

Addendum to ANZICA Surrogacy Guidelines - Surrogacy Legislation in New Zealand and each Australian state or territory of Australia, and requirements for counselling related to surrogacy arrangements V4-2021

Legislation		Counselling Requirements			Counsellor Eligibility
Australian Capital Territory					
Legislation	<u>Eligibility criteria</u>	Pre Surrogacy	During Treatment/ Pregnancy	Post Birth	Counsellor/s
<p>Surrogacy Act 2004</p> <p>Key Issues: Conception must occur in ACT</p> <p>Traditional surrogacy prohibited. At least one IP must be genetic parent</p> <p>Surrogacy agreement can be oral.</p> <p>Surrogate and partner legal parents at birth. IPs apply to Supreme Court for Parentage Order when child is 6 weeks - 6 months age.</p> <p>Commercial surrogacy prohibited, payments to surrogate strictly to reimburse expenses connected to surrogate pregnancy.</p> <p>Illegal to advertise for surrogacy</p> <p>Illegal to undertake a commercial surrogacy arrangement overseas</p>	<p>IP: - min age 25 - married or defacto couple - resident of ACT</p> <p>Surrogate: - min age 18 - in a couple relationship. - must have birthed own child</p>	<p>In clinic and external counselling required.</p> <p>Purpose of the surrogacy report S26.3.e “whether both birth parents and both substitute parents have received appropriate counselling and assessment from an independent counselling service”.</p> <p>2 ACT clinics offer surrogacy. Information from Canberra Fertility Centre (CFC) below is an indication of requirements:</p> <p>Assessment by external counsellor eligible for registration with AASW, ANZICA or APS. Assessment must attend to required “questions” in CFC booklet. Personality testing at counsellor discretion. External counsellor makes recommendations for counselling during pregnancy and post-delivery.</p> <p>Clinic counsellor sees patients before treatment, repeating surrogacy “questions”.</p> <p>‘Cool-off’ period before treatment.</p>	<p>No legislative requirements.</p> <p>CFC: Counselling recommended, but not a requirement of the clinic</p>	<p>No legislative requirements.</p> <p>CFC: Counselling recommended, but not a requirement of the clinic.</p>	<p>Definition of Appropriate Counsellor: S26.5 “a counselling service is not independent if it is connected with—</p> <p>(a) the doctor who carried out the procedure that resulted in the birth of the relevant child; or</p> <p>(b) the institution where the procedure was carried out; or</p> <p>(c) another entity involved in carrying out the procedure.</p> <p>Pre-surrogacy assessment done by external counsellor who is registered or eligible for registration of AASW, ANZICA, APS.</p>

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New South Wales					
Legislation	Eligibility criteria	Pre Surrogacy	During Treatment/ Pregnancy	Post Birth	Counsellor/s
<p><u>Surrogacy Act 2010 No 102 Vs 7/6/2011</u></p> <p><u>Surrogacy Regulation 2016 Vs 29/7/2016</u></p> <p><u>Assisted Reproductive Technology Act 2007 No 69 Vs 8/1/2019</u></p> <p><u>Assisted Reproductive Technology Regulation 2014 vs 24/7/2020</u></p> <p>Key issues: Medical or social need for surrogacy required.</p> <p>Traditional surrogacy is permitted. No restrictions on gametes used.</p> <p>Must have written surrogacy agreement</p> <p>Reimbursement of birth mother costs is enforceable</p>	<p>IP: - Min age 18 years BUT assessment of maturity for anyone under 25 years - any single person or couple. - resident of NSW</p> <p>Surrogate: - min age 25 years - does not have to birthed own child</p>	<p>Surrogacy Act S35 (1) Each party must have received counselling from an independent qualified counsellor about the surrogacy arrangement and its social and psychological implications before entering into a surrogacy arrangement.</p> <p>Independent counsellor must assess the parties for suitability to participate in a surrogacy arrangement and for the IPs to be parents. AND A.R.T Act 2007 amendments 2010 S15A Before treatment a medical practitioner must receive assessment report from qualified counsellor, providing opinion as to whether the parties suitable persons to enter into surrogacy arrangement. Report also required by legal practitioners for the court if there is a surrogacy birth.</p> <p>Clinic Counselling Some clinics also provide counselling on the 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 surrogacy arrangement.</p>	<p>Surrogacy Act S35 (2) The birth mother and the birth mother's partner must have received further counselling from a qualified counsellor about the surrogacy arrangement and its social and psychological implications after the birth of the child and before consenting to the parentage order. Surrogacy Act S 17 Application for parentage order must be supported by a report prepared by another independent counsellor. Section 17 outlines the issues to be considered by the counsellor for the writing of the parentage order counselling report. ART Act 2007 and ART Regulation 2014– Information related to the</p>	<p>Surrogacy Act S 4 No formal accreditation process for counsellors. “Qualified counsellor”: person who has the experience or qualifications required by the regulations to exercise the functions of a counsellor under the Act AND Surrogacy Regulation S 6 “Qualified counsellor” :must be eligible as member of ANZICA, and familiar with relevant guidelines. Surrogacy Act S17 (7) 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 specialist knowledge.</p>

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<p>Commercial surrogacy prohibited, payments to surrogate strictly to reimburse expenses connected the surrogate pregnancy.</p> <p>Surrogate and partner recognised as birth parents. IPs can apply to Supreme Court for a Parentage Order any time following birth, before the child turns 18.</p> <p>Permitted to advertise for surrogacy</p> <p>Illegal to undertake a commercial surrogacy arrangement overseas</p>				<p>conception and birth of offspring of surrogacy arrangements is held in NSW Central Register. For contact there may be requirement for a psychological report under Section 23A of the ART Regulation 2014</p>	
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Legislation		Counselling Requirements			Counsellor Eligibility
New Zealand					
Legislation	Eligibility criteria	Pre Surrogacy	During Treatment/ Pregnancy	Post Birth	Counsellor/s
<p><u>HART Act 2004</u> <u>Adoption Act 1955</u> <u>Status of Children Amendment Act 2004</u> <u>The Hague Convention</u> <u>ACART</u> <u>Advice to ECART</u> <u>ECART issues and guidelines</u></p> <p>Key Issues: Ethics Committee approval required</p> <p>Prior approval for adoption via surrogacy must be sought by IPs from Oranga Tamariki. Illegal to take parental responsibility until sanctioned</p> <p>All parties must receive independent legal advice and medical consultation. Additional medical specialist reports may be required</p> <p>Legislation only applicable to surrogacy involving fertility providers. All fertility providers</p>	<p>IPs: - Heterosexual or homosexual couples, single women</p> <p>Surrogate: - min age 20. If over 45, usually require obstetric physician review</p>	<p>Independent pre-surrogacy psychology report required as an addition to counselling if parties have a history of mental health issues.</p> <p>All parties must have counselling from an ANZICA counsellor independent of each other and together</p>	<p>Clinic counsellors provide follow up and counselling if needed</p>	<p>Oranga Tamariki give consent to baby being in care of IPs (or baby cannot be in their care until consent to adoption signed 10 days postbirth)</p> <p>Interim adoption order and Final adoption order applied for by IPs' lawyer</p> <p>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>

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<p>must apply to ECART</p> <p>Surrogate (and partner) legal parents at birth. Consent to relinquishing parental rights must be signed by surrogate >10 days postbirth</p> <p>Surrogate has all legal rights about the pregnancy</p> <p>No payment for loss of earnings- only medical and some legal expenses</p> <p>Traditional surrogacy permitted</p>					
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Legislation		Counselling Requirements			Counsellor Eligibility
Northern Territory					
Legislation	Eligibility criteria	Pre Surrogacy	During Treatment/ Pregnancy	Post Birth	Counsellor/s
No legislation Under review in 2021				No legislation, therefore no parentage order can be made.	

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Queensland					
Legislation	Eligibility criteria	Pre Surrogacy	During Treatment/ Pregnancy	Post Birth	Counsellor/s
<p><u>QLD Surrogacy ACT</u> <u>Status of Children Act</u></p> <p>Key issues: Must be medical or social need for surrogacy</p> <p>Must have written surrogacy agreement and receive legal advice</p> <p>Can be traditional surrogacy or dual donor</p> <p>Commercial surrogacy prohibited, any payment to surrogate strictly to reimburse for expenses connected the surrogate pregnancy.</p> <p>Surrogate (and partner) legal parents at birth. IPs can apply to Supreme Court for Parentage Order 28 days - 6 months following birth.</p>	<p>IPs: - min age 25 - can be heterosexual or same sex; single or couple - must be QLD resident</p> <p>Surrogate: - Min age 25 - can be single</p>	<p>Prior to conception and signing of a surrogacy arrangement all parties, IPs, surrogate (and partner), must attend counselling with an experienced counsellor regarding the potential surrogacy.</p> <p>Routine for assessment counselling to include personality and mental health assessment using standard testing procedures, but not a legal requirement.</p> <p>31 Initial counsellor's affidavit: The affidavit sworn by the appropriately qualified counsellor who gave counselling to the birth mother, the birth mother's spouse (if any) and the intended parents (the relevant persons) must verify a report prepared by the counsellor addressing the matter mentioned in section 22(2)(e)(ii), including by stating— (a) the reasons the counsellor is an appropriately qualified counsellor; and (b) that counselling about the surrogacy arrangement and its social</p>	<p>Nil legal or clinic requirements.</p> <p>Recommended follow-up by counsellor</p>	<p>Surrogacy Guidance report to be completed by independent counsellor post birth. Content and qualifications, and independence defined under the Act,. Must NOT be the initial counsellor, or any counsellor associated with the treating doctor/clinic</p> <p>Relevant section of the legislation: 32 Surrogacy guidance report A surrogacy guidance report must be prepared by an independent and appropriately qualified counsellor and state the following matters— (a) the reasons the counsellor is an independent and appropriately qualified counsellor; (b) that, for the application, the counsellor interviewed the birth mother, the birth mother's spouse (if any), another birth parent (if any) and the applicant, or joint applicants, (the relevant persons); (c) the date or dates of the interviews; (d) the counsellor's opinion formed as a result of the interviews relevant</p>	<p>S19 Appropriately qualified means: one of the following— (A) a member of the Australian and New Zealand Infertility Counsellors Association; (B) a psychiatrist who is a member of the Royal Australian and New Zealand College of Psychiatrists; (C) a psychologist who is a member of the Australian Psychological Society; Chapter 3 Parentage orders (D) a social worker who is a member of the Australian Association of Social Workers; and (ii) has the experience, skills or knowledge appropriate to prepare the report; or (b) for a medical practitioner swearing an affidavit mentioned in section 25(1)(j), a medical practitioner who has the qualifications, experience, skills or knowledge appropriate to prepare the report.</p> <p>Independent counsellor: (a) did not give counselling about the surrogacy arrangement to the birth mother, the birth mother's spouse (if any) or an intended parent; and</p>

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<p>Illegal to advertise for surrogacy</p> <p>Illegal to undertake a commercial surrogacy arrangement overseas</p>		<p>and psychological implications was given to the relevant persons before the surrogacy arrangement was made.</p>		<p>to the application for a parentage order including, for example, about the following matters</p> <p>(i) each relevant person's understanding of—</p> <p>(A) the social and psychological implications of the making of a parentage order on the child and relevant persons;</p> <p>(B) openness and honesty about the child's birth parentage being for the wellbeing, and in the best interests, of the child;</p> <p>(ii) the care arrangements that the applicant, or joint applicants, have proposed for the child;</p> <p>(iii) whether the making of a parentage order would be for the wellbeing, and in the best interests, of the child.</p>	<p>(b) is not, and has not been, directly connected with a medical practitioner who carried out a procedure that resulted in the birth of the child.</p> <p>All fertility groups in QLD recognize that the counsellor should be an ANZICA member, as well as being a psychologist or a social worker, but not a legislative requirement.</p>
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Legislation		Counselling Requirements			Counsellor Eligibility
South Australia					
Legislation	Eligibility criteria	Pre Surrogacy	During Treatment/ Pregnancy	Post Birth	Counsellor/s
<p><u>Family Relationships Act 1975</u> <u>Assisted Reproductive Treatment Act 1988</u> <u>Statutes Amendment Act 2009</u> <u>Family Relations Surrogacy Amendment Act 2015</u> <u>Surrogacy Act 2019</u> <u>Surrogacy Regulations 2020</u></p> <p>Key issues: IP(s) must be an Au citizen or permanent resident.</p> <p>Surrogate must be an Au citizen or permanent resident.</p> <p>At least one IP must be domiciled in SA at the time of the Surrogacy arrangement.</p> <p>Traditional Surrogacy permitted</p> <p>Must have written agreement</p> <p>Each of the parties is expected</p>	<p>IPs: - married or defacto couples, single women - SA residents - Min age 25</p> <p>Surrogate: - Min age 25</p>	<p>IPs, Surrogate (and partner) must attend individual and joint counselling. All counselling should be provided by one counsellor. Counselling must be consistent with ANZICA and NHMRC guidelines.</p> <p>Counselling Certificate issued by an accredited counselling service stating: all parties received counselling about personal and psychological issues that may arise in connection with a surrogacy arrangement AND in the opinion of the counsellor, the proposed surrogacy agreement would not jeopardise the welfare of any child born as a result of the agreement.</p>	<p>No legislative requirement</p>	<p>IPs must ensure surrogate (and partner) are offered counselling after the birth (including still birth) at no cost to Surrogate (or partner).</p>	<p>Counselling must be provided by an accredited counselling service.</p> <p>Counselling must be consistent with ANZICA and NHMRC guidelines.</p>

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<p>to provide the other with a criminal history report provided by SA Police or Australian Crime Commission within 12 months prior to the lawful Surrogacy agreement.</p> <p>IVF treatment prior to the surrogacy agreement can take place outside of SA</p> <p>Commercial surrogacy prohibited, however reimbursement of costs for surrogate in lost income is permitted.</p> <p>Surrogate (and partner) legal parents at birth. IPs can apply to Supreme Court for Parentage Order 30days – 12 months following birth.</p> <p>Permitted to advertise for surrogacy</p>					
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Tasmania					
Legislation	Eligibility criteria	Pre Surrogacy	During Treatment/ Pregnancy	Post Birth	Counsellor/s
<p><u>Surrogacy Act 2012</u></p> <p>Key Issues: Must have written agreement</p> <p>Commercial surrogacy prohibited, any payment to surrogate strictly to reimburse expenses connected the surrogate pregnancy.</p> <p>Only gestational surrogacy arrangements are permitted</p> <p>All parties must seek independent legal advice and counselling prior to making arrangement.</p> <p>Illegal to advertise for surrogacy</p> <p>Surrogate (and partner) legal parents at birth. IPs apply to Supreme Court for Parentage Order 30 days - 6 months following birth.</p>	<p>IPs: - min age 25 - Heterosexual or homosexual couple or single women - Tas resident</p> <p>Surrogate: - Min age 25 - must have birthed own live child - Tas resident</p>	<p>Parties must receive counselling from accredited counsellor prior to entering into an arrangement.</p>	<p>No requirements</p>	<p>After the birth counselling is to be used to ensure that all parties are still comfortable with the arrangement.</p> <p>No detailed written report is required here unless requested by court but a certificate needs to be signed stating that the counselling has occurred.</p>	<p>Accreditation of counsellors through Department of Justice (Births, Deaths and Marriages).</p> <p>“Appropriate experience” for accreditation, counsellor must be: registered psychologist, OR have level 2 Membership of the Australian Counselling Association OR be registered with Psychotherapy and Counselling Federation of Australia.</p> <p>No specific fertility experience required</p>

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Victoria					
Legislation	Eligibility criteria	Pre Surrogacy	During Treatment/ Pregnancy	Post Birth	Counsellor/s
<p>Assisted Reproductive Treatment Act 2008</p> <p>Key issues: Surrogacy must be pre-approved by Patient Review Panel</p> <p>Commercial surrogacy prohibited; IPs may reimburse surrogate for costs connected to the surrogate pregnancy</p> <p>Can be dual donor</p> <p>May have Oral agreement</p> <p>Illegal to advertise for surrogacy</p> <p>Surrogate and partner legal parents at birth. IP apply to the Supreme Court for Parentage Order 28 days - 6 months following birth.</p>	<p>IP: - min age 18 - heterosexual, same sex couples, single women - Vic residents</p> <p>Surrogate: - min age 25 - Surrogate can be single - must have birthed own live child</p>	<p>S40(1)(c)- 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>S 41 Part 4—Surrogacy Assisted Reproductive Treatment Act 2008</p> <p>(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</p> <p>(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</p> <p>(c) obtain information about the legal consequences of entering into the arrangement.</p> <p>S43(a) and (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.</p> <p>If any parties are not living in Victoria they may be required to have further counselling.</p>	<p>S43(a)- aforementioned parties must be counselled by a counsellor providing services on behalf of a registered ART provider</p> <p>S3- registered ART provider is a person/body registered under Part 8 of the Act</p> <p>Clinic counsellor required to complete the pre-treatment counselling. The PRP must approve all surrogacy applications, also require independent psychological assessment done external to the clinic (although this is not a legal requirement).</p>

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Western Australia					
Legislation	Eligibility criteria	Pre Surrogacy	During Treatment/ Pregnancy	Post Birth	Counsellor/s
<p><u>Surrogacy Act 2008</u> <u>Surrogacy Regulations 2009</u></p> <p>Key Issues: Parentage orders cannot be made unless surrogacy agreement approved by the WA Reproductive Council.</p> <p>Commercial surrogacy prohibited, payments to surrogate strictly to reimburse for expenses connected the surrogate pregnancy.</p> <p>Written agreement required</p> <p>Traditional surrogacy permitted.</p> <p>Permitted to advertise</p> <p>Surrogate and partner legal parents at birth. IPs can apply to Supreme Court for Parentage Order 28 days - six months following birth.</p>	<p>IP: - min age 18 - Heterosexual couples, single women - WA resident</p> <p>Surrogate: - min age 25 - must have birthed own live child</p>	<p>S 17 c (i) 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>Surrogacy Regulations (2009)S 12: Ongoing counselling and support throughout treatment including counselling at a time where there is a decision by participants to discontinue the surrogacy process.</p> <p>S13: 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 live birth.</p>	<p>Surrogacy Regulations S 6: Appropriate counselling for the purposes of S21 (2)(b): counselling about the effect of the proposed order provided by an approved counsellor following the birth of a child. Done by Approved Counsellor, usually the clinic counsellor, not the independent psychologist. Presumed that all parties to the arrangement will attend. Unlike the implications counselling section in S4, not defined what is covered in post order counselling nor surrogate relinquishment. Must 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”: clinic counsellor who conducts the implications counselling, then writes certificate indicating dates patients were counselled with final statement highlighting any concerns. Must be qualified and experienced counsellors, who possess significant knowledge of the issues associated with fertility and infertility, and 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 HRT Act 1991 a counsellor must apply to the RTC for formal recognition. Approved counsellors must be ANZICA eligible.</p> <p>2 Independent psychosocial assessment by a clinical psychologist who completes psychological report.</p>