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# **COVID 19 Protocol for the Adoption of New Zealand Surrogate Babies born overseas**



Principal Family Court Judge Jacquelyn Moran  
22 March 2022

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## ***What is the concern?***

There are a known number of babies currently growing in utero of overseas surrogates for births commissioned by New Zealand citizen or resident visa holder parents. There are likely to be further babies who are not yet known about. Due to the consequences of the outbreak of COVID-19 it is not always possible to obtain, in a timely manner, a passport from the issuing authority in the child's country of birth. This has the potential to result in surrogate babies being unable to travel to New Zealand with their commissioning parents.

## ***What is the usual process?***

The usual process is for an overseas passport to be issued for the baby in the country where they are born, DNA testing to be done, and a New Zealand visitor visa applied for and issued by the Minister of Immigration in accordance with non-binding Guidelines agreed by Cabinet in 2010.

Upon arrival in New Zealand, the adoption application is filed with the Family Court and processed, and a report under section 10 of the report directed, and a hearing allocated once the report is completed. If a final adoption order is granted and where the commissioning parents are New Zealand citizens or are entitled to be in New Zealand indefinitely, citizenship and, upon application, a New Zealand passport are issued. This normally occurs about 6-9 months after the arrival of the baby in New Zealand.

### ***What can we do to help?***

The Adoption Act 1955 permits an adoption application to be considered by the Court when the Applicants and the baby are not physically in New Zealand.<sup>1</sup>

For those babies where COVID-19 related delays in issuing documentation in the overseas country are present, with the use of AVL/VMR and electronic filing, together with a streamlined registry process and the use of specific judges to oversee this work, the applications can be determined remotely.

This will enable those affected babies in international surrogacy cases to be adopted by their commissioning parents and to consequently receive New Zealand citizenship by descent and a New Zealand passport prior to travelling to New Zealand. No Ministerial request for a visitor visa will be required.

It is not intended that this protocol will undermine or replace the existing framework under which the New Zealand government manages international surrogacies. This protocol instead aims to provide a temporary, targeted response to the specific issue of the inability to obtain a passport in the country of the baby's birth.

### ***How will this be implemented?***

This protocol will only apply in overseas surrogacy cases where passports in the country of the baby's birth cannot be obtained in a timely manner, due to the effects of Covid-19, and this directly and seriously impacts the return of the baby and commissioning parents to New Zealand.

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

Oranga Tamariki—Ministry for Children social workers will vet applicants before the birth, wherever possible in person but by audio visual link where this is not possible. An interview will also occur after the birth by audio visual link. Oranga Tamariki will 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

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<sup>1</sup> Adoption Act 1955, s 3(1).

applications for adoption related to international surrogacy cases. Ideally, the Oranga Tamariki assessment of the applicants is to commence before the birth of the baby. The social workers should 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 commissioning parents and the baby.
- Information about how the child will have access to information about their identity.

### ***Review***

The protocol will be in operation until 23 September 2022. It will then be reviewed to assess its functioning, including a consideration of the ongoing necessity for remote determinations if there are no longer difficulties in obtaining a passport in the country of the baby's birth.

### ***Steps needed to implement***

1. Two registries and two Family Court Judges to oversee all international surrogacy adoption applications and hearings from 20 August 2020 – 23 September 2022. These are:
  - a. Waitakere Registry (Claire O'Connor/Lauren Stephenson) Judge Pidwell - for applications from Northern and Central regions.
  - b. Wellington Registry (Rebecca Pratt/Phil McKenzie) Judge O'Dwyer - 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. An undertaking to be provided to file originals when reasonably available. (s 24 EPA and FC (Emergency) Amendment Rules 2020).

3. If any application for international surrogacy adoption is filed elsewhere, registrar to immediately transfer to either Waitakere or Wellington courts under Rule 186.
4. Rule 186 application and consents to be filed with adoption application seeking proceedings to be dealt with in one of those courts.
5. 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
6. Priority 30-minute AVL or VMR hearing to be scheduled within 6 weeks (maximum) before either Judge Pidwell or Judge O'Dwyer.
7. Submissions and draft orders to be filed electronically 3 days prior.
8. If adoption order made, registrar to seal immediately. Notice of adoption order to be released to parties.
9. Protocol to be sent to all Family Court managers to ensure understanding and compliance.
10. Schedulers for Waitakere and Wellington to be notified of requirement for priority AVL/VMR hearings.