

## **SURROGACY BILL 2007**

### *Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Minister for Child Protection)**, read a first time.

### *Second Reading*

**HON SUE ELLERY (South Metropolitan - Minister for Child Protection)** [10.02 pm]: I move -

That the bill be now read a second time.

This bill provides a framework for the regulation of surrogacy and for the legal parentage of children born as a result of surrogacy arrangements. Surrogacy is a practice whereby a woman agrees to become pregnant and bear a child for another person or persons - the arranged parents - to whom she intends to transfer the child's care at, or shortly after, birth.

This bill will give couples the chance to be a family and to love and care for a child they so desperately want. It is an example of using technology and the law to fulfil their dream to be a family.

The use of surrogacy as a means of helping women who are unable to bear a child has a long history in various cultures. In Australia, the demand for surrogacy has increased since the 1970s with the decline in the number of babies available for adoption and the increased availability of assisted reproductive technology. The use of artificial reproductive technology has increased options for conception in connection with surrogacy and allows the creation of embryos that are genetically related to the arranged parents.

The regulation of surrogacy presents challenges because of the need to balance the possibly conflicting interests of the parties who may be involved in a surrogacy arrangement. These interests include the child's right to be protected and to know about the circumstances of his or her birth, the arranged parents' interest in being able to have a child and to be recognised by law as parents of that child, and the birth mother's right to be protected from exploitation.

Five Australian jurisdictions have legislation regulating surrogacy: the Australian Capital Territory, Victoria, South Australia, Tasmania and Queensland. In each of those jurisdictions there are prohibitions in connection with commercial surrogacy arrangements, and surrogacy arrangements are not enforceable. The ACT is the only jurisdiction that has comprehensive legislation dealing with the parentage of children born following surrogacy arrangements.

Currently, there is no legislation in Western Australia dealing directly with surrogacy. Other legislation such as the Human Reproductive Technology Act 1991, the Artificial Conception Act 1985 and the Adoption Act 1994 indirectly impact on surrogacy arrangements. The Human Reproductive Technology Act regulates access to in-vitro fertilisation procedures and currently restricts access to IVF in connection with surrogacy. The Artificial Conception Act provides for the legal parentage of all children born as a result of assisted reproductive technology - ART - and means that the birth parents of a child, rather than the parents who intend to raise the child, are legally recognised as the parents. The Adoption Act effectively restricts adoption as a method for arranged parents to be legally recognised as the parents of a child born under a surrogacy arrangement.

The regulation of surrogacy has been considered by Parliament through the select committee process. In 1999, the Select Committee on the Human Reproductive Technology Act 1991 released its report, including recommendations supporting the development of legislation regulating the practice of surrogacy. The bill, with some exceptions, reflects the recommendations of the 1999 select committee. An earlier, 1988 select committee also considered this issue, but recommended that the practice of surrogacy be discouraged. Thinking on surrogacy has come a long way in the past 19 years.

In summary, under the bill, surrogacy will be provided for by allowing access to IVF for a woman who has agreed to bear a child for a woman or couple who would be eligible for IVF; providing a parentage order that will alter the birth certificate to make the arranged parents the legal parents of the child; and regulating activities around the making of surrogacy arrangements. The bill will amend the Human Reproductive Technology Act to allow IVF procedures to be used in connection with surrogacy when the arranged parents, rather than the birth parents, meet the existing eligibility requirements for IVF. This represents a limited expansion of IVF to allow women who are not able to conceive or carry a child themselves due to medical reasons to arrange for another woman to become pregnant and to carry a child on their behalf.

Directions issued under the Human Reproductive Technology Act will require comprehensive assessment and preparation of all the parties to a surrogacy arrangement using assisted reproductive technology procedures, including requirements for counselling and independent legal advice prior to assisted reproductive technology

services being provided in connection with the arrangement. All providers of assisted reproductive technology services are required to comply with the directions.

The bill does not deal with the initial birth registration of a child. This means that in most cases the child should be registered in accordance with the Artificial Conception Act, with the birth mother recorded as the mother of the child and her consenting partner as a legal parent of the child. The bill provides a mechanism for a judge of the Family Court of Western Australia to make an order transferring legal parentage of the child to the arranged parents in certain circumstances.

The requirements for a parentage order include -

- the arranged parents must reside in Western Australia and must have met the criteria for the use of IVF procedures set out in the Human Reproductive Technology Act;

- the application cannot be made until one month after the child's birth and must be made within six months of the child's birth unless the court gives leave for the application to be made later;

- the birth parents must freely consent to the order being made;

- the child must be living with the arranged parents;

- all the parties must have received counselling and independent legal advice about the effect of the orders; and

- the order must be in the best interests of the child.

The court must also approve a plan agreed between the parties about any contact or communication between the child and the birth parents or any other person. The bill provides that these parentage orders will make the arranged parents the legal parents of the child for all purposes of state law. The bill also deals with provisions relating to the registration of the parentage order and access to information and copies of the birth registration. These are generally modelled on the provisions for adoption orders.

The bill provides for a range of offences in connection with surrogacy arrangements. These are: making a surrogacy arrangement that provides for payment or other reward to the birth mother, apart from payment of reasonable expenses incurred in connection with the conception, pregnancy and birth of the child; advertising or providing services in connection with a commercial surrogacy arrangement; and offering or receiving a payment or other reward for introducing potential parties to a surrogacy arrangement. A surrogacy arrangement is not enforceable. This means that the birth mother could not be forced to give up the child because of the surrogacy arrangement. The circumstances in which a birth mother changes her mind after the birth of a child are distressing to all the parties, and careful preparation and counselling before the arrangement is intended to minimise the chances of this occurring.

The Surrogacy Bill seeks to balance and protect the interests of all parties to surrogacy arrangements by providing a framework for the best interests of the child to be paramount in any decision about surrogacy and legal parentage, requiring careful preparation and assessment of the parties and preventing surrogacy for commercial gain. For that reason, I hope this bill will enjoy the support of the Parliament. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.