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# **Family Court Protocol for the Adoption by New Zealand-Based Intended Parents of Children Born by Surrogacy Overseas**

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## ***Context***

In 2020, as a result of the Covid-19 worldwide pandemic, the Family Court established a protocol to enable remote hearings to take place urgently, to facilitate the adoption of children born through surrogacy overseas to New Zealand intended parents. The process was implemented successfully.

The protocol expired upon the expiry of the Epidemic Notice issued under the Epidemic Preparedness Act 2006.

The Law Commission has recommended the process continue in their report urging reform in this area.

The Adoption Act 1955 permits adoption applications to be considered by the Court when the applicants and the child/children are not physically in New Zealand. Amendments to the Family Court Rules now permit electronic filing of applications and the use of remote hearings if directed by a judge. The court registries are now equipped to enable remote hearings.

## ***The protocol***

This protocol aims to provide a framework to secure legal parenthood, in a child focussed manner, and in a timely way.

The updated protocol enables a streamlined use of technology and resources in international surrogacy cases in which the intended parents are planning to reside in New Zealand with the surrogate-born child. It will enable intended parents who meet the conditions outlined below to make an application to the Family Court from outside New Zealand.

Consequently, once the Family Court hearing has taken place and if an adoption order has been issued, the adoption can be registered in New Zealand confirming that the child is New Zealand citizen by birth by operation of law if a least one intended parent is a New Zealand citizen or entitled to reside in New Zealand indefinitely. This means that the child can receive a New Zealand passport prior to travelling to New Zealand.

Where the protocol does not apply, the existing framework will apply, under which the New Zealand government determines whether to permit a child's entry into New Zealand in international surrogacy cases. The Court's jurisdiction under the Adoption Act is not affected by this protocol.

### ***When will the protocol apply?***

The protocol will apply in international surrogacy cases in which the conditions below are met, or if one of the judges overseeing the protocol is satisfied that the New Zealand court is the appropriate forum to hear the matter and that the use of the protocol would be in the best interests of the surrogate-born child.

The conditions are intended to:

- help protect the interests of the surrogate-born child and of participants in surrogacy arrangements, and
- to ensure that a New Zealand court is the appropriate forum to hear the matter.

Applicants will be able to apply for adoption orders remotely under section 3(1) of the Adoption Act.

### ***Conditions***

1. At least one applicant must be habitually resident in New Zealand at the time of the application.
2. A legal parent-child relationship exists between the intended parent and surrogate-born child under the law of the jurisdiction in which the child was born (regardless of whether this relationship arose via a judicial determination, an administrative determination or process, or the operation of law).
3. Oranga Tamariki—Ministry for Children social workers have completed an adoption assessment of the applicants in person before the birth. An interview will also occur after the birth by audio visual link. This will enable Oranga Tamariki to provide the Family Court with reports under s 10 of the Adoption Act. The reports will cover the factors contained in the non-binding 2010 guidelines agreed by government for use when considering applications for adoption related to international surrogacy cases.
4. The social workers must have access to the following documents when completing their reports:
  - A copy of the surrogacy arrangement contract
  - Proof of consent from the surrogate mother (and her partner, if applicable) for the arrangement regarding the adoption application and the child travelling to New Zealand to reside permanently.
  - Evidence of a genetic link between at least one of the intended parents and the child (not required in the event the arrangement, according to the contract, does not involve any genetic relationship between the intended parent(s) and the child/ren)
  - Information about how the child will have access to information about their identity.

## ***Review***

The protocol will be reviewed annually. It will continue to operate while such reviews are underway.

The protocol will be in operation until the government changes the Adoption Act 1955 and/or regulates international surrogacy in some other legislation.

## ***Protocol in practice***

1. Two registries and two Family Court Judges nominated by the Principal Family Court Judge to oversee all international surrogacy adoption applications and hearings. These are:
  - a. Auckland Registry - for applications from Northern and Central regions.
  - b. Wellington Registry for applications from Lower North and Southern regions.
2. All international surrogacy adoption applications to be filed directly with one of those court registries, with cover letter highlighting the application falls within the ambit of this protocol. Electronic filing is permitted.
3. Applications filed electronically should be addressed to generic address for those two courts and cc'd to the responsible Court Registry Officer (CRO) and their Service Manager. Counsel will be provided with an updated contact list.
4. If any application for international surrogacy adoption is filed elsewhere, registrar to immediately transfer to either Auckland or Wellington courts under Rule 186.
5. Rule 186 application and consents to be filed with adoption application seeking proceedings to be dealt with in one of those courts.
6. Registrar to refer immediately to Judge to consider:
  - a. Rule 186 application
  - b. Section 10 social work referral with time frame
  - c. Directions for AVL or VMR hearing
7. Priority 30-minute AVL or VMR hearing to be scheduled within 6 weeks (maximum) before either of the judges overseeing the protocol.
8. Submissions and draft orders to be filed electronically 3 days prior.
9. If adoption order made, registrar to seal immediately. Notice of adoption order to be released to parties.
10. Protocol to be sent to all Family Court managers to ensure understanding and compliance.
11. Schedulers for Auckland and Wellington to be notified of requirement for priority AVL/VMR hearings.