Western Australia

Surrogacy Act 2008

Surrogacy Regulations 2009

As at 18 Dec 2025 Official Version
[PCO 00-c0-00] Published on www.legislation.wa.gov.au

Western Australia

Surrogacy Regulations 2009

Contents

1.	Citation	1
2.	Commencement	1
3.	Term used: counsellor	1
4.	Counselling about implications of surrogacy arrangement	1
5.	Application for approval of surrogacy arrangement	4
6.	Counselling about the effect of parentage order	5

Notes

Compilation table	6
Uncommenced provisions table	6

Defined terms

Surrogacy Regulations 2009

1. Citation

These regulations are the *Surrogacy Regulations 2009*.

2. Commencement

These regulations come into operation as follows —

(a) regulations 1, 2 and 3 — on the day on which these regulations are published in the *Gazette*;

(b) regulations 4 and 5 — on the day on which the *Surrogacy Act 2008* section 17 comes into operation;

(c) regulation 6 — on the day on which the *Surrogacy Act 2008* section 21 comes into operation.

3. Term used: counsellor

In these regulations —

counsellor means a person who is eligible for full membership of the Australian and New Zealand Infertility Counsellors Association.

[Regulation 3 inserted: SL 2021/96 r. 4.]

4. Counselling about implications of surrogacy arrangement

(1) The counselling that is referred to in section 17(c)(i) of the Act is counselling provided by a counsellor that covers the following issues —

(a) the likely effect of the surrogacy arrangement on the birth mother and on her relationship with the arranged parents;

(b) whether, and to what extent, the birth mother should allow the arranged parents or a donor to express their views about aspects of the birth mother's lifestyle and behaviour during a pregnancy in connection with the surrogacy arrangement;

(c) whether prenatal testing will be considered and how the birth mother, the arranged parents and any donor will address a situation where a serious defect of a fetus is found;

(d) identification of expenses associated with the pregnancy and the birth that may be paid on behalf of, or reimbursed to, the birth parents and the circumstances in which those expenses may be paid or reimbursed;

(e) identification of expenses associated with a donation of eggs or sperm intended to be used for the conception of a child that may be paid on behalf of, or reimbursed to, a donor and the circumstances in which those expenses may be paid or reimbursed;

(f) who is to be present at a child's birth;

(g) arrangements for the arranged parents to take care of a child following birth, including the process of separation of birth parents from the child;

(h) how the birth of a child born with a disability would be dealt with under the surrogacy arrangement;

(i) how the separation of the arranged parents, or the death of either or both of them, before a child's birth would be dealt with under the surrogacy arrangement;

(j) what information would be given to the child about the circumstances of the child's birth and when and by whom it would be given;

(k) what communication it is proposed that a child would have with the birth parents and the family of the birth parents during childhood and how any proposed contact is to be managed;

(l) what communication it is proposed that a child would have with a donor and the family of a donor during childhood and how any proposed contact is to be managed;

(m) the likely effects of the surrogacy arrangement on other children of the birth parents or the arranged parents, and the involvement of those children in the process in ways appropriate to their age and maturity;

(n) the likely effects of the surrogacy arrangement on the birth mother's husband or de facto partner (if any), including consideration of how the surrogacy arrangement may impact on that relationship;

(o) the likely effects of the surrogacy arrangement on a donor or the family of a donor;

(p) how the situation of birth parents changing their minds about transferring the care of a child to the arranged parents would be dealt with;

(q) the attitude towards, and impact of, the surrogacy arrangement on the extended families of the birth parents, the arranged parents and any donor;

(r) the level of support networks for the parties during the surrogacy arrangement;

(s) methods of conflict resolution.

(2) The counsellor is to determine the process to be used in the provision of counselling.

(3) The counsellor is to prepare and give to the arranged parents a written certificate stating —

(a) the name of each party who has undertaken the counselling referred to in subregulation (1); and

(b) details of any concern the counsellor has about the surrogacy arrangement as a result of the counselling; and

(c) the day on which counselling was completed by each of the parties.

[Regulation 4 amended: SL 2021/96 r. 5.]

5. Application for approval of surrogacy arrangement

(1) An application to the Council for the approval of a surrogacy arrangement is to be in a form approved by the Council.

(2) The application is to be accompanied by —

(a) evidence of the age and obstetric history of the birth mother; and

(b) evidence of the age of each arranged parent; and

(c) a copy of the signed surrogacy arrangement; and

(d) a copy of the certificate referred to in regulation 4(3); and

(e) a copy of a clinical psychologist's report referred to in section 17(c)(ii) of the Act for each of the parties stating the name of the clinical psychologist who undertook the assessment and the day on which the assessment was completed; and

(f) a written notice from each legal practitioner who has provided legal advice about the effect of the surrogacy arrangement to a party stating —

(i) the name of the practitioner providing the advice; and

(ii) the name of the person to whom the advice was provided; and

(iii) the day on which the advice was provided; and

(iv) whether the advice was independent legal advice within the meaning given in section 14 of the Act;

and

(g) a copy of a medical practitioner's report referred to in section 17(d) of the Act for each of the parties stating —

(i) the name of the medical practitioner who undertook the assessment; and

(ii) the day on which the assessment was completed; and

(iii) details of any concerns the medical practitioner has about the effect that involvement of the person in the surrogacy arrangement may have on any known medical condition of the person; and

(iv) details of any medical condition of the person that may pose a risk to a child born as a result of the surrogacy arrangement; and

(v) in the case of the arranged parents, whether the eligibility criteria set out in section 19(1)(b) of the Act have been met.

6. Counselling about the effect of parentage order

Appropriate counselling for the purposes of section 21(2)(b) of the Act is counselling about the effect of the proposed order provided by a counsellor following the birth of the child.

[Regulation 6 amended: SL 2021/96 r. 6.]

Notes

This is a compilation of the *Surrogacy Regulations 2009* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Citation	Published	Commencement
Surrogacy Regulations 2009	25 Feb 2009 p. 501-8	r. 1, 2 and 3: 25 Feb 2009 (see r. 2(a)); Regulations other than r. 1-3: 1 Mar 2009 (see r. 2(b) and (c) and *Gazette* 27 Feb 2009 p. 512)
Surrogacy Amendment Regulations 2021	SL 2021/96 23 Jun 2021	r. 1 and 2: 23 Jun 2021 (see r. 2(a)); Regulations other than r. 1 and 2: 24 Jun 2021 (see r. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Citation	Published	Commencement
Assisted Reproductive Technology and Surrogacy Act 2025 s. 279(1)(d)	assented to 18 Dec 2025	To be proclaimed (see s. 2(c))

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
approved counsellor	3

© State of Western Australia 2025.
This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0).
To view relevant information and for a link to a copy of the licence, visit www.legislation.wa.gov.au.
Attribute work as: © State of Western Australia 2025.
By Authority: ROGER JACOBS, Acting Government Printer