



**Australian Government**

**Department of Foreign Affairs and Trade**

Mr George Christensen MP  
Committee Chair  
House of Representatives Standing Committee on Social Policy and Legal Affairs  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Mr Christensen

I am writing in relation to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements. This submission provides information about the experience of the Department of Foreign Affairs and Trade in relation to international surrogacy arrangements, as well as a summary of some key trends observed in recent years.

I trust this information is of assistance, and would be happy to assist the Committee by providing additional detail as required.

Yours sincerely

Julie Heckscher  
A/g Senior Legal Adviser

**Submission of the Department of Foreign Affairs and Trade to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements**

**1. Overview**

The Department of Foreign Affairs and Trade (DFAT) welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements.

This submission provides information on DFAT's experience in relation to international surrogacy arrangements as relevant to a number of the Committee's terms of reference (particularly items 4, 5, 6 and 8).

DFAT's primary involvement in relation to international surrogacy arrangements is in administering the *Australian Passports Act 2005* (Passports Act) and assessing applications for Australian passports for children born from surrogacy arrangements, once Australian citizenship has been established. DFAT also provides information to the Australian public on international surrogacy issues through the Smartraveller website, and may also provide consular services (where necessary) to commissioning parents and children born through international surrogacy arrangements, once Australian citizenship has been established. These issues are covered in Section 2 of this submission.

In recent years, DFAT has observed an increase in the number and range of complex issues emerging in relation to Australians entering into surrogacy arrangements overseas. Examples have included situations where changes to the policy or laws of a foreign jurisdiction on surrogacy have had a direct impact on Australians engaged in surrogacy arrangements in that jurisdiction at the time, or where Australian commissioning parents have pursued particular arrangements for a child born through an overseas surrogacy including not seeking Australian citizenship for a child born through such a surrogacy arrangement. Further details on some of these issues are provided in Section 3 of this submission.

Section 4 of this submission provides information on some recent trends observed by DFAT in the international surrogacy environment.

**2. Passport and consular services provided by DFAT in relation to international surrogacy arrangements**

DFAT's involvement in international surrogacy arrangements primarily arises at the time that a commissioning parent seeks a passport or requests consular services for a child born as a result of an international surrogacy arrangement, once Australian citizenship has been established.

***Assessment of Australian passport applications for children born through an international surrogacy arrangement***

DFAT has observed that the number of Australians seeking passports for children born overseas through international surrogacy arrangements has been increasing steadily in recent years. In the majority of cases, soon after the child's birth the commissioning parents will make an application to the Department of Immigration

and Border Protection (DIBP) for citizenship by descent. A child born outside Australia as a result of a surrogacy arrangement is eligible for Australian citizenship by descent if, at the time of their birth, they had a parent who was an Australian citizen (DIBP's submission contains further details on this issue).

Similar to Australian citizenship laws, Australian passport laws apply universally to child passport applications, no matter how the child came to be conceived. If a child is granted Australian citizenship, and meets the requirements of the Passports Act (that is, they meet citizenship, identity and consent requirements) they have a legal entitlement to an Australian passport.

The Passports Act does not deal specifically with surrogacy. The provisions of the Passports Act relating to the issuing of travel documents to children are applied by DFAT in all child cases, including in relation to applications made on behalf of children born as a result of a surrogacy arrangement. The way such applications are dealt with in practice is set out in Australian Passport Office policy guidelines, which provide for the management of complex child cases, including complex surrogacy cases. Information on passport applications involving surrogacy arrangements is publicly available on the Australian Passport Office website (**Attachment A**).

The starting point under the Passports Act is that an Australian passport will only be issued to a child where each person with parental responsibility for the child consents to the child having a passport or an Australian court order permits the child to have a passport, or to travel internationally, or to live with or spend time with another person who is outside Australia.

In accordance with the Australian Passports Act, a surrogate mother is considered to have parental responsibility for a child to whom she gave birth, whether or not she has a biological link to the child, is named on the child's birth certificate or has parental responsibility for the child under the law of another country. Among other things, before an Australian passport is issued to a child born through surrogacy, the surrogate mother's consent must be provided in writing. The passport consent form includes two clear options: to provide consent or not to provide consent. Consent must be witnessed by a qualified person (a registered medical or legal practitioner, public notary, Justice of the Peace or Australian government official). That person makes a declaration that the surrogate mother has willingly indicated her consent or otherwise to the child having an Australian passport and travelling internationally. In every case where the surrogate mother does not attend the passport interview in person to provide her consent, Australian officials also seek verbal confirmation of consent from the surrogate mother and from the witness, where possible.

Generally, biological mothers and fathers are also legally considered to be parents of a child. Depending on the particular circumstances of a case, there may be other people (such as the husband of the surrogate mother) who may also be considered to have parental responsibility for the purposes of the Australian Passports Act.

For the purposes of the Passports Act, a person's parental responsibility ceases only through an order made under Australia's *Family Law Act 1975*. A foreign court order would not be recognised as terminating a person's parental responsibility for the purposes of the Passports Act unless it has been registered in an Australian court under the *Family Law Act 1975*.

In practice, this means that the only circumstances in which a surrogate mother's consent would not be required for the issue of a passport to the child would be when the commissioning parents have obtained an Australian court order that permits the

child to travel internationally, or when they have obtained an Australian court order or have registered a foreign order that removes the surrogate mother's parental responsibility. Commissioning parents may approach federal family law courts to make orders for parental responsibility, including in circumstances where parentage is not recognised under state and territory laws.

Where a child passport application is lodged without all required consents, including cases where there is an absence of consent from a surrogate mother, the Australian Passports Act provides for the consideration of such applications under 'special circumstances'. These special circumstances are set out in section 10 of the *Australian Passports Determination 2015* and include, for example, the circumstance where 'neither the applicant nor the Minister has been able to contact the non-consenting person for a reasonable period'. In addition, the Passports Act also provides for a number of other situations where a travel document may be issued to a child in the absence of the consent of each person with parental responsibility, including if the Minister is satisfied that the child's welfare (physical or psychological) would be adversely affected if the child were not able to travel internationally. All such applications are assessed on case-by-case basis.

DFAT's experience to date has been that in the vast majority of first-time passport applications involving international surrogacy arrangements, the surrogate mother's consent has been obtained.

***Information and assistance provided to the Australian public in relation to surrogacy arrangements***

DFAT provides general information to the Australian public on international surrogacy issues through the maintenance of an 'Overseas Births, Adoptions and Surrogacies' page on the Smartraveller website (**Attachment B**) and an 'International Surrogacy' bulletin (**Attachment C**). These resources are updated, as DFAT becomes aware of significant developments.

The 'Overseas Births, Adoptions and Surrogacies' page and 'International Surrogacy' bulletin provide general information to the public on international surrogacy, with more detailed information on key jurisdictions with significant surrogacy activity included in individual country pages of the Smartraveller website. The Smartraveller website warns of the risks involved in entering into such arrangements, and strongly encourages Australians considering such arrangements to seek legal advice on relevant Australian and foreign laws. It provides a caution about the risk of the regulatory environment in surrogacy host countries changing suddenly and without warning, and notes that an absence of rules and regulations governing surrogacy in some countries should not be seen as indicating that surrogacy is lawful in those countries.

In recent years, DFAT has observed an increase in complex international surrogacy-related cases. There have for example been cases in which commissioning parents have decided not to seek Australian citizenship for one or more children born through surrogacy. DFAT has no legal basis to intervene in such circumstances, particularly given that consular assistance is only available to a child born through an overseas surrogacy arrangement once the child has obtained Australian citizenship.

The most common requests for DFAT assistance recently have occurred where regulatory environments in a foreign jurisdiction have changed with little warning, in some cases leaving surrogate children with uncertain status in a foreign jurisdiction.

The lack of consistency in the domestic regulation of surrogacy arrangements can add to the complexities associated with international surrogacy arrangements. Some Australian jurisdictions (Australian Capital Territory, New South Wales and Queensland) have legislated to make overseas commercial surrogacy arrangements extraterritorial offences. This can raise complex questions about whether commissioning parents may have committed offences and determining whether such an offence may have been committed is not straightforward. DFAT has no investigative or law enforcement role. DFAT's role is limited to the issue of passport and the provision of consular assistance once the child has obtained Australian citizenship. DFAT has no involvement when international surrogacy arrangements are negotiated between commissioning parents and surrogacy service providers. In most cases, the contract to commission a child/ren through surrogacy has already been entered into before the commissioning parent(s) come to DFAT's attention.

### **3. Issues associated with international surrogacy arrangements**

Arising out of DFAT's passport and consular role in international surrogacy arrangements, DFAT has been and will be involved in the management of bilateral relations with countries in which Australians may be engaged in surrogacy arrangements.

DFAT has worked closely with foreign governments when the frameworks governing surrogacy in overseas jurisdictions have changed, in ways that may adversely impact Australians. In such instances, DFAT has pursued options to resolve those impacts, for example encouraging the implementation of transitional arrangements so that Australian commissioning parents, children born through surrogacy arrangements (particularly those 'in utero' when the policy or regulatory changes take place) and surrogate mothers are not unduly affected by the new measures. While DFAT will seek where possible to achieve outcomes which minimise the detrimental impact of such changes on Australians, the reality is that DFAT and the Commonwealth Government do not play a role in regulating surrogacy in foreign countries, and we may be limited in the advice we can give and changes we can secure. We cannot guarantee that arrangements can be put in place to assist Australians in a foreign jurisdiction nor provide advice on how a foreign regulatory regime might be implemented in relation to any Australian commissioning parents or children born of surrogacy overseas.

#### ***International legal frameworks which may impact international surrogacy arrangements***

The lawfulness of surrogacy is not specifically addressed as a matter of international law. DFAT notes that the Permanent Bureau of the *Hague Conference on Private International Law* is currently studying the private international law issues being encountered in relation to international surrogacy arrangements. This work may lead to pressure for greater international regulation of commercial surrogacy.

Although surrogacy is not specifically addressed as a matter of international law, broader conventions such as the *United Nations Convention on the Rights of the Child* (CRC) cover a range of issues regarding the protection of children which are relevant to surrogacy arrangements, including the right to birth registration and the right for a child to know and be cared for by his or her parents.

While surrogacy is neither prohibited or permitted at international law, certain behaviours which may occur in the context of initiating or concluding an overseas surrogacy arrangement may be inconsistent with international legal obligations. Australia has international legal obligations in relation to human trafficking and slavery which, in extremely limited circumstances, could be relevant to overseas commercial surrogacy arrangements. Australia has ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol), which supplements the *United Nations Convention against Transnational Organized Crime* (UNTOC). The Trafficking Protocol is the first legally binding global instrument with an agreed definition of trafficking in persons.

Australia is also a party to a number of other international instruments that form part of the legal framework on trafficking, including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination against Women*, the CRC and its Optional Protocols on *the sale of children, child prostitution and child pornography*, and on *involvement of children in armed conflict*, the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, and several International Labour Organization conventions relating to forced labour.

There are limited circumstances in which Australia's human trafficking and slavery-related offences (which give effect to Australia's international legal obligations in this area) could apply in relation to overseas surrogacy arrangements.

For example, under the *Criminal Code Act 1995 (Cth)*, it is an offence to organise or facilitate a child's entry into Australia, intending or reckless as to whether the child will be used to provide sexual services or will be otherwise exploited after entry. The child trafficking offence is an extraterritorial offence applying to Australian citizens and residents.

The Criminal Code also contains offences of servitude and forced labour, which could apply to Australian citizens and residents involved in overseas surrogacy arrangements where there is a risk that the surrogate mother may be exploited. A surrogate mother may be in a condition of servitude or forced labour if she does not consider herself free to leave or cease providing her services because of the use of coercion, threats or deception. The servitude and forced labour offences are also extraterritorial offences applying to all Australian citizens and residents overseas.

#### **4. The international surrogacy environment**

##### ***International trends***

Internationally, regulatory and legislative approaches to surrogacy vary significantly. A large number of countries restrict or prohibit access to commercial surrogacy arrangements, while a more limited number of countries have more permissive legal frameworks. Some countries do not regulate commercial surrogacy at all, considering it to be a private contractual arrangement between the commissioning parents and surrogate. In countries where Shariah (Islamic Law) applies, commercial surrogacy may be illegal for Muslims.

In recent years, DFAT has observed a trend towards increased regulation of international surrogacy arrangements, including in the Indo-Pacific region. It is now illegal for foreign nationals to commission surrogacy in many countries across the region, including Cambodia, Thailand, India and Nepal.

While Australians have traditionally sought to access surrogacy arrangements most frequently in countries within the Indo-Pacific region, DFAT has observed an increase in inquiries from Australians in relation to surrogacy arrangements in other regions such as Eastern Europe. Despite some parts of the United States retaining a regulatory framework allowing commercial surrogacy, DFAT has observed a decrease in the number of Australian passport applications involving surrogacy in the United States. These trends may reflect the changing regulatory environment within our immediate region, as well as the significant costs associated with surrogacy in the United States compared to other available options. DFAT has observed more complex problems arising from international surrogacy arrangements when undertaken in countries with limited regulation, as opposed to highly regulated (high cost) jurisdictions.

### ***Key international issues***

The significant differences between countries in relation to rules on jurisdiction, legality, applicable law (including in relation to legal parentage) and identity documents, among other things, create significant complexity in international surrogacy cases. This complexity is exacerbated by the fact that in some foreign jurisdictions, surrogacy policy and/or regulations may change significantly at short notice.

The limited or unclear regulatory frameworks for surrogacy arrangements in many jurisdictions give rise to a range of legal and social concerns particularly in relation to the welfare of the parties involved. Of particular concern is the potential in such environments for the exploitation of surrogate mothers or children born through surrogacy. Similar concerns arise in jurisdictions where a surrogacy ‘black market’ has emerged.

The apparent mobility of the international surrogacy industry means that changes to laws or practice in one country can result in the relocation of businesses to countries where the regulatory regime may be weaker. This shift to less regulated jurisdictions increases the risk of problems emerging with negotiated surrogacy arrangements. For example, the tightening of regulatory frameworks in some of the key surrogacy jurisdictions accessed by Australians in the Indo-Pacific region has encouraged Australian commissioning parents to seek out options in countries where there are less clear or less robust regulations. This has led to problems in some instances, including in relation to the recognition of legal parentage, or the issue of exit permits for children born through surrogacy.

DFAT is concerned that many commissioning parents rely on advice from surrogacy service providers or their agents, rather than obtaining independent legal advice. In some cases this can result in commissioning parents having inaccurate or incomplete information, including that surrogacy might be legal in locations where a country has regulated against the practice. DFAT is particularly concerned by reports that commissioning parents might be actively encouraged by surrogacy clinics to engage in surrogacy illegally or in jurisdictions where the legality of surrogacy is unclear. In several jurisdictions DFAT has also received some reports of fraud associated with surrogacy services, such as online financial scams pretending to offer surrogate services or through unregistered surrogacy businesses.

As outlined in section 3 above, the lack of consistency in the domestic regulation of surrogacy arrangements can also add to the complexities associated with international

surrogacy arrangements. DFAT has seen several cases where commissioning parents are named on the birth certificate and do not declare that a child was born through surrogacy arrangements in the child's citizenship and passport applications. Under the Passports Act, DFAT can either refuse to process an application where there are reasonable grounds to suspect fraud or dishonesty in the application or refuse to issue a passport if there is sufficient evidence that another person has parental responsibility and that person has not provided consent. In practice, these are difficult cases – and not always obvious.

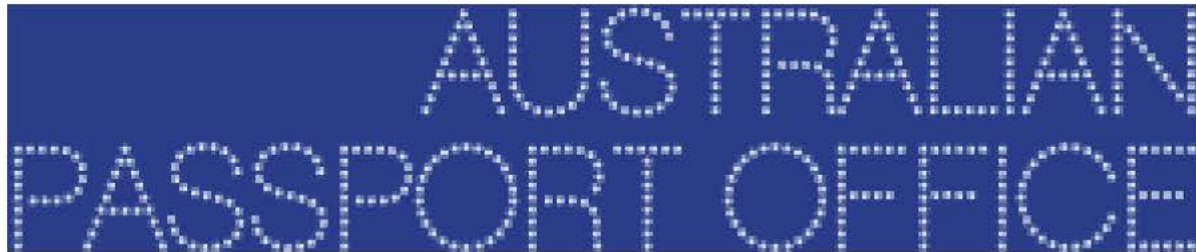
DFAT would welcome the Committee's consideration of these international issues during its inquiry into regulatory and legislative aspects of surrogacy. It is clear that there is an ongoing need for all governments, within Australia and overseas, to continue working closely together to ensure the interests of children and the welfare of all parties is protected in international surrogacy arrangements.



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# Surrogacy

## Caution

We strongly advise Australians who are considering an international commercial surrogacy arrangement to obtain information on the legal and other risks involved, and to seek independent legal advice regarding Australian and foreign laws.

Commercial surrogacy is prohibited in all Australian states and territories. In addition, the Australian Capital Territory, New South Wales and Queensland have made it illegal for residents to enter into international commercial surrogacy arrangements. The international regulatory environment for commercial surrogacy arrangements can change quickly.

See the [Smartraveller website](#) for further advice.

For information on Australian citizenship or Australian visa requirements for children born overseas, see [Fact Sheet 36a – International Surrogacy Arrangements](#) on the website of the Department of Immigration and Border Protection.

## General information

See [Applying for a child passport](#) for general information on children's passport applications and supporting documentation including photographs.

As well as the passport application form, the intended parent/s of a child born through surrogacy must complete [Form B4 \(Child born through surrogacy\)](#) (pdf) and they must present supporting documentary evidence of the surrogacy, such as a surrogacy agreement or a foreign court order.

Any foreign language documents presented to support a passport application must be accompanied by a full translation by a recognised translating and interpreting service. See [English translations of foreign language documents](#) for further information.

After lodgment, we may contact you for further information to assist in processing the application.

The Department of Foreign Affairs and Trade may disclose information provided in or with a child's passport application to any person or organisation that can verify the facts to establish the child's identity and eligibility for an Australian passport.

## Parental consent

In almost all cases, the written consent of each person considered to have parental responsibility, including the surrogate mother, is needed to obtain a passport for a child born through surrogacy.

Foreign court orders, even if they remove the parental rights of the surrogate mother, do not override the parental consent requirements under Australian passport law. However, all foreign court orders should be presented as supporting documents with a surrogate child's passport application.

If your child is the subject of any Australian court orders, the orders must be presented when the passport application is lodged. If an Australian court order permits your child to travel internationally, a passport may be issued provided all other requirements have been met.

If an Australian court order grants you parental responsibility for your child, you may lodge a passport application without the consent of the surrogate mother. However, even when an Australian court order recognises the parental responsibility of the intended parents, the surrogate mother may still retain her parental responsibility. We will contact you if further information is required to process the application.

If persons with parental responsibility are in different locations when the child's passport application is lodged, those who are not lodging may provide written consent through any passport office in Australia or an Australian diplomatic mission or consulate overseas.

If the surrogate mother resides outside Australia, her consent may be given on the passport application form (if she is one of the persons lodging the application) or on a [Form B5 \(Supplementary Consent Overseas\)](#) (pdf). If she is completing a Form B5, her signature must be witnessed by a person from one of the categories listed on the form.

An intended parent without a biological link to the child may not have parental responsibility for the purposes of Australian passports law. That parent's consent is recommended but not essential for the issue of a passport to the child.

If you are unable to provide all necessary consents, you may request that your child's application be referred to a delegate in the Australian Passport Office for consideration under [special circumstances](#), by completing a [Form B9 \(Child without full parental consent or Australian court order permitting international travel\)](#) (pdf) for each person whose consent is not obtained.

The delegate will make a decision taking account of all relevant circumstances. Please refer to the [Children and parental consent brochure](#) for further information.

## Emergency travel

If you are lodging your child's application overseas with full parental consent and there is a genuine need for the child to travel before a full validity passport can be issued, you may apply for an emergency passport (up to 12 months validity). A fee will apply.

It is advisable to apply for a full validity passport at the same time as applying for an emergency passport. The full validity passport can be collected from a passport office in Australia (or the nearest Australian mission or consulate) on presentation and cancellation of the emergency passport.

If the child's passport application does not have full consent, an emergency passport cannot be issued until the application has been approved.

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# BIRTH, ADOPTION AND SURROGACY

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## BIRTH OF AN AUSTRALIAN CITIZEN OVERSEAS

A person born outside Australia who is the biological child of an Australian citizen can apply for Australian citizenship by descent with the Department of Immigration and Border Protection.

Parents of children born overseas should obtain an application for Australian citizenship by descent (form 118) from the [Department of Immigration and Border Protection website](#) (<http://border.gov.au>). Contact the nearest [Department of Immigration and Border Protection overseas office](#) (<http://www.border.gov.au/about/contact/offices-locations>) for information on how to lodge a citizenship application.

Further information on Australian citizenship is available at [www.citizenship.gov.au](http://www.citizenship.gov.au) (<http://www.citizenship.gov.au>) or by calling the Citizenship Information Line on 13 18 80 from within Australia.

## OVERSEAS ADOPTIONS

### Intercountry Adoption (ICA)

ICA is the formal process which occurs when an Australian citizen or permanent resident, residing in Australia, adopts a child from abroad through a state or territory central authority.

Intercountry Adoption Australia has been established to guide people through the intercountry adoption process and connect them to a range of resources and services.

Call the information line on 1800 197 760, open 9am-5pm, Monday to Friday, across Australia or visit [Intercountry Adoption Australia](http://www.intercountryadoption.gov.au) (<http://www.intercountryadoption.gov.au>).

## Expatriate Adoption

Expatriate adoption occurs when an Australian living abroad adopts a child from the country where he or she is living. Expatriate adoption occurs through the overseas country's domestic processes and is finalised in that country. Expatriate adoption can also include third country adoption, where an Australian living abroad in country B, adopts a child from country C. Although this adoption may be legal and final in countries B and C, it may not meet legal requirements in Australia.

The Australian, state and territory central authorities are not responsible for expatriate adoptions. They do not assess or approve applications for such adoptions.

## Visas and citizenship

For information on immigration and citizenship requirements in relation to expatriate adoption and intercountry adoption, visit the [Department of Immigration and Border Protection website](http://www.border.gov.au/Trav/Life/Adoption-of-children) (<http://www.border.gov.au/Trav/Life/Adoption-of-children>) .

## INTERNATIONAL SURROGACY

International surrogacy is a complex and evolving area which raises significant legal and social considerations. Surrogacy is often poorly regulated in many countries, which gives rise to a range of concerns for the welfare of the parties involved. Concerns include both the potential exploitation of women and differing approaches among countries to the legal rights of children who are born as a result.

We strongly caution Australians to consider all legal and other risks involved in pursuing international surrogacy, and to seek independent legal advice regarding Australian and foreign laws. You should be aware that the regulatory environment in a host country may change and that transitional arrangements to ensure such changes do not unduly affect pending arrangements cannot be guaranteed. Further, the absence of rules and regulations governing surrogacy in some countries should not necessarily be seen as condoning commercial surrogacy. The risk of entering into such arrangements in less regulated markets is high. Australians entering into surrogacy arrangements overseas should be familiar with the entry and exit requirements for respective countries including visas to ensure full compliance with these from the outset. See our country-specific [travel advice](http://smartraveller.gov.au/countries/) (<http://smartraveller.gov.au/countries/>) .

See our [International surrogacy bulletin](http://smartraveller.gov.au/bulletins/surrogacy) (<http://smartraveller.gov.au/bulletins/surrogacy>) for information on the legal situation in India, Thailand, Nepal and Cambodia.

## Applying for Australian citizenship and a passport for a child commissioned through international surrogacy

Children born overseas through surrogacy arrangements are entitled to Australian citizenship and an Australian passport provided they meet the requirements of the *Australian Citizenship Act 2007* and the *Australian Passports Act 2005*.

You should be prepared for a lengthy process for returning to Australia with your child and should not confirm travel plans until you have finalised citizenship and passport processes. Should unforeseen legal complications arise, this time period could be considerably prolonged.

A child born overseas may be eligible for Australian citizenship by descent if they are born overseas and have at least one parent who is an Australian citizen at the time of their birth. Additional DNA testing and/or other evidence may also be required to demonstrate the parent-child relationship. Where an international surrogacy arrangement is declared or detected, medical procedure records and surrogacy agreement documents will be required to support the application. See *Form 1259i - Information about DNA testing for visa and citizenship applicants* (<http://www.border.gov.au/forms/Documents/1259i.pdf>) and *Fact Sheet 36a - International Surrogacy Arrangements* (<http://www.border.gov.au/about/corporate/information/fact-sheets/36a-surrogacy>) for further information.

All citizenship applications lodged for applicants aged under 16 years must be signed by a responsible parent of the child. The definition of a responsible parent is set out in the *Australian Citizenship Act 2007*. A person is a responsible parent of a child if they are the child's parent under the *Family Law Act 1975*, or have parental responsibility, guardianship or custody under Australian or foreign laws.

Each country has its own rules about who will be recognised as the parent(s) of a child born overseas. In some overseas jurisdictions, only the birth mother and her husband are recognised as the child's legal parents and must sign the application form on the child's behalf.

You should be aware that not all countries have an Australian mission that processes visa and citizenship applications in that country. This may mean that your application will need to be sent to another country for processing. Once your application is lodged then that Australian mission will contact you should further information be required.

Further advice on citizenship applications for surrogate children is available from the Department of Immigration and Border Protection at [citizenship.gov.au](http://citizenship.gov.au) (<http://citizenship.gov.au>) .

To obtain an Australian passport for a surrogate child, the written consent of each of the intended parent/s, and the surrogate mother is required. If you are unable to provide all necessary consents, you may request that the application be referred to a delegate in the Australian Passport Office for consideration under 'special circumstances'. You are advised not to commit to international travel before obtaining your child's passport as the processing times may vary depending on whether the application is lodged with full consent and all the required documentation.

For more information on how to apply for an Australian passport for your child, see the Australian Passport Office's information about [applying for a passport for a child born through surrogacy](https://www.passports.gov.au/passportexplained/childpassports/Pages/surrogacy.aspx) (<https://www.passports.gov.au/passportexplained/childpassports/Pages/surrogacy.aspx>) .

## Australian Surrogacy Legislation

In Australia, the regulation of surrogacy is a matter for the states and territories. All states and territories (except Northern Territory) have criminalised commercial surrogacy in their jurisdictions. The ACT, NSW and QLD have also legislated to make it illegal for residents of those jurisdictions to enter into commercial surrogacy arrangements overseas with penalties as set out below.

STATE/TERRITORY	LEGISLATION	PENALTY
NSW	<i>Surrogacy Act 2010</i>	Maximum penalty: 2500 penalty units, in the case of a corporation, or 1000 penalty units or imprisonment for two years (or both) in any other case.
ACT	<i>Parentage Act 2004</i>	Maximum penalty: 100 penalty units, imprisonment for one year or both.
Queensland	<i>Surrogacy Act 2010</i>	Maximum penalty: 100 penalty units or three years imprisonment.

It is important to note that surrogacy arrangements undertaken overseas may not fulfil the requirements to support a transfer of legal parentage under Australian state and territory law.







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# INTERNATIONAL SURROGACY

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This travel bulletin has been reviewed and updated. It contains new information regarding changes to surrogacy laws in India. On 4 November, the Government of India issued advice that surrogacy was no longer available for foreigners.

## International Surrogacy

This travel bulletin provides information for Australians planning to travel overseas for the purpose of surrogacy.

International surrogacy is a complex and evolving area which raises significant legal and social considerations. Surrogacy is poorly regulated in many countries, which gives rise to a range of concerns for the welfare of the parties involved. Concerns include both the potential exploitation of women and differing approaches among countries to the legal rights of children who are born as a result of surrogacy.

We strongly caution Australians to consider all legal and other risks involved in pursuing international surrogacy, and to seek independent legal advice on Australian and foreign laws. You should be aware that the regulatory environment in a host country may change without warning. The absence of rules and regulations governing surrogacy in some countries should not be seen as condoning commercial surrogacy. The risks of entering into such arrangements in less regulated markets are high.

Australians entering into surrogacy arrangements overseas should be familiar with the entry and exit requirements for respective countries, including visas for commissioning parents and infants, to ensure full compliance. The Australian Government cannot intervene in visa matters.

Surrogacy arrangements occur legally in a number of countries. Highlighted below are countries in which surrogacy is not legal or where specific rules or requirements governing overseas arrangements surrogacy are in place.

The following websites provide an overview of the legal issues affecting Australians considering overseas surrogacy arrangements:

- [Smartraveller overseas births, adoptions and surrogacies](http://smartraveller.gov.au/tips/birth-adoption-surrogacy.html) (<http://smartraveller.gov.au/tips/birth-adoption-surrogacy.html>)
- [Department of Immigration and Border Protection Factsheet on international surrogacy arrangements](http://www.border.gov.au/about/corporate/information/fact-sheets/36a-surrogacy) (<http://www.border.gov.au/about/corporate/information/fact-sheets/36a-surrogacy>)

## India

On 4 November 2015, the Government of India issued advice confirming surrogacy was no longer available to foreigners. With immediate effect visas and permission issued by Indian consulates or Foreigners Regional Registration Offices (FRRO) will not be available to foreign nationals seeking to visit India for the purpose of commissioning surrogacy.

For those Australian parents who have entered into surrogacy arrangements in India prior to 4 November and who are seeking to travel to India to collect their children, permission must be granted by the FRRO/Foreigners Registration Office (FRO). Those who are seeking to complete a medical process started before 4 November will need to seek permission from the Indian State Health authorities. Permission will be granted on a case by case basis.

Applicants seeking further advice about changes to surrogacy in India or visa requirements are encouraged to contact [Indian Consulates](http://www.hcindia-au.org/) (<http://www.hcindia-au.org/>) in Australia.

The Australian Government cannot intervene in visa matters, or in applications to the FRRO/FRO or India's State Health Authorities.

While in India, Australians are subject to the local laws of India and we strongly advise against any attempt to circumvent the requirement to obtain an exit permit to remove children from India. Visa guidelines for foreign nationals intending to visit India for commissioning surrogacy are strictly enforced. We strongly recommend that Australians comply fully with India's visa regulations. Failing to do so risks Australian parents being unable to travel to India to collect their children.

Australians with children currently in gestation are encouraged to contact the Australian Department of Immigration and Border Protection (DIBP) office at Australia's High Commission in New Delhi (+91 11 4122 1000 or [Citizenship.NewDelhi@dfat.gov.au](mailto:Citizenship.NewDelhi@dfat.gov.au) (<mailto:Citizenship.NewDelhi@dfat.gov.au>)) to discuss options under Australian migration and citizenship legislation.

See also our travel advice for [India](http://smartraveller.gov.au/Advice/India) (<http://smartraveller.gov.au/Advice/India>).

## Thailand

On 19 February 2015, the Thai Parliament passed legislation banning commercial surrogacy. The legislation was published in the Royal Gazette on 1 May and came into effect on 30 July. Australians are advised not to visit Thailand for the purpose of engaging in commercial surrogacy arrangements.

Thai authorities are enforcing documentation requirements upon departure from Thailand when they suspect a child has been born by surrogacy in Thailand. We strongly recommend that Australians already engaged in commercial surrogacy arrangements in Thailand seek independent legal advice, including on the implications of any new exit requirements.

Australians with existing agreements who may be affected by these arrangements should call the Consular Section at the Australian Embassy in Bangkok for the latest information (Tel: +66 2 344 6300 and follow the prompts for Consular Services).

See also our travel advice for [Thailand](http://smartraveller.gov.au/Advice/Thailand) (<http://smartraveller.gov.au/Advice/Thailand>).

## Nepal

On 28 October 2015, the Nepal Government approved the issue of exit visas for children born through surrogacy arrangements in Nepal, which had been delayed following a decision on 25 August 2015 by the Supreme Court of Nepal to immediately halt commercial surrogacy services in Nepal. The exit visa approval applies only to children conceived on or before 25 August 2015. We understand however that surrogate children of Nepali surrogate mothers may have to await a full decision by the Supreme Court. While in Nepal, Australians are subject to the local laws of Nepal and we strongly advise against any attempt to circumvent the requirement to obtain an exit permit to remove children from Nepal.

The Australian Government strongly recommends that commissioning parents do not consider surrogacy in Nepal. Australians should seek independent legal advice regarding these matters.

Australians with children currently in gestation are encouraged to contact the Australian Department of Immigration and Border Protection (DIBP) office at Australia's High Commission in New Delhi (+91 11 4122 1000 or [Citizenship.NewDelhi@dfat.gov.au](mailto:Citizenship.NewDelhi@dfat.gov.au)

(mailto:Citizenship.NewDelhi@dfat.gov.au) ) to discuss options under Australian migration and citizenship legislation for children who are already in gestation.

See also our travel advice for [Nepal](http://smartraveller.gov.au/Advice/Nepal) (http://smartraveller.gov.au/Advice/Nepal) .

## **Cambodia**

In November 2014, Cambodian authorities advised the Australian Government that the act of commercial surrogacy, or commissioning commercial surrogacy, was illegal in Cambodia with penalties including imprisonment and fines. Australians are advised not to visit Cambodia for the purpose of engaging in commercial surrogacy arrangements. Those considering commercial surrogacy in Cambodia should seek independent legal advice. While in Cambodia, Australians are subject to the local laws of Cambodia and should not rely on assurances from commercial clinics or other agencies suggesting there are ways to circumvent or influence local laws.

See also our travel advice for [Cambodia](http://smartraveller.gov.au/Advice/Cambodia) (http://smartraveller.gov.au/Advice/Cambodia) .

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- [Australian embassies, high commissions and consulates](http://dfat.gov.au/about-us/our-locations/missions/Pages/our-embassies-and-consulates-overseas.aspx) (<http://dfat.gov.au/about-us/our-locations/missions/Pages/our-embassies-and-consulates-overseas.aspx>)
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