

SARAH JEFFORD

Surrogacy Pregnancy and Birth Planning

A guide for surrogacy teams and
healthcare providers





About Sarah Jefford

Sarah Jefford (she/her) is a family creation lawyer, who helps families across Australia with surrogacy, donor conception and co-parenting arrangements. Sarah is an IVF mum, an egg donor and a surrogate.

Sarah advocates for positive, best practice surrogacy arrangements within Australia, and provides support and education to help intended parents make informed decisions when pursuing overseas surrogacy.

Sarah promotes the best interests of the child and the bodily autonomy of the surrogate, and supports parties to build a relationship that lasts.

Sarah produces the ***Australian Surrogacy Podcast***, sharing stories from intended parents and surrogates from around Australia.

Sarah has also published a book, ***More Than Just a Baby, a guide to surrogacy for intended parents and surrogates.***

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A guide for surrogacy teams and healthcare providers

Sarah Jefford
Surrogate and Surrogacy Lawyer

This guide was developed with pregnant surrogates, their partners and the intended parents in mind, to assist parties to navigate a surrogacy pregnancy, birth and the parentage order. It can also assist healthcare providers to support surrogacy teams during pregnancy, birth and the post-natal period.

All birth is unique, and surrogacy births are a special kind of unique which require a special kind of care.

Surrogates should be supported to have a positive birth experience, and intended parents should be supported as they welcome the new addition to their family.

Everyone should be supported to have a loving, caring and ongoing relationship, for their own wellbeing and that of the children they are bringing into the world.

I hope you find this guide useful. Further information can be found at www.sarahjefford.com and in the last pages of this guide.

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Language

Surrogates, donors and intended parents should agree on the language to be used in their surrogacy arrangement. The following terms are used in this document and are consistent with most legislation:

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

Birth parents: the birth mother and their partner.

Traditional Surrogacy (TS): This type of surrogacy involves a surrogate who has provided the egg for conception, fertilised with sperm from an intended father or a donor.

Intended parent/s: the intended parents of the baby, who will take care of the child from birth.

Gestational Surrogacy (GS): This type of surrogacy 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.

Parentage Order: The intended parents apply for a parentage order after the birth, to transfer parentage from the birth parents to the intended parents.

Surrogacy in Australia

The Legal Context

Surrogacy is legal across Australia. Surrogacy arrangements have the following elements:

- **Intended parents** can be gay or heterosexual, single or coupled.
- The **laws** that apply are that where the intended parents live.
- The arrangement is **altruistic**. Commercial surrogacy is illegal. Surrogates can be reimbursed for surrogacy-related expenses.
- The parties receive **counselling** with a surrogacy counsellor prior to entering the arrangement.
- The parties receive **legal advice** prior to entering the arrangement, and often have a written surrogacy agreement.
- The arrangement is **not enforceable**.
- The birth mother retains her **bodily autonomy** throughout pregnancy and birth.
- The birth is **registered** by the birth parents, with the full name chosen by the intended parents.
- The birth parents are the **legal parents** at the time of birth.
- The intended parents apply for a **Parentage Order** after the birth, which transfers parentage from the birth parents to the intended parents.

Patient Rights and Care

A note to healthcare providers

Surrogacy arrangements are legal across Australia, whether gestational or traditional surrogacy. The parties have satisfied a lawful process prior to conceiving the child. Healthcare providers need to recognise the legitimacy of the surrogacy arrangement and provide care that supports the parties and the baby.

Healthcare providers should seek input from the birth parents and the intended parents for the care that is best for their arrangement.

Surrogates cannot be forced, and should not be pressured, to care for the baby. Healthcare providers should recognise the legitimacy of the surrogacy arrangement and the autonomy of the surrogate to access the care they need. The surrogate should be supported to exercise their right to relinquish the baby into the care of the intended parents.

It is a child's right to be cared for by their parents. This includes children born through surrogacy, who should build primary attachments to their intended parents from the moment of birth.

The right of the surrogate to bodily autonomy and that of the child to be cared for by the intended parents should guide all decision-making for healthcare provision to surrogacy teams.

Pregnancy Care

A surrogacy pregnancy should be treated the same as other pregnancies. The surrogate should receive the same care as every other pregnant person.

The health practitioners' priority will be the health of the pregnant person and the baby. The surrogate will be offered all the usual diagnostic tests and treatments and birth options.

Surrogates can access Medicare rebates for pregnancy and birth care, just as if they were pregnant with their own child.

A surrogacy arrangement can be cared for in a private or public hospital, birth centre or at home, the same as any other pregnancy and birth.

The intended parents should be encouraged to attend antenatal appointments, 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 intended parents should be offered parentcraft and birth classes and provided with information and support for new parents.

Bodily Autonomy, Privacy and Information- Sharing

A surrogate, as any person, can make decisions about their body. This is the case during pregnancy, even when the baby is not intended to be raised by them and does not share their genetics.

Surrogacy teams should reach agreements about how the surrogate will manage the pregnancy, any treatments, birth options and termination of pregnancy.

Ultimately, if there is a disagreement, the surrogate will be able to make the final decision.

Surrogates will usually be happy to consent to the intended parents receiving

information about the pregnancy and the baby, and for them to attend healthcare appointments. This should not be assumed, noting that the surrogate maintains their right to privacy.

Health practitioners should not discuss the surrogate's pregnancy, health or body with the intended parents without the surrogate's knowledge and consent.

The surrogate should receive information directly and share it with the intended parents. Surrogacy teams should agree on their preferred way to share and receive information.

Birth Planning

Surrogates should be supported to have a positive experience as they watch the intended parents meet the baby. The baby has a right to be cared for by the intended parents.

Things to discuss with the team, health care providers and the hospital administration in advance of the birth include:

- **One-to-one care** for the surrogate and team.
- **Birth education and parentcraft** offered to the intended parents
- Subject to the surrogate's preference, the intended parents should be **present for the birth**.
- **Birth photography** should be supported.
- Surrogates and intended parents should be supported with their **milk and feeding** preferences.
- The intended parents should be provided with a **separate room** to care for the baby.
- Separate **discharges** for the surrogate and the baby should be facilitated where possible.

Birth Photography

Birth photography should be considered a vital aspect of a surrogacy birth.

Birth photography provides a record of the labour and birth for the surrogate, who has imagined this day for a long time and may not remember it in the detail they had hoped for. Photos can also assist everyone to process the birth afterwards.

Birth photographs are also important for the child to understand their story.

The team should discuss the option of having a professional photographer.

Birth workers should support and facilitate the attendance of a photographer wherever possible.

Milk and Feeding

New parents decide how to feed their newborn and make the right decisions for their family. Feeding decisions in surrogacy have an added layer of complexity.

Surrogacy teams will discuss their preferences for how the baby is fed. Some surrogates breastfeed or express milk for baby, while some intended parents will induce lactation. Many babies are given formula or a combination of breastmilk and formula.

Some options for feeding the new baby in a surrogacy arrangement 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 preferences may change during the pregnancy and post-birth.

The surrogate is unlikely to feel any distress if she chooses to breastfeed the baby. This is a personal preference.

The hospital should provide information, support and referrals for all parties to make informed decisions.

Registering the Birth

Registering the birth is the responsibility of the **birth parents**. The surrogate and their partner must be listed as the baby's parents on the original birth certificate.

The birth parents will complete the birth registration details online at Births Deaths and Marriages in the state or territory where the baby was born.

The surrogate and their partner will be listed as the baby's parents on the **original birth certificate**.

The **intended parents can choose** the baby's first, middle and surnames.

It is important that the child's name is a true reflection of the name that the parties intend for them to have for life.

An intended/biological father is **not** listed on the original birth certificate, even if the surrogate is single.

Once the **Parentage Order** is made, a new birth certificate will be issued listing the intended parents as the parents of the child.

Medical Treatment of Baby

The birth parents are the legal parents at the time of the birth and until a Parentage Order is made.

The birth parents may need to consent to any medical treatment of the baby during this time,

The intended parents and birth parents should agree on how these decisions are made.

The intended parents should be supported and involved in any decisions about the medical treatment of the baby.

The birth parents may need to sign consent forms for any treatment.

Leaving Hospital and Postnatal 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. A template **Parenting Plan** is included in the back of this book for this purpose.

The intended parents and baby should be provided with home visits as is usually provided to new parents. Referrals should be made for their local child health nurse.

The birth mother should be provided with postnatal checkups and referred to her treating general practitioner as appropriate.

Medicare

New parents can apply for their new baby to be placed on their Medicare card from birth. In surrogacy, the baby will sometimes be listed on the birth parents' Medicare card.

Medicare may also give the baby their own card.

The intended parents can contact Medicare and seek that the baby be listed on their Medicare card.

A copy of the Surrogacy Agreement can be provided to Medicare if necessary.

The intended parents should have no difficulty listing baby on their Medicare card once the Parentage Order has been processed and they are listed on the Birth Certificate.

The baby will have access to medical treatment regardless of which Medicare card they are listed on.

Post-Birth Counselling

New South Wales and Queensland require the parties to have further counselling after the birth, and before applying for a Parentage Order.

Intended parents can make enquiries with counsellors before the birth. The post-surrogacy counsellor must be independent of the pre-surrogacy counsellor.

Post-surrogacy counselling can be scheduled around 4-6 weeks after the birth. It is best to get advice about the requirements before booking in.

While it is not a requirement to have post-birth counselling in other states, it is important for the parties to debrief the birth and seek support as necessary.

Applying for the Parentage Order

After a baby is born through a surrogacy arrangement, the intended parents apply for a Parentage Order in their home state. The Parentage Order transfers parentage from the birth parents to the intended parents.

Intended parents can start the paperwork before the birth, but cannot lodge the application until at least one month after the birth. The application must be made within 6 months (or 12 months in South Australia) of the birth.

Documents required for the Parentage Order vary between the states, but can include:

- a signed copy of the **Surrogacy Agreement**
- the **pre-conception counselling** report
- statements of **legal advice** from both lawyers
- a copy of the intended parents' drivers licences
- **medical evidence** of the need for surrogacy if applicable
- the baby's **birth certificate**
- a letter from the **IVF clinic** confirming the embryo transfer and pregnancy
- the Victorian **PRP** or WA **RTC** certificate (if appropriate)

Resources and Information

Further information and resources can be found:

- **The Australian Surrogacy Podcast:**
sarahjefford.com/australian-surrogacy-podcast/
- **The Australian Surrogacy Handbook:**
sarahjefford.com/surrogacy-handbook/
- **More Than Just a Baby: A Guide to Surrogacy for intended parents and surrogates:**
sarahjefford.com/more-than-just-a-baby/

You can contact Sarah Jefford at sarah@sarahjefford.com

A template Birth Plan and a template Parenting Plan can be found on the following pages.

Birth Plan (Surrogacy)

Name	Role
	Birthing Person
	Surrogate's partner
	Doula/Support Person
	Intended Parents
	Photographer
<p>We are a surrogacy arrangement whereby Surrogate is carrying a baby for Intended Parents. This is Surrogate's # pregnancy, and the Intended Parents' #first/second baby.</p>	
Labour and Birth/Delivery	
Pain Relief	<ul style="list-style-type: none"> • Surrogate expects to birth without drugs and will rely on the use of a TENS machine, hot water, movement and massage. • Surrogate intends to have rely on gas/pethidine/epidural for pain relief.
Delivery	<ul style="list-style-type: none"> • Surrogate does not wish to have any routine vaginal examinations and the Intended Parents will leave the room during any VEs. • Surrogate wishes to be left to labour without intervention, where possible. • Surrogate prefers Doppler to CTG monitoring • The Intended Parents will discover whether Baby is a boy or a girl.
Placenta Delivery and Cord	<ul style="list-style-type: none"> • Baby to be placed on Surrogate chest until the placenta is delivered • The Intended Parents will 'catch' baby and have first cuddle if possible. • The Intended Parents to receive baby while cord still attached, after placenta delivery • Delayed cord clamping and cord to be cut by one of the Intended Parents. • Physiological fourth stage where possible, with Baby on Surrogate's chest. • Surrogate will give Baby the first feed
Skin to Skin Contact	<ul style="list-style-type: none"> • Once Baby and the placenta are delivered and presuming no complications, Surrogate will hand Baby to the Intended Parents • Surrogate will have skin-to-skin until placenta has been delivered. • The Intended Parents will then have skin to skin contact with Baby
Birth Complications	<ul style="list-style-type: none"> • If there are complications during or post birth Surrogate requests that their partner will be their primary support person • C-section – it is expected that both the Intended Parents will be in theatre if possible. The surrogate's partner will wait in another room [or] Partner will be in theatre while the Intended Parents remain in recovery.

	<ul style="list-style-type: none"> • Everyone will remain together in theatre and recovery, where possible • If there are complications with Baby, then The Intended Parents will accompany Baby while surrogate's partner will remain with Surrogate.
First Moments	<ul style="list-style-type: none"> • Regardless of the birth, it is important that Surrogate has a clear line of sight to the Intended Parents receiving, seeing or meeting Baby for the first time. • As this is an important moment, allowance needs to be made for this to be recorded by photo and video. • If Surrogate is unable to witness these first moments then it is particularly important that these moments be recorded.
After Birth Plan and Care	
Hospital Rooms / Stay	<ul style="list-style-type: none"> • It is requested that the Intended Parents are accommodated in a separate room with Baby. • We expect to remain in hospital for 24 hours even where birth is uncomplicated. • The Intended Parents will be on the primary visitor list if Baby is admitted to NICU and they are to visit Baby without Surrogate's presence being required.
Consent for Baby	<ul style="list-style-type: none"> • Any decisions about medical treatment or procedures for Baby to be discussed with Surrogate, the Intended Parents in the same room. Surrogate will sign any required consent forms after discussion with The Intended Parents.
Feeding Baby	<ul style="list-style-type: none"> • Surrogate will express colostrum pre-birth which will be frozen and brought to hospital for Baby. • The Intended Parents will feed Baby formula in addition to any milk provided by Surrogate. • Surrogate has the support of lactation professionals and will express for Baby [or] • Surrogate will not provide milk for Baby and will seek assistance to inhibit lactation.
Baby Hospital Care	<ul style="list-style-type: none"> • The Intended Parents will provide all care to Baby and need to be supported the same as any new parents and provided with parent craft education.
Leaving the Hospital	
Discharge Process	<ul style="list-style-type: none"> • Baby is to be discharged into the care of the Intended Parents. Surrogate will leave hospital when she is ready; Baby will leave when s/he is ready. • If the hospital requires written authority for Surrogate to be discharged separately, a Parenting Plan can be provided to the hospital.
Follow up Contact and Care	<ul style="list-style-type: none"> • The Intended Parents's details to be listed as the primary contact point. • Surrogate, the Intended Parents and Baby will be in the same location for the midwife home visit so that appropriate follow up care and support can be provided to all parties. • Any referrals for ongoing parenting support to be given to The Intended Parents. Surrogate will seek postnatal support from her GP and Doula.

_____ & _____
INTENDED PARENT 1 INTENDED PARENT 2

AND

_____ & _____
SURROGATE SURROGATE'S PARTNER

SURROGACY PARENTING PLAN



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THIS AGREEMENT

BETWEEN _____ (intended parent) and
_____ (intended parent) of
_____ (address)

AND _____ (surrogate) and
_____ (surrogate's partner)
of _____ (address)

RECITALS

A. _____ (surrogate) was born
_____ (date) and is now aged ____ years.
_____ (surrogate's partner) was born
_____ (date) and is now aged ____ years.

B. _____ (surrogate and partner)
live in _____ (suburb) with their family.

C. _____ (intended parent) was born
_____ (date) and is now aged ____ years.
_____ (intended parent) was born
_____ (date) and is now aged ____ years.

D. The parties entered into a surrogacy arrangement pursuant to the
_____ (surrogacy legislation).

-
- E.** The surrogate conceived a child in _____ (month) with the intention that the said child would be relinquished to the care of the intended parents immediately upon the child's birth.
- F.** The pregnancy is expected to reach 40 weeks' gestation on _____ (date).
- G.** The surrogate is attending at the _____ (hospital), for antenatal care and treatment.
- H.** The parties intend to seek a Parentage Order after the birth. The Parentage Order application cannot be made prior to the baby reaching at least one month of age.
- I.** The surrogate and partner do not intend exercising parental responsibility for the child. This Parenting Plan is intended to provide the intended parents with full parental responsibility for the child immediately after the birth and pending the making of the Parentage Order.
- J.** The parties intend that this Parenting Plan will be relied upon by hospital staff in their care of the child.

OPERATIVE PART

1. The parties agree that:

- (a) Upon the birth of the child, the surrogate and partner shall relinquish parental responsibility to the intended parents.
- (b) If the child requires any specialist care after the birth, the intended parents shall be in attendance and shall be consulted as to diagnosis, treatment and care of the child;
- (c) The surrogate may be discharged from hospital separately to the baby. The baby can be discharged directly into the care of the intended parents.
- (d) The surrogate and partner shall sign all such documents as requested by the intended parents for the treatment of the child and the discharge of the child into the intended parents' care.
- (a) Upon the child's discharge from hospital, s/he shall live with the intended parents and they shall be responsible for all the child's care.

Execution page

DATE: _____

SIGNED BY THE PARTIES

SIGNED BY)	
)	
.....	
(intended parent 1 name)		(intended parent 1 signature)

SIGNED BY)	
)	
.....	
(intended parent 1 name)		(intended parent 2 signature)

SIGNED BY)	
)	
.....	
(surrogate's name)		(surrogate's signature)

SIGNED BY)	
)	
.....	
(surrogate partner's name)		(surrogate's partner signature)

