

## HOUSE OF ASSEMBLY

THURSDAY 04<sup>TH</sup> JUNE 2015

### FAMILY RELATIONSHIPS (SURROGACY) AMENDMENT BILL

**Mr PEDERICK ( Hammond ) ( 11:03 ):** I rise to support the Family Relationships (Surrogacy) Amendment Bill. This bill was introduced by my colleague and good friend the Hon. John Dawkins MLC from another place. It seeks to amend the Family Relationships Act 1975 and to make a related amendment to the Assisted Reproductive Treatment Act 1988. Obviously, this all relates to the Statutes Amendment (Surrogacy) Act 2009.

An investigation was undertaken to improve the existing law in South Australia, firstly, to ensure security for children who are born through surrogacy; secondly, to try to make the existing surrogacy arrangements accessible in this jurisdiction more extensive; and, thirdly, limiting the use of the overseas commercial surrogacy process while also ensuring that commercial surrogacy remains banned in South Australia.

As stated before, commercial surrogacy at the moment remains banned in South Australia. However, various forms of altruistic surrogacy are legal. As of 26 November 2010, recognised surrogacy arrangements were also permitted. Altruistic surrogacy is where the surrogate mother does not receive any compensation and may only be reimbursed for the medical costs incurred during the pregnancy.

One of the amendments that the Hon. John Dawkins has made is to provide a suitable allowance for reimbursement costs which the surrogate mother may have incurred during the pregnancy period. This amendment may attract more women to be surrogates. At present, the number of willing surrogates is minimal. This is due to the lengthy process without any sort of reimbursement of the cost which may have been acquired during the gestational period.

Before the commissioning parents have the access to begin a surrogacy arrangement, they must provide the following evidence. They must show that the woman is or appears to be infertile, or there seems to be a significant risk of a serious genetic illness being transmitted to a child born. The commissioning parents also have to be legally married or have been living as a de facto husband and wife. If possible, at least one of the commissioning parents' gametes are to be used, and it is understood that, in some circumstances, this is not possible. It is also a requirement that the commissioning parents live in South Australia, and all parties participating must be 18 years of age or over.

I would like to make mention of a second amendment, that being the desire to build a register of approved surrogates which is to be accessed

only by approved medical institutions. Creating the surrogacy register would minimise the difficulty of finding a willing and reliable surrogate. Many commissioning parents find themselves having to travel overseas and engage in a commercial surrogacy arrangement. As I mentioned previously, at the moment, commercial surrogacy is illegal in Australia. The current proposed amendment reads:

(1) The Minister must establish a register (the *Surrogate Register* ) of women who are willing to act as a surrogate mother within the meaning of section 10HA.

(2) The Surrogate Register must be kept and maintained in accordance with the *State Framework for Altruistic Surrogacy* .

(3) A woman cannot apply for registration on the Surrogate Register unless—

(a) she is 18 years of age or older; and

(b) she is resident and domiciled in the State; and

(c) she is a permanent resident of Australia; and

(d) she satisfies any other requirement set out in the regulations for the purposes of this subsection.

(4) The Surrogate Register is not available for public inspection.

(5) The regulations may make further provisions in relation to the Surrogate Register (including, to avoid doubt, provisions relating to inspection of the Surrogate Register by specified persons, or persons of a specified class).

Having a certified register of surrogates may provide the commissioning parents with a sense of security when deciding to enter into a surrogacy agreement. People want to be certain that the selected surrogate mother bringing their possible child into the world is reliable and suitable to conceive and carry a baby.

Another amendment that I would like to note is a similar procedure that is in place for overseas adoptions. Any proposed international surrogacy must go before the relevant minister to review and assess each proposed surrogacy agreement case by case. Before approval, the minister must consider that the welfare and security of the possible child is secure, and any unsuitable parents would be discouraged from access to use the option of surrogacy. This amendment would regulate overseas surrogacy arrangements. In regard to offences in the bill, there is an amendment

that involves the substitution of section 10H. It deletes the previous section and substitutes it with:

#### 10H—Offences

(1) Except as authorised by or under this Act or the *State Framework for Altruistic Surrogacy*, a person who, for valuable consideration, negotiates, arranges or obtains the benefit of a surrogacy contract on behalf of another is guilty of an offence.

Maximum penalty: Imprisonment for 12 months.

(2) A person who, for valuable consideration, induces another to enter into a surrogacy contract is guilty of an offence.

Maximum penalty: Imprisonment for 12 months.

(3) For the purposes of subsections (1) and (2), the prosecution need not prove that—

(a) a surrogacy contract was, in fact, entered; or

(b) a woman became pregnant, or a child born, pursuant to a surrogacy contract.

This bill has been amended in a way to ensure security, wellbeing and a healthy lifestyle for all parties involved.

The bill supports the welfare of the child being born, which in my view is the top priority. Certainly, and as the member for Morialta mentioned earlier, I was involved in the Social Development Committee in my first term in this parliament, and surrogacy was a major reference which we debated for a considerable length of time before the original legislation came several years ago.

There were some very heart-rending stories and evidence provided by people who had been involved in an interstate surrogacy arrangement, including the evidence provided by Kerry Faggotter, and others. It was tough, because essentially what was going on was that these people were having to go interstate and, by the time they went through the whole process, it was costing in many cases at least \$50,000.

What the Hon. John Dawkins sought to do with part of the original surrogacy bill was to stop people having to spend that amount of money so that they could enjoy the joy of having a child. It was a very interesting reference to deal with, and I know on our side of the argument the Hon. Stephen Wade from the other place was working on it with me.

I think that this just brings the legislation into line and takes on the reality of the world of what is happening at the moment. We have obviously heard of the case in Thailand and baby Gammy, and there are obviously other things that are going on where people are trying to pick the sex of a baby and that kind of thing in overseas surrogacy arrangements. It is just wrong, and this kind of legislation will avert that practice to a great degree.

I think it is just sensible legislation, updating what has already been brought to the house. As I said, all the amendments I have mentioned today are a significant contribution to improve the current act, and I commend everyone who has had input to this and all of the agencies, and certainly the eight years, or so, of work that the Hon. John Dawkins has put into this cause to get something right for the good citizens of South Australia and for people who for whatever reason cannot conceive a child of their own.

My wife and I had the ability to have a couple of kids. We did not need to use surrogacy arrangements. There is nothing better than witnessing childbirth. It is such a great thing; and if this opens up the world for couples and opens up the state for couples to have the opportunity to have children what greater thing can we do in this place. Certainly, with those few words I support the bill.