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## **SURROGACY INFORMATION FOR HEALTHCARE PROVIDERS**

The information contained herein is for medical practitioners treating patients who may seek assistance and treatment for a surrogacy arrangement in Australia.

There are between 60 and 80 surrogacy births per year in Australia. Whilst it is not common, it is supported by legislation and is entirely legal in most parts of Australia. Whilst many surrogacy arrangements involve friends and family, there are a growing number of arrangements involving women who carry for intended parents they have met for the purpose of surrogacy. These connections often occur online and at surrogacy events across Australia.

If a patient seeks advice and support for surrogacy in Australia, the practitioner should make a referral to a fertility specialist to discuss their options.

### **QUALIFYING FOR SURROGACY**

There must be a medical or social need for surrogacy. A medical need is determined on a case-by-case basis, but may include situations such as:

- A woman who does not have a uterus due to MRKH or hysterectomy;
- A woman who has a uterus but cannot, or should not, carry a pregnancy due to illness or medical condition and the risks to herself and/or the baby;
- A woman who has been unable to conceive due to medical condition that cannot be overcome with fertility treatment;

A medical need for surrogacy must be determined by the woman's treating medical specialist. This may include a mental health professional, if her condition is a psychiatric one.

Same sex male couples and single men and women can also pursue surrogacy, however there are restrictions in some States. The parties need to seek legal advice about their particular circumstances.

### **WHO CAN BE A SURROGATE?**

Most State laws require a surrogate to be 25 years or older. In many States a surrogate must have previously birthed her own child. Some clinics apply an upper age limit for a surrogate of 52 years; this is discretionary and not a legislative restriction. Whether a woman is a candidate to be a surrogate is an individual discussion between her and her medical practitioner. If a woman seeks to be a surrogate she may require a referral to a fertility clinic.

## **SURROGACY LAWS IN AUSTRALIA**

Surrogacy is legal in all States and the ACT. There are currently no surrogacy laws in the NT. Surrogacy is altruistic; commercial surrogacy is illegal.

The parties receive counselling and legal advice prior to entering into the arrangement, and may have a written Surrogacy Agreement they have signed prior to conception.

Surrogacy may be either:

- Gestational – where the surrogate is not the genetic mother of the baby
- Traditional – where the surrogate is the genetic mother of the baby

Both options are legal, except in the ACT where only gestational surrogacy is legal.

The birth mother and her partner are the legal parents at the time of the birth. The intended parents will apply for a transfer of parentage between one month and six months' post birth, and this is called a *Parentage Order*.

The birth mother retains her bodily autonomy throughout pregnancy and birth. Healthcare providers should ensure the birth mother and the intended parents are provided with information and offered the opportunity to discuss issues separately and together.

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.

## **DONOR CONCEPTION**

Altruistic gamete and embryo donation is legal across Australia; commercial arrangements are illegal. Many fertility clinics have access to a sperm bank, however egg donation often relies on the parties knowing each other prior to the donation. Many recipients will find an altruistic egg donor through forums such as Egg Donation Australia. It is illegal to pay a donor to travel to Australia to donate their gametes.

## **WHAT TO DO?**

If you are attended upon by intended parents or a woman seeking to become a surrogate, you should refer them to a fertility clinic for further advice and treatment. They should also be referred to a surrogacy lawyer for advice about their eligibility, the options and processes.

There are a number of resources available for intended parents, surrogates and healthcare providers at [www.sarahjefford.com](http://www.sarahjefford.com). The **Australian Surrogacy Podcast** shares stories from intended parents, surrogates and industry professionals across Australia.

Sarah Jefford is a Family and Surrogacy Lawyer practicing across Australia. Sarah has been an IVF parent, egg donor and a traditional surrogate, delivering a baby for intended parents in 2018. Sarah provides legal advice to intended parents and surrogates across Australia.

For further information, please visit [www.sarahjefford.com](http://www.sarahjefford.com) or contact [sarah@sarahjefford.com](mailto:sarah@sarahjefford.com).