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| **Document Details** | | | |
| **Subject** | **Process for Registration Orders under Division 2A of Part IV of the *Status of Children Act 1974*** | | |
| **Date Created** | December 2014 | **Last Updated** | December 2014 |
| **Authorised By** | Judge Hampel, Judge in Charge of Substitute and Parentage Orders List | | |

# Background

1. The *Justice Legislation Amendment (Succession and Surrogacy) Act 2014* amended the *Status of Children Act 1974* (‘the Act’) to recognise commissioning parents of a child born in Victoria for the purposes of birth registration where the child is conceived in another state or territory and a corresponding surrogacy parentage order has been obtained from the other state or territory.

# Process

1. In order to make an application for a registration order in the County Court, the applicant must file an Application for a Registration Order (application form to be found on County Court website).
2. The application must include the following:
   1. evidence that the child was conceived under the surrogacy

arrangement in another Australian State or Territory;

* 1. a certified copy of the child’s birth certificate;
  2. a copy of the sealed corresponding surrogacy parentage order; and
  3. an affidavit from the applicant(s) and any other relevant witnesses addressing the matters set out in s 29E(1)&(2) of the Act.

1. In order for the court to consider the matters set out in s 29E(1)&(2) of the Act, if the following information was not provided to the interstate provider as part of the surrogacy arrangement, the application must also include:
2. a criminal record check as evidence of whether the applicant(s) have had relevant charges proven or a relevant conviction[[1]](#footnote-1) recorded against them;
3. a child protection order check as evidence of whether a child protection order has been made removing a child from their custody or guardianship against the applicant(s); and
4. a letter from the Patient Review Panel advising as to whether the applicants have previously sought and had refused to a Victorian surrogacy arrangement.[[2]](#footnote-2)
5. Following the filing of the application with the court, the applicant(s) must serve the application on the Secretary of the Department of Justice (pursuant to s 29C of the Act).[[3]](#footnote-3)
6. Once the application and supporting documentation have been filed with the court, these will be considered by a Judge in chambers. The Judge will make directions as to:
   1. any further material the Judge requires the applicant to provide;
   2. the time by which the additional material to be provided by the applicants is to be filed and served;
   3. if the Judge considers that the Secretary should make further inquiries to assist the Court, the date for a directions hearing; and
   4. the date(s) of the directions hearing (if necessary) and/or final hearing.
7. The Court will notify the applicant(s) and the Secretary in writing of the directions made and provide the Secretary with any supporting documentation.
8. Pursuant to s 29D of the Act, the Secretary may appear or be represented at the hearing.[[4]](#footnote-4)
9. The Judge will hear the matter and based on the evidence before the court, determine whether to make a registration order under s 29E of the Act.

**Effect of date of surrogacy arrangement on making of registration order**

New section 48 of the *Status of Children Act 1974* (as inserted by section 41 of the *Justice Legislation Amendment (Succession and Surrogacy) Act 2014*) provides that Part IV of that Act, as amended by the amending Act, applies in respect of a surrogacy arrangement entered into before commencement of the amending Act, subject to certain modifications.

| **Date of surrogacy arrangement** | **Effect** |
| --- | --- |
| If the surrogacy arrangement was entered into before 1 January 2010 | The court may make a registration order under new section 29E of the *Status of Children Act 1974* if it is satisfied that the making of the registration order is in the best interests of the child.  The other criteria under section 29E, which the court would otherwise need to be satisfied of, do not apply.  Further, new sections 29C and 29D of the *Status of Children Act 1974*, under which the Secretary of the Department of Justice is to be given notice of an application for a registration order and is permitted to appear or be represented at the hearing, do not apply to these pre-2010 arrangements. |
| If the surrogacy arrangement was entered into on or after 1 January 2010, but before commencement of this Act (30 October 2014) | The court may make a registration order under new section 29E of the *Status of Children Act 1974*if it is satisfied that the making of the order is in the best interests of the child, the commissioning parents did not enter into the surrogacy arrangement for the purpose of avoiding requirements under Part IV of the *Status of Children Act 1974* or under the *Assisted Reproductive Treatment Act 2008* and the commissioning parents had a genuine connection to the Australian State or Territory in which the child was conceived.  The other criteria under section 29E, of which the court would otherwise need to be satisfied, do not apply. |
| On or after commencement of this Act (30 October 2014) | The provisions of the Act apply. |

1. Relevant charges/convictions are those as set out in s 14(1)(a) of the *Assisted Reproductive Treatment Act 2008* (charge proven of a sexual offence referred to in clause 1 of Schedule 1 to the *Sentencing Act 1991* or convicted of a violent offence referred to in clause 2 of Schedule 1 to the *Sentencing Act 1991*). [↑](#footnote-ref-1)
2. The documents referred to in paragraph 4 are not required as part of the application if the surrogacy arrangement was entered into prior to 1 January 2010 (*Status of Children Act 1974,* s 48 – see table below). [↑](#footnote-ref-2)
3. This paragraph does not apply if the surrogacy arrangement was entered into before 1 January 2010 (see *Status of Children Act 1974,* s 48 - see table below). [↑](#footnote-ref-3)
4. This paragraph does not apply if the surrogacy arrangement was entered into before 1 January 2010 (see *Status of Children Act 1974,* s 48- see table below). [↑](#footnote-ref-4)