

Legislation Committee

From: Tammy Render [REDACTED]
Sent: Tuesday, 30 April 2019 11:02 AM
To: Legislation Committee
Subject: To Be Fair

Hi there

I would like to express my concern to the matter of the following issue (see below) Having done some research into a case I am supporting a male couple in becoming partents I came accross the current legislation as was genuinly disapointed to see that Australia and Western Austraila in particular has taken backward steps to support same sex couples to be able to become a family with chldren, I am supportive of this cause and I beleive the legislation needs to be changed

Assisted reproduction and surrogacy[[edit](#)]

[Assisted Reproductive Technology](#) (ART) and [surrogacy](#) comes under the jurisdiction of states and territories in Australia so national legislation cannot be used to no its practice. ART services (which include but are not limited to [In Vitro Fertilization](#) and [artificial insemination](#)) and other reproductive technologies are legal in all states and territories (see [LGBT rights in Australia](#) for more). Western Australia is the only state that bans altruistic surrogacy for singles and same-sex couples.

Commercial [surrogacy](#) and related advertising remains illegal in all states and territories except for the Northern Territory where there are no laws or regulations regarding surrogacy arrangements. Altruistic surrogacy, where the surrogate receives no financial reward for her pregnancy or the relinquishment of the child, is legal in all states and territories, though in Western Australia it is reserved for opposite-sex couples. South Australia was the most recent state to allow same-sex couples the right to altruistic surrogacy (see [LGBT rights in South Australia](#) for more). With altruistic surrogacy, only expenses related to the pregnancy and birth are paid by the intended parents such as medical expenses, maternity clothing, and other related expenses.

The practice of altruistic surrogacy for same-sex couples and single people remains illegal only in Western Australia.^[33] It is believed that only 1 in 20 surrogacy arrangements take place in Australia; almost all involving foreign surrogates from South-East Asia and the United States.^[33] In Tasmania, until 30 April 2012 then the *Surrogacy Contracts Act 1993* is then repealed and replaced on 1 May 2013 with the *Surrogacy Act 2012* becoming effective to allow altruistic surrogacy for all singles and couples of all genders.^[34] In Queensland where the newly elected state Liberal National Party government who won the Queensland state election in March 2012 with a massive super-majority, has announced that they will re-criminalise altruistic surrogacy for singles, same-sex couples and opposite-sex couples who have been in a de facto relationship for less than 2 years.^[35] In November 2006, Attorneys-Generals from all states and territories agreed in principle to uniform surrogacy regulations which meant couples would no longer have to travel to avoid illegal arrangements in their home state after Victorian Senator Stephen Conroy and his wife, Paula Benson, revealed that their daughter Isabella had been born to a surrogate mother in Sydney via the in-vitro fertilisation of a donated egg.^{[36][37][38]} In April 2007, Federal Attorney-General [Philip Ruddock](#) called for national surrogacy laws, so couples in some states no longer have to travel elsewhere to undergo the procedure legally.^[39]

Obtaining legal parental rights for same sex partners of birth parents has only recently been addressed in limited ways. All states and territories recognise female co-mothers as birth parents of children conceived through in vitro fertilisation or artificial insemination. Male couples who arrange altruistic surrogacy (since commercial surrogacy is illegal) using one partner's sperm, which may be legally possible in the Australian Capital Territory, New South Wales, Tasmania,^[34] Queensland, Victoria and South Australia, will face legal difficulties gaining rights for the genetic father as a 'sperm donor', and terminating the surrogate mother's rights (ideally through a stepparent adoption), which will be required in order to obtain legal recognition for the non-biological male partner. A growing number of male couples from around the world are attempting to become parents through surrogacy in America due to its favourable laws.^[40] However, it is a criminal offence for a person ordinarily resident in Queensland, New South Wales or the ACT to enter into a commercial surrogacy arrangement anywhere in the world.

	ART/IVF for surrogates of male couples	ART/IVF for lesbian couples	Commercial surrogacy	Altruistic surrogacy	Automatically recognise non- genetic parent at birth
Queensland	✓ Yes	✓ Legal	✗ Illegal	✓ Legal	✓ Yes (for all couples)
ACT	✓ Yes	✓ Legal	✗ Illegal	✓ Legal	✓ Yes (for all couples)
Tasmania	✓ Yes ^[34]	✓ Legal	✗ Illegal	✓ Legal ^[34]	✓ Yes (for all couples) ^[34]
Victoria	✓ Yes	✓ Legal	✗ Illegal	✓ Legal	✓ Yes (for all couples)
New South Wales and Norfolk Island	✓ Yes	✓ Legal	✗ Illegal	✓ Legal	✓ Yes (for all couples)
South Australia	✓ Yes	✓ Legal	✗ Illegal	✓ Legal	✓ Yes (for all couples)
Northern Territory	✗ No laws at this point in time	✓ Legal	✗ No laws at this point in time	✗ No laws at this point in time	✓ Yes (female couples), ✗ No laws at this point in time (male couples)
Western Australia	✗ Illegal	✓ Legal	✗ Illegal	✗ Illegal (banned for singles and same sex couples; bill pending to remove ban); ^[41] ✓ Legal (for heterosexual couples who are married or in a de facto relationship) ^[42]	✓ Yes (for all couples), ✗ No (male couples)

ACT^[edit]

Main article: [LGBT rights in the Australian Capital Territory](#)

The *Parentage Act 2004* made non-commercial surrogacy legal but the birth mother and her husband were deemed to be the parents unless the genetic parents adopt the child back. In 2000, The ACT became the first state or territory to allow the genetic parents who are heterosexual of a child born through surrogacy to become its legal parents, allowing them to easily obtain a parenting order and avoid adoption.^{[43][44]} It is illegal to advertise for a surrogate and to pay for a surrogate or an ovum donor. When two women are in a same-sex relationship, and one of them gives birth as a result of ART, her partner is presumed to be a parent of the child. The ACT's birth registration process allows for a person to be registered as a 'mother', 'father' or 'parent', enabling lesbian couples to be recognised as parents on a child's birth documents.

New South Wales^[edit]

Main article: [LGBT rights in New South Wales](#)

Northern Territory^[edit]

The Northern Territory was the second jurisdiction to extend a presumption of parentage to lesbian partners in 2003 with its *Status of Children Act 2003*, following Western Australia's lead in 2002.^{[45][46]} The [Northern Territory](#), became the last jurisdiction within [Australia](#) to legally allow both unmarried different-sex couples and same-sex couples to adopt children, when the *Adoption of Children Legislation Amendment (Equality) Bill 2017* passed the [Northern Territory Legislative Assembly](#) in March 2018. The bill received royal assent on 19 April

2018, becoming the *Adoption of Children Legislation Amendment (Equality) Act 2018* and commenced the following day.^[47]

Queensland^[edit]

Main article: [LGBT rights in Queensland](#)

South Australia^[edit]

Main article: [LGBT rights in South Australia](#)

Tasmania^[edit]

The *Status of Children Act 1974* states that the woman who gives birth to the child is the mother, regardless of genetics. The Act does make a mention of "parentage" of both co-mothers in section 10C, however a report back in 2003 by the Joint Standing Committee on Community Development proposed amending the Act to recognise the lesbian partner as a parent via the *Relationships (Consequential Amendments) Bill 2003* but it failed to pass in the upper house by just one vote.^[48] In June 2009, the *Relationships (Miscellaneous Amendments) Bill* proposed reform to the state's *Adoption Act* and *Status of Children Act*, allowing non-biological lesbian parents to be legally considered the parents of a child conceived using IVF.^[49] The bill passed the lower house 45-3 on 20 August, opposed by three Liberal MHA's who had been given a conscience vote. The Legislative Council (Upper House) ratified the bill with amendments to back date the law to 1 January 2004 in October without dissent.^[50] The lower house approved of the amendments made in the upper house in November 2009 and then passed the Tasmanian parliament.^[51]

In 2012, Tasmania passed two pieces of legislation to legally allow altruistic surrogacy. The two laws are called the *Surrogacy Act No 34* and the *Surrogacy (Consequential Amendments) Act No 31*.^{[34][52]} Proposed altruistic surrogacy legislation was drafted and passed by both houses of the Tasmanian parliament – only after a review of the *Surrogacy Contracts Act 1993 No 4*.^{[53][54]} and after an ongoing community consultation process. Under the altruistic surrogacy legislation, the surrogate must be at least 25 years old and it cannot be her first pregnancy. The new altruistic surrogacy laws went into effect on May 1, 2013.^[34]

Victoria^[edit]

Main article: [LGBT rights in Victoria \(Australia\)](#)

Western Australia^[edit]

The *Human Reproductive Technology Act 1991 (WA)* established that to use any ART, a woman must be unable to conceive a child due to medical reasons (clinical infertility) and "persons seeking to be treated as a couple must be married or in a de facto relationship and must be of the opposite sex to each other".^[55]

In 2002, the *Artificial Conception Act 1985* was amended to deal with lesbian couples. It stated that, where a woman who is in a de facto relationship with another woman undergoes, with the consent of her de facto partner, an artificial fertilisation procedure, the de facto partner of the pregnant woman is conclusively presumed to be a parent of the unborn child and is a parent of any child born as a result of the pregnancy.^[56]

Western Australia's Registry of Births, Deaths and Marriages allows for registration of a parent other than a 'mother' and/or 'father' on the birth documents of the child. The birth registration form provides same-sex couples with the option of describing themselves as 'mother' and 'parent'; 'mother' and 'mother'; or 'parent' and 'parent'. Provided proper consent has been given by both the woman and her same-sex partner, the partner will conclusively be presumed to be the parent of any resulting child.

The *Surrogacy Bill 2007* was passed by the Legislative Assembly (Lower House) in September 2007, and was referred to the Standing Committee on Legislation within the Legislative Council (Upper House) in November 2007. It was sent back to the Legislative Council (with amendments to ban single people and same-sex couples from altruistic surrogacy arrangements) for a third reading in June 2008. The legislation was passed on 4 December 2008.^{[57][58]}

Have a great day

Tammy Render