



Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Thursday, 26 November 2009

SURROGACY BILL

First Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (11.30 am): I present a bill for an act about surrogacy arrangements, to provide for the court sanctioned transfer of parentage of children born as a result of particular surrogacy arrangements, to prohibit commercial surrogacy arrangements, to make particular related amendments of the Adoption Act 2009, the Births, Deaths and Marriages Registration Act 2003 and the regulation under that act, the Criminal Code, the Domicile Act 1981, the Evidence Act 1977, the Guardianship and Administration Act 2000 and the Powers of Attorney Act 1998, to amend the Status of Children Act 1978 for particular purposes and to make minor and consequential amendments of acts as stated in schedule 1. I present the explanatory notes, and I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Tabled paper: Surrogacy Bill [[1505](#)].

Tabled paper: Surrogacy Bill, explanatory notes [[1506](#)].

Second Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (11.30 am): I move—

That the bill be now read a second time.

Earlier this year the Premier and I announced this government's commitment to implement important reforms that will assist people to realise their dreams of a family. Even with recent medical advances in the use of assisted reproductive treatment for infertility, there are people in Queensland who are unable to start a family. The current law in Queensland has prevented these people from using surrogacy as a last-resort option to create a family.

The Surrogacy Bill 2009 heralds a new approach to the regulation of surrogacy in Queensland. The bill decriminalises altruistic surrogacy in Queensland and provides a legal mechanism for the parentage of a child born as a result of a surrogacy arrangement to be transferred from the birth mother to the intended parents. This new approach to surrogacy is guided by and implements much of the report of the bipartisan parliamentary committee established in 2008 to investigate certain matters relating to altruistic surrogacy in Queensland. This new approach is consistent with the Australian Capital Territory, Victoria, South Australia and Western Australia, where legislation has been passed to regulate surrogacy and to provide a legal mechanism for the transfer of the parentage of the child from the birth mother to the intended parents.

All of the reforms in the bill have been the subject of extensive public consultation. The main features of the bill were released for public comment in the Queensland model for the decriminalisation of altruistic surrogacy and the transfer of legal parentage—otherwise known as the Queensland model—on 18 August 2009. The overwhelming number of respondents supported the proposed surrogacy reforms in the Queensland model. An exposure draft of the Surrogacy Bill 2009 was also released for public comment on 29 October 2009. Again, the clear majority of respondents to the exposure draft supported the approach set out in the bill with some suggested minor changes.

Consistent with the parliamentary committee's report, the bill includes principles that will govern the legislation's application. The bill is underpinned by the main principle that the wellbeing and best interests of a child born as a result of a surrogacy arrangement, both through childhood and the rest of his or her life, are paramount.

Under the bill, a surrogacy arrangement is where a woman—the birth mother—agrees to become pregnant and to relinquish the child to another person or persons—the intended parents—who will be the child's parent or parents. Same-sex de facto couples and single persons are not excluded from entering into a surrogacy arrangement and becoming intended parents. This government is committed to the freedom and autonomy of the individual. We believe in the dignity of all citizens and that all citizens should be free from unlawful discrimination. Long gone are the days when the Queensland government sought to embroil itself in the personal affairs of its citizens. We hope we never return to those dark days.

Labor governments see family life as fundamental to the wellbeing of society, and we do not seek to impose one narrow set of criteria on our description of what constitutes a family in Queensland. Nor do we have any preconceived ideas about which individuals make the best parents. Queenslanders should be free to determine, between themselves, the surrogacy arrangements they wish to put in place.

Consistent with the parliamentary committee's report, parties will be able to utilise any of the various methods for conception, including assisted reproduction technology through fertility clinics, self-insemination or natural conception. There are no restrictions upon the use of genetic material used in conception of the child. Nor does the government consider it appropriate to impose restrictions based on marital status, gender, sexual orientation or methods of conception.

However, to ensure that the wellbeing and best interests of the child are protected and that parties to a surrogacy arrangement understand the implications of the arrangement, various safeguards are included. These safeguards are built into the court process for an application to transfer the parentage of the child. Before a parentage order transferring the parentage of a child from the birth mother to the intended parents can be made, a judge of the Children's Court must be satisfied of certain requirements.

These safeguards include the court having to be satisfied that the parties to the surrogacy arrangement obtained independent legal advice before entering into the arrangement. The court will also have to be satisfied that the parties to the surrogacy arrangement obtained counselling prior to entering into the arrangement about the social and psychological implications of the surrogacy. The intended parents must also establish to the court that there was either a medical or social need for the surrogacy.

In addition, intended parents must provide to the court a surrogacy guidance report prepared by an independent counsellor with the qualifications, experience, skills or knowledge appropriate to prepare the report. Once a parentage order is made, intended parents will be able to lodge the parentage order with the Registry of Births, Deaths and Marriages so that the birth certificate of the child will show the intended parents as the child's parents.

The birth mother who relinquishes the child can be reimbursed for and enforce payment of reasonable costs she has incurred as a result of participating in a surrogacy arrangement. A surrogacy arrangement is otherwise unenforceable. The current prohibitions against commercial surrogacy, advertising and brokerage fees are maintained. A new offence of knowingly providing technical, professional or medical services to facilitate a pregnancy under a commercial surrogacy arrangement is provided under the bill.

The bill includes related amendments to certain other acts, including the Adoptions Act 2009, the Births, Deaths and Marriages Registration Act and Regulation 2003, the Criminal Code, the Domicile Act 1981, the Evidence Act 1977, the Guardianship and Administration Act 2000 and the Powers of Attorney Act 1998. The bill also includes amendments to the Status of Children Act 1978 to recognise the female de facto partner of a child's birth mother as a legal parent of the child in certain circumstances. These circumstances are that the birth mother has undergone a fertilisation procedure to conceive the child with the consent of her female de facto partner. These amendments provide legal certainty for these children and gives them the same legal rights and status as all other children.

These particular amendments, consistent with provisions in the majority of other states, including most recently Tasmania, reflect the outcomes of my department's recent review of the parentage presumptions in the Status of Children Act 1978 as they apply to same-sex couples. This review was

publicly released for comment on 18 August 2009. The overwhelming number of respondents to the review supported the proposed reforms. These reforms were also included in the exposure draft of the Surrogacy Bill 2009 released for public comment on 29 October 2009. Again, the majority of respondents who commented on this particular aspect of the exposure draft supported the reforms.

Finally, I would also like to take the opportunity to congratulate and thank the parliamentary committee on its hard work and diligence in the development of its comprehensive report on this very complex and important issue of surrogacy which has, in the end, led to this important legislative measure being introduced into the Legislative Assembly. I commend the bill to the House.