



New South Wales

Surrogacy Regulation 2011

under the

Surrogacy Act 2010

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Surrogacy Act 2010*.

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Attorney General

Explanatory note

The object of this Regulation is to provide for certain matters under the *Surrogacy Act 2010* in order to facilitate the commencement of that Act.

This Regulation makes provision for the following matters:

- (a) the orders that are considered to be Interstate parentage orders under the Act,
- (b) the laws that are considered to be Interstate surrogacy laws under the Act,
- (c) the qualifications and experience required in respect of counsellors under the Act,
- (d) transitional arrangements relating to commercial surrogacy arrangements entered into outside the State.

This Regulation is made under the *Surrogacy Act 2010*, including section 4 (definitions of ***Interstate parentage order***, ***Interstate surrogacy law*** and ***qualified counsellor***), section 59 (the general regulation-making power) and clause 1 of Schedule 1.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely, matters of a machinery nature, matters of a savings or transitional nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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1 Name of Regulation

This Regulation is the *Surrogacy Regulation 2011*.

2 Commencement

This Regulation commences on 1 March 2011 and is required to be published on the NSW legislation website.

3 Definitions

- (1) In this Regulation:
the Act means the *Surrogacy Act 2010*.
- (2) Notes included in this Regulation do not form part of this Regulation.

4 Interstate parentage orders

Each of the following orders is declared to be an *Interstate parentage order* under section 4 (1) of the Act:

- (a) an order under section 19 of the *Parentage Act 2004* of the Australian Capital Territory,
- (b) an order under section 22 of the *Surrogacy Act 2010* of Queensland,
- (c) an order under section 10HB of the *Family Relationships Act 1975* of South Australia,
- (d) an order under section 22 of the *Status of Children Act 1974* of Victoria,
- (e) an order under section 21 of the *Surrogacy Act 2008* of Western Australia.

5 Interstate surrogacy laws

Each of the following laws is declared to be an *Interstate surrogacy law* under section 4 (1) of the Act:

- (a) *Parentage Act 2004* of the Australian Capital Territory,

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- (b) *Surrogacy Act 2010* of Queensland,
- (c) *Family Relationships Act 1975* of South Australia,
- (d) *Status of Children Act 1974* of Victoria,
- (e) *Surrogacy Act 2008* of Western Australia.

6 Qualified counsellor

- (1) For the purpose of the definition of *qualified counsellor* in section 4 (1) of the Act, to exercise the functions of a counsellor a person must:
 - (a) be a member of, or eligible for membership of, the Australian and New Zealand Infertility Counsellors Association, and
 - (b) be familiar with any guidelines issued by the Australian and New Zealand Infertility Counsellors Association and the National Health and Medical Research Council that are relevant to the exercise of those functions.
- (2) This clause does not apply in respect of the functions of a counsellor under section 17 or 35 (2) of the Act.

Note. The requirements of this clause apply to a counsellor who gives counselling about the social and psychological implications of a surrogacy arrangement to the affected parties as referred to in section 35 (1) of the Act. In addition, a counsellor who provides an assessment report in relation to a surrogacy arrangement under section 15A of the *Assisted Reproductive Technology Act 2007* must also be a qualified counsellor under this clause.

7 Qualified counsellor—requirements for counselling under sections 17 and 35 (2) of the Act

- (1) For the purpose of the definition of *qualified counsellor* in section 4 (1) of the Act, to exercise the functions of a counsellor under section 17 of the Act a person must:
 - (a) hold a qualification conferred by a university (whether within or outside New South Wales) after at least 3 years full time study or an equivalent amount of part time study, and
 - (b) be a qualified psychologist, qualified psychiatrist or qualified social worker, and
 - (c) have specialised knowledge, based on the person's training, study or experience, that enables the person to give opinion evidence as to the matters referred to in section 17 of the Act.

Note. The requirements of this subclause apply to a counsellor who gives an independent counsellor's report in relation to proceedings for a parentage order as referred to in section 17 of the Act.

Note. In relation to paragraph (c), see section 79 of the *Evidence Act 1995*.

- (2) For the purpose of the definition of *qualified counsellor* in section 4 (1) of the Act, to exercise the functions of a counsellor under section 35 (2) of the Act a person must:
- (a) hold a qualification conferred by a university (whether within or outside New South Wales) after at least 3 years full time study or an equivalent amount of part time study, and
 - (b) be a qualified psychologist, qualified psychiatrist or qualified social worker, and
 - (c) have specialised knowledge, based on the person's training, study or experience, of the social and psychological implications of relinquishing a child.

Note. The requirements of this subclause apply to a counsellor who gives counselling to the birth mother and birth mother's partner about a surrogacy arrangement after the birth of the child as referred to in section 35 (2) of the Act.

- (3) A *qualified psychologist* is a person registered as a psychologist in a State or Territory or in New Zealand.
- (4) A *qualified psychiatrist* is a medical practitioner who has qualifications in psychiatry recognised by the Royal Australian and New Zealand College of Psychiatrists.
- (5) A *qualified social worker* is a person who is eligible for membership of the Australian Association of Social Workers or the New Zealand Association of Social Workers.

8 Transitional—section 11

- (1) Section 11 of the Act does not apply in respect of any act done outside New South Wales by a person in connection with a surrogacy arrangement or proposed surrogacy arrangement if the person engaged a surrogacy service provider before the commencement of the Act to arrange the surrogacy arrangement.
- (2) A *surrogacy service provider* is a person who arranges surrogacy arrangements for fee or reward.
- (3) A surrogacy service provider is *engaged* by a person when a written contract is entered into between the person and the surrogacy service provider under which the surrogacy service provider agrees to arrange a surrogacy arrangement for or on behalf of the person.

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- (4) This clause does not affect any liability for an offence under Part 4 of the *Assisted Reproductive Technology Act 2007* in respect of acts done before the repeal of that Part.

Note. Section 11 of the *Surrogacy Act 2010* extends the jurisdictional nexus for offences relating to entry into, and advertising of, commercial surrogacy arrangements. As a consequence of that provision, the offences extend to acts done outside New South Wales by persons who are ordinarily resident or domiciled in New South Wales. Although similar offences existed under the *Assisted Reproductive Technology Act 2007* before the commencement of the *Surrogacy Act 2010*, those offences did not have the same extended application to acts done outside New South Wales.