
Surrogacy

Summary

- Surrogacy is not a simple alternative to having a child.
 - The process of surrogacy and surrounding issues are complex.
 - Surrogacy legislation in Australia may vary from state to state.
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Surrogacy arrangements are medically, emotionally, financially and legally complex. For some people who previously were unable to have children, including gay couples and women who are unable to carry a pregnancy, surrogacy offers the opportunity to have a child.

The information provided here relates to surrogacy arrangements in Australia. If you are considering undertaking surrogacy elsewhere you may find the information available on the [**Victorian Assisted Reproductive Treatment Authority's website**](#) helpful.

The surrogate

A surrogate, sometimes also called a gestational carrier, is a woman who conceives, carries and gives birth to a child for another person or couple (intended or commissioning parents). The surrogate agrees to give the child to that person or couple after the birth. In most parts of Australia, including Victoria, a surrogate cannot be the genetic mother of the child she carries. This means that her egg cannot be used in the surrogacy arrangement. The future child's mother and father, or a donor, provide the egg and sperm to form an embryo. This embryo is then transferred to the uterus of the surrogate who carries the pregnancy and gives birth. In Australia, only altruistic surrogacy is allowed. This means that it is illegal to pay the surrogate for her role beyond reimbursing her for medical and other reasonable expenses.

Reasons for surrogacy

A surrogacy arrangement may be considered if:

- a woman is unable to become pregnant or carry a pregnancy because she has had a hysterectomy or is missing part of her uterus, ovaries or other parts of the genital tract
- a woman has a health condition that makes pregnancy dangerous
- a couple in a male same-sex relationship wish to have a child using the sperm of one or the other partner
- a single man wishes to have a child using his sperm
- a woman who has frozen embryos in storage dies and her male partner wishes to use the embryos to have a child.

Things to consider before entering a surrogacy arrangement

There are many medical, emotional, financial and legal issues to consider when entering a surrogacy arrangement. There are also matters to be aware of once the surrogate gives birth and gives the child to the intended parents.

General information is provided here but for detailed information about all aspects of surrogacy visit the [**Victorian Assisted Reproductive Treatment Authority \(VARTA\) website**](#).

Key factors for a successful surrogacy arrangement

Factors that can contribute to a positive surrogacy arrangement include:

- all parties being in good mental and physical health
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- clear and open communication between all parties
- clear boundaries and mutual understanding of the relationship and interactions between the surrogate and her family and the commissioning parent(s)
- having realistic expectations about the chance of a successful outcome
- all parties having a good understanding of the medical processes involved
- being realistic about the timeline (it can take a year or more before embryo transfer occurs)
- being prepared for the emotional responses and reactions that can occur during the process
- agreement between parties regarding what is fair and reasonable payment of the surrogate's expenses (including what expenses will be covered)
- being aware of and prepared for the financial costs involved
- agreement between parties on how the pregnancy and birth will be managed.

Surrogacy legislation in Australia

All surrogacy arrangements in Australia must be altruistic (where the surrogate does not get paid for acting as a surrogate, other than being reimbursed for medical and other reasonable expenses).

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. There is also information available on each state's legal position on altruistic surrogacy.

Surrogacy legislation in Victoria

Under the Assisted Reproductive Treatment Act 2008, the following requirements apply:

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 eggs in the surrogacy arrangement.

It is preferred that the surrogate has already completed her family but this is not a legal requirement.

All parties, including the commissioning parent(s) and the surrogate and the surrogate's partner (if she has one):

- must undergo a criminal record check and a child protection order check
- must have received counselling and legal advice.

Some clinics also require the donor involved in the arrangement to comply with these two requirements.

The medical risks of surrogacy

There are certain medical risks involved in surrogacy. They are similar to the risks of other assisted reproductive treatment (ART) procedures [<https://www.varta.org.au/resources/publications/possible-health-effects-ivf>]. These risks include:

- for the child – if more than one embryo is transferred this increases the risk of **multiple birth**. Multiple birth is associated with **premature birth**, low birth weight and health problems for the babies
- for the egg provider – fertility drugs are given to stimulate the ovaries to produce multiple eggs. There is a small risk that these can cause **ovarian hyper-stimulation syndrome** (OHSS). OHSS is a potentially serious condition which, in very rare cases, can lead to blood clots, kidney failure and death
- for the surrogate – pregnancy and birth are associated with some risks, including development of **gestational**

diabetes and **high blood pressure**, bleeding, and needing a caesarean section.

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

Where to get help

- Your doctor
- An IVF clinic in your state or territory
- **Victorian Assisted Reproductive Treatment Authority** (VARTA) Tel. (03) 8601 5250
- **Surrogacy Australia**

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