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# Best Practice Guidelines for Care in Surrogacy

For Australian health practitioners





## Introduction

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

These Guidelines are to assist health practitioners in Australia who are supporting a surrogacy pregnancy and birth.

With less than 150 surrogacy births across Australia each year, many health practitioners will have limited experience supporting a surrogate and intended parents through pregnancy and birth.

Many hospitals do not have surrogacy-specific policies, and some policies are not inclusive and do not reflect modern surrogacy in Australia.

These Guidelines can be used to draft policies for surrogacy care. Hospitals should have surrogacy-specific policies to ensure care is inclusive and supportive of all family types.

Care should be provided in the context that the child's best interests are paramount and the surrogate retains their bodily autonomy.

For more comprehensive advice, practitioners can download the **Surrogacy Pregnancy and Birth Planning** guide.

Some parts of the Guidelines are hyperlinked so you can find more information.

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## Language and definitions

The following terms are used in this document and are consistent with most surrogacy 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.

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

**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.

**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.

# 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 only exception is in Western Australia, where law reform is expected in 2025.
- 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.

## Pregnancy Care

The intended parents should be supported to attend appointments, with the surrogate's consent.

The **surrogate retains her autonomy** throughout pregnancy and birth.

Information should be provided to allow the parties to make decisions together. The surrogate can make the final decision.

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

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

Read more: **Surrogacy Information Sharing and Privacy**

## Birth Planning

Health practitioners should meet with the birth parents and intended parents to discuss plans for the birth.

The surrogate retains her bodily autonomy throughout the birth and post-partum. The surrogate 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 surrogate's emotional wellbeing that she can see the intended parents meet the baby, and to remain close by in the first few days.

**Birth photography** can assist the surrogate to process the event.

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.

## Milk & Feeding

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

- The intended parent may induce lactation and feed baby.
- The birth mother may breastfeed the baby.
- The surrogate may express 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.

You can read more information about [\*\*surrogacy milk and feeding\*\*](#).

## 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 surrogate, with the baby.

Thee intended parents should be treated as the parents of the child, subject to any agreement with the birth parents.

The surrogate is not obliged to care for the baby and is unlikely to want to do so.

The intended parents should be supported to provide all care for the baby, and provided with 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.

## Discharge from hospital

The baby and the surrogate 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 and referrals for their local child health nurse. The surrogate should be provided with postnatal check-ups and referred to their treating general practitioner as appropriate.

## Resources and Information

Further information and resources can be found:

- **[The Australian Surrogacy Podcast](#)**
- **[Surrogacy Pregnancy and Birth Planning guide](#)**
- **[More Than Just a Baby: A Guide to Surrogacy for intended parents and surrogates](#)**

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