

Information Fact Sheet: International Surrogacy

CAUTION

This information sheet outlines the key issues New Zealanders must consider and seek advice on if considering commissioning a surrogacy arrangement overseas. International surrogacy can be fraught with difficulty and overseas countries can change their surrogacy regulations without notice. The relevant New Zealand government agencies endeavour to provide the most up-to-date accurate information in this fact sheet. However, you should take care to ensure that any decisions you make are based on current information from the country concerned. You must ensure you comply with the laws and regulations of any country where you are considering commissioning a surrogacy.

We strongly advise New Zealanders who are considering commissioning a surrogacy overseas to seek independent legal advice and consult Oranga Tamariki—Ministry for Children (Oranga Tamariki), the Department of Internal Affairs (DIA), and Immigration New Zealand (INZ) before beginning the process. Contact details are at the end of this fact sheet.

What is international surrogacy?

International surrogacy is defined as a surrogacy arrangement, regardless of how it is organised, involving an overseas country. This includes:

- surrogacy involving a commercial arrangement i.e., in instances where money is paid to the surrogate mother and/or the medical practitioner and the surrogacy procedure takes place through a designated fertility clinic
- surrogacy involving a compassionate or altruistic arrangement i.e., the surrogate is known to the intending parent(s) and an arrangement has been made between both groups without any profit made
- surrogacy involving the export of gametes by a New Zealand Fertility Clinic for the purposes of commissioning a gestational surrogacy arrangement.

There are significant complexities with international surrogacy arrangements involving a child born via a surrogacy which takes place in a country that is different to where the intending parents habitually reside. Navigating the legal and medical systems in an overseas country can be extremely difficult, and due to weak legislative and regulatory frameworks in some countries where commercial surrogacy is legal, there is often very little protection for the parties involved in these arrangements.

You need to be aware that you are financially responsible for all costs incurred overseas, including unexpected medical treatment such as neo-natal care in the event of premature births or other health conditions.

As well as legal and medical complexities, there are also risks associated with the movement of the child from their country of birth to New Zealand. Each country has its own set of immigration procedures and regulations relating to how individuals exit their country.

In addition, there are social risks which you need to consider; these include the potential for exploitation and trafficking of women for surrogacy purposes and the vulnerability of children due to a number of their rights not being met. For example, children may not be legally registered, may not have a nationality (and therefore may be unable to travel due to their lack of travel documentation - a nationality is required to acquire a passport) and they may have no future access to information about their genetic identity.

New Zealanders must ensure they comply with the laws and requirements of the foreign jurisdiction where they intend to commission a surrogacy. This includes entry and exit requirements and domestic regulations relating to surrogacy procedures, including the movement of gametes across borders if that is applicable.

New Zealand law

Altruistic domestic surrogacy in New Zealand is governed by the Human Assisted Reproductive Technology Act 2004. Under this Act commercial surrogacy is illegal in New Zealand. Currently¹New Zealand does not have legislation which specifically addresses New Zealanders travelling offshore to commission a commercial surrogacy arrangement.

In the absence of specific legislation, in all cases where you arrange for a child to be born to a surrogate mother overseas, and you intend to bring the child back to live with you in New Zealand, New Zealand law will apply.

In addition, there are some important considerations regarding the long-term interests of children who may be born through international surrogacy:

- New Zealand's domestic surrogacy law recognises the long-term interests of the children who are born through surrogacy – and requires that genetic donors are identifiable.
- While some overseas countries allow surrogacy involving anonymous donor material, this is not consistent with the obligations that New Zealand has under the United Nations Convention on the Rights of the Child. The use of anonymous donors is also inconsistent with the Verona Principles that provide guidance on legislative, policy and practical reforms on upholding children's rights born through surrogacy (www.iss-ssi.org/wp-content/uploads/2023/03/VeronaPrinciples_25February2021-1.pdf).
- New Zealanders who are exploring international surrogacy should consider how they will ensure the future availability of identifying information about any genetic donors used.

Who is the legal parent of a child born via a surrogacy arrangement?

Under New Zealand law, children born as the result of a surrogacy arrangement, whether in New Zealand or overseas, are unlikely to have any legal relationship to the New Zealand intending parents. The legal relationship is determined by the Status of Children Act 1969 and this says that the surrogate who gives birth to the child and their partner (if they have one) are considered to be the legal parents of the child. This is the case even when the intending parents are genetically related to the child or if the intending parents are recognised as the parents on the child's overseas birth certificate.

The most common way to transfer legal parenthood, under New Zealand law, from the surrogate (and their partner) to you as the intending parent, is by way of an adoption in the New Zealand Family Court. If you do not have a legal relationship, which is recognised under New Zealand law,

¹ Work is being undertaken on the Improving Arrangements for Surrogacy Bill, the current situation remains in place until any new legislation is passed by Parliament and then becomes law.

your child will only have a temporary immigration status in New Zealand and the child will not be entitled to New Zealand citizenship or a New Zealand passport. Importantly, as you will not be the legal parent of the child you will have no legal ability to assume parental authority and the child will not have any inheritance rights to your estate. Legalising the parental relationship is important to ensuring current and future legal security for your child.²

Options available under New Zealand law to be recognised as the legal parents of a child born through an international surrogacy arrangement. Please discuss with your New Zealand lawyer which option best suits your circumstances.

Option 1: Intending parents commission an international surrogacy whilst habitually living in New Zealand and intend to return to New Zealand following the birth of your child.

A Family Court Protocol was implemented on the 11 August 2023, which enables intending parents to adopt the surrogate-born child through the New Zealand Family Court prior to the family returning to New Zealand.

The criteria required for this protocol to apply are:

- At least one applicant must be habitually resident in New Zealand at the time of application.
- A legal parent-child relationship exists between the intended parent and the surrogate-born child under the law of the jurisdiction in which the child was born.
- A social worker from the Adoption Service, Oranga Tamariki has completed an adoption assessment of the applicants in person before the birth of the child.
- Social workers must have access to a copy of the surrogacy arrangement contract, proof of consent from the surrogate, evidence of a genetic link between at least one of the intended parents and the child, and information about how the child will have access to information about their identity.

The Adoption Service will not undertake any pre-court adoptive applicant assessment for people who commission an international surrogacy in a country where it is illegal.

Please familiarise yourself with the Family Court Protocol for the Adoption by New Zealand-Based Intended Parents of Children Born by Surrogacy Overseas, including a comprehensive version of the criteria as set out above (www.justice.govt.nz/assets/Documents/Publications/FINAL-2023-international-surrogacy-protocol.pdf).

Option 2: Intending Parents are granted an exemption by the Associate Minister of Immigration for their child to enter New Zealand on a visitor visa. Once back in the country they can make an adoption application to the New Zealand Family Court.

Immigration requirements

There is no immigration policy to facilitate the entry of children into New Zealand who have been born as a result of a surrogacy arrangement overseas. Any decision to grant a temporary visitor visa to a child born via a surrogacy arrangement is made by the Associate Minister of Immigration. When deciding, the Associate Minister of Immigration may consider a set of non-binding

² In some cases, the legal relationship between the intending parents and the child may possibly be established via adoption in the country where the child was born, or through another legal mechanism in the country of birth (such as parentage orders). However, these processes may not necessarily meet the requirements of New Zealand law to establish the legal relationship.

guidelines, which have been agreed by Cabinet, to inform a response to cases of international surrogacy (a copy of these guidelines is attached to this Information Sheet).

This includes:

- Confirmation from Adoption Service, Oranga Tamariki that a pre-court adoptive applicant assessment has been completed. (Please note that the Adoption Service will not provide a pre-court adoptive applicant assessment for people who commission a surrogacy in a country where it is illegal.)
- Confirmation of a genetic link between one or both intending parents through DNA testing carried out by a provider approved by Immigration New Zealand
- You will need to pay for these tests and processing time can take several weeks to complete
- You will need to be prepared to remain in the country of your child's birth, until the results are received

Intending Parents habitually resident offshore

If you are a New Zealand citizen or resident, habitually live outside New Zealand, and wish to secure New Zealand citizenship for a child born through a surrogacy arrangement, it is recommended that you contact the Department of Internal Affairs to discuss their eligibility for citizenship.

Citizenship status

Children born through an international surrogacy arrangement do not meet the requirements for New Zealand citizenship by descent. The pathway to acquire New Zealand citizenship for children born from a surrogacy arrangement which has been commissioned by New Zealand citizens or permanent residents is through establishing a legal relationship between yourself and your child, which is recognised under New Zealand law, as described above.

If you are relying on a foreign parental order as evidence of the parent-child relationship for New Zealand citizenship by descent, DIA needs to be satisfied that the order has the same effect as an Adoption Order. Your lawyer will need to complete a form confirming that the order complies with the adoption law of the place where the parental order was granted and that the following requirements have been met:

- best interest of the child
- suitability of intending parents
- prohibition on commercial surrogacy, and
- surrogate's consent after birth.

If DIA is unable to be satisfied that the requirements for a parental order to be accepted as an adoption order are met, you will need to obtain a declaration from the New Zealand High Court that the parental order has the same effect as a New Zealand adoption. Your lawyer can provide advice on the process of obtaining a declaration from the High Court.

If the High Court determines that a parental order does not have the same effect as a New Zealand adoption, there are other options for the child to obtain New Zealand citizenship:

- By applying to the New Zealand Family Court to adopt.
- By an overseas adoption that meets the requirements of the Citizenship Act 1977; or
- By applying for a grant of citizenship under the exceptional circumstances' provisions of the Citizenship Act. However, we must advise that the Minister of Internal Affairs is unlikely to approve a grant of citizenship under these circumstances.

Adoption process

Under New Zealand law, legal parenthood will need to be transferred from the surrogate and her partner (if she has one) to the intending parents after the birth of the child. The process involves the intending parents undergoing an assessment by the Adoption Service, Oranga Tamariki about their suitability as adoptive applicants. It is imperative that intending parents seek advice from a New Zealand family lawyer who is experienced in international surrogacy matters as it is important that you understand the process, including the need to ensure that documentation obtained overseas meets the requirements of the Adoption Act 1955.

Country updates

Argentina

Some New Zealanders are now considering commissioning surrogacies in Buenos Aires, Argentina. Please be aware that since June 2024, the process has become extremely complicated due to legal issues that have led to long delays issuing birth certificates for babies born through surrogacy. Without a birth certificate, you cannot secure a passport, travel documents or complete DNA testing. Therefore, any baby is unable to leave Argentina until the issue of a birth certificate. It is very important to ensure that you have up-to-date and accurate information.

China

Surrogacy transactions are considered illegal in China, as they violate certain principles of the Civil Code of China.

Colombia

Under Colombian law, surrogacy must be altruistic and at least one intending parent must be linked with the baby. Egg donors are anonymous in Colombia.

Georgia

In June 2023, the Georgian Prime Minister made a public verbal announcement that the government intends to restrict surrogacy services for non-Georgian intended parents and pass relevant legislation. As of September 2024, the Georgian Parliament has not enacted this law.

Mexico

In December 2015, a law was passed banning surrogacy for foreign couples. The Mexican Supreme Court reversed those prohibitions in 2021. Commercial international surrogacy is currently legal in Mexico. Please note that egg donation is required to be done anonymously.

Ukraine

In response to the invasion of Ukraine in February 2022, New Zealanders are **still** advised not to travel to Ukraine. The New Zealand Government is severely limited in its ability to provide consular assistance to New Zealand citizens in Ukraine. The Government cannot facilitate entry into, or evacuation from, Ukraine (www.safetravel.govt.nz/ukraine).

Emergency situations of the kind that exists in Ukraine, are not compatible with commissioning a surrogacy arrangement in Ukraine. It is strongly recommended that New Zealanders do not engage with surrogacy services in the Ukraine whilst the New Zealand Government's travel advice is to not travel.

Countries where commercial surrogacy is no longer available for foreigners

There were a number of countries that were known to have commercial surrogacy services available. However, since 2015, these countries have introduced laws and restrictions on

foreigners commissioning surrogacy arrangements. It is important that you are guided by the government regulations of the overseas country, **not** by the advice given by individual fertility clinics in the overseas country or any private individual who provides surrogacy advice.

New Zealanders are advised **not** to engage in commercial surrogacy arrangements in the following countries:

Thailand

In April 2015, the National Legislative Assembly of Thailand passed the 'Protection of Children Born from Assisted Reproductive Technologies Act'. The Act places tight restrictions on commercial surrogacy in Thailand. It severely limits who may engage in a surrogacy arrangement and imposes sanctions for those who do not comply. Thailand's restrictions prohibit foreigners undertaking a surrogacy arrangement in the country.

Nepal

On 25 August 2015, the Supreme Court of Nepal issued an order to immediately ban foreigners from commissioning commercial surrogacy arrangements in Nepal. Whilst international surrogacy service providers may continue to mention Nepal as a possible location, intending potential parents should not consider Nepal for any IVF/surrogacy process.

India

On 5 November 2015 the Indian Government banned the issuing of visas to foreigners for the purposes of entering India to commission a surrogacy. The Parliament of India passed the Surrogacy (Regulation) Act 2021 in December 2021, which has prohibited commercial surrogacy in India. The Act outlines specific eligibility criteria for surrogacy treatment.

Cambodia

In November 2015, the New Zealand government received formal advice from the Government of Cambodia that the practice of commercial surrogacy is prohibited in Cambodia, and parties found to be involved in surrogacy arrangements will be punished by both imprisonment and fines. On 24 October 2016 the Cambodian Government issued a ministerial directive which reaffirmed that surrogacy is banned in Cambodia.

Key Contacts

New Zealand has a joint government agency approach to all cases of international surrogacy. Please read the advice contained in this Information Sheet and contact the following agencies **before** you begin any surrogacy process.

Immigration New Zealand - a service line of the Ministry of Business, Innovation and Employment that takes care of all New Zealand immigration issues

To send a query use the following link: www.immigration.govt.nz/contact

Phone: 0508 558 855 within New Zealand but outside Auckland

Phone: 09 914 4100 Auckland

Phone: +64 9 924 4100 from outside New Zealand

Oranga Tamariki—Ministry for Children - has the responsibility for reporting to the New Zealand Family Court on the suitability and eligibility of adoptive applicants

Email: webadoption@ot.govt.nz

Phone: 0508 FAMILY (0508 326 459) from within New Zealand

Phone: +64 9 912 3820 from outside New Zealand

Department of Internal Affairs - administers applications for New Zealand citizenship and issues New Zealand passports

Email: staykiwi@dia.govt.nz

Freephone 0800 22 51 51 within New Zealand

Phone: +64 4 463 9361 outside New Zealand

Ministry of Foreign Affairs and Trade - consular support

Email: cons@mfat.govt.nz

24/7 Consular emergency call: 0800 30 10 30 or +64 99 20 20 20

Related legislation

All legislation referred to in this Information Sheet can be found at this website:

www.legislation.govt.nz

The New Zealand government will not participate in the irregular movement of children across borders.

Appendix A: Ministerial guidelines

Below are the guidelines that Ministers are likely to take into account if and when they are deciding to exercise statutory discretion to issue a visa or grant citizenship for a baby born as a result of a surrogacy arrangement overseas, who would otherwise not be able to enter New Zealand or be granted citizenship. These guidelines are non-binding and serve as a guide only.

Minister may consider:

1. Whether there is a genetic link between at least one of the commissioning persons and the child.
2. The outcome that is in the best interests of the child.
3. New Zealand's international obligations.
4. The nature of the surrogacy arrangement, i.e., is it altruistic or commercial?
5. Whether the commissioning persons intend to or have taken steps to secure legal parenthood or other legal rights in respect of child in New Zealand.
6. What the commissioning persons have done in the child's country of birth to secure legal parenthood or other legal rights in respect of the child.
7. Whether the applicants have demonstrated respect for the laws of the jurisdiction in which the surrogacy was carried out.
8. Whether there is satisfactory evidence of informed consent from the:
 - gamete (egg/sperm donor, if relevant)
 - surrogate mother for the surrogacy arrangement to take place (was she a willing party?)
 - surrogate mother (and her partner, if relevant) for the child to depart the country of birth and enter New Zealand
 - surrogate mother (and her partner, if relevant) for the child's adoption
9. Steps taken by the commissioning persons to preserve the child's identity, e.g., do the commissioning persons intend to retain information about the child's origins?
10. Whether the recognised authority of the birth country has agreed or objects to the child leaving the country permanently.
11. Any other considerations that the Minister wishes to take into account.