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BEST PRACTICE GUIDELINES FOR CARE IN SURROGACY

FOR AUSTRALIAN HEALTHCARE PROVIDERS

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1. INTRODUCTION

These guidelines are to assist healthcare practitioners supporting surrogacy pregnancies and births. At all times, the child's best interests are paramount, and the birth mother retains her bodily autonomy. Healthcare providers should acquaint themselves with the legal context of surrogacy arrangements and defer to the parties to assist them to understand the dynamics in each unique relationship.

2. LANGUAGE

Care Providers should discuss the appropriate use of language with the parties to determine the terms they are most comfortable with. The following terms are used in this document:

Birth mother: the pregnant person, also referred to as the surrogate. Some surrogates dislike being referred to as 'birth mother,' whilst the legislation often refers to them in this manner.

Birth parents: the birth mother and their partner.

Intended parent/s (IPs): the intended parents of the baby, who will take custody of the child from birth. Alternatively, the parties may be referred to as 'intended mother' or 'intended father.' The intended parent/s may be heterosexual or homosexual, coupled or single. The intended parent/s will have qualified for surrogacy prior to conception.

Gestational Surrogacy (GS): This is the most common type of surrogacy in Australia and involves a surrogate who is not the genetic mother of the child. An egg is provided by the intended mother or a donor, which is fertilised with sperm from an intended father or a donor. The arrangement necessarily involves fertility treatments at an IVF clinic.

Traditional Surrogacy (TS): This is less common in Australia and involves a surrogate who has provided the egg for conception, fertilised with sperm from an intended father or a donor. Whilst traditional surrogacy is legal across Australia (except in the ACT), the parties often conceive without the assistance of an IVF clinic and instead via home insemination.

3. LEGAL CONTEXT

Altruistic surrogacy is legal in across Australia, except in the Northern Territory where there are currently no surrogacy laws. Surrogacy arrangements have the following elements:

- The arrangement is altruistic; commercial surrogacy is illegal across Australia. Surrogates can be reimbursed for surrogacy-related expenses.
- The parties receive counselling with a qualified surrogacy counsellor prior to entering the arrangement.
- The parties obtain independent legal advice prior to entering the arrangement, and often have a written surrogacy agreement they have signed prior to conception.
- The arrangement is not enforceable.
- The birth mother retains her bodily autonomy throughout pregnancy and birth.
- The birth is registered under the birth parents' names, with the full name chosen by the intended parents. The birth mother's surname can be used on hospital identification documents for baby. The baby is given the intended parents' chosen surname on the Birth Registration.
- The birth mother and her partner are the legal parents at the time of the birth. The intended parents will apply for a **Parentage Order** after the birth, which transfers parentage from the birth parents to the intended parents.

4. PREGNANCY CARE

The parties should be supported to attend appointments together, with the birth mother's consent. Information should be provided to allow the parties to make decisions together. The birth mother can make the final decision.

The birth mother is entitled to her privacy; medical information about the pregnancy can be shared with the intended parents with the birth mother's consent.

The intended parents should be offered parentcraft and birth classes and provided with information and supports as appropriate.

5. BIRTH PLANNING

It is crucial that healthcare providers meet with the birth parents and intended parents to discuss plans for the birth. It is important that the birth mother maintains her bodily autonomy throughout the birth and post-partum.

The birth mother should be supported to have the intended parents present during the birth, if that is her preference and circumstances allow. It is important for the birth mother's emotional wellbeing that she can see the intended parents meet the baby, and to remain close by in the first few days. Surrogacy births should also be photographed if practicable and the parties request it.

Arrangements for the birth such as cutting the cord, skin-to-skin, breastfeeding and placenta delivery should be discussed with the parties and information and support provided to allow them to make informed decisions.

6. FEEDING BABY

The intended parents can provide all care for baby, including feeding, immediately from the moment of birth. This can include:

- The intended parent may induce lactation and feed baby;
- The birth mother may breastfeed the baby;
- The birth mother may provide expressed colostrum and milk for baby;
- The baby may be formula fed;
- A combination of the above.

The feeding arrangements should be agreed between the parties, and plans will often change throughout the pregnancy and post-birth. The hospital should provide information, support and referrals for all parties to make informed decisions.

7. POSTNATAL CARE

The birth mother's privacy should be respected, and every effort made to accommodate her in a separate room from the intended parents and baby.

If there are no available rooms for the intended parents to stay, an intended parent should be accommodated to stay in the same room as the birth mother, with the baby.

It is usual for the intended parents to be treated as the parents of the child, subject to any agreement with the birth parents.

The birth mother is not obliged to care for the baby and is unlikely to want to do so. Further, the intended parents should be supported to undertake all care for the baby, including the provision of parent craft assistance.

The intended parents can care for the baby from the moment of birth. The birth parents may provide consent to any medical treatment of the baby if necessary.

8. DISCHARGE FROM HOSPITAL & ONGOING CARE

The baby and the birth mother may be discharged together or separately, depending on the circumstances. If there are to be separate discharges, the hospital may seek that the birth parents provide written consent for the intended parents to remain in hospital or leave with the baby.

The intended parents and baby should be provided with home visits as is generally provided to new parents and referrals for their local child health nurse. The birth mother should be provided with postnatal checkups and referred to her treating general practitioner as appropriate.

9. RESOURCES

Further information and resources can be found at www.sarahjefford.com, including information about surrogacy pregnancy and birth planning, feeding a surrogacy-baby and the importance of surrogacy birth photography. You can contact me on sarah@sarahjefford.com.

The Australian Surrogacy Podcast is available at www.sarahjefford.com and on Apple Podcasts and Spotify.