



# The Australian Surrogacy Handbook

Helping you navigate surrogacy laws in Australia

Sarah Jefford, Surrogacy Lawyer  
sarahjefford.com | sarah@sarahjefford.com





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# WELCOME

This is The Australian Surrogacy Handbook, published to help intended parents and surrogates understand surrogacy requirements, options and processes.

Starting out in surrogacy can feel a little overwhelming. Don't worry, you are in the right place. Think of this as a Beginner's Handbook, to get you started.

This book focuses on surrogacy in Australia and is not intended to replace individual advice from a lawyer or a clinician.



## ABOUT ME

My name is Sarah Jefford and I am a family and surrogacy lawyer living in Melbourne. I provide legal advice via Skype for all sorts of surrogacy and donor arrangements around Australia.

I live with my partner and we have two young children. We experienced infertility and used IVF to have our first child. Since then, I've been an egg donor, and in 2018 I gave birth as a traditional surrogate.

I am passionate about making surrogacy information accessible to intended parents and surrogates and their families. I promote positive, empowered altruistic surrogacy arrangements within Australia, and provide support and education to help intended parents make informed decisions when pursuing overseas surrogacy.

If you have questions that are not covered in this book, please feel free to contact me:

**Web** [www.sarahjefford.com](http://www.sarahjefford.com)

**Email** [sarah@sarahjefford.com](mailto:sarah@sarahjefford.com)

**Instagram** [@sarah\\_surrolawyer](https://www.instagram.com/sarah_surrolawyer)

**Facebook** [/sarahjefford](https://www.facebook.com/sarahjefford)

Disclaimer: The information contained in this book does not constitute legal advice. Whilst every effort is made to ensure the information is correct, you should obtain legal advice before proceeding.



## Surrogacy in Australia – a quick overview

Surrogacy in Australia is regulated in each State, which means there are no uniform laws that cover surrogacy across the country. Surrogacy laws in all States follow the same basic principles:

- The Intended Parents must not be able to either conceive or carry a baby themselves. You should check the laws in your State to see who can access surrogacy.
- The surrogacy arrangement is not enforceable. Rest assured however that your surrogate does not want to keep your baby!
- Everyone must receive counselling and legal advice before entering into a surrogacy agreement.
- The surrogacy arrangement must be altruistic. Commercial surrogacy is illegal in all States in Australia. This means the surrogate and her partner cannot be paid for carrying a baby for someone else.
- Whilst surrogacy is altruistic, the intended parents must cover the surrogate's expenses in relation to surrogacy, pregnancy and birth.
- When the baby is born, the surrogate and her partner are listed on the Birth Certificate. The Intended Parents can apply to the Court for a Parentage Order. The Order transfers parentage from the birth parents (the surrogate and her partner) to the intended parents. The Birth Certificate is then re-issued with the new parents listed as parents.



## So You Want to Be a Surrogate?

Are you considering becoming a surrogate, for a friend, family member, or someone you hope to meet on the internet?

It's a daunting prospect; so much to consider and a lot of information to take in. Are you racing ahead, excited to get started and make someone's dreams come true? (I know I was!). We have a saying in the surrogacy community – it's a marathon, not a sprint. Take your time, (take off those rose-coloured glasses!), absorb the information, ask lots of questions. And, get advice.

I want to promote positive, empowered altruistic surrogacy arrangements in Australia, and to do that I think everyone needs to be fully prepared before they jump in.

So with that in mind, I provide free initial surrogacy consults to any woman (and her partner) who is considering becoming a surrogate. I'll take you through the laws, the criteria, the processes...and add a dash of personal experience to help you on your way.

I'll help you make informed decisions so you can build a surrogacy arrangement on a strong foundation. Because I want you to know if surrogacy is right for you before you take the leap. I want you to have a positive experience, and I'll do what it takes to get you there.

If you are a wannabe surrogate, you can book in for a **free initial advice session** with me.



## Finding a Surrogate, and Finding Intended Parents

If you have been advised to pursue surrogacy to grow your family, you can start searching for a surrogate. The first thing to remember is that intended parents outnumber women who are willing to carry a baby for someone else. Many intended parents travel overseas to pursue surrogacy, because surrogacy in Australia is not common.

There are, however, lots of reasons why you should consider Australian surrogacy as an option. For one, the arrangement is regulated by Australian laws, which means the surrogates rights are protected and the child's best interests are paramount. You'll be able to have lots of contact with your surrogate and her family. For any baby conceived through the arrangement, they will also be able to have contact with her as they grow up and get to know their story. Surrogates and intended parents report positive ongoing relationships well beyond the pregnancy or birth.

Whilst the law might prohibit advertising in your State, it does not prohibit you from discussing it with your friends and family. You are more likely to find someone within your friends and family than connecting with someone outside your circle.

The number of intended parents far outweighs the number of women considering surrogacy, so familial connections are a good place to start.

There are a number of Facebook groups and web-based forums established to support intended parents and surrogates. **See the Resources page for a helpful list of information sources.**





## Traditional Surrogacy

Traditional surrogacy is where a surrogate uses her own eggs to conceive, with sperm from an Intended Father or from a donor. It is different from gestational surrogacy, where the surrogate becomes pregnant with an embryo created with an egg from the intended mother or an egg donor. Traditional surrogacy is legal in every State of Australia except the ACT, and there is no surrogacy legislation in the Northern Territory.

Many fertility clinics will not facilitate a traditional surrogacy arrangement, however it is worth contacting them to find out. This often leaves home insemination as the only other option. However, whilst the conception is all arranged in private, the parties still need to go through the process of counselling and obtaining legal advice beforehand. A Parentage Order cannot be obtained after the birth unless all the pre-conception requirements are met.

Traditional surrogacy is less common than gestational surrogacy, due to the availability of IVF and egg donors. Surrogates are often not comfortable providing their own egg. And whilst traditional surrogacy does not usually involve an IVF Clinic, it is not something to pursue simply to save on expenses. If you are seeking an egg donor, you might like to join Egg Donation Australia.

I was a traditional surrogate and am aware of how complex and rewarding it can be. It is a different experience to gestational surrogacy, and should not be entered into lightly. If you would like to discuss traditional surrogacy arrangements, **get in touch**.

# The Surrogacy Process

For surrogacy arrangements accessing clinic services, the process usually involves the following steps. Note that the steps vary in each State.

- 1 QUALIFY FOR SURROGACY**  
The Intended Parents need to meet the criteria for surrogacy in their State. Generally, this begins with a fertility specialist recommending surrogacy.
- 2 MEDICAL ASSESSMENT**  
The Surrogate attends for a medical assessment by a medical specialist.
- 3 COUNSELLING**  
All parties involved have counselling about the surrogacy arrangement.
- 4 LEGAL ADVICE**  
The Intended Parents and the Surrogate and her partner obtain legal advice from two different lawyers.
- 5 PSYCHOLOGICAL ASSESSMENT**  
Some Clinics and States require the parties to be psychologically assessed.
- 6 APPROVAL**  
Surrogacy arrangement is approved by the Clinic or external Committee before any embryo transfer can occur.



# The Laws of Surrogacy

## Australian Surrogacy Laws: State by State

| Where are the Intended Parents? | Applicable Legislation                          | Minimum age of the surrogate | Allows gay couples                     | Allows single women | Written Agreement required | Traditional Surrogacy | Can I advertise? |
|---------------------------------|---|------------------------------|--|---------------------|----------------------------|-----------------------|------------------|
| ACT                             | <i>Parentage Act 2004</i>                       | 18yo                         | Yes                                    | No                  | No                         | No                    | No               |
| NSW                             | <i>Surrogacy Act 2010</i>                       | 25yo                         | Yes                                    | Yes                 | Yes                        | Yes                   | Unpaid only      |
| NT                              | No relevant law                                 | –                            | –                                      | –                   | –                          | –                     | –                |
| QLD                             | <i>Surrogacy Act 2010</i>                       | 25yo                         | Yes                                    | Yes                 | Yes                        | Yes                   | No               |
| SA                              | <i>Family Relationships Act 1975</i>            | 18yo                         | Yes                                    | No                  | Yes                        | Yes                   | Yes              |
| TAS                             | <i>Surrogacy Act 2012</i>                       | 25yo                         | Yes                                    | Yes                 | Yes                        | Yes                   | No               |
| VIC                             | <i>Assisted Reproductive Treatment Act 2008</i> | 25yo                         | Yes                                    | Yes                 | No                         | Yes                   | No               |
| WA                              | <i>Surrogacy Act 2008</i>                       | 25yo                         | No<br>(This is currently under review) | Yes                 | Yes                        | Yes                   | Yes              |

## The Big Money Question – how much does it cost?

Intended parents are always keen to know how much surrogacy will cost them. There are so many variables depending on individual circumstances, so it can be hard to give an exact answer to that question. You can expect that surrogacy in Australia will cost anywhere from \$15,000 to over \$100,000. The major variable is the cost fertility treatment, which will depend on what sort of treatment you require, and the success of any treatment and when the surrogate falls pregnant.

You can expect surrogacy costs to include:

**Fertility treatment**– this will depend on how many cycles are required, whether donor eggs or sperm are required, and the success of the treatment. Medicare rebates are not available for surrogacy arrangements and this will have a variable impact.

**Legal Advice** – Lawyer fees vary considerably and depend on a number of factors, including whether you need a written agreement. You should compare quotes beforehand, and seek out lawyers who specialise in surrogacy law. Intended parents need to cover the cost of their own legal advice as well as that of their surrogate and her partner.

**Counselling and Psychological Assessments** – some fertility clinics provide counselling as part of their service. For the most part, however, counselling and psychological assessments are provided by independent counsellors specialising in surrogacy.

**Pregnancy and Birth** – Surrogates are eligible for Medicare and public healthcare, just as if they were having their own baby. Medical costs that are not covered by Medicare need to be covered by the intended parents. This includes private health insurance, private healthcare and hospital fees as appropriate. It also includes medication and treatments that might be required during the pregnancy and birth.

**Parentage Order** – After the baby is born, the intended parents need to apply to Court for a Parentage Order to recognise them as the legal parents and to change the Birth Certificate. This can involve lawyers, and further counselling.

Other costs that might be payable, depending on the State legislation and individual circumstances, include:

- travel costs (fuel, parking fees, train tickets) for the surrogate and her partner to attend for treatment, or for pregnancy appointments;
- life insurance for the surrogate;
- loss of income for the surrogate and her partner for days they need to take off for appointments related to surrogacy, pregnancy and birth;
- maternity wear, a cleaner, food deliveries;
- non-medical treatment such as massage, naturopathy and acupuncture for the surrogate.

## Giving gifts to your Surrogate

Altruistic surrogacy means that the surrogate cannot receive any fee, payment, material benefit, compensation or inducement to be a surrogate.

One of the first questions asked by intended parents is whether they can give gifts to their surrogate or her family members, without compromising the surrogacy agreement or the Parentage Order application. And what sort of gifts might be ok, and what might be considered a reward or inducement? The answer is complex!

The legislation can be interpreted very broadly, such that even the gift of a massage voucher or a bunch of flowers could be seen as a material benefit or reward for the surrogate. So how do intended parents look after their surrogate, support her through any treatment and pregnancy, and show their appreciation without crossing over into illegal territory?

A good rule of thumb is to act as you would if you were to give a gift to any other friend. Gifts that are not cash, such as massage vouchers, flowers, ready-cooked meals, movie tickets and dinner vouchers are unlikely to be considered by any reasonable person as an inducement or reward for surrogacy.

So what about bigger gifts? The legislation is clear that surrogates should not receive material benefits or reward for being a surrogate. But is a gift of love and appreciation a reward, or inducement, or material benefit of surrogacy? You should exercise both caution and common sense. And if in doubt, get legal advice.

Intended parents worry that giving any gifts to their surrogate could compromise the surrogacy arrangement and that the Court might refuse to make the Parentage Order.

The laws provide that the Courts can refuse to make a Parentage Order if the arrangement looks to be a commercial transaction. And parties can be prosecuted if they have broken the law and made or received payment for surrogacy. Some things to consider:

- The Court is most concerned whether making the Parentage Order would be in the baby's best interests. If all the criteria are met, the Courts are unlikely to refuse to make the Parentage Order simply because the surrogate received a gift from the intended parents.
- There have been no prosecutions that I am aware of, where the intended parents have given gifts to their surrogate.

**If in doubt, you should contact your lawyer. My advice: be kind, exercise common sense, and remember: if it looks like a commercial arrangement it probably is. If it looks like a gift of love and friendship, it probably is.**



## Written Agreements

Most States require you to have a written surrogacy agreement. You can draft your own, or ask a lawyer to draft it for you.

A written agreement is not enforceable, other than to enforce the reimbursement of the surrogate's expenses.

A written agreement can help ensure everyone is on the same page and there is less likely to be conflict or misunderstandings.

Surrogacy Agreements should be written in good faith and based on trust. The Agreement is not a contract, and you should not be writing it as if it were.

Written agreements can also cover agreements about other matters, such as:

- Pregnancy and birth care options;
- What costs the intended parents have committed to cover;
- How the intended parents will reimburse their surrogate for costs;
- How the intended parents will support their surrogate and her family in times of need;
- How the parties will communicate with each other;
- How the parties might resolve issues and conflict as it arises.

Remember, you need to obtain legal advice before proceeding with any arrangement. I can assist with arrangements across Australia, and you can **get in touch** to find out more.



## Brokers, Consultants & Kickbacks

Intended Parents may be forgiven for thinking that everyone they talk to about surrogacy has their best interests at heart. If someone seems kind, knowledgeable and generous, surely they're only wanting to help you have a baby, right? But, surrogacy is an industry like any other, and not everyone who seems helpful is looking out for your interests.

There are overseas surrogacy agencies who pay commissions to consultants and brokers who refer intended parents to them. Consultants come in many forms – they may also be intended parents, fertility specialists or lawyers. I don't have a problem with consultants making money for the work they do. I do have a problem with people not declaring that they are receiving commissions from the organisation they are referring to. This is a conflict of interest, if they're making money for referring you to an agency and not telling you about it – do their interests lie with you, or the agency?

So, for the savvy intended parents, I have some tips to help you make informed decisions when considering overseas donor and surrogacy arrangements.

**Cast the Net Wide:** Research all the surrogacy options. There are lots of agencies and clinics in various countries, and not all of them will be the right match for you. Surrogacy is a marathon, not a sprint, and you should commit several months to researching the options and gathering information to make a final decision. Best practice arrangements involve known donors and a relationship with your surrogate. The Agencies should be able to provide a detailed breakdown of their fees and expenses, and candidly answer your questions about surrogate recruitment and screening, fees, insurances, timelines, processes and contracts.

**Ask the Question:** If you are meeting with someone (anyone!) to discuss donor and surrogacy options, ask if they are receiving commissions, including co-marketing fees or benefits from any other organisation.

**Go Direct to the Source:** Avoid consultants and brokers altogether, and go direct to the source.

Agencies and Clinics will offer Skype consults direct with them, which means you can get the information direct from the horses' mouth and know that no one is benefiting from your business but them. It's worth emailing them direct and asking to meet with them.

**Speak to other Intended Parents** – and ask the Question Other intended parents are an amazing source of information, and have often done a tonne of research themselves. They can provide reassurance about the process and advice about the challenges and successes. But if they are referring you to their agency or clinic, ask them if they're receiving a benefit for the referral. They should be declaring their interest to protect yours.

**Listen to the Podcast! [The Australian Surrogacy Podcast](#)** shares stories from intended parents and surrogates from around Australia. Sarah has interviewed intended parents who went overseas, and others who pursued surrogacy in Australia. The best advice is free! You can listen to the Podcast on the website or on Apple Podcasts.

## Applying for a Parentage Order



When the baby is born, the surrogate and her partner register the baby's birth in the State where the baby is born. They can register the baby with a name chosen by the intended parents.

The surrogate and her partner are listed as the baby's parents on the birth certificate. Where the surrogate is single, she may not list a father on the Birth Certificate, but you should seek legal advice about your options.

Once the birth certificate is issued, the intended parents must apply for a Parentage Order (also called a Substitute Parentage Order). They apply to a Court in the State where they live. The purpose of a Parentage Order is to transfer parentage from the surrogate and her partner, to the intended parents. This has the effect of providing an Order that recognises the surrogacy arrangement, and who the true parents are.

The Order also tells the Registry of Births Deaths and Marriages (in the State where the child was born) to re-issue the birth certificate with the parents listed, instead of the surrogate and her partner.

For the Court to grant a Parentage Order, the intended parents need to provide evidence of the surrogacy arrangement, and that the surrogate and her partner have relinquished care of the baby to the parents. This is usually provided by way of Affidavits from each of the intended parents and the surrogate and her partner.

The Court will need to see evidence that the parties received legal advice and counselling prior to the pregnancy. In some States, post-surrogacy counselling is also a requirement of the Parentage Order.

You should refer to the legislation in the State where the intended parents live to understand the requirements that apply to you.





# Resources

## Where to go for more information

I hope that this Handbook has answered some of your initial questions about surrogacy in Australia. You can also find more information on my website [www.sarahjefford.com](http://www.sarahjefford.com) and at the resources below.

Australian Surrogacy Podcast  
[www.sarahjefford.com/surrogacypodcast/](http://www.sarahjefford.com/surrogacypodcast/)  
Sharing stories from intended parents and surrogates from around Australia

Below are links to sites that you might find useful. I cannot verify the information contained on those sites.

**Australian Surrogacy Community on Facebook**  
[www.facebook.com/groups/ftsaust/](http://www.facebook.com/groups/ftsaust/)  
This community supports Australian residents who are intended parents or surrogates, or parents who have created families through surrogacy. Other Facebook groups include Gay Intended Dads Australia, and various groups for Australians pursuing overseas surrogacy.

**EDA: Egg Donation Australia**  
[www.eggdonationaustralia.com.au](http://www.eggdonationaustralia.com.au)

EDA provides a supportive forum for people seeking egg donors or looking to donate their eggs. Egg donation in Australia is altruistic; we recommend you explore local options before considering overseas donation.

**Fertility Connections**  
[www.fertilityconnections.com.au](http://www.fertilityconnections.com.au)

Fertility Connection is an online community for Intended Parents, Surrogates and Donors.

**RTC: The Reproductive Technology Council in Western Australia**  
[www.rtc.org.au](http://www.rtc.org.au)

The RTC regulates surrogacy arrangements in WA and is a useful resource for surrogates, intended parents, donors, legal and health professionals.

**Surrogacy Australia**  
[www.surrogacyaustralia.org](http://www.surrogacyaustralia.org)

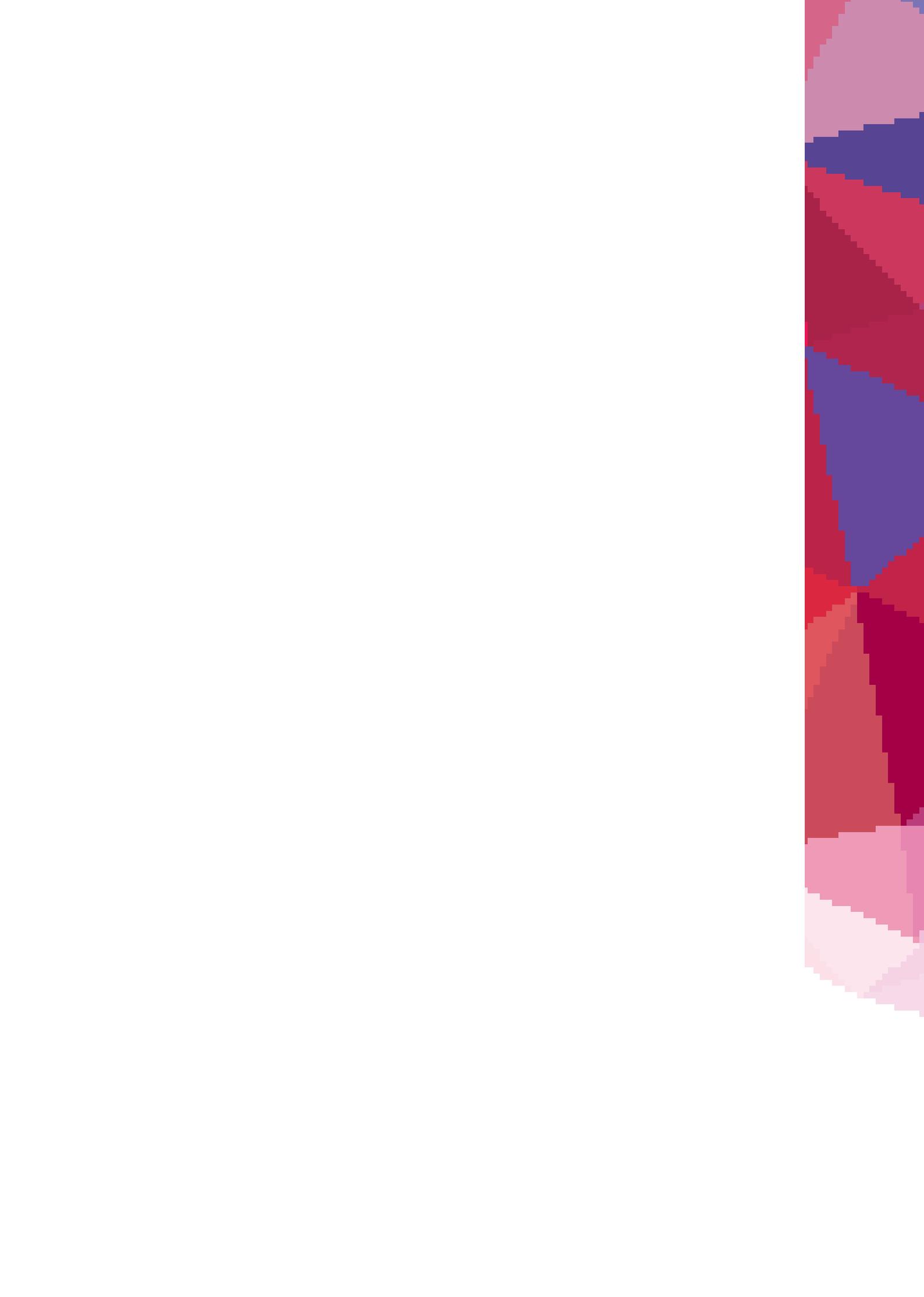
Surrogacy Australia promotes social inclusion and best practice in relation to all stakeholders in surrogacy arrangements, including parents, surrogates, children and service providers. Surrogacy Australia's Support Service helps both surrogates and intended parents in forming well-suited teams

**VARTA: The Victorian Assisted Reproductive Treatment Authority**  
[www.varta.org.au](http://www.varta.org.au)

VARTA provides independent information and support for individuals, couples and health professionals on fertility and issues related to assisted reproductive treatment, including egg and sperm donation, infertility treatment and surrogacy in Victoria.

**This Handbook is intended as informative only. It does not replace legal or medical advice. You should consult your medical specialist, fertility clinic and your lawyer for individual advice.**







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[sarahjefford.com](http://sarahjefford.com) | [sarah@sarahjefford.com](mailto:sarah@sarahjefford.com)