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Families
THROUGH
SURROGACY

Confidence + Connection

Domestic Surrogacy Arrangements

Legal Considerations for Queensland

Australian Roadshow 2018

Relevant Legislation in Queensland

Queensland has an established legal framework in which domestic surrogacy can occur:

- *Surrogacy Act 2010*;
- *Status of Children Act 1978*
- *Family Law Act 1975*.

Who Can Participate in a Surrogacy Arrangement

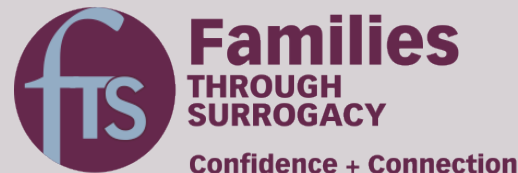
Commissioning Parents:

- Can be heterosexual or same sex couples, or a single person;
- No requirement for a genetic connection to the child;
- Must be at least 25 years of age;
- Must be residents of Queensland;

Surrogate:

- Must be at least 25 years of age;
- Can't use the surrogate's oocyte in the conception procedure (unless it is a traditional surrogacy requiring self-insemination).

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Surrogacy Process in Queensland

1. Counselling – Can use the same counsellor;
2. Legal advice – Separate lawyer for Intended Parents and Surrogate;
3. Surrogacy Agreement – Must be in writing and be made post-advice and pre-conception;
4. Conception - IVF, artificial insemination, self-insemination or natural conception leading to pregnancy;
5. Register the birth of the child;
6. Post birth Surrogacy Guidance Report from an independent counsellor;
7. Application to the Children’s Court for a Parentage Order (transfer of parentage to the commissioning couple).
8. Register the Parentage Order and obtain new birth certificate.

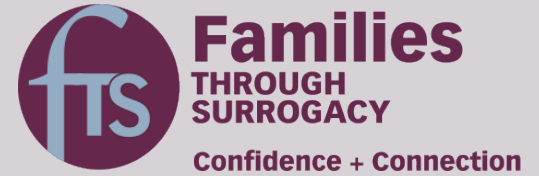
Why do Intended Parents need a Parentage Order?

In Queensland, Division 2 of Part 3 of the *Status of Children's Act* 1978 address the parentage of children born through assisted fertilisation procedures. Several sections give rise to statutory presumptions as to **who is a parent** of a child born through assisted reproduction (including surrogacy).

The **effect** of the presumptions in summary are that if a woman becomes pregnant through a fertilisation procedure (in this instance, the surrogate), she is presumed to be the 'mother' and legally responsible for the child. If the surrogate has a partner who has consented to the treatment procedure, they are presumed to be the other parent.

The presumptions **can only be displaced** by a Parentage Order.

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Q&A

Does my surrogate have to live in Queensland?

- There are no restrictions in Queensland against having a surrogate interstate.
- There are however a number of things to keep in mind if your surrogate lives interstate, some of which we're about to cover.

Q&A

Which law applies to cost reimbursement if my surrogate lives interstate?

- It's a tricky question!
- To ensure your ability to obtain a Parentage Order, regard should be had for the laws of the State or Territory in which the application for a Parentage Order will be made.
- For birth mothers living in other States and Territories, regard should also be had to what is permitted in those jurisdictions to avoid accidentally offending the prohibitions on commercial arrangements.

Q&A

What cost reimbursements does Queensland law allow?

A "birth mother's surrogacy costs" can be reimbursed, being reasonable costs associated with any of the following matters—

- (1) becoming or trying to become pregnant;
- (2) a pregnancy or a birth;
- (3) the birth mother and the birth mother's spouse being a party to a surrogacy arrangement or proceedings in relation to a parentage order.

Q&A

What cost reimbursements does Queensland law allow?

More specifically, the following can be included as a birth mother's surrogacy costs—

- (a) Reasonable medical costs of the surrogate;
- (b) Reasonable cost, including a reasonable medical cost, for the child;
- (c) Health, disability or life insurance premiums;
- (d) Reasonable cost of counselling (including the Surrogacy Guidance Report).
- (e) Reasonable legal costs;
- (f) The surrogates actual lost earnings for a period of not more than 2 months or any other period when the birth mother was unable to work on medical grounds;
- (g) Another reasonable cost associated with the surrogacy arrangement or the making of the order transferring parentage (travel and accommodation).

Q&A

What happens if the child is born interstate?

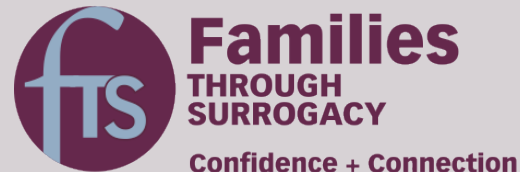
- Ordinarily, when a Parentage Order is made, notice is provided to the Queensland Registry of Births, Deaths and Marriages (this results in the issue of the amended birth certificate).
- Most other States and Territories have enacted legislation which will permit the registration of a Queensland Parentage Order (problem areas are SA and NT, and in Victoria it requires a Registration Order).

Q&A

Can we undertake a traditional surrogacy in Queensland?

- Yes, but the arrangement will still need to be the subject of a Surrogacy Agreement (and all it's incumbent requirements).
- The primary difficulty with traditional surrogacy relates to satisfying the counselling requirements and obtaining treatment. IVF clinics may be reluctant to provide their support due to the complexities around an arrangement which involves the surrogate using her own egg.

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Q&A

What legal processes should we budget for?

1. Advice prior entering into a surrogacy agreement (for all parties);
2. Written surrogacy agreement;
3. Reimbursement of the birth mothers surrogacy costs;
4. Application to the Children's Court for a Parentage Order.