Surrogacy

**Surrogacy defined**

Surrogacy is an arrangement where a woman agrees to bring to gestation in her uterus the ovum of another woman fertilised outside the first woman’s body and introduced artificially. For some women it may be the only means by which they can have their own biological child (for example, for a woman without a uterus because of an accident, genetics or disease).  (*Hot Topics 64:*[*Health and the Law*](http://www.legalanswers.sl.nsw.gov.au/hot_topics/pdf/health_64.pdf), 2008, page 12.)

**The law in NSW**

The [*Surrogacy Act 2010*](http://www.legislation.nsw.gov.au/maintop/view/inforce/act+102+2010+cd+0+N)(NSW) commenced operation on 1 March 2011.  The second reading speech is useful for understanding what is in the Act and why this legislation was introduced into NSW Parliament.  This link to the [*Surrogacy Bill*](http://www.parliament.nsw.gov.au/Prod/parlment/nswbills.nsf/0/71C024816771A264CA2577C100195683)will take you to the Bill and the second reading speech in both Houses of Parliament.

The Bill was introduced in response to a government inquiry into 'altruistic' surrogacy, which is when the woman who agrees to carry the baby throughout the pregnancy is not being paid for this service.  This woman has been referred to recently as a 'gestational carrier'.

To read the background to this new legislation, you can read the terms of the Parliamentary inquiry into altruistic surrogacy and related legal issues.  The [Final Report](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/6468D3AF7B117A6CCA2575C3000883D6)was tabled in May 2009.  To read the debate and a record of public hearings and submissions made by members of the public, see[Legislation on Altruistic Surrogacy](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/127CB755FE3D5304CA25749B0017C3F2).

The Act prohibits commercial surrogacy arrangements and any advertising for such services. Hefty penalties apply to breaches of the law.  It is this aspect of the legislation that has attracted much media attention including:

* ['Ill-conceived surrogacy laws'](http://ezproxy.sl.nsw.gov.au/login?url=http://search.proquest.com/docview/843431088?accountid=13902), 20 January 2011, *SMH*, editorial - available in full text from[Proquest ANZ Newsstand](http://ezproxy.sl.nsw.gov.au/login?url=http://search.proquest.com/anznews/index?accountid=13902).
* '[The real celebrities are the altruistic surrogates'](http://www.smh.com.au/lifestyle/lifematters/the-real-celebrities-are-the-altruistic-surrogates-20110118-19vcu.html)by Amy Cordery, Glenda Kwek and Andrew Hornery, 19 January 2011, *SMH.*

The Act introduces a scheme for new parentage orders, which may be granted by the Supreme Court to transfer parentage in surrogacy situations, provided certain safeguards are observed.  The Act is subject to a guiding principle - that the best interests of children born as a result of surrogacy arrangements are paramount. However, it should be noted that children born of surrogacy through a commercial arrangement are not included in such orders or principles.

**More about surrogacy**

For more extensive reading:

* 'Surrogacy' by Belinda Bennett, chapter 11 of [*Health Law in Australia*,](http://library.sl.nsw.gov.au/record=b3330650~S2) Lawbook Co, 2010, edited by Ben White, Fiona McDonald and Lindy Willmott.  Available at the State Library.

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