



New South Wales

Surrogacy Regulation 2016

under the

Surrogacy Act 2010

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

GABRIELLE UPTON, MP
Attorney General

Explanatory note

The object of this Regulation is to repeal and remake, with some changes, the *Surrogacy Regulation 2011*, which would otherwise be repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision for the following matters:

- (a) the orders that are considered to be Interstate parentage orders under the *Surrogacy Act 2010*,
- (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) repeal, savings and formal matters.

This Regulation updates the lists of laws and orders considered to be Interstate surrogacy laws and Interstate parentage orders under the Act, to include the *Surrogacy Act 2012* of Tasmania and parentage orders made under that Act.

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

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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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Surrogacy Regulation 2016*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Surrogacy Regulation 2011*, which would otherwise be repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

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 26 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 16 or 22 of the *Surrogacy Act 2012* of Tasmania,
- (e) an order under section 22 of the *Status of Children Act 1974* of Victoria,
- (f) 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,
- (b) *Surrogacy Act 2010* of Queensland,
- (c) *Family Relationships Act 1975* of South Australia,
- (d) *Surrogacy Act 2012* of Tasmania,

- (e) *Status of Children Act 1974* of Victoria,
- (f) *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 Aotearoa New Zealand Association of Social Workers.

8 Repeal and savings

- (1) The *Surrogacy Regulation 2011* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Surrogacy Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.