

# NORTHERN TERRITORY OF AUSTRALIA

## LOCAL COURT SURROGACY RULES 2022

As in force at 20 December 2022

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 20 December 2022

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## LOCAL COURT SURROGACY RULES 2022

### Rules under the *Local Court Act 2015*

#### Part 1 Preliminary matters

##### 1 Title

These Rules may be cited as the *Local Court Surrogacy Rules 2022*.

##### 2 Commencement

These Rules commence on the day that section 2 of the *Surrogacy Act 2022* commences.

##### 3 Interpretation

(1) In these Rules:

***applicant*** means a person who is applying for a parentage order.

***application*** means an application to the Court under the *Surrogacy Act 2022*.

***approved*** means approved by the Chief Judge.

***birth parent***, see section 3 of the *Surrogacy Act 2022*.

***child*** means a child born under a surrogacy arrangement.

***intended parent***, see section 3 of the *Surrogacy Act 2022*.

***parentage order***, see section 34 of the *Surrogacy Act 2022*.

***partner***, see section 3 of the *Surrogacy Act 2022*.

***respondent*** means a person who is opposing the revocation of a parentage order.

***surrogacy arrangement***, see section 3 of the *Surrogacy Act 2022*.

**surrogate mother**, see section 3 of the *Surrogacy Act 2022*.

- (2) Unless the context or subject matter otherwise indicates or requires, a word or expression used in the *Local Court (Civil Jurisdiction) Rules 1998* has the same meaning in these Rules.

#### **4 Surrogacy proceedings**

These Rules apply in relation to any proceeding in the Court under the *Surrogacy Act 2022*.

#### **5 Procedure wanting or in doubt**

- (1) The Court may adopt and apply, with the necessary changes, any relevant procedures, rules and forms observed and used in the *Local Court (Civil Jurisdiction) Rules 1998* if the manner or form of the following is not prescribed by these Rules or by or under an Act:
- (a) the procedure for commencing or taking a step in proceedings;
  - (b) the procedure by which the jurisdiction, power or authority of the Court is to be exercised.
- (2) An act done in accordance with an order made or direction given under subrule (1) is taken to be regular and sufficient.

#### **6 Dispensing with compliance**

The Court may dispense with compliance with these Rules either before or after the time for compliance arises.

### **Part 2 General matters**

#### **7 Filing application**

An application filed in the Court is taken to be made on the date of filing.

*Notes for rule 7*

- 1 *An application for a parentage order under section 26 of the Surrogacy Act 2022 is made by the intended parent or intended parents of the child.*
- 2 *An application for revocation of a parentage order under section 40 of the Surrogacy Act 2022 may be made by the persons specified in that section.*

#### **8 Forms**

The following must be in a form approved by the Chief Judge:

- (a) an application;

- (b) a response to an application;
- (c) an affidavit of service;
- (d) a notice to the Registrar under section 46(2) of the *Surrogacy Act 2022*.

## **9 Service of documents**

- (1) All documents to be served under the *Surrogacy Act 2022* or these Rules must be served personally, unless the Court orders otherwise.
- (2) All documents supporting an application or a response to an application must be served on the same persons as the notices of the relevant application under sections 26(5) and 40(3) of the *Surrogacy Act 2022*.
- (3) An affidavit of service must be filed in the Court for each document served under the *Surrogacy Act 2022* or these Rules no later than 7 days before the day fixed for the first pre-hearing conference.
- (4) An affidavit of service must depose:
  - (a) the nature or identity of the document served; and
  - (b) who served the document; and
  - (c) the time, date and other particulars constituting service.

## **10 Pre-hearing conference**

- (1) On the filing of an application, a registrar must:
  - (a) fix a date and time for the holding of a pre-hearing conference; and
  - (b) return to the applicant a copy, affixed with the seal of the Court, of the application for service.
- (2) The date for a pre-hearing conference must be no later than 14 days after the application is filed or as soon as practicable after that 14-day period.
- (3) A pre-hearing conference must be held informally.
- (4) Each party to the application must attend the pre-hearing conference in one of the following ways:
  - (a) in person;

- (b) by a legal practitioner.
- (5) At the pre-hearing conference the Court may do any of the following:
  - (a) give the directions it thinks necessary regarding the appointment of a legal practitioner to represent the child;
  - (b) give the directions it thinks necessary for the expeditious determination of the proceedings, including the filing of additional evidence;
  - (c) adjourn the pre-hearing conference;
  - (d) fix a date for the hearing of the application.

#### **11 Duty to make full and frank disclosure**

Each party to a proceeding has a duty to the Court to make known fully and frankly all matters relevant to the making of a parentage order or the revocation of a parentage order, whether those matters tend to support or not to support making or revoking the order.

### **Part 3 Application for parentage order**

#### **12 Affidavits in support of parentage order**

- (1) In addition to the material required by section 28 of the *Surrogacy Act 2022*, an application for a parentage order must be supported by an affidavit by each of the following persons:
  - (a) each applicant;
  - (b) the surrogate mother;
  - (c) any other birth parent of the child;
  - (d) any other party to the surrogacy arrangement.
- (2) In the case of 2 applicants, one applicant's affidavit may rely on facts deposed to in the other applicant's affidavit.
- (3) Despite subrule (1), an affidavit by a person referred to in subrule (1)(b), (c) or (d) is not required if the Court dispenses with the consent of that person under section 32(3) or (4) of the *Surrogacy Act 2022*.

**13 Affidavit of applicant for parentage order**

The affidavit of the applicant for a parentage order must depose the following matters:

- (a) the location and residence of the child at the time of the application, including particulars of the person or persons with whom the child resides or who has the care and custody of the child;
- (b) the proposed names of the child;
- (c) the names, including maiden family name if applicable, of each applicant;
- (d) the date of birth, or age, and place of birth of each applicant;
- (e) if there are 2 joint applicants:
  - (i) whether they are partners; and
  - (ii) if they are married – the date and place of their marriage;
- (f) the place of residence of each applicant and whether the applicant is an Australian citizen or permanent resident;
- (g) if there are 2 intended parents in the surrogacy arrangement but only one applicant – the reason the other intended parent is not an applicant;
- (h) the reasons for each applicant entering into the surrogacy arrangement;
- (i) whether any party to the surrogacy arrangement was offered or is to receive a payment, reward or other material benefit or advantage, other than reasonable costs allowed under section 12 of the *Surrogacy Act 2022*;
- (j) whether any payment, reward or other material benefit or advantage was offered to or received by a person for any of the following:
  - (i) agreeing to enter into, or entering into, the surrogacy arrangement;
  - (ii) permanently relinquishing custody of a child born under the surrogacy arrangement;

- (iii) consenting to the making of a parentage order for a child born under the surrogacy arrangement;
- (k) if an applicant has or had any children:
  - (i) the given names, sex or gender and date of birth of each child (including a deceased child); and
  - (ii) whether a child is deceased; and
  - (iii) if there are or were 2 intended parents – whether the child is or was of their relationship;
- (l) that each applicant consents to the making of a parentage order;
- (m) if an applicant is asking the Court to dispense with consent of an intended parent under section 32(2) of the *Surrogacy Act 2022*, the grounds for that dispensation;
- (n) any other matters relevant to the application.

*Note for rule 13(g)*

*If there are 2 intended parents, they are expected to be joint applicants, unless there is a reason allowed under section 26(3) of the Surrogacy Act 2022, for example they are no longer partners.*

#### **14 Affidavit of surrogate mother in support of parentage order**

The affidavit of the surrogate mother in support of the parentage order must depose the following matters:

- (a) the name, including maiden family name if applicable, of the surrogate mother;
- (b) the date of birth, or age, and place of birth of the surrogate mother;
- (c) if the surrogate mother has a partner:
  - (i) the name of the partner; and
  - (ii) if married, the date and place of their marriage; and
  - (iii) whether the partner is a birth parent of the child;
- (d) the place of residence of the surrogate mother and whether she is an Australian citizen or permanent resident;
- (e) that the surrogate mother consents to the making of the parentage order sought by the applicant;



- (f) any other matters relevant to the application.

**15 Other affidavits in support of parentage order**

The affidavit of another birth parent of the child or any other party to the surrogacy arrangement in support of the parentage order must depose the following matters:

- (a) the name, including maiden family name if applicable, of the person;
- (b) the date of birth, or age, and place of birth of the person;
- (c) that the person consents to the making of the parentage order sought by the applicant;
- (d) any other matters relevant to the application.

**Part 4 Application for revocation of parentage order**

**16 Affidavit of applicant to revoke parentage order**

- (1) An application for revocation of a parentage order under section 40 of the *Surrogacy Act 2022* must be supported by an affidavit by the applicant.
- (2) The affidavit of the applicant for revocation of a parentage order must depose the following matters:
  - (a) a copy of the parentage order;
  - (b) the reasons for the revocation;
  - (c) any other matters relevant to the application.

**17 Response to revocation of parentage order**

Any person who opposes an application to revoke a parentage order must file a response to the application in the approved form.

**18 Affidavit of respondent**

- (1) The respondent must file an affidavit in support of the response as directed by the Court and no later than 14 days before the day fixed for the hearing.
- (2) The affidavit of the respondent must depose the following matters:
  - (a) the reasons for opposing the revocation;

- (b) any other matters relevant to the response.

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

#### Regulations

##### ***Local Court Surrogacy Rules 2022 (SL No. 26, 2022)***

Date made	15 December 2022
Commenced	20 December 2022 (r 2, s 2 <i>Surrogacy Act 2022</i> (Act No. 8, 2022) and <i>Gaz S66</i> , 20 December 2022)