

## **INFORMATION SHEET: Gay men and surrogacy**

This information sheet has been prepared for gay men who are considering surrogacy as a way of having a child, and the agencies (including mental health professionals) who work with them.

Over the past decade growing numbers of gay men in particular have entered into surrogacy arrangements in Australia or overseas in order to become parents. This is due in part to the non medical infertility experienced by most gay men, and also to ongoing perceived and actual barriers relating to adoption and fostering by men in gay relationships, which makes surrogacy an alternative option for starting a family.

However, engaging in surrogacy can be a challenging process that is likely to be emotionally draining, legally complex, time-consuming, and financially costly. Gay men who seek to become parents via surrogacy may experience attitudinal as well as legal barriers relating to their sexual orientation, alongside broader challenges relating to the context of surrogacy.

This information sheet covers the following questions:

- How does surrogacy work?
- What are the laws around surrogacy for Australians?
- What are the psychological impacts of seeking surrogacy?
- How might mental health professionals assist gay men in relation to surrogacy?
- What are some useful further resources?

### **How does surrogacy work?**

Surrogacy arrangements may involve the use of a donor egg and a woman who acts as a surrogate (gestational surrogacy), or may involve a woman who acts as a surrogate and whose own eggs are utilised (traditional surrogacy).

A distinction is typically made between altruistic surrogacy and commercial surrogacy. In altruistic surrogacy, the woman is usually already known to the intended parents, such as a friend or family member, and no payment is made to the woman for being a surrogate other than to cover her out-of-pocket expenses like medical bills. In commercial surrogacy, the woman is typically not previously known by the intended parents, and she is paid for the role she plays in carrying the child.

### **What are the laws around surrogacy for Australians?**

Australian laws surrounding surrogacy are frequently changing and differ from state to state/territory. Those considering surrogacy should therefore seek legal advice from an expert in surrogacy in their state or territory.

Onshore commercial surrogacy within Australia is banned in all states and territories (aside from the Northern Territory, though it is in effect banned there too due to the implementation of the [NHMRC guidelines](#)). However altruistic surrogacy arrangements may be entered into provided particular requirements are met.

For altruistic surrogacy arrangements in Australia, the surrogate and egg donor must be two different women (i.e. traditional surrogacy is not allowed). In New South Wales (NSW), Tasmania, Queensland (QLD), South Australia and Victoria, any person is allowed to be an intended parent (including gay men), whereas the Australian Capital Territory (ACT) and other States allow only heterosexual couples (married or de facto) or single women to seek surrogacy. In Western Australia (WA), lesbian couples are also allowed to seek surrogacy.

In relation to offshore commercial surrogacy arrangements, the situation is more complicated and depends on the country (and possibly state) in which the surrogacy arrangement takes place. Offshore commercial surrogacy is illegal for residents of the ACT, NSW and QLD, and may also be an offence in Western Australia (Page, 2016). Some states in the US, such as California, allow for international surrogacy (commercial and altruistic) to be undertaken by gay men, and Canada allows for altruistic surrogacy by gay men, including international surrogacy.

Research with Australian gay men has found that there is a strong preference for surrogacy arrangements to be entered into offshore rather than in Australia, despite commercial surrogacy being banned for residents of some states and territories (Everingham, 2014). This is likely to be in part due to the availability of altruistic surrogates and donors, which is perceived to be low in Australia (Page, 2016).

### **What are the psychosocial impacts of seeking surrogacy?**

There are many issues which are important for gay men to reflect on when thinking about surrogacy as an option and prior to entering into surrogacy arrangements. In addition to the considerable practical, legal and financial considerations, there are many psychosocial impacts of this decision as well.

Australian research has highlighted the significance of the emotional aspects of surrogacy for gay men (which are unfortunately not sufficiently accounted for in many fertility clinics) (Riggs, Due, & Power, 2015). Some of the emotional aspects include things like preparing psychologically to be parents, managing negative societal attitudes about having children in the context of a gay marriage or via surrogacy, nurturing hope about being able to have a baby using this method, as well as being prepared for a possible pregnancy loss within a surrogacy arrangement. There are also often complex negotiations between the couple around choosing whose sperm to use, and working out who to disclose this to, and how forms of kinship are created.

There are also many stressors to be endured, like the substantial financial expenses (Medicare does not cover altruistic surrogacy (onshore surrogacy can cost approximately \$25,000-\$60,000, with offshore surrogacy in the US costing significantly more); legal issues (e.g., working out the legal rights of children born via surrogacy); and practical issues (e.g., finding a suitable surrogate, counsellor and lawyer).

Other psychosocial considerations involve the wellbeing of the surrogate. Surrogacy is often poorly regulated, which can impact on the treatment of surrogates, particularly in international commercial surrogacy contexts where the power imbalance between intending parents and women who act as surrogates is likely to be much wider than in the case of local altruistic surrogacy arrangements.

## **How might mental health professionals assist gay men in relation to surrogacy?**

Counselling is mandatory in order to undertake an altruistic surrogacy arrangement in all states and territories in Australia (aside from the Northern Territory, as per above), and is likely to be continually beneficial throughout the process. Make sure that the counsellor you arrange to see is familiar with [The Australian and New Zealand Infertility Counsellors Association surrogacy counselling guidelines](#) (ANZICA).

APS member psychologists are bound by Ethical Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients, thus the APS 'Find a Psychologist' service on the APS website is a good way to identify a psychologist likely to provide supportive and inclusive services. Visit the website [www.psychology.org.au/FindaPsychologist/](http://www.psychology.org.au/FindaPsychologist/) or phone 1800 333 497 (outside Melbourne) or (03) 8662 3300 (in Melbourne).

## **What are some useful resources?**

### **Websites – Surrogacy generally**

- Surrogacy Australia [www.surrogacyaustralia.org/](http://www.surrogacyaustralia.org/)
- Families through Surrogacy [www.familiesthrusurrogacy.com/](http://www.familiesthrusurrogacy.com/)
- Victorian Assisted Reproductive Treatment Authority (VARTA) [www.varta.org.au/information-and-support/surrogacy](http://www.varta.org.au/information-and-support/surrogacy)

### **Websites – Gay men and surrogacy**

- Gay Dads Australia [www.gaydadsaustralia.com/surrogacy/](http://www.gaydadsaustralia.com/surrogacy/)
- Rainbow Families Victoria [www.rainbowfamilies.org.au/](http://www.rainbowfamilies.org.au/)

### **International surrogacy information**

- Department of Foreign Affairs and Trade – Smart Traveller – International surrogacy bulletin [smartraveller.gov.au/bulletins/pages/surrogacy.aspx](http://smartraveller.gov.au/bulletins/pages/surrogacy.aspx)
- Department of Foreign Affairs and Trade – Child passports – Surrogacy [www.passports.gov.au/passportexplained/childpassports/Pages/surrogacy.aspx](http://www.passports.gov.au/passportexplained/childpassports/Pages/surrogacy.aspx)
- Department of Foreign Affairs and Trade – Birth, adoption and surrogacy [smartraveller.gov.au/guide/all-travellers/birth-death-marriage/pages/birth-adoption-and-surrogacy.aspx](http://smartraveller.gov.au/guide/all-travellers/birth-death-marriage/pages/birth-adoption-and-surrogacy.aspx)
- Department of Immigration and Border Protection – Fact Sheet – International surrogacy arrangements [www.border.gov.au/about/corporate/information/fact-sheets/36a-surrogacy](http://www.border.gov.au/about/corporate/information/fact-sheets/36a-surrogacy)

### **Guide to finding a surrogate**

- Victorian Assisted Reproductive Treatment Authority (VARTA) – 'Finding a surrogate' [www.varta.org.au/resources/brochure/finding-surrogate](http://www.varta.org.au/resources/brochure/finding-surrogate)

## References

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- Riggs, D. W., Due, C., & Power, J. (2015). Gay men's experiences of surrogacy clinics in India. *Journal of Family Planning and Reproductive Health Care*, 41(1), 48-53.
- Surrogacy in Canada Online (no date). FAQ. [surrogacy.ca/surrogacy-in-canada/faq.html](http://surrogacy.ca/surrogacy-in-canada/faq.html)