



Applications under the Surrogacy Act

Applications for a parentage order
FAMILY COURT OF WESTERN AUSTRALIA

You will need this kit if

You are applying to the Family Court of Western Australia for a parentage order in relation to a child born through a surrogacy arrangement.

You will need to complete a parentage order application form (Form S1). If your application concerns more than one child, you will need to complete a separate form for each child.

A copy of this form is attached to the back of this kit.

What is a parentage order?

A parentage order is an order of the Court which transfers the parentage of a child from his or her surrogate birth parent/s to the child's arranged parents. The arranged parents then become the child's legal parents.

After commencement of the *Surrogacy Act* on 1 March 2009, any person wishing to enter into a surrogacy arrangement under the Act must comply with all the procedures set out under the Act and Regulations if they propose to apply to the Family Court of WA for a parentage order.

If a child is conceived through a surrogacy arrangement before the Act came into effect, an application may be made to the Family Court of WA for a parentage order provided the application is brought within 12 months of the commencement of the *Surrogacy Act* (1 March 2009) and all the requirements set out in the *Surrogacy Act* have been met.

Applying for a parentage order

To apply for a parentage order in the Family Court of WA you will need to file the appropriate application form available at the Family Court of WA registry.

The court cannot accept your application unless you satisfy the criteria set out in the *Surrogacy Act*:

- 1) You are the arranged parent or parents in a written surrogacy arrangement which has been approved, in writing, by the Western Australian Reproductive Technology Council. (This does not apply if the surrogate pregnancy began before the commencement of the *Surrogacy Act*).
- 2) Both arranged parents must be residents of Western Australia.
- 3) At least one of the arranged parents must be over the age of 25.
- 4) The arranged parents must be an eligible couple or at least one of you must be an eligible person.

What will I need to be able to prove?

The Court will consider the following factors when deciding whether or not to grant a parentage order.

- 1) The arranged parent/s satisfy the criteria outlined in the last section.
- 2) The arranged parent/s and the birth parent/s have undergone counselling about the consequences of the proposed order.
- 3) The arranged parents and the birth parent/s have all received independent legal advice about the legal implications of the proposed order.
- 4) The birth parent/s consent to the order being made.
- 5) The child is in the day to day care of the arranged parents.
- 6) The parties have agreed an 'approved plan'.
- 7) That is in the best interests of the child for the parentage order to be made.

Depending on who are the genetic parents of the child, the arranged parents may make an application to the Court for an ancillary order requesting that the court dispense with any of these requirements. To do this, you will need to complete an ancillary application form (Form S2).

How do I complete the application form?

Work your way through the form starting from the front page. Follow the instructions written on the form. Make sure you answer all the questions.

Please type or print clearly and mark any checkboxes with an [X].

Failing to complete your form correctly may result in your application being delayed.

If your application concerns more than one child, you will need to complete a separate form and affidavit for each child.

Part A

If you are the arranged parent/s, enter your details here. Use both columns if there are two arranged parents.

Make sure to put your date of birth in the box at the bottom of the page.

Part B

Enter the birth parent/s details here.

Part C

Either party can complete this section. Give careful consideration to your response to the question regarding whether this child's conception resulted from an approved surrogacy arrangement. Read the sections on "If you have ticked YES" and "If you have ticked NO", below for further information.

If you have ticked YES

You are a party to a surrogacy arrangement which has been approved by the Western Australian Reproductive Technology Council.

The Court can only accept applications for parentage orders from 28 days after the birth of the child until six months after the birth of the child.

If you want to apply outside this period, you will need to get the permission of the Court. You should complete an ancillary application form (Form S2), available from the Family Court of WA registry or website www.familycourt.wa.gov.au. You will need to attach evidence to this form explaining why you were unable to apply within the appropriate time period.

If you have ticked NO

You are party to a surrogacy arrangement which has not been approved by the Western Australian Reproductive Technology Council.

The Court can only accept applications in which the arranged parents are not parties to an approved surrogacy arrangement if the surrogate pregnancy commenced prior to the *Surrogacy Act* which came into effect on 1 March 2009.

If this is the case, you have up to one year from the birth of the child to file an application with the Court. If you want to apply outside this period, you will need to complete an ancillary application form (Form S2), available from the Family Court of WA registry or website www.familycourt.wa.gov.au. You will need to attach evidence to this form explaining why you were unable to apply within the appropriate time period.

Who are the child's genetic parents?

A child's genetic parents are the people from whose eggs or sperm the child was conceived. The birth mother of a child may not be a child's genetic parent. In a situation where the birth mother is not the child's genetic parent and at least one of the arranged parents is, the Court will not require the consent of the birth parents before making a parentage order. If this is the case, you should complete an ancillary application form (Form S2). You will need to attach proof that the arranged parents are the genetic parents and the birth mother is not.

Part D

Write the orders you want in this part of the form.

What if it is impossible to contact the birth parent/s?

In situations where the birth parent/s have died, or are otherwise incapacitated and unable to respond to your application, you will need to complete an ancillary application form (Form S2) setting out the reasons why the birth parent/s are unable to respond to the application. You will need to supply evidence which proves your statement.

The Court can dispense with the requirement of the birth parent/s consent if the applicant can show that they were unable to provide it, or are unable to be contacted, despite the applicant having made all reasonable efforts to do so.

Will I need an affidavit?

All applications will need to be filed with a sworn affidavit. The affidavit is where you state the facts which support your case and satisfy the evidentiary requirements under the *Surrogacy Act*. You should always seek legal advice before writing an affidavit. Family Court staff cannot tell you what information to include in your affidavit.

You should attach certified copies of any of the documents mentioned in your affidavit to the back of your affidavit.

Completing an affidavit

There are strict rules about affidavits. If you do not follow these rules the Court will not accept your affidavit and your application will not progress.

- The affidavit must be typed, not hand written.
- It must be split into small paragraphs (no more than six lines).
- Each paragraph must be numbered.
- It must contain all the relevant facts (see the relevant sections of this kit for more information).
- It must not contain comments or arguments – it must contain only facts (things you have personally seen, heard or done). The affidavit should only contain information to help the Court make the decision.
- Any material referred to in the affidavit (other documents etc) must be attached to the affidavit and marked as an ‘annexure (A to Z)’. You must attach an annexure note to each document. The annexure note must be signed on the same day, and by the same person who witnessed the affidavit.

| | |
|---|------------------------------|
| This is the annexure marked “ ”, referred to in the | |
| Affidavit of: | _____ (Full Name) |
| Sworn/Affirmed this: | _____ day of _____ 20 _____ |
| Before me: | _____ (signature of witness) |

How do I sign the affidavit?

You will need to have your affidavit ‘witnessed’ by a Justice of the Peace (JP), Lawyer or Notary Public.

A Notary Public is a lawyer appointed by the Supreme Court of WA. Generally it is their job to draw up and authenticate documents of a quasi-public character. They are mainly used in commercial situations to authorise international documents. A Notary Public can endorse documents with an official seal, but unlike a JP they will charge for their services.

Your affidavit must be signed by yourself and the JP next to the signing clause at the end of the affidavit and at the foot of each page.

Where do I find a Justice of the Peace?

There is usually a JP at the Family Court of WA between 9:30am and 1:00pm. If a JP is not available you may find one at the Justices’ Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices’ Association on 1300 657 788 or visit their web page www.dotag.wa.gov.au.

What other documents do I need to file?

Your application for a parentage order is to be filed together with:

- The Western Australian Reproductive Technology Council’s written approval of the surrogacy arrangement;
- The applicant’s (arranged parents) affidavit;
- A certified copy of the child’s birth certificate;
- The Approved Plan (refer to the section “What is an approved plan” below);
- Medical evidence in support of your status as an eligible couple or an eligible person;
- If this application is made by 2 persons jointly, the marriage certificate, if any, of the arranged parents;
- Evidence that:
 - The birth parent/s have received counselling and independent legal advice about the proposed parentage order;
 - The birth parent/s consent to the parentage order; and
 - The birth parent/s have agreed to an appropriate plan (the “approved plan”).

(This evidence is not required if the birth mother is not the child’s genetic parent and at least one arranged parent is the child’s genetic parent. If this is the case, you must complete an ancillary application form (Form S2) seeking permission to dispense with the requirements for any or all of the above).

- Evidence that the arranged parent/s have received counselling and independent legal advice about the proposed parentage order.

About the terms used in this kit

Who is an eligible person or part of an eligible couple?

The Court cannot make a parentage order unless it is satisfied that the arranged parents are an eligible couple, or one of the applicants is an eligible person.

The Act defines an eligible couple as:

Two people of opposite sexes who are married to, or in a de facto relationship with, each other and who, as a couple-

- a) are unable to conceive a child due to medical reasons, (other than age); or
- b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease.

The Act defines an eligible person as:

A woman who-

- a) is unable to conceive a child due to medical reasons (other than age); or
- b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease; or
- c) Although able to conceive a child, is unable for medical reasons to give birth to that child.

You will need to attach evidence to your affidavit which supports your statement.

What is an approved plan?

An approved plan is a document, signed by the arranged parents and the birth parent/s, and approved by the court, which sets out details of:

- a) any time the child is to spend, or communication that the child is to have, with the child's birth parent/s or any other person (eg: birth grandparents);
- b) any information that any of the parties is to provide to the other or any other person. This could include things like photos, school reports etc.

An approved plan may not be required in situations where the birth parent/s cannot be contacted, or are unable to consent to the application. Read the section 'what if it is impossible to contact the birth parent/s' on page 3 for more information about what to do.

If the birth mother is not the genetic parent of the child, and at least one arranged parent is, the Court may decide that an approved plan is not necessary. Read the section 'who are the child's genetic parent' on page 2 for more information about what to do in this situation.

An example of an approved plan is attached to the back of this kit.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case.

You can get legal advice from a:

- Legal Aid WA
- Community Legal Centre, or
- Private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Need more information?

For more information about the Family Court of WA, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au;
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of Western Australia registry.

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice.

The Family Court respects your right to privacy and the security of your information.

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