



Keogh Institute for Medical Research

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Patient Information about Surrogacy at the Keogh Institute

Introduction

A surrogacy arrangement allows couples (known as the arranged parents) where the woman is medically unable to carry a pregnancy, to have a child.

The surrogate (known as the birth mother) is a third party who has agreed to carry the pregnancy but after the birth will relinquish the child to the arranged parents. The arranged parents are the couple who will raise the child.

In Western Australia, the surrogacy process is governed by the *Surrogacy Act 2008*. Also relevant to surrogacy arrangements are the *Human Reproductive Technology Act 1991* and the *Artificial Conception Act 1985*. There are website links to these Acts on the Keogh Institute for Medical Research (the Keogh Institute) web site www.kimr.org

The arranged parents should find their own surrogate and all surrogacy applications and arrangements must be submitted to the Reproductive Technology Council for approval.

Although most surrogacy arrangements involve in vitro fertilisation (IVF), at the Keogh Institute the only surrogacy arrangement available is where the birth mother undergoes intrauterine insemination with the arranged father's sperm or donor sperm. This is known as traditional surrogacy.

Prevention of transmissible disease through surrogacy arrangements

All parties to this arrangement – the birth mother and the arranged parents - should be screened for transmissible diseases including hepatitis B, hepatitis C, human immunodeficiency virus (HIV) and syphilis. The arranged father should provide sperm for cryopreservation and storage. Sperm is stored for six months before use so that infectious disease testing can be repeated and cleared before usage.

Intrauterine insemination procedure

The cryopreserved sperm is thawed, seminal fluid is washed off and the sperm concentrate is suspended in suitable solution. Intrauterine insemination involves introducing the sperm into the uterus by means of a fine catheter. For the recipient the procedure is similar to having a pap smear.

Who can consider surrogacy?

The surrogacy process may be considered by a couple where the woman:

- is eligible to be treated in accordance with the *Human Reproductive Technology Act 1991*
- has reproductive tract abnormalities which make it impossible to conceive
- is incapable of carrying a pregnancy for medical reasons
- has a serious medical condition which would be transferred to the unborn child
- has had repeated miscarriage
- has undergone many unsuccessful attempts at assisted reproduction including IVF

What is required?

The following steps are essential in the process.

- The arranged parents must find a surrogate. The Keogh Institute cannot actively recruit a surrogate.
- A medical practitioner must confirm in a written report that the arranged couple and the birth mother are suitable for the surrogacy arrangement.
- A complete medical history of the arranged mother and the birth mother must be provided by their own independent gynaecologist.
- Two independent counsellors must provide a written assessment of the arranged parents and the birth mother and her partner. Counselling of children of the birth mother may also be required. One of the counsellors must be a clinical psychologist and the other must be an approved counsellor.
- Each participant must receive independent legal advice about the possible effects of the surrogacy arrangement. This advice must be given by separate lawyers.
- The Keogh Institute must review all the documents and submit them to the Reproductive Technology Council (RTC) for approval.

Please note that there is a mandatory “cooling-off” period of three months following completion of all assessments. This “cooling-off” period must be completed before the RTC can approve a surrogacy arrangement.

Considerations

Psychological considerations

It is important that all parties to the surrogacy arrangement have had counselling to resolve any differences in dealing with possible scenarios arising before or during the pregnancy, or birth. Counselling should take place before submission of the application and joint counselling with all parties should occur again at both 20 and 34 weeks of pregnancy and within 14 days of the birth of the child or miscarriage. There is very little known of the long-term psychological effects of surrogacy on the child, the birth mother or the other parties involved.

Legal considerations

It is mandatory to consult a family lawyer knowledgeable in the area. A list of possible lawyers is attached.

Costs

An administration fee will be charged for the preparation of the surrogacy application and counselling. This cost is non-refundable irrespective of the outcome. The arranged parents are expected to pay for the out of pocket expenses incurred by the birth mother and her partner. In addition, there are the costs of medical assessments, semen preparation and storage, intrauterine insemination, obstetric management and delivery.

Who can be a surrogate?

The *Surrogacy Act 2008* states that surrogacy is an altruistic act and it is illegal for the arranged parents to pay for a surrogate. However, reasonable costs may be covered, including travel, health insurance, child care expenses during treatment.

The Keogh Institute’s policy sets out the following eligibility criteria for surrogacy applications:

A birth mother (surrogate) must:

- be between 25 and 39 years of age
- have carried a pregnancy to term without complications
- have not yet become pregnant under the arrangement
- not abuse drugs or alcohol, or tobacco
- be in a monogamous relationship with her partner
- have no known illnesses such as diabetes
- not have rhesus antibodies.

Who are the child's legal parents?

Under the *Artificial Conception Act 1985*, the legal parents are the birth mother and her consenting partner. In a surrogacy arrangement, a parentage order from the Family Court is required to change the legal parent status. Application for parentage orders are filed in the Family Court and must include a copy of the RTC's approval notification, a marriage certificate (if any), the child's birth certificate and affidavit evidence as to the facts on the basis of which the Court may be satisfied as required by the *Surrogacy Act 2008* section 21 (2). In order to apply for a parentage order the arranged parents must reside in Western Australia. A parentage order application cannot be made until the child is at least 28 days old but should be made before the child is six months old.

Surrogacy approval applications

The application must include

- a copy of the independent gynaecological report for the arranged mother giving the reasons why surrogacy is required
- evidence of the age and obstetric history of the surrogate
- evidence of the age of each arranged parent
- a copy of the signed surrogacy arrangement form
- a copy of the counselling report for completed counselling
- a copy of the clinical psychologist report for each party including the name of the clinical psychologist who undertook the assessment and the date on which it was completed
- a copy of the written report from each legal practitioner who provided legal advice about the effect of the surrogacy arrangement. The report must contain the name of the practitioner providing the advice, the name of the person to whom the advice was given, the date on which it was given and whether the advice was independent within the meaning of the *Surrogacy Act 2008*.
- A copy of the medical practitioner report for each party stating the name of the medical practitioner who undertook the assessment, the date on which the assessment was completed, details of any concerns the practitioner may have about anyone involved in the surrogacy arrangement that may impact on any medical conditions, details of any medical conditions of the person that may pose a risk to the child born as a result of the surrogacy arrangement and whether the arranged parents are eligible for treatment under the *Human Reproductive Technology Act 1991*.

When these documents are available they will be submitted to the Reproductive Technology Council and thereafter there is a three (3) month “cooling-off” period.

The Keogh Institute Surrogacy Coordinator is responsible for coordinating surrogacy applications and is available at the Keogh Institute during normal working hours Monday to Friday. If you have any questions about the above please contact the Surrogacy Coordinator at the Keogh Institute on (08) 9346 2008 or email institute@kimr.org

List of lawyers and clinical psychologists who have indicated (as of January 2010) that they may be contacted for advice on surrogacy.

Lawyers

John Pacy
Family Law Specialist
9371 9261 or jpacy@brockmanlegal.com.au

Janine Kiely
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DCH legal Group
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Nicole Croft and Ms Lucy Thomas
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Rachel Oakeley
Family Law: Bowen Buchbinder Vilensky Lawyers
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Kymerley Kerr
Marks & Sands Lawyers
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Clinical Psychologists

Ms Rikki Ambrosius 0401 671 300

Mr Douglas Hatchett 0437 195 758 (Bunbury)

Melanie Honnor 9221 2333

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