

# ANZICA Surrogacy Guidelines Addendum

Version January 2017

Surrogacy Legislation in each state or territory of Australia, and in New Zealand, and requirements for counselling related to surrogacy arrangements

Legislation	Counselling Requirements	Counsellor Qualifications		
<b>Australian Capital Territory</b>				
Legislation	Before Surrogacy Treatment	During Treatment & Pregnancy	After the birth of child/ren	Counsellor/s
<p><b>Parentage Act 2004</b> Requirement for commissioning couple to have at least one genetic parent, hence allowing for one donor. Thus IVF surrogacy only, and no traditional surrogacy.</p>	<p>Intended parents (known as substitute parents) must be a heterosexual couple. They must live in the A.C.T. to be able to get a parentage order. The surrogate must also be in a couple relationship. The surrogacy arrangement can be oral.</p> <p>There are two clinics in the A.C.T. offering surrogacy, with the information from one of them below as an indication of requirements.</p> <p><b>Canberra Fertility Centre (CFC)</b> requirements: An assessment by an <b>external counsellor</b> who is registered (or eligible for registration) with AASW, ANZICA or APS. Assessment must attend to the required “questions” in CFC booklet, including legal wills etc. No longer is full personality testing required but this is at the discretion of the counsellor. The external counsellor also makes recommendations for counselling during pregnancy and post-delivery.</p> <p><b>Canberra Fertility Centre clinic counsellor</b> also sees patients before treatment, and also repeats the clinic surrogacy “questions). CFC has a cool off period before treatment commences, and it usually takes a good six months or more to start treatment.</p>	<p>No legislative requirements.</p> <p><b>Canberra Fertility Centre:</b> Counselling recommended though it is no longer a requirement of the clinic, as it was found to be impossible to monitor, and patients refused to do it due to expense/imposition on their time etc.</p>	<p>No legislative requirements.</p> <p><b>Canberra Fertility Centre:</b> Counselling recommended though it is no longer a requirement of the clinic as it was found to be impossible to monitor, and patients refused to do it due to expense/imposition on their time etc.</p>	<p>In clinic and external counselling required.</p> <p>Pre-surrogacy assessment done by external counsellor who is registered or eligible for registration of AASW, ANZICA, or APS.</p>

# ANZICA Surrogacy Guidelines Addendum

Version January 2017

Surrogacy Legislation in each state or territory of Australia, and in New Zealand, and requirements for counselling related to surrogacy arrangements

Legislation	Counselling Requirements			Counsellor Qualifications
<b>New South Wales</b>				
Legislation	Before Surrogacy Treatment	During Treatment & Pregnancy	After the birth of child/ren	Counsellor/s
<p><b>Surrogacy Act 2010</b>  <b>Surrogacy Regulations 2011</b>  <b>Assisted Reproductive Technology Act 2001 and amendments 2010</b></p>	<p><b>Surrogacy Act Section 35 (1)</b>                      Each of the affected parties must have received counselling from a qualified counsellor about the surrogacy arrangement and its social and psychological implications before entering into a surrogacy arrangement. The independent counsellor must assess the parties for their suitability to participate in a surrogacy arrangement and for the intended parents to be parents.  <b>AND</b>  <b>A.R.T. Act 2007 amendments 2010</b>                      Before treatment a medical practitioner must receive an assessment report from a qualified counsellor, which gives the counsellor’s opinion as to whether the parties are suitable persons to enter into a surrogacy arrangement. The report is also required by legal practitioners as well as for the court if there is a surrogacy birth.  <b>Clinic counselling</b>                      Some clinics also cover the counselling issues listed in the ANZICA guidelines, as well as providing supportive counselling.</p>	<p>No legislative requirements though some clinics do provide counselling support and implications counselling as part of their processes; and when it is required for a particular surrogacy arrangement.</p>	<p><b>Surrogacy Act Section 35 (2)</b>                      The birth mother and the birth mother’s partner must have received further counselling about the surrogacy arrangement and its social and psychological implications after the birth of the child and before consenting to the parentage order.  <b>Surrogacy Act Section 17</b>                      An application for a parentage order must be supported by a report about the application prepared by another independent counsellor. Section 17 outlines the issues which are to be considered for the writing of the parentage order counselling report.</p>	<p><b>Surrogacy Act Section 4</b>                      No formal accreditation process for counsellors. “Qualified counsellor” means a person who has the experience or qualifications or both of a kind required by the regulations to exercise the functions of a counsellor under the Act.  <b>AND Surrogacy Regulations Section 6</b>                      “Qualified counsellor” must be a member of ANZICA or eligible for this, and must be familiar with relevant guidelines.  <b>Surrogacy Act Section 17 (7)</b>                      An independent counsellor cannot be a clinic counsellor and/or cannot be connected with a medical practitioner who did the surrogacy treatment AND must be a qualified psychologist, psychiatrist or social worker with specialised knowledge.</p>

# ANZICA Surrogacy Guidelines Addendum

Version January 2017

Surrogacy Legislation in each state or territory of Australia, and in New Zealand, and requirements for counselling related to surrogacy arrangements

Legislation	Counselling Requirements	Counsellor Qualifications
-------------	--------------------------	---------------------------

New Zealand				
Legislation	Before Surrogacy Treatment	During Treatment & Pregnancy	After the birth of child/ren	Counsellor/s
<p><b>HART Act 2004</b>  <b>Adoption Act 1955</b>  <b>Status of Children’s amendment Act 2004</b>  <b>The Hague Convention</b>  <b>ACART (Advisory Committee on Assisted Reproductive Technology) Advice to ECART</b>  <b>ECART issues guidelines to fertility providers</b></p>	<p>Legislation only applicable to surrogacy involving fertility providers. All fertility providers must apply to ECART (Ministry of Health Ethics Committee on Assisted Reproductive Technology).</p> <p>All parties must have counselling from an ANZICA counsellor independent of each other and together. All parties must seek legal advice separately. All parties must have medical consultation separately.</p> <p>If birthing woman is over 45 it is usual for an obstetric physician’s review to be called for.</p> <p>No payment for loss of earnings, only medical and some legal expenses.</p> <p>Prior approval for adoption via surrogacy needs to be sought by intending parents from Department of Child Youth and Family.</p> <p>Additional medical specialist reports required sometimes.</p>	<p>Pregnant woman has all legal rights to make decisions about the pregnancy.</p> <p>Birthing mother is regarded as the legal mother and her partner as the other legal parent.</p> <p>Cannot sign consent to transfer of parental right until baby more than ten days old.</p> <p>Illegal to take parental responsibility unless Child Youth and Family have “sanctioned” this.</p> <p>Clinic counsellors provide follow up and counselling if needed.</p>	<p>Child Youth and Family give consent to baby being in care of intending parents (if not then baby cannot be in their care until consent to adoption signed after baby ten days old)</p> <p>Consent to relinquishing parental right must be signed by birth mother and her partner when baby more than ten days old.</p> <p>Interim adoption order applied for by intending parents’ lawyer.</p> <p>Final adoption order applied by intending parent’s lawyer. Clinic ANZICA counsellor follow up.</p>	<p>Each party must have a different counsellor who is an ANZICA member.</p> <p>Independent psychological assessment or psychiatric assessment sometimes required.</p> <p>An independent pre-surrogacy (from the clinic) psychology report is often required as an addition to counselling but not always.</p>

# ANZICA Surrogacy Guidelines Addendum

Version January 2017

Surrogacy Legislation in each state or territory of Australia, and in New Zealand, and requirements for counselling related to surrogacy arrangements

Legislation	Counselling Requirements	Counsellor Qualifications
-------------	--------------------------	---------------------------

Northern Territory				
No legislation No order can be made			As there is no legislation, no parentage order can be made.	

Queensland				
Legislation	Before Surrogacy Treatment	During Treatment & Pregnancy	After the birth of child/ren	Counsellor/s
<b>Surrogacy Act 2010</b> <b>Status of Children Act 1978</b>	Prior to conception and signing of a surrogacy arrangement all parties, being the intending surrogate and partner, and the intended parent/s (must) attend counselling with an experienced counsellor regarding the potential surrogacy. Routine for assessment counselling to include personality and mental health assessment using standard testing procedures, though it is not a legal requirement.	Nil legal requirements or clinic requirements. Recommended follow-up only by counsellor.	<b>Qld Surrogacy Act 2010</b> Requires Surrogacy Guidance report, to be completed by independent counsellor post birth. Content and qualifications, and independence, defined under the Act, and includes a requirement that NOT the initial counsellor associated with the treating doctor/clinic.	All fertility groups in Queensland recognize that the counsellor ought to be a member of ANZICA as well as being a registered psychologist or a social worker. There is however no legislative requirement.

# ANZICA Surrogacy Guidelines Addendum

Version January 2017

Surrogacy Legislation in each state or territory of Australia, and in New Zealand, and requirements for counselling related to surrogacy arrangements

Legislation	Counselling Requirements			Counsellor Qualifications
<b>South Australia</b>				
Legislation	Before Surrogacy Treatment	During Treatment & Pregnancy	After the birth of child/ren	Counsellor/s
<p><b>Family Relationships Act 1975</b>  <b>Assisted Reproductive Treatment Act 1988</b>  <b>Statutes Amendment (Surrogacy) Act 2009</b>  <b>Family Relations (Surrogacy) Amendment Act 2015</b></p> <p>Only available to married couples or those who have been living in a husband/wife de facto relationship continuously for at least three years.                      Must be residing in S.A.                      Requirement for at least one of the commissioning parents to provide genetic material unless they have a medical certificate as to why this cannot occur.                      Child must be conceived as a result of fertilisation procedures carried out in S.A.</p>	<p>Prior to conception and prior to signing a surrogacy agreement all parties, being the Commissioning Parents and the Surrogate and any partner must attend individual and joint counselling.                      Under recent legislation amendments all such counselling should be provided by one counsellor.                      Counselling must be consistent with ANZICA and NHMRC guidelines. A Counselling Certificate must also be issued by an accredited counselling service for the Commissioning Parents and the Surrogate and partner stating that they have received counselling about personal and psychological issues that may arise in connection with a surrogacy arrangement <b>AND</b> that, in the opinion of the counsellor who undertook the counselling, the proposed recognised surrogacy agreement would not jeopardise the welfare of any child born as a result of the pregnancy that forms the subject of the agreement.</p>	<p>No legislative requirements.</p>	<p><b>Family Relations (Surrogacy) Amendment Act 2015</b>                      Under recent changes to legislation the Commissioning Parents must take reasonable steps to ensure the Surrogate and her partner are offered counselling after the birth (including stillbirth) of a child from the surrogacy agreement at no cost to the Surrogate or her partner.</p>	<p><b>Statutes Amendment (Surrogacy) Act 2009</b>                      Counselling must be provided by an accredited counselling service.</p> <p><b>Family Relations (Surrogacy) Amendment Act 2015</b>                      Counselling must be consistent with ANZICA and NHMRC guidelines.</p>

# ANZICA Surrogacy Guidelines Addendum

Version January 2017

Surrogacy Legislation in each state or territory of Australia, and in New Zealand, and requirements for counselling related to surrogacy arrangements

Legislation	Counselling Requirements	Counsellor Qualifications
-------------	--------------------------	---------------------------

Tasmania				
Legislation	Before Surrogacy Treatment	During Treatment & Pregnancy	After the birth of child/ren	Counsellor/s
<b>Surrogacy Bill 2010</b>	Parties must receive counselling from a counsellor accredited under the Act, prior to entering into an arrangement. All parties must come from Tasmania unless they have dispensation.	No requirements.	After the birth, counselling is to be used to ensure that all parties are still comfortable with the arrangement. No detailed written report is required here unless the court requests it, though a certificate needs to be signed stating that the counselling has occurred.	Accreditation of counsellors through Department of Justice (Births, Deaths and Marriages).  For accreditation: to demonstrate “appropriate experience” the counsellor must be registered with the Psychology Registration Board, have level 2 Membership of the Australian Counselling Association or be registered with the Psychotherapy Counselling Federation of Australia.  Note – No specific infertility experience is required in Tasmania.

# ANZICA Surrogacy Guidelines Addendum

Version January 2017

Surrogacy Legislation in each state or territory of Australia, and in New Zealand, and requirements for counselling related to surrogacy arrangements

Legislation	Counselling Requirements			Counsellor Qualifications
<b>Victoria</b>				
Legislation	Before Surrogacy Treatment	During Treatment & Pregnancy	After the birth of child/ren	Counsellor/s
<p><b>Assisted Reproductive Treatment Act 2008</b></p>	<p><b>Section 40 (1)(c)</b> The Patient Review Panel may only approve a surrogacy arrangement if the commissioning parent/s, surrogate mother and surrogate mother’s partner have received counselling.</p> <p><b>Section 41 Part 4 – Surrogacy Assisted Reproductive Treatment Act 2008 No 76 of 2008 35</b>                      (a) undergo counselling, by a counsellor providing services on behalf of a registered ART provider, about the social and psychological implications of entering into the arrangement, including counselling about the prescribed matters; and                      (b) undergo counselling about the implications of the relinquishment of the child and the relationship between the surrogate mother and the child once it is born; and                      (c) obtain information about the legal consequences of entering into the arrangement.</p> <p><b>Section 43 (a) and (b)</b> the counselling must address the social and psychological implications of entering into the arrangement and implications of relinquishing the child and the relationship between the surrogate mother and the child once it is born.</p>	<p>None legally required. Some clinics offer supportive counselling throughout entire journey including pregnancy and post birth.</p>	<p>None legally required. Some clinics offer supportive counselling throughout entire journey including pregnancy and post birth.                      If any parties not living in Victoria they may be required to have further counselling.</p>	<p><b>Section 43 (1)</b> the aforementioned parties must be counselled by a counsellor providing services on behalf of a registered ART provider.</p> <p><b>Section 3</b> A registered ART provider is a person/body registered under Part 8 of the Act.</p> <p>A clinic counsellor is required to complete the pre-treatment counselling. The Victorian Patient Review Panel (PRP) which must approve all surrogacy applications in Victoria, also requires an independent psychological assessment which is done external to the clinic (though this is not a legal requirement).</p>

# ANZICA Surrogacy Guidelines Addendum

Version January 2017

Surrogacy Legislation in each state or territory of Australia, and in New Zealand, and requirements for counselling related to surrogacy arrangements

Legislation	Counselling Requirements			Counsellor Qualifications
<b>Western Australia</b>				
Legislation	Before Surrogacy Treatment	During Treatment & Pregnancy	After the birth of child/ren	Counsellor/s
<p><b>Surrogacy Act 2008</b> <b>Surrogacy Regulations 2009</b> Submissions for a review of the Surrogacy Act (2008) W.A. were commissioned in February 2014. As of July 2016 the current status of the Surrogacy Act (2008) remains.</p>	<p><b>Section 17 c (i)</b> 1. Counselling about the implications of the surrogacy arrangement. Counsellor must prepare a written certificate regarding the counselling and any concerns. 2. Assessment by a clinical psychologist with a written report.</p>	<p><b>Surrogacy Directions (2009) Section 12:</b> Ongoing counselling and support throughout treatment including counselling at a time where there is a decision by participants to discontinue the surrogacy process. <b>Section 13:</b> Counselling requirements during pregnancy by an approved counsellor for both surrogates and intended parents at 20 and 34 weeks after the beginning of a pregnancy and at 14 days after either a miscarriage or a live birth.</p>	<p><b>Surrogacy Regulations Section 6</b> Appropriate counselling for the purposes of <b>Section 21 (2) (b)</b> of the Act is counselling about the effect of the proposed order provided by an approved counsellor following the birth of a child. In W.A. an “approved counsellor” tends to be the clinic counsellor, not the independent psychologist. It is not written but presumed all participants to the arrangement would be there. Unlike the implications counselling in <b>Section 4</b> it is not defined what is covered in post order counselling nor surrogate relinquishment. However there does need to be consideration of “whether the making of a parentage order would be for the wellbeing, and in the best interests of the child.”</p>	<p>Two different counsellors: 1. “Approved Counsellor” is the clinic counsellor who conducts the implications counselling and then writes a certificate indicating dates patients were counselled with final statement highlighting any concerns. “Approved Counsellor”s must be qualified and experienced counsellors, who also possess a significant knowledge of the issues associated with fertility and infertility. They must also demonstrate evidence of keeping up to date with technological developments including fertility specific professional development. To become formally recognised as an “Approved Counsellor” under the <b>HRT Act 1991 (WA)</b> a counsellor must make an application to the Reproductive Technology Council for formal recognition. Approved counsellors must be eligible for ANZICA. 2. Independent psychosocial assessment is done by a clinical psychologist. The independent clinical psychologist does assessment psychological report.</p>