

Surrogacy

The issue of surrogacy can cause great moral, ethical and legal debate within the community. Surrogacy arrangements are complex and involve medical, emotional, financial and legal issues. However, with increasing demand for assisted reproductive treatment (ART) and a decline in the number of children available for adoption, more Australians are considering surrogacy as a means to having a child.

Surrogate mother

A surrogate mother is someone who gestates (conceives and carries within the uterus) and then gives birth to a child for another person or couple, with the full intention of handing the child over to that person or couple after the birth.

In Australia, the surrogate mother must not have any genetic link to the child she carries for the commissioning parent or parents. Therefore, her egg may not be used in the surrogacy arrangement. The egg and sperm used to form the embryo for transfer to the womb of the surrogate mother must be provided by the commissioning parent or parents (the person or people for whom the surrogate is becoming pregnant) or a donor.

In some cases, a donor egg may be used in conjunction with the commissioning father's sperm, or donor sperm may be used in conjunction with the commissioning mother's egg to form an embryo for transfer to the surrogate's womb.

Why do people consider surrogacy?

Surrogacy is not a common procedure compared with other forms of assisted reproductive treatment. A surrogacy arrangement could be considered if:

- A woman is unable to become pregnant as she has had a hysterectomy or is missing part of her uterus, uterine lining, ovaries or other parts of the genital tract.
- A woman may have a health condition that makes pregnancy dangerous or she may not be able to carry a baby to term.
- A couple in a male same-sex relationship may wish to have a child using their sperm.
- A man may wish to have a child, but have no partner.
- A woman, who has embryos in storage with her male partner, dies and the man wishes to use the embryos to have a child.

Many people argue that it is difficult to compare surrogacy with other reproductive methods such as egg donation, as the surrogate mother is undergoing all the emotional, mental and physical feelings of pregnancy.

Issues to consider

There are a number of medical, emotional, financial and legal issues to consider in making a surrogacy arrangement and once the surrogate mother gives birth and hands over the child. Visit the Victorian Assisted Reproductive Treatment Authority (VARTA) website for information about these issues.

What are the key ingredients for a positive surrogacy arrangement?

Potential factors that can contribute to a positive outcome from a surrogacy arrangement include:

- Minimal risk factors – stable mental and physical health, positive life situation, supportive partner
- Clear and open communication between all parties
- All parties have clear boundaries and realistic expectations
- All parties have knowledge of the medical process, including being realistic about the timeline – it could be up to 12 months before embryo transfer even occurs
- Realistic expectations about the emotional responses and reactions that may occur during the process. Emotions should be managed with care and sensitivity – anxiety, grief, guilt and disappointment and are all common feelings
- Discussions between all parties regarding the fair and reasonable expenses of the surrogate that should be covered
- Commissioning parent(s) should budget for medical, counselling and legal costs
- Agree on a pregnancy and birth plan that all parties are comfortable with, but remember that the birth mother has the right to manage her own pregnancy as any other pregnant woman does, despite what may be agreed to in the surrogacy arrangement.

Surrogacy legislation

All surrogacy arrangements in Australia must be altruistic, which means that the surrogate mother receives no material gain from acting as a surrogate.

Most Australian states have specific legislation that outlines the requirements for surrogacy. In the absence of legislation, states and territories are required to abide by national ethical guidelines issued by the National Health and Medical Research Council (NHMRC).

Check with your local IVF clinic or legal advisor for the current surrogacy legislation in your state or territory.

Surrogacy legislation in Victoria

Under the *Assisted Reproductive Treatment Act 2008*, the requirements are as follows.

The commissioning parent(s):

- Must be infertile or unable to carry a baby or give birth, or
- There is a likely medical risk to the mother or baby if pregnancy is carried out.

The surrogate:

- Must be at least 25 years old
- Must have previously been pregnant and given birth to a live child
- Must not use her own eggs in the surrogacy arrangement.

NOTE: it is preferred that the surrogate has already completed her family.

All parties, including the commissioning parent(s), the surrogate and the surrogate's partner (if any), must:

- Undergo a criminal record check and a child protection order check
- Undertake counselling and obtain independent legal advice.

Some clinics also require any donor involved in the arrangement to comply with the same requirements.

What are the medical risks of surrogacy?

There are certain medical risks of surrogacy, which are similar across all methods of assisted reproductive treatment. These can include:

- Effects on the child born as a result of the treatment – IVF treatment has a greater chance of producing multiple births, which increases the chance of the baby being born prematurely and therefore to have below-normal birth weight.

- Effects on the egg provider – reactions to fertility drugs, including hot flushes, feelings of depression or irritation, headaches and restlessness. There is also the small risk of ovarian hyper-stimulation syndrome (OHSS), which can cause stomach pains, nausea, vomiting, shortness of breath and faintness. However, this is extremely rare.
- Effects on the surrogate – the usual risks associated with any pregnancy and birth. These risks are increased with the age of the surrogate.

There is also the rare risk of transfer of HIV and/or hepatitis. To eliminate this risk, mandatory screening of everyone involved in surrogacy is required.

To enhance safety, embryos are also 'quarantined' for six months (although this time period may vary from clinic to clinic), at the end of which, before proceeding with the embryo transfer, any infections or diseases are screened for a second time.

For more detail about the risks involved in surrogacy, please consult your fertility specialist.

Where to get help

- Your doctor
- An IVF clinic in your state or territory
- Victorian Assisted Reproductive Treatment Authority

Things to remember

- Surrogacy is not a simple alternative to having a child. The process and surrounding issues are complex.
- Surrogacy legislation in Australia may vary from state to state.

This page has been produced in consultation with, and approved by:

Victorian Assisted Reproductive Treatment Authority

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