



Government of **Western Australia**
Department of **Health**

Surrogacy under the *Assisted Reproductive Technology and Surrogacy Act 2025*

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The *Assisted Reproductive Technology and Surrogacy Act 2025* (ARTS Act) provides a new regulatory framework for surrogacy in Western Australia (WA), expanding access to surrogacy and simplifying some prerequisites for a valid surrogacy arrangement. The surrogacy framework under the ARTS Act applies to all surrogacies, regardless of whether assisted reproductive technology is used.

The ARTS Act does not come into effect until it is commenced by proclamation, which is expected to occur in mid-2027. Until then, the *Human Reproductive Technology Act 1991*, the *Surrogacy Act 2008*, the *Artificial Conception Act 1985* and subsidiary legislation remain in force.

Can anyone access surrogacy under the ARTS Act?

The ARTS Act removes current discriminatory barriers and expands access to surrogacy regardless of a person's sex, relationship status, gender identity, intersex status, or sexual orientation. This includes access for same-sex couples and single people who need surrogacy to form their family.

Access to surrogacy via a fertility clinic will be based on a clinical assessment and decision, with the clinician having regard to the person's current and future physical, psychological and social circumstances.

Before a clinic provides an Assisted Reproductive Technology (ART) procedure to achieve a pregnancy under a surrogacy arrangement, the clinic must also verify that a written surrogacy arrangement is in place and has been signed by the surrogate and each intended parent under the arrangement.

Who are the parties to a surrogacy arrangement under the ARTS Act?

At a minimum, the surrogate and each intended parent (formally known as an arranged parent) are parties to the surrogacy arrangement. The partner of the surrogate, or a donor of reproductive material or embryos, may also be a party to the arrangement, but this is no longer a requirement. However, fertility clinics must obtain donor consent for use of material or embryos in a surrogacy arrangement and ensure any counselling requirements for donation are met.

What are the requirements for a surrogate under the ARTS Act?

To enter into a surrogacy arrangement, the surrogate:

- Must be 18 years of age or older;
- Is no longer required to have previously had a live birth;
- Does not need to be a resident in WA,
- Must have received counselling from a [qualified counsellor](#) and [independent legal advice](#) .

There are additional requirements for surrogates at the time of an application to the Family Court for a parentage order, including for the surrogate to have freely consented to the parentage order and to have agreed in writing to a [relationship plan](#).

What are the requirements for intended parent/s under the ARTS Act?

To enter into a surrogacy arrangement, the intended parent/s must be 18 years of age or older. The intended parent/s must have received counselling from a [qualified counsellor](#) and [independent legal advice](#) .

There are [additional requirements](#) for intended parent/s at the time of an application to the Family Court for a parentage order, including that the intended parent/s must have lived in WA for at least 12 months (though not necessarily continuously) and for the child to be in their care.

What are the requirements for a valid surrogacy arrangement under the ARTS Act?

A surrogacy arrangement is valid if:

- All parties have reached 18 years of age;
- It is not for reward (reimbursement or payment of reasonable surrogacy expenses is permitted);
- It is in writing;
- It includes the required [contents](#);
- It is signed by the surrogate and each intended parent;
- It is entered into after the surrogate and each intended parent has received counselling from a [qualified counsellor](#),
- It is entered into after the surrogate and each intended parent has received [independent legal advice](#) about the arrangement and its implications; and
- It is entered into before the surrogate becomes pregnant.

Who is a qualified counsellor?

The required experience and qualifications for counsellors will be included in the ARTS Regulations, which will be published prior to commencement of the ARTS Act.

Counselling undertaken before commencement of the ARTS Act, in accordance with the existing legislation will be considered as sufficient.

What is independent legal advice?

Independent legal advice is when the intended parent/s or the surrogate, have freely chosen their own lawyer, who is providing the advice only to them, and not another party to the surrogacy arrangement. While the surrogate's cost of obtaining legal advice may be paid for by the intended parent/s as a [surrogacy expense](#), the surrogate still has the right to freely choose their own lawyer.

What needs to be included in a written surrogacy arrangement?

The ARTS Act outlines the required contents of a surrogacy arrangement. This includes agreement:

- By the surrogate to become or try to become pregnant; and
- By each intended parent:
 - To raise a child of the pregnancy; and
 - To pay or reimburse the surrogate's reasonable expenses specified in the arrangement.

Additional matters will also be outlined in regulations. The ARTS regulations will be published prior to commencement of the ARTS Act.

What is a surrogacy expense?

A surrogacy expense is a cost incurred by the surrogate that relates to the surrogate trying to become pregnant, being pregnant, being a party to the surrogacy arrangement or to proceedings in the Family Court for a parentage order. This may include, but is not limited to:

- Medical expenses of the surrogate.
- Lost income or earnings of the surrogate.
- Counselling expenses of the surrogate or their partner, if applicable.
- Reasonable travel and accommodation expenses of the surrogate.
- Insurance (eg. life, health, disability) for the surrogate that they would not have taken out had the surrogacy arrangement not been entered into.
- Childcare for the surrogate's children, if applicable.
- Expenses associated with legal advice related to the surrogacy arrangement or proceedings in the Family Court for a parentage order.
- Additional prescribed expenses may be outlined in regulations. The ARTS regulations will be published prior to commencement of the Act.

Does the surrogacy arrangement still need to be approved by the Reproductive Technology Council under the ARTS Act?

No, the ARTS Act removes the need for Reproductive Technology Council approval for surrogacy.

Other aspects of the process have also been simplified under the new framework. There is also no longer a requirement for a separate assessment and report by a clinical psychologist, or a separate assessment and report from a medical practitioner as currently required under the *Surrogacy Act 2008*.

Who is the legal parent in a surrogacy arrangement?

The surrogate is the legal parent of any child born from the surrogacy arrangement and remains so until a parentage order made by the Family Court of Western Australia transfers the [parentage of the child](#).

A surrogacy arrangement under the ARTS Act is not enforceable, other than the payment or reimbursement of the [surrogate's reasonable expenses](#).

Is commercial surrogacy permitted in WA?

No, surrogacy cannot be for reward and only altruistic surrogacy is permitted in WA. This means the surrogate cannot receive payment or other valuable consideration other than reasonable [surrogacy expenses](#). The ARTS Act also applies this offence to actions undertaken overseas, meaning it will also be an offence to engage in a commercial surrogacy arrangement overseas.

The prohibition of commercial surrogacy overseas, however, will only commence in approximately mid-2029 (2 years after the rest of the Act commences). This aims to give those intended parents who are already engaged in an overseas commercial arrangement the time to complete their surrogacy arrangement and acknowledges that surrogacy is not currently accessible in WA for all groups.

Can I undertake a surrogacy arrangement interstate or overseas under the ARTS Act?

A surrogacy arrangement may be undertaken interstate or overseas, providing it is not a commercial surrogacy arrangement or for any kind of reward. Commercial surrogacy is prohibited by the ARTS Act and will be an offence regardless of where it is undertaken

When can I apply to the Family Court of WA for transfer of parentage under the ARTS Act?

Different application timeframes apply depending on when the child was born.

For surrogate children born locally or overseas on or **after** commencement of the Act, applications must be lodged between 28 days and 6 months after the child is born (see below), with the possibility for extension from the Family Court.

For surrogate children born locally or overseas **before** commencement of the Act, applications must be lodged within a non-extendable 6-month window from approximately mid-2027 when the Act commences. These applications may be made regardless of the age of the child or person born from the arrangement, as long as they were born before commencement of the Act and are more than 28 days old at the time the application is made. Information for parties to a historical surrogacy arrangement who may be impacted by this can be found at [Advance notice of requirements for parentage order applications for historical surrogacies](#). More information on this will be made available closer to commencement of the Act.

How is parentage transferred from the surrogate to the intended parent/s under the ARTS Act?

The intended parent/s may apply to the Family Court for a parentage order in accordance with application [timeframes](#). The Family Court may transfer parentage to the intended parents providing:

- It is in the best interests of the child.
- The surrogacy arrangement is valid.
- The intended parent/s live in WA and have lived in the state for at least 12 months.
- The surrogate freely consents to parentage being transferred.
- The intended parent/s have responsibility for the day-to-day care and wellbeing of the child.
- The surrogate and intended parent/s have agreed to a written [relationship plan](#).

The Family Court has discretion to dispense with certain requirements under certain circumstances.

If there are two intended parents under the surrogacy arrangement, parentage may be transferred to only one of the intended parents under certain circumstances.

The Family Court will notify the Registrar of Births, Deaths and Marriages to register the transfer of parentage.

What is a relationship plan?

A relationship plan (formerly known as an approved plan) is a written plan, agreed to by all parties to the surrogacy arrangement and lodged with an application to the Family Court for a parentage order. It is prepared in anticipation of a parentage order being made for the child and usually includes whether or not the child will have an ongoing relationship with the surrogate, and if so, any matters pertaining to that relationship. It may include, but is not limited to, details of:

- Time the child is to spend with the surrogate.
- Communication between the child and surrogate.
- Information to be shared between parties to the surrogacy arrangement or other persons.

If the Family Court transfers parentage, the relationship plan becomes enforceable. The relationship plan may be varied, including to add or remove a party, with the agreement of all parties, or on application to the Family Court.

Are both gestational and traditional surrogacy permitted under the ARTS Act?

Yes, both forms of surrogacy are permitted.

Gestational surrogacy: this uses the intended parent and/or donor reproductive material (sperm and eggs).

Traditional surrogacy: this uses the surrogate's egg, and sperm from an intended parent or donor. The ARTS Act also allows traditional surrogacy without the use of ART services, when all the requirements of a valid arrangement can still be met.

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