

**HUMAN REPRODUCTIVE TECHNOLOGY AND SURROGACY
LEGISLATION AMENDMENT BILL 2018**

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Alanna Clohesy (Parliamentary Secretary)**, read a first time.

Second Reading

HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary) [7.00 pm]: I move —

That the bill be now read a second time.

This bill amends the Human Reproductive Technology Act 1991—the HRT act—and the Surrogacy Act 2008 to enable male same-sex couples and single men access to surrogacy to become parents. The McGowan government is committed to upholding the values of equality, fairness and diversity.

The broadening of access to surrogacy proposed under the bill adds to the family formation options of adoption and fostering that are already available to male same-sex couples and single men in WA.

The changes will bring WA into line with all other Australian jurisdictions that permit male same-sex couples to engage in altruistic surrogacy, with the exception of the Northern Territory, which has no relevant laws. The main amendments to the current legislation within this bill are in response to the 2013 amendments to the commonwealth Sex Discrimination Act 1984, which made discrimination on the grounds of sexual orientation, gender identity and intersex status unlawful in all states and territories.

Commonwealth regulations that were in place exempting the HRT act and the Surrogacy Act from application of the Sex Discrimination Act expired on 31 July 2017. Failure to respond to this would be unwise due to an unacceptable risk of litigation and the prospect of provisions of the relevant state legislation—the HRT act—being held by a court to be invalid. The amendments will, firstly, provide equitable access to surrogacy through the use of assisted reproductive technology for male same-sex couples and single men; and, secondly, enable licensed fertility clinics and practitioners to provide such services without discrimination on the basis of sex and sexual orientation in compliance with commonwealth and state legislation—the Western Australian Equal Opportunity Act 1984.

One benefit we expect to see following the enactment of this bill is that we may reduce the impetus of people to travel overseas to create a family. In many cases of overseas surrogacy, the children never know who their egg donor is or who gave birth to them. For the children and arranged parents, there are difficulties in establishing legal parentage, which impacts on the rights of these children.

The key changes to the legislation being proposed in this bill include availability of IVF and surrogacy. Under the existing provisions of the HRT act, single women, irrespective of their sexual orientation, heterosexual couples, and female same-sex couples will be able to benefit from access to IVF or surrogacy based on their medical need. The proposed changes will expand that access to surrogacy to include male same-sex couples and single men, irrespective of their sexual orientation. This is achieved by amending section 23 of the HRT act to allow an IVF procedure to be carried out for the purposes of a surrogacy arrangement where there are “medical or social reasons”. “Medical or social reasons” is defined under new section 19(IA) of the Surrogacy Act to mean an eligible woman or man in the case where there is one arranged parent; in the case where there are two arranged parents, a married or de facto couple who are an eligible woman and a man; or two eligible women or two men. “Eligible woman” is defined in section 19(2) of the Surrogacy Act to mean a woman who is likely to be unable to conceive a child due to medical reasons not by reason of advanced age or excluded for a prescribed reason; or although able to conceive a child, is likely to be unable to give birth due to medical reasons; or although able to conceive a child, any such child is likely to be affected by a genetic abnormality or a disease. For all practical purposes, “social reasons” in terms of access to surrogacy is intended to apply to male same-sex couples and single men. Women will still need to meet the existing criteria of having medical reasons to access IVF and surrogacy, including providing the least invasive treatment necessary in order to have a child.

Circumstances for seeking a parentage order: Section 19 of the Surrogacy Act is amended to enable an application to be made for a parentage order in circumstances where there were “medical or social reasons” for the surrogacy arrangement at the time the arrangement was entered into. Eligible male same-sex couples and single men will be able to apply for a parentage order provided all the usual requirements under the act are met.

Fertility preservation for medical reasons: Doctors have expressed uncertainty about whether a woman who is presently fertile, but who is soon to become infertile as a result of a disease, condition or treatment, such as chemotherapy, is permitted to have her eggs fertilised to create an embryo through IVF for future use. This bill is intended to make clear that a woman can be eligible for IVF treatment if there is a likelihood of her becoming infertile or unable to give birth as a result of disease, a medical condition or medical treatment. To effect this change, the words “likely to be” will be inserted immediately before the words “unable to conceive a child due to

medical reasons” and “unable to give birth to a child due to medical reasons” in the eligibility criteria for IVF under section 23 of the HRT act, as well as the corresponding provisions in section 19 of the Surrogacy Act.

Advisory, investigation and search powers in surrogacy: The proposed amendments provide an opportunity to strengthen some of the advisory, investigation and search powers in relation to surrogacy regulation. Changes to section 14 of the HRT act make it clear that the functions of the council extend to advising the minister and the CEO of the Department of Health on matters of administration and enforcement of the Surrogacy Act. The existing section 54 of the HRT act authorises an officer to investigate a breach or possible breach of that act. Proposed section 55A of the HRT act will extend that authority to an officer to investigate a breach or possible breach of the Surrogacy Act. The provision will also permit a justice, when duly satisfied on the evidence, to exercise the same power available under section 55 of the HRT act to issue a warrant to an authorised officer or member of the police force to enter and search, and seize records and other evidence, in relation to an offence or suspected offence under the Surrogacy Act.

Related amendments and minor corrections: This bill incorporates a number of amendments to the HRT act that flow from the changes to allow male same-sex couples and single men access to surrogacy and fertility preservation for medical reasons.

Finally, a number of sections of the HRT act will also be amended to correct some minor errors and outdated references to other acts.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 2036.]

Debate adjourned, pursuant to standing orders.

House adjourned at 7.09 pm
