

International Surrogacy

This Information Sheet sets out the general background to international surrogacy, and outlines some of the key issues. New Zealanders thinking about international surrogacy as an option for their family should seek independent legal advice, and consult the Department of Internal Affairs (DIA), Immigration New Zealand (INZ) and Child, Youth and Family (CYF) before beginning the process (see below for contact details).

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 (e.g. 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); and
- surrogacy involving a compassionate or altruistic arrangement (e.g. the surrogate is known to the commissioning parent(s) and an arrangement has been made between both groups without any profit being made).

New Zealand Law applies

In all cases of international surrogacy, 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 particular, you should be aware that the legal relationship between you (as the commissioning parents) and a child born as a result of a surrogacy arrangement taking place overseas, will be governed by New Zealand Law. In addition, eligibility for New Zealand residency or citizenship for a child that is born as a result of a surrogacy arrangement in an overseas country, who you want to live with you in New Zealand, will also be governed by New Zealand Law.

This means:

1. being named as a parent on a foreign birth certificate for a child born as a result of a surrogacy arrangement, does not mean that the birth certificate will meet New Zealand immigration or citizenship requirements, and
2. any adoption or guardianship orders issued by an overseas court for a child born overseas as a result of a surrogacy arrangement will not necessarily meet New Zealand immigration or citizenship requirements, and,
3. that the issuing of a foreign passport does not necessarily entitle the child to New Zealand citizenship

Status of a child born as a result of a surrogacy arrangement

In New Zealand the legal status of a child born as a result of a surrogacy arrangement is determined by the Status of Children Act 1969, whether the child is born in New Zealand or outside New Zealand.

A genetic relationship between you and a child born as a result of a surrogacy arrangement does not mean that you are the legal parent of that child. The surrogate mother is a legal parent of the child under New Zealand law. The father's legal status depends on his relationship with the surrogate mother.

Citizenship and residence in New Zealand

Claims to New Zealand citizenship by descent for a child are determined by the Citizenship Act 1977 and the Status of Children Act 1969.

Under New Zealand law, as the egg and sperm donor will usually have no legal parental relationship with a child born as a result of a surrogacy arrangement, the child is not entitled to be issued with New Zealand citizenship by descent, and travel documents will not be issued for the child.

The child will not meet immigration policy requirements for a New Zealand residence visa or permit. Current residence policy requires a child to be born to, or adopted by, its parents to be able to gain New Zealand residence. A child born to a surrogate mother does not meet the 'born to' requirement. This means that the child will not be able to enter and live in New Zealand, unless the child has been adopted, and the adoption meets the necessary requirements to be recognised in New Zealand.

Citizenship by descent can be granted:

1. when a final adoption order has been issued after you have applied to adopt the child either through the New Zealand Family Court, or,
2. by way of the intercountry adoption process under the Hague Convention on Protection and Co-operation in Respect of Intercountry Adoption (refer Adoption (Intercountry) Act 1997) or
3. when the adoption has occurred in an overseas country that has compatible legislation to New Zealand (section 17 of the Adoption Act 1955).

Legalising your parental relationship with the child in New Zealand

New Zealand is a signatory to the Hague Convention on Protection and Co-operation in Respect of Intercountry Adoption (the Convention). The Adoption (Intercountry) Act 1997 makes the Convention part of New Zealand law and governs international adoptions by New Zealanders of children in other contracting states to that Convention.

If you have a surrogacy arrangement in a country that is not a signatory to the Convention, then you are subject to adoption requirements set out in the New Zealand Adoption Act 1955 in order to create a legal relationship with a child born as a result of that arrangement.

An intercountry adoption is the only way you can create a legal parental relationship with a child born as a result of a surrogacy arrangement in a country that is a signatory to the Convention, e.g. India, USA.

In all matters relating to the adoption of children from an overseas country, the New Zealand Government must work in accordance with the requirements of the Convention (even with non-signatory countries, the Convention principles will be applied and followed as a matter of best practice). The Convention sets out a process to guide the way countries co-operate in sharing information, retain information for the adopted person, make decisions about a proposed adoption and facilitate an intercountry adoption.

An intercountry adoption of a child born as a result of an international surrogacy arrangement requires the following actions:

- an application to the New Zealand Family Court for an adoption order by the applicants who want to adopt the child
- an assessment of the applicants by a Child, Youth and Family social worker to determine if they are fit and proper persons to adopt a child in advance of any surrogacy arrangement being undertaken
- a report provided to the Family Court by a Child, Youth and Family social worker
- an exchange of information between the country the child is born in and New Zealand
- consent of the birth mother
- information about the circumstances of the surrogacy arrangement
- the approval of both central authorities that the adoption is in the best interests of the child.

All applicants must undertake the assessment process. An assessment cannot be undertaken of any applicants who are residing overseas. This means that applicants must be resident in New Zealand for the process to be followed.

The intercountry adoption process takes time. Foreign laws can make it very difficult to proceed with a successful intercountry adoption. New Zealand has limited ability to influence the actions of overseas authorities and issues are often not able to be resolved quickly. Because of this you should seek advice prior to commencing with an international surrogacy arrangement.

Seek advice before proceeding

It is important that you seek appropriate legal and other advice before you begin any international surrogacy arrangement. It is your responsibility to ensure that any child born as a result of a surrogacy arrangement is able to enter and reside permanently in New Zealand if that is your intention.

The New Zealand government will not participate in the irregular movement of children, and failure to have adequate arrangements in place in relation to any international arrangement you undertake will create difficulties for you and the child.

Key contacts

Immigration New Zealand – takes care of all New Zealand immigration issues, including residence application.

Contact - <http://www.immigration.govt.nz>
0508 558 855 within New Zealand but outside Auckland
09 914 4100 Auckland
++64 9 924 4100 outside New Zealand

Department of Internal Affairs – takes care of the facilitation and administration of New Zealand citizenship by descent under the Citizenship Act 1977 and the issuing of New Zealand passports.

Contact - Email: staykiwi@dia.govt.nz
0800 22 51 51 from within New Zealand
++64 4 474 8123 outside New Zealand

Child Youth and Family – takes care of the intercountry adoption process.

Contact - webadoption@cyf.govt.nz
0508 FAMILY (0805 326 459) from within New Zealand
++64-9-912 3820 outside New Zealand

Related legislation

All legislation referred to in this information sheet can be found here:

<http://interim.legislation.govt.nz>

Hague web site

A list of signatories to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption can be found here:

<http://www.hcch.net>