

# FAMILY MATTERS

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## Intervention Orders

### Are they working as a form of protection for those who have been abused?

There has been a lot of comment recently in the media as to whether intervention orders are working to protect those who have been abused.

In our experience the obtaining of an intervention order is usually enough to stop further abuse from occurring. A person is able to attend at the Magistrates' Court and seek an interim order which can result in an abuser being removed from a marital home. The police serve the order and it becomes effective upon service.

A breach of this order is then a criminal matter. A person found guilty of a breach of an intervention order can be jailed for a maximum period of two years or fined \$27,220.80, or both.

If a crime is committed by a person, the victim can also seek that the person be criminally charged. It is possible to have an intervention order put in place and a person charged for a criminal act at the same time. This allows the person to be protected while the criminal action proceeds against the defendant.

## Financial Agreements Independent Legal Advice

The requirements set out in the Family Law Act regarding Financial Agreements are exact and demanding. Although the majority of people are aware vaguely of the requirement to obtain legal advice, the requirement in practice is extensive and detailed.

Specifically, both parties to any such agreement must receive advice from different solicitors working at different firms. It is permissible for one of the solicitors to be the same practitioner who prepared the original agreement. The advice must be given by both individual solicitors before either party signs the agreement, and correspondence must be exchanged between the solicitors to ensure that this has taken place. Advice must be provided on the final draft of any agreement, with an amendment to the agreement requiring that advice be provided again.

Competent practitioners will usually confirm their advice by way of a detailed letter, and also require the relevant client to counter-sign the letter to confirm receipt of the advice.

The Family Court takes the requirements regarding advice extremely seriously. In a 2012 decision, the Court set aside an agreement due to a deficiency in the advice received by one party, even though the other party had not been aware of any deficiency and had relied upon the agreement up until that point in good faith.

It is for these reasons that many solicitors are extremely cautious about the provision of advice concerning Financial Agreements, and people considering an agreement should give careful notice to the state of the legislation and case law in this area.



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# Surrogacy

In a time of falling fertility rates and people delaying in having children, the issue of surrogacy has become a hot topic. It is also often the subject of intense debate.

When we talk about surrogacy, we often think of surrogacy arrangements made overseas, such as in the United States and India.

With the recent introduction of the Assisted Reproductive Treatment Act 2008 (Vic) what is the status in Australia?

Parties in Australia can lawfully enter into a surrogacy arrangement with the assistance of a registered assisted reproductive treatment provider, such as Monash IVF and Melbourne IVF ("ART providers"). This process involves the ART providers assisting the commissioning parents (also known as the intended parents) and the gestational surrogate and her partner (if any) in making an application to the Patient Review Panel to approve the proposed arrangement. This Panel is independent of the ART providers and the Department of Health. It is necessary to satisfy the Panel of a number of criteria including that all parties entering into the proposed surrogacy arrangement are aware of the social and legal implications of the arrangement. With the assistance of the relevant ART providers, the parties participate in counseling and obtain independent legal advice.

If the Panel is satisfied that all parties are aware of, and understand the potential implications of such an arrangement, then the application is approved and transfer of the embryo can proceed.

Once the child is born, the current State laws dictate that the gestational surrogate and her partner are considered to be the legal parents of the child. This is irrespective of the fact that neither the gestational surrogate or her partner's genetic material is used. Furthermore, it will be their names registered on the child's birth certificate. However, recent changes to the legislation and the introduction of the Assisted Reproductive Treatment Act enable the commissioning parents to apply to the County Court of Victoria seeking a substitute parentage order. This order effectively directs the Registrar of Births, Deaths & Marriages to amend the child's birth certificate and list the commissioning parents as the mother and father on the child's birth certificate. There are specific timeframes that must be adhered to in order to make this application.

Under the ART Act, there are also a number of prohibitions. First, commercial surrogacy in Australia is strictly prohibited save that the commissioning parents can reimburse the medical costs incurred by the gestational surrogate. Second, it is unlawful to publish or advertise that you are willing to enter into a surrogacy arrangement or assist in procuring a surrogate. Such offences carry a maximum penalty of two (2) years imprisonment and/or a fine up to \$24,000.

Berry Family Law has extensive experience in assisting parties at all stages of surrogacy arrangements both in Australia and overseas. We have also presented at a number of conferences on this issue. Should you have any queries, we would be pleased to discuss this with you.

## Welcome back

Welcome back to Stephanie Reid who has been on maternity leave since the birth of Felix in December last year.



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