

Draft SCAG surrogacy principles

1. A court may grant a parentage order where the court is satisfied a surrogacy arrangement was entered into by the surrogate mother, her partner (if any) and the intended parents prior to conception
2. A court may grant a parentage order where the court is satisfied all parties have undergone counselling with an accredited counsellor in relation to the surrogacy arrangement
3. A court may grant a parentage order where the court is satisfied all parties have received independent legal advice about the surrogacy arrangement prior to entering the arrangement
4. A court may grant a parentage order where an application was made to the court at least 21 days, but not more than six months after the birth
5. The intended parents must reside in the jurisdiction in which the application is made
6. All parties to the surrogacy arrangement must give informed consent to the granting of a parentage order
7. The child must be living with the intended parents at the time the application is heard
8. A court may grant a parentage order where the court is satisfied granting the order is in the best interests of the child
9. A court may grant a parentage order where certain requirements set out in the model provisions are not met if the court is, despite this, satisfied granting the order is in the best interests of the child. The ability of the court to waive requirements is subject to mandatory requirements set out in legislation
10. A court may take into account any other matter it considers relevant when determining whether to grant a parentage order
11. A court may grant a parentage order to parents who are now lawfully raising children under the age of 18 years conceived through surrogacy if:
 - (a) the court is satisfied that a surrogacy arrangement was entered into prior to conception
 - (b) the court is satisfied the surrogacy arrangement was not a commercial arrangement
 - (c) all parties consent to the granting of the order
 - (d) it is in the best interests of the child

In determining such an application the court will be required to take into account the views of the child, where appropriate.
12. After a parentage order is granted a new birth certificate can be applied for and will resemble an ordinary birth certificate recording only the names of the legal parents.

13. The original birth record would still exist and the child would be able to obtain both records in defined circumstances
14. The jurisdiction where the original birth certificate was issued will provide for the mutual recognition of a parentage order granted in another jurisdiction by provision of a new birth certificate. Alternately, the jurisdiction where the original birth certificate was issued should cancel the birth certificate and the jurisdiction where the parentage order was granted should issue a new birth certificate.
15. The surrogate mother will be able to enforce an arrangement for the reimbursement of reasonable expenses