can that order made in country A be enforced? Is the only place in which that order can be enforced country A? If the mother does not allow the child to travel to be with the father, in accordance with the orders made in country A which permit that travel, does that mean that the father needs at considerable expense to litigate in country A? If you were the father in such a circumstance, you would like to know that the order is enforceable in country B, so that if there is non-compliance he can then litigate in country B to ensure that the child will be returned.

An application of that kind is likely to be met with:

- A defence of *forum non conveniens* in country B and an application in country A for a non-suit injunction.
- The *forum non conveniens* argument can vary considerably. For example:
    - If it is between European countries, then the rules of Brussels II will apply;

[19] As discussed in the surrogacy case of *Johnson v. Calvert* 5 Cal. 4th 84, 19 Cal. Reptr. 494 (1993) per Panelli J.
[20] For example, *Adoption Act 2009* (Qld), ss.301, 303.

- If it is in the UK and a non-EU country, then the court will determine which is the *more appropriate* forum under the Spiliada test.[21]

- In Australia, Spiliada has not been followed, and we are not parties to Brussels II and the test, subject to the best interests of the child, is Australia a clearly inappropriate forum?[22]

Australia and New Zealand are each separate countries. They are separated by the Tasman Sea, commonly called the ditch by which from the East Coast of Australia to New Zealand and vice versa is about a 3 or 4 hour plane flight. Travel between the two can be achieved by any Australian or New Zealand citizen based on their passports.

Not surprisingly, along with having a common language, similar heritage, economies and with many New Zealanders living in Australia and some Australians living in New Zealand, there is an extraordinary rate of Hague Convention applications made between Australia and New Zealand. The last I heard was that approximately 60% of Hague Convention applications in New Zealand concerned children allegedly wrongfully removed to or wrongfully retained in Australia. The number in reverse I am told is about 40%.

I will give two examples where the parties ultimately ended up with orders by consent and were concerned about children moving between the two countries.

Example 1

Giorgio and Rita live in New Zealand. Rita hates the bleak weather and wants to move to the beautiful beaches on Queensland's Gold Coast. She wants to take their two children Laura and Robert with her. Giorgio is concerned that if Rita takes the children to Australia, they won't come back.

He agrees to the move on the basis that:

1. Both parents have parental responsibility (i.e. rights of custody under the *1980 Hague Convention* and *1996 Hague Convention*);

2. That the children return to New Zealand for holidays with him;

3. That the courts of New Zealand continue to have exclusive jurisdiction.

Rita agreed and subsequently consent orders were made in New Zealand to that effect.

Those orders were subsequently registered with the Family Court of Australia, being overseas child orders made in a prescribed overseas jurisdiction namely New Zealand. Therefore those orders were given effect to in Australia.

The mother and children moved to the Gold Coast. The mother re-partnered. She subsequently sought to have a new life with her husband and sought in effect to exclude the father from the lives of the children. The mother did this by applying to the Family Court of

[21] *Spilada Maritime Corp v. Cansulex Ltd* [1987] AC 460.
[22] *Voth v. Manildra Flour Mills Pty Ltd* (1990) 171 CLR 583, *Band B (Re Jurisdiction)* [2003] FamCA 105.

Australia for an order that she have sole parental responsibility and for there to be only supervised time with the father. The grounds for supervised time were specious.

The father met this application head on in two ways:

1. By commencing proceedings in New Zealand seeking to enforce the existing orders.
2. By resisting the application in the Family Court of Australia.

The prime dispute as it turns out was in the Family Court of Australia. The father relied on section 70J of the *Family Law Act 1975* (Cth). This provides:

"(1) A court in Australia that is aware that an overseas child order is registered under section 70G must not exercise jurisdiction in proceedings for the making of a Subdivision C parenting order in relation to the child concerned unless:

(a) each person:

(i) with whom the child is supposed to live; or
(ii) who is to spend time with the child; or
(iii) who is to have contact with the child; or
(iv) who has rights of custody or access in relation to the child;

under the overseas order consents to the exercise of jurisdiction by the court in the proceedings; or

(b) the court is satisfied that there are substantial grounds for believing that the child's welfare requires that the court exercise jurisdiction in the proceedings.

(2) If a court exercises jurisdiction in proceedings for a Subdivision C parenting order in relation to a child who is the subject of an overseas child order, the court must not make a Subdivision C parenting order in relation to the child unless it is satisfied:

(a) that the welfare of the child is likely to be adversely affected if the order is not made; or

(b) that there has been such a change in the circumstances of the child since the making of the overseas child order that the Subdivision C parenting order ought to be made."

I acted for the father. Not surprisingly the father did not consent to the exercise of jurisdiction by the Family Court.

On the first substantive return date, the court noted the father's objection under section 70J(1)(a). Therefore for the court to act it had to be satisfied that there were substantial grounds for believing that the child's welfare requires that the court exercise jurisdiction under section 70J(1)(b). The court declined to do so, but adjourned the proceedings.

Subsequently there were negotiations between the parties which resulted in orders being made in New Zealand, much akin to the original orders, with some tweaking and still saying

that New Zealand had jurisdiction. Those orders were registered with the Family Court of Australia, at which point the Australian proceedings were discontinued.

It is arguable, in light of the *1996 Hague Child Protection Convention* that Australia should have been the place exercising jurisdiction, and not New Zealand. The case illustrates that:

- A party launched proceedings without consideration of the jurisdictional point.
- That jurisdictional point needs to be considered very carefully before any overseas orders are entered into or indeed proceedings are commenced.
- A party with means might be able to achieve a successful outcome as opposed to a party without means.

Example 2

I acted for the father who lived on the Gold Coast. He and the mother were both New Zealand citizens. They had migrated to Australia. Both of their children, who were New Zealand citizens, resided on the Gold Coast and had lived all their lives on the Gold Coast.

The mother sought to relocate to New Zealand with the children. This was opposed by the father. The mother left the Gold Coast, returning to New Zealand to live. No orders were entered into. The mother said both through her solicitor and directly that she was aware of her obligations under the Hague Convention.

The children went on two holidays to New Zealand with the mother and returned.

On the third holiday to New Zealand, the mother retained the children. She then commenced proceedings in Australia for the children to live with her. The father responded to those proceedings. The New Zealand Central Authority commenced Hague proceedings in New Zealand for the return of the children.

The mother voluntarily returned the children to Australia. The Hague proceedings were then discontinued. Injunctions were in place to stop the children being returned to New Zealand.

Ultimately my client consented to an order for the children to spend holidays with the mother in New Zealand. This was only after:

- my client obtained advice in Australia and New Zealand about the effect in New Zealand of registration there of the Australian orders;
- the court in Australia being made aware that the intention was to register the orders in New Zealand and seeking the court's assistance in the registration process;
- that the time in New Zealand with the mother was not to commence until the orders had been registered there.

Subsequently there was a gap of several months before the orders were able to be registered in New Zealand, after several holiday periods had transpired. Once the orders were

registered in New Zealand, then the children were able to and have spent holiday time with the mother in New Zealand.

Before entering into proposed overseas orders checklist

1. What international instruments apply, for example:

    - *1980 Hague Child Abduction Convention;*
    - *1996 Hague Child Protection Convention;*
    - *Brussels II;*
    - *European Convention on Human Rights;*
    - *International Convention on the Rights of the child.*

2. Ensure that there is expert legal advice from a lawyer in the other country who is familiar with international parenting matters, as well as your advice at your end.

3. How are passports obtained for the children? Who can consent to those passports? In what circumstances will a country issue a passport even if there are orders prohibiting a party obtaining them?

    For example, in *Saad and Saad* [1992] FamCA 44, the husband was injuncted from obtaining passports for the children from the Jordanian Embassy. Nevertheless, the father managed to add the child's name to the father's existing Jordanian passport.

4. What are the prospects of the child being returned if there is non-compliance with the order? Just because a country is a party to the 1980 Hague Convention does not mean that the child will necessarily be returned. Find out what the reality is of return, not the theory. The US State Department has in previous years published a report as to miscreant countries (so far as US citizens are concerned). That is a good starting point, but don't rely just on that. Find out from an expert lawyer in that country as to what are the prospects of return.

5. If the child is not returned, then take immediate action to have the child returned! The classic example of this is *Ibbotson and Wincen* [1994] FamCA 103. After the parties separated, the child lived with Ms Wincen. The father proposed to take the child from Australia to California for Disneyland during school holidays. The mother agreed.

    In the meantime the husband had brought a yacht in New Zealand which he had repainted and registered to overseas registration. He moored the yacht in Indonesia, which of course is not a Hague country.

    The father and child went to Disneyland. Showing the age of the case, the father by fax machine from the motel sought via his Australian solicitors an extension of time in Disneyland. His solicitors were unable to obtain further instructions from him because he and the child had already flown to Indonesia (as it turns out before the fax was sent).

    The father then sailed the yacht from one non-Hague country to another, eventually ending up in Cyprus.

    The mother engaged a private investigator to snatch the child back.

Gamely, the mother and P.I. turned up on the yacht in Cyprus, demanding that the mother be able to spend time with the child. The father said that he was ready, if necessary, to sail from Larnaca to an undisclosed destination and that there was no way that she could take the child as he had been advised that if she attempted to do so, she would be charged with kidnapping under the laws of Cyprus. He said that he was aware of all the Hague Convention countries and had kept in contact with his solicitors. The mother was also informed that the father had over US$200,000 in cash on board.

The following day however the father agreed to the child going with the mother until the following day. Once the mother obtained possession of the child she, the child and the agent went to the airport and ultimately obtained a flight to Athens and then to Australia.

The game was up. Four days later the husband returned to Australia and was immediately arrested. The husband was convicted of contempt and sentenced to 12 months imprisonment, to be suspended after 6 months if he paid to the wife various costs which amounted to approximately A$70,000. His appeal against that conviction was unsuccessful.

Stephen Page
Page Provan
Brisbane
1 May 2019
stephen@pageprovan.com.au
www.facebook.com/stephen.page.lawyer.brisbane