

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

Second Reading

Resumed from 9 April.

HON NICK GOIRAN (South Metropolitan) [5.08 pm]: Here we are on the eighth sitting day that the government has decided to prioritise the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. On the first of those eight days, we had the unedifying spectacle of the parliamentary secretary pretending that the government did not have in its possession these two documents from the review by Associate Professor Sonia Allan, only to be caught out in question time on 20 February. Then on the following day, 21 February, we had the spectacle of Minister Roger Cook, whose bill this is, proceeding to tell the media that nothing in the report was relevant to the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. Lo and behold, after three days of debate, the government abandoned the debate for the entire month of March. Let us be clear: the government determines the agenda of bills that are brought before this house, and for the entire month of March it determined that this bill would not be brought on for debate. That was because the government was highly embarrassed by the parliamentary secretary having pretended that this review report did not exist, which was then made worse by the minister saying that the review had nothing to do with the bill before Parliament. When the bill proceeded to this place—the government next prioritised it on 2 April—we continued the debate. Last Thursday, as members may recall, I asked the government to table certain documents to facilitate the passage of this bill. I note that those documents still have not appeared on the table in front of me, which continues to impede the progress of this bill.

It has been put to me by other members, from conversations that they have had with the government, that it is crystal clear that the government will not provide those documents to Parliament. It refuses to provide that information to the Parliament, yet it then complains that the chamber's time is being wasted when it is the government that determines the priority of legislation before the house. The government is obstructing the progress of the bill by not providing information to Parliament.

What options do we have available to us to facilitate the passage of this bill? I indicate to members that, being left with no other option, it is my intention to move a motion to have this bill discharged from the notice paper and referred to the Standing Committee on Legislation. I urge members to support that motion. It is impossible for us to make serious progress on this bill while the government continues to hide documents. I understand that this matter has been highly embarrassing to the government after its parliamentary secretary pretended that documents did not exist, only to be caught out in question time, and after its Minister for Health deceived the media by saying that the report had nothing to do with the bill. Let us send the bill to the legislation committee and see what it has to say about it.

I urge members to support the motion I will move shortly, which will be that the Standing Committee on Legislation—of which I am deputy chair—should consider and report on the bill by no later than 27 June 2019. Members may quite rightly ask, “Why select that date? You could pick any date. Why pick 27 June 2019?” The simple reason is this: members will be aware that at the next sitting block we will move into what is ordinarily the budget process. Members who have been here for a while will know that the passage of legislation comes to a grinding halt because, under our standing orders, priority is given to budget speeches for an extended time, and there is no realistic prospect of this bill passing during that time. The second reason for proposing 27 June is that that is the last sitting day before the long winter recess. That would enable members to have the opportunity to consider and peruse the report by the Standing Committee on Legislation over the course of the winter recess. The government will then, as has always been the case, have the opportunity, should it wish, to bring the matter on for debate in August when we return from the winter recess.

If the bill is referred to the Standing Committee on Legislation—I urge members to support that—there are a number of things the committee should consider, in my opinion. In fact, I will give four categories of things that I think the committee should consider. The first is: are any sections of the Human Reproductive Technology Act 1991 or the Surrogacy Act 2008 inconsistent with any sections of the Sex Discrimination Act 1984? Members will recall that the government has asserted that that is the case, but not one of its frontbench members is able to identify for us the sections it says are inconsistent with commonwealth law, yet it expects us to cast our conscience vote in those circumstances. That in itself is unconscionable. If the committee finds that the answer to that is yes, it should tell the house which sections are inconsistent and whether there are any exemptions. Furthermore, will the bill address any such inconsistencies, and will any inconsistency remain if the bill is passed unamended? I draw to members' attention the remarks by Associate Professor Sonia Allan, in the report the government tried to hide from us, that indicate that that is indeed the case. But let us not proceed on the basis of what Associate Professor Sonia Allan says the law is; let the Standing Committee on Legislation determine those things and bring them to our attention.

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The second category is: are any sections of the Allan report relevant to the bill; and, if yes, which sections? Which sections of the report support the bill, and which sections of the report support the foreshadowed amendments? Which other sections of the report express concern about the existing surrogacy regime in Western Australia?

The third category that the Standing Committee on Legislation should look into is: is there a right to be a parent? That is what has been asserted by the Minister for Health. The Standing Committee on Legislation should consider whether what the minister has said is true and correct and whether it is a basis upon which we can support this bill.

Lastly: will the passage of this bill be consistent with the child welfare principles expressed in section 4(1)(d)(iv) of the Human Reproductive Technology Act 1991?

Discharge of Order and Referral to the Standing Committee on Legislation — Motion

HON NICK GOIRAN (South Metropolitan) [5.16 pm] — without notice: I move —

- (1) That the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 27 June 2019; and
- (2) the committee has the power to inquire into and report on the policy of the bill.

I urge members to support the motion.

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.17 pm]: I rise to indicate the government's position on this motion. We will not support the referral, and I will outline the reasons, but I will move an amendment. I understand, from the people I have spoken to, that the honourable member has the numbers to support the motion before us. That is disappointing to the government, but I respect people's rights to reach the conclusion that this is an appropriate thing to do. However, I think it is important that we give due consideration to what we are asking the Standing Committee on Legislation to do. That is the essence of my amendment, which I will get to in due course.

I will explain the reasons why we will not in the first place support the referral of the bill to the committee. We have now had just over 21 hours of debate from one member of the house on a matter that is a conscience vote. The issue with this being a conscience vote is that the essence of the policy of the bill is a matter that our respective parties have determined we will each get to apply our own set of values, our own moral compass—if that is what members want to call it—and our own set of beliefs in respect of whether we support the bill. No committee can resolve that for us. Committees can look at technical things, and I will talk about those when I speak to my amendment, but at the heart of this bill is: do we agree to extend eligibility for surrogacy to single men and gay men? No committee can resolve that question for members—no committee. It is a question that we have to resolve for ourselves. The proposition that has been moved by Hon Nick Goiran says in paragraph 2 that “The committee has the power to inquire into and report on the policy of the bill.” It is useful to note that schedule 1 of the standing orders sets out the provisions relating to our standing committees. I discovered the wonders of this particular section of the standing orders earlier today. Paragraph 4.4 of the provisions that apply to the Standing Committee on Legislation, state —

Unless otherwise ordered, any amendment recommended by the Committee must be consistent with the policy of the Bill.

That has been interpreted and generally accepted to mean that unless the house so directs, the legislation committee does not look at the policy of a bill. That is why the standard motion we see when a bill is referred to the legislation committee regularly includes the phrase to authorise the committee to look into the policy of a bill, which is not what the standing orders say the committee should do. If we accept Hon Nick Goiran's terms of reference, we are making a decision that the legislation committee shall look at the policy of the bill. A whole lot of things have been talked about in this debate that are not relevant to the bill before us, but even the matters that have been raised that are relevant to the bill are legal and technical matters.

No committee can resolve the policy of the bill and determine whether members support surrogacy being accessible to single and gay men. Members must resolve that according to their own values and beliefs—moral compass, if that is what members want to call it. I am worried that we are going to ask the Standing Committee on Legislation to report back to us before 27 June on a matter that the committee cannot possibly resolve. It could take an awfully long time and the committee could hear from people who support both sides of the moral question, but I still think it would be of no assistance to members because ultimately they have to make that decision according to their own set of values. It is not a useful expenditure of taxpayers' money to get a committee to consider a question that only we can resolve. It is arguable and, indeed, has been demonstrated many times that it is useful to get committees to look at very specific, technical matters and matters that relate to operationalising a policy or the mechanics of technical components of a bill. That is a reasonable thing for the legislation committee to look at if we deem it to be appropriate. That is why I will move an amendment to give an instruction to the

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committee that it should look at a number of things, which I will lay out. Some of those things neatly coincide with the list of four matters raised by Hon Nick Goiran, but some of them do not because two matters, I would argue, go to the policy of the bill—the right to be a parent and the welfare of a child. Our views on that are determined by how we feel about whether single men or gay men are appropriate as parents. The committee cannot resolve that for us. However, other elements of what the honourable member raised could be appropriate and helpful to members for the committee to examine, if the committee is established.

One thing I was terribly disappointed not to hear from the honourable member was a commitment that if this bill goes off to a committee, when it comes back the honourable member will do his very best to expedite the passage of the bill and that we will not see —

Hon Nick Goiran interjected.

Hon SUE ELLERY: Honourable member, for 21 hours, I have not interjected.

Hon Nick Goiran interjected.

Hon SUE ELLERY: Please, honourable member, let me make my speech uninterrupted. I am asking the member to pay me the respect I have paid him for 21 hours.

Hon Nick Goiran interjected.

The PRESIDENT: Order, members!

Hon SUE ELLERY: The point I am making, which I was terribly disappointed not to hear from the honourable member, is that when the committee report comes back, he will commit to exercising his conscience vote in a way that does not see us again spend an unreasonable amount of time canvassing matters that are, firstly, not in the scope of the bill and, secondly —

Hon Nick Goiran interjected.

Hon SUE ELLERY: Honourable member.

The PRESIDENT: Order! Hon Nick Goiran, you might just want to listen to what the Leader of the House has to say. We are now on limited time.

Hon SUE ELLERY: The point I am making is that I would like to ask the honourable member to give the house a commitment that when we send this bill off to the Standing Committee on Legislation, which is what I think the house is going to do —

Hon Nick Goiran: You're opposing it!

Hon SUE ELLERY: Now the honourable member is just being disingenuous. I said at the outset that I would oppose the motion, but that my understanding of the numbers in the house was that the honourable member has the numbers for it to be successful. He is now just being disingenuous.

Hon Michael Mischin interjected.

The PRESIDENT: Order!

Hon Alannah MacTiernan interjected.

The PRESIDENT: Order! Let us hear what the Leader of the House has to say and, when she sits down, if other people want to seek the call, they will have an opportunity to make a contribution to this referral motion. Leader of the House.

Hon SUE ELLERY: Thanks, Madam President; I appreciate your assistance.

I would hope that when I finish speaking, the honourable member takes any opportunity that is available to him to indicate to the house that he will ensure that he respects this process and that when the report comes back, we do not see a repeat of what we have just heard for the last 21 hours in which the member has talked for hour upon hour upon hour, for example, about commercial surrogacy, which is not in this bill, and that he does not talk for hour upon hour about other matters that are not relevant to the bill. That is the commitment I am seeking from him. I am disappointed because I understood it was a possibility he would give that commitment. I am disappointed that it has not happened.

Nevertheless, I am going to move an amendment that will have the effect of specifically issuing an instruction to the committee that it is not to inquire into the policy of the bill for the reasons I have outlined; I do not think any committee can resolve the essential policy of this bill, which is whether we think it is reasonable for the house to pass legislation that extends surrogacy to single and gay men. However, I note from my discussions with members of the house that they have formed a view that some of the matters that Hon Nick Goiran has raised warrant specific consideration. They go to, for example, the matters directly relevant to clauses in the bill that amend the

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Surrogacy Act and Human Reproductive Technology Act to address inconsistency with the Sex Discrimination Act. That was the first point in the list of four criteria that Hon Nick Goiran raised. It has been raised with me that this issue warrants further examination. Although I oppose the referral motion, if the house decides to pass it, I will ask members to support my amendment. Further, the other points raised by the honourable member that members have indicated to me in their discussions warrant some further examination from their point of view are those that are set out in the amendments that appear in the honourable member's name on supplementary notice paper 88, issue 1. My amendment also goes to do that. It essentially says three things: that the committee is not to inquire into the policy of the bill; but that it considers only matters directly relevant to clauses in the bill that amend the Surrogacy Act 2008 and Human Reproductive Technology Act 1991 to address inconsistency with the commonwealth Sex Discrimination Act 1984; and the proposed amendments on supplementary notice paper 88, issue 1. In the discussions I have had with members, those are the issues they think Hon Nick Goiran has made good points about. I do not agree, but that is what members have said to me. If that is the case and the house decides that the referral is appropriate, I ask members to seriously consider supporting the terms of reference that I am proposing. Do not ask the committee to do something by 27 June that no committee can possibly do, which is resolve where members stand on the issue of whether surrogacy should be available to single or gay men. I am asking members to support that amendment.

Amendment to Motion

Hon SUE ELLERY: I move —

To amend the motion to delete paragraph (2) and substitute —

- (2) That it be an instruction to the committee —
 - (a) that it is not to inquire into the policy of the bill; and
 - (b) that it only considers —
 - (i) matters directly relevant to clauses in the bill that amend the Surrogacy Act 2008 and the Human Reproductive Technology Act 1991 to address inconsistency with the commonwealth Sex Discrimination Act 1984; and
 - (ii) the proposed amendments contained in supplementary notice paper 88, issue 1.

HON NICK GOIRAN (South Metropolitan) [5.31 pm]: This amendment demonstrates precisely why the Leader of the House does not understand the legislation that is before us. In a very shifty fashion, the Leader of the House is suggesting that members agree that a select committee look only at matters directly relevant to clauses in the bill that amend the Surrogacy Act 2008 and the Human Reproductive Technology Act 1991 to address inconsistency with the Sex Discrimination Act 1994. Guess what, members? What if the committee finds that there is no inconsistency with the Sex Discrimination Act? There goes subparagraph (i). It is completely obliterated because of the shifty wording proposed by the Leader of the House. All the committee can then do is look at the proposed amendments. That is appalling. That goes to the very heart of this issue.

I think the Leader of the House knows full well that that would be the impact of her amendment because she and her government have access to legal advice that they have been hiding from the rest of us. Hon Tjorn Sibma and Hon Michael Mischin have been trying to pursue this at length but the government refuses to provide it. We cannot get one of the government frontbench members to stand up and indicate to us what section of the Sex Discrimination Act the government says our laws are inconsistent with. Not one of them has told us throughout this debate. The Leader of the House cries about the fact that there has been 21 hours of debate but not once has the government indicated what the section is. None of the government members can tell us what it is. The government has had so many opportunities. Every day a member or minister can stand up and make a members' statement.

Several members interjected.

The PRESIDENT: Not helpful, member. Hansard cannot hear when people yell at each other across the chamber. You may not like what you are hearing but given that everyone else has been heard in relative silence, I ask that you extend the same courtesy to this speaker.

Hon NICK GOIRAN: I will be brief because I would like to make progress, unlike the Leader of the House, who has purposely put wording before members—if it is the case that our laws are not inconsistent with the Sex Discrimination Act—that would, in effect, leave us looking at the supplementary notice paper. What a waste of time that would be for the committee. The Leader of the House asked me to give a commitment depending on the outcome of her amendment to my motion, but I do not know what the outcome will be. If the committee just looked at the supplementary notice paper, the Leader of the House can rest assured that there would be no such

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commitment from me. We have a long way to go yet. This has all been brought about because of the Leader of the House and her government's arrogance and desire to hide documents from Parliament. When the Leader of the House had control of the agenda in March, she decided not to bring this bill on for debate. I ask members to oppose the amendment moved by the Leader of the House.

HON ALISON XAMON (North Metropolitan) [5.34 pm]: This is the first opportunity that I have had to speak on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. I want to make a few comments. Ordinarily, the Greens are very supportive of sending bills to committee. That is a practice that we usually try to follow. However, this issue is similar to what happened late last year: we have a reluctance to refer this matter to a committee on the basis that, as already articulated by the Leader of the House, it is effectively about competing ideas around the policy of the bill. It is the case that if we do not support surrogacy, we just do not support surrogacy, or if we do not think that gay parents should be able to access surrogacy, that is something that we believe. If we do not believe that single men should be able to access surrogacy, that is a belief that we hold and we are entitled to have and we are entitled to speak on that, and it cannot be reconciled through any activity of or investigation by a committee.

We have heard from Hon Nick Goiran for some time on this legislation. I am not surprised. Like many other people, Hon Nick Goiran feels strongly about the provisions within this legislation. Throughout his contributions, I feel that some issues have warranted further debate and other issues are not pertinent to the debate in front of us today. I feel confident that those discussions could be borne out through a second reading debate and also during Committee of the Whole House, we would be able to tease out the nature of the amendments on the supplementary notice paper and any other amendments that may arise.

Having said that, like the Leader of the House, my understanding from discussions behind the Chair is that it is likely to be the will of the house that this bill be referred to a committee for further consideration. As such, it is useful that we narrow down the exact scope of what this bill is trying to address. As I said, if we do not support surrogacy, this committee will not be able to resolve that. I am firmly of the view that gay men are able to be wonderful, loving parents and that a man on his own is able to be a wonderful, loving father. I want to say from the outset how offended I am by some of the correspondence that I have received that has cast aspersions on the capacity of sole parents, being a former sole parent myself, and never the twain shall meet. There are obviously strongly held views around this, and no committee will be able to resolve that. No committee will be able to come to the conclusion that I as a sole parent was a really good parent or that any sole parent would be a good parent. I see no merit whatsoever in trying to get a committee to rehash that particular policy.

Having said that, if the bill is sent to a committee to be considered further, I would like to make a few comments about a couple of the amendments on the supplementary notice paper that may be subject to consideration by the committee should they be referred. Should it be agreed by the house to refer this matter to a committee and to look at that, I am particularly interested in the issue of extraterritoriality. Like Hon Nick Goiran, as we have heard during his contributions to date, I do not support commercial surrogacy. I have never been supportive of commercial surrogacy. I am very interested in looking at amendments that might address the issue to discourage people from going overseas to access commercial surrogacy arrangements.

The PRESIDENT: Member, I might just say that this is part of the difficulty with that particular matter; it is not canvassed in this legislation. I remind you that we are dealing with an amendment to a referral motion, so it is a really narrow debate about why you either support or reject the amendment or why you would support the referral, rather than the broader issues.

Hon ALISON XAMON: Thank you, Madam President; with respect, the amendment refers specifically to discussion on the proposed amendments contained in supplementary notice paper 88, issue 1. I am referring to those specific amendments. If this matter is referred to a committee, I would like my concerns about those amendments on the record so that the Standing Committee on Legislation can have it as part of its consideration. It is actually part of the motion we are debating directly in front of us at the moment.

The PRESIDENT: Hon Alison Xamon.

Hon ALISON XAMON: As such, I am particularly interested in this issue of extraterritoriality because it seeks to discourage people from going overseas particularly to pursue commercial arrangements. One of my concerns is whether this will limit extraterritoriality simply to within Western Australia because my concern is that rainbow families often exist across Australia. I would like to know whether the Human Reproductive Technology and Surrogacy Legislation Amendment Bill will prohibit people from accessing altruistic surrogacy arrangements between states in Australia. That has been unclear to me and I have not been able to get a satisfactory answer to it. It is a particular area I would like to have looked at.

The second issue on the supplementary notice paper is working with children checks. I note the report that has been tabled does not refer to working with children checks as part of the process, but it refers to the need for some

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sort of independent checks. I am of the view that working with children checks are not fit-for-purpose for this type of legislation. However, if this legislation is referred to a committee and the house looks at the proposed amendments to this motion that we are discussing now, I am interested to know whether there is perhaps a more fit-for-purpose process that would meet the needs articulated within the report that has subsequently been tabled. Those are two areas that I believe could be adequately canvassed during the Committee of the Whole House. I was fully anticipating to do that but in the event this bill is referred to the Standing Committee on Legislation, I would like to have it on the record that that detail might be worthwhile investigating further.

With those comments, I want to reiterate that I do not believe, as the Leader of the House does not believe, that the policy of this bill can be reconciled by a committee. I think it will delay it unnecessarily. Having said that, if it is to be referred, those are the matters I suggest would be worthwhile looking at further.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [5.43 pm]: I will be brief. I have listened with interest to the rationale put forward by the Leader of the House for truncating the scope of any inquiry by the Standing Committee on Legislation. I will say this: This is not a question simply of whether gay men can be good parents. It is not a question simply of whether single men can be good parents. It is not a question of re-examining surrogacy, as it is currently set out in the legislation, or other human reproductive technology. That is in legislation now. The question is whether this bill seeks to extend it under false pretences.

I asked yesterday whether the government had legal advice on this subject. I was pointed to two items of legal advice. I will not reveal the detail of it, but I know for a fact that as Attorney General, I received advice from the Solicitor-General at the end of 2016 and I know the content of that legal advice. It is by no means the blanket support for the need to amend this legislation as the government might pretend. It may be that subsequent legal advice that the government has tells it differently, but in the last how many hours the government has not even had the courtesy to say that these are the sections of this legislation that are inconsistent with the commonwealth Sex Discrimination Act. I can tell members which ones I think are potentially inconsistent—section 23 of the Human Reproductive Technology Act and section 19 of the Surrogacy Act, and section 22 of the commonwealth Sex Discrimination Act. The government will not tell us that.

The second reading speech of the Human Reproductive Technology and Surrogacy Legislation Amendment Bill states that this has been brought forward mainly to ensure consistency with commonwealth legislation because there is a risk that it is inconsistent and, hence, invalid. I suggest that is not established and is not entirely true. There is a policy element in this that goes beyond what the government says is necessary. The policy of the bill is important because we will find out whether it is to cure an inconsistency with commonwealth legislation. However, we may very well expose the fact that this is also a piece of social policy extension. If so, that raises the question of whether legislation—particularly the Human Reproductive Technology Act, which was carefully crafted after a lot of debate on the ethics and risks of human reproductive technology being extended at all, put into statute and being permitted within narrow confines for the benefit of women who, for medical reasons, were incapable of reproducing—ought to be extended for “social reasons”. One need only look at the preamble of that act to see how carefully Parliament framed its scope. This legislation purports to go well beyond that and introduce social reasons, whatever they may be.

The PRESIDENT: Member, I know that you are going to bring this back to why this amendment should be agreed to or not.

Hon MICHAEL MISCHIN: That is why the motion to have this matter referred to a committee ought not be restricted. If it proves that this legislation goes well beyond its scope, we need to look at whether the narrow scope of IVF and human reproductive technology ought to be indiscriminately extended without considering the harm to children and to the women who bear those children for others. That is why that issue becomes relevant. We would then, for social reasons, be ultimately putting those children and women at potential harm simply on the basis of a need for consistency and across-the-board extension. If it is a matter of simply aligning rules, that is fine, but if it goes well beyond that, it exposes the risks of surrogacy and of IVF and it means revisiting those social issues that the government has so far attempted to conceal. I suggest that members give this committee broad scope so it can look at those issues and wrestle with them to the extent they are relevant to this legislation. Maybe there is nothing in it at all, but we should not restrict the scope of its inquiry. I am disappointed that the Greens think this is all about gay men. It is not. It is about children and the women who bear those children for others, and that is important.

HON RICK MAZZA (Agricultural) [5.49 pm]: I rise to briefly say that I will not support the amendment to the motion. I would like to know a lot more about this bill. We received a two-volume report very recently that we are still wading through. I do not buy the fairly shallow idea of members making up their minds about whether they support a single man having a child or whether a gay person is a good parent. There is a lot more to it than that. I would like to know more about how this is going to operate. Accepting this amendment would

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narrow the inquiry too much. I am quite confident that this committee is more than capable of determining what part of the policy it should and should not investigate and of reporting back to the house. I will not support the amendment to the motion.

HON AARON STONEHOUSE (South Metropolitan) [5.49 pm]: I certainly empathise with the Leader of the House; the debate has been going on for quite some time. The government is looking to move beyond what seems like an impasse at this point, and is perhaps worried about the committee having a runaway inquiry into this bill. However, I fear that the proposed amendments to this motion may narrow the scope of the inquiry too far beyond what is reasonable. For example, subparagraph (2)(b)(ii) of the proposed amendment to the motion states —

the proposed amendments contained in supplementary notice paper 88, issue 1.

This would limit the capacity of the committee to inquire into the bill and the supplementary notice paper that we currently have. What if we were to refer this bill to the Standing Committee on Legislation now and someone in this chamber put forward another amendment tomorrow? That is entirely possible. The ability of the committee to consider those amendments would be limited, simply because it would be able to look only at the amendments that were put on the supplementary notice paper before the bill was referred.

Hon Martin Aldridge: Or the government's amendments.

Hon AARON STONEHOUSE: The government may have amendments that it wishes to use. That aspect of the amendment is unacceptable. I understand that there is a need to have a speedy resolution to this impasse, but limiting the consideration of amendments to only what is on supplementary notice paper 88, issue 1 will prevent the committee from looking at other amendments placed on the supplementary notice paper over the coming days or weeks. I also wonder whether limiting the consideration of the committee to not include the policy of the bill will limit its capacity to look at the amendments in the context of the policy of the bill. If amendments go to the overall policy of the bill but perhaps introduce new elements to the legislative instruments that enact that policy, will that fall outside the scope of the committee's inquiry? I am not too sure. It is unclear to me how limiting the capacity of the committee to look at the policy will interact. Perhaps there are wiser heads here who understand the committee process a little better than I do and who might explain how that might affect the committee's capacity to inquire.

The Leader of the House talked about schedule 1 of the standing orders, which deals with committees, and the standing orders around the legislation committee. If I got her arguments correctly, I think she was saying that the committee is not empowered to look into the policy of the bill unless otherwise expressly —

Hon Sue Ellery: The default position is that it does not, unless it is given an instruction to.

Hon AARON STONEHOUSE: So the default position of the legislation committee, according to the interpretation of the standing orders by the Leader of the House, is that it does not look at the policy of a bill unless expressly instructed to do so by the Legislative Council. If that is the case, why do we need to insert an amendment that expressly prohibits the legislation committee from looking at the policy? If that is the case, we do not need that part.

Hon Sue Ellery: We could just delete it.

Hon AARON STONEHOUSE: We could perhaps just delete it. There is a bit of disagreement about whether the standing committee has the capacity, by default, to look at the policy of the bill. I have heard a couple of different interpretations of the standing orders. If it is in fact the case that the standing committee already has the capacity to look at the policy of the bill, we should perhaps not give it such restrictive instructions when we make our referral and should let it carry out its normal function when inquiring into this bill. The comments of Hon Michael Mischin in this debate were probably the most informative; that is, if the impetus for this bill in the first place is based on a faulty premise—on a misleading explanation of state law and commonwealth law—then the policy perhaps does need to be looked into, not around the idea of surrogacy in and of itself, but around one of the impetuses for this bill, being a breach of commonwealth law. It seems to me that that is at the heart of the policy of this bill and is one of the main drivers for the referral in the first place. Even the Leader of the House recognised that, by trying to limit the scope of the committee to dealing with the parts of the bill that are inconsistent with the commonwealth Sex Discrimination Act 1984. I wonder how limiting the ability of the committee to look at the policy will work when part of the impetus for the bill is the policy—that is, the breach of commonwealth law. I am worried that when we refer this bill to the Standing Committee on Legislation, we will tie its hands behind its back and limit its ability to do its job.

I hope that the members of the Standing Committee on Legislation will have the capacity to look at the time restraint they are dealing with and will narrow the scope of the inquiry based on that. That would limit the possibility of a runaway committee. In any case, if I have my standing orders correct, if the committee does not have time to complete its inquiry and wants to extend its time, it will have to seek leave from the Legislative Council. If the will of the Council is that the committee does not get an extended time line, the committee has no choice but

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to severely limit the scope of the inquiry itself and look only at the matters it thinks are important. Based on that, I do not think I could support the amendment to the referral motion.

HON MARTIN ALDRIDGE (Agricultural) [5.56 pm]: I rise to speak on the amendment to the motion to refer this matter to the Standing Committee on Legislation, which is a little back to front. I will try to make sure that I contain my remarks to the amendment, and then, if I am given an opportunity later, I will speak to the substantive motion. I will not support the amendment moved by Hon Sue Ellery. I want to point out some of the reasons for that. Earlier today I received notice from Hon Nick Goiran that he intended to move a referral motion in the standard form. I understood that would include paragraph (2) of the motion, which refers to authorising the committee to inquire into and report on the policy of the bill. In my view, that has become the default position of this Council, despite the fact that the standing orders with respect to the legislation committee recognise that it is a decision of the Council to order such a thing. I would argue that in more cases than not, the legislation committee in particular, which receives most of the bill referrals, is authorised to consider the policy of a bill. I can recall at least a few speeches in my short time in this place that have been made by tabling members or during the consideration of committee reports in which the chair of the legislation committee, the Standing Committee on Uniform Legislation and Statutes Review or perhaps some other committee that was considering a bill before the house made some comments about the way in which their committee was constrained in looking at particular matters because the house had not expressly ordered that provision. What makes this bill somewhat different from many of those others is the circumstances that have arisen since debate on the bill commenced. We now have a 520-page independent inquiry report, which canvasses many issues related and unrelated to the scope of the bill before us. We do not know what the government's response to that will be. We do not know whether the government will support the recommendations of the inquirer. We do not know whether, if it supports the recommendations of the inquiry, it will introduce a further bill to give effect to the recommendations that it supports. All those things are outside my control.

The first opportunity I have had to consider this amendment to the motion was when it was moved by the Leader of the House. I understood that the Leader of the House would simply amend the proposed motion by Hon Nick Goiran by proposing to delete part (2), to remove the power of the committee to inquire into the policy of the bill. The amendment motion is obviously much more complex than that. I have not been able to seek adequate advice or adequately consult with my party colleagues on the amendment to the motion that is currently before us. On balance, it is my view that in this instance the legislation committee should be authorised to consider the policy of the bill. In fact, I remind members that the bill does many things other than just extend the provisions of the Surrogacy Act to allow for single men and men in a same-sex relationship to access surrogacy. The second reading speech outlines circumstances for seeking a parentage order, fertility preservation for medical reasons, advisory investigation search powers in surrogacy and other related amendments and minor corrections. Although there has been a lot of focus on trying to make this a vote on whether we support single men or gay men having access to the Surrogacy Act in Western Australia, I do not agree with that view. I assure the Leader of the House that no matter what speech is given by any member in this house or no matter what the view the committee may form about the appropriateness of single or gay men having access to surrogacy, it will not change my personal views. I think there are matters that ought to be genuinely considered by the legislation committee, and I will address those further when we return to the substantive motion. I also want to recognise that the motivation for having the legislation committee consider this matter and the subsequent amendment to the referral motion was to provide a circuit-breaker so this matter could be resolved. I think an important point that should not be forgotten is that there are people who have various views, and they are not just constrained to one political party. There will be various views on whether this bill should be passed. I am not speaking on behalf of my party, but I will provide support in principle to the passage of this bill. However, there are a range of matters that I want to ensure we have appropriately canvassed and considered before we reach that point.

HON COLIN TINCKNELL (South West) [6.01 pm]: I will not support the amendment to the motion. I have heard various members debating this issue this evening. I have conferred briefly with my colleagues, and we believe the committee will need to have the right to the full consideration of the report and to look into the policy of the bill. We will not support the amendment to the motion.

Division

Amendment put and a division taken with the following result —

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Ayes (14)

Hon Robin Chapple
Hon Tim Clifford
Hon Alanna Clohesy
Hon Stephen Dawson

Hon Sue Ellery
Hon Diane Evers
Hon Adele Farina
Hon Laurie Graham

Hon Alannah MacTiernan
Hon Kyle McGinn
Hon Martin Pritchard
Hon Darren West

Hon Alison Xamon
Hon Pierre Yang (*Teller*)

Noes (15)

Hon Martin Aldridge
Hon Jacqui Boydell
Hon Peter Collier
Hon Donna Faragher

Hon Nick Goiran
Hon Colin Holt
Hon Rick Mazza
Hon Michael Mischin

Hon Simon O'Brien
Hon Robin Scott
Hon Tjorn Sibma
Hon Charles Smith

Hon Aaron Stonehouse
Hon Colin Tincknell
Hon Ken Baston (*Teller*)

Pairs

Hon Samantha Rowe
Hon Matthew Swinbourn
Hon Dr Sally Talbot

Hon Colin de Grussa
Hon Dr Steve Thomas
Hon Jim Chown

Amendment thus negatived.

Motion Resumed

HON MARTIN ALDRIDGE (Agricultural) [6.07 pm]: I rise to speak to the substantive motion before the house that we discharge the Human Reproductive Technology and Surrogacy Legislation Amendment Bill and refer it to the Standing Committee on Legislation. I point out that this is now my second chance to speak to this bill in some respect, but we are still dealing with the referral motion. I indicate from the outset, and I preface my remarks as I just did when I spoke to the amendment to the referral motion, that the bill has my in-principle support. There are a number of issues I have had some concern with and required further examination of from the beginning. Obviously, one of those is the fact that the government had received this independent inquiry report but had not released it when we commenced debate on this bill. Things have moved on and we now have a report. I must admit that I have not read all 520 pages of the report. I am not sure whether any other member in this house can claim to have read it. I note that the report more extensively reviews the two pieces of legislation, being the Human Reproductive Technology Act 1991 and the Surrogacy Act 2008, whereas the bill before us is much more focused and specific.

During the second reading debate, we heard doubt about whether the bill before us is premised on our state laws being inconsistent with federal laws—namely, the Sex Discrimination Act 1984—and that that therefore renders our state law invalid. That is not a major influence in my decision or concern about this bill, but I know that it is for others who are considering the matter. Indeed, it is certainly one of the key drivers—if not the key driver—for the legislation before us. It is clearly outlined on the first page of the second reading speech that that is the case and therefore is a problem that we need to fix. As I said, that is not a major factor for me. I believe in removing sex-based discrimination in whatever form and regardless of whether state law offends the federal law, my view will not change. Others may well be considering their support for or response to the bill differently, but certainly a committee inquiry to consider that matter would assist with the progress of this bill. For example, I understand from the debate that I have heard so far that the government has not been prepared to release or summarise the legal advice that it has been provided. Perhaps the committee could seek independent legal advice and the views of others, such as the Sex Discrimination Commissioner of Australia.

I turn to section 3.4.2, “The 2018 proposed changes regarding discrimination”, on page 59 in part 2 of “The Review of the Western Australian Human Reproductive Technology Act 1991 and the Surrogacy Act 2008”. It is a commentary on the bill. The inquirer, Associate Professor Sonia Allan, states —

Regarding the above-mentioned discrimination on the basis of sex, relationship status, sexual orientation, gender identity and intersex status, the bill only addresses access to surrogacy through use of ART for male same-sex couples and single men. This is an important first step in removing discrimination in Western Australia regarding relationship status, sex, and sexual orientation, but further reform will be necessary to ensure non-discrimination on the basis of gender identity or intersex status. The latter appear not to have been included in the current Bill due to a need to clarify the impact of provisions in the *commonwealth Prohibitions on Human Reproductive Cloning Act 2002* (see discussion below), which will take time.

In the meantime, the current Bill addresses pertinent issues that were reported by the Government to be seen as requiring immediate action. That is, in the second reading speech it was said that the bill enables licensed

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fertility clinics and practitioners to provide such services without discrimination based on sex and sexual orientation, in compliance with commonwealth and state legislation (*Equal Opportunity Act 1984 (WA)*).

One of the issues that I would like the committee to consider is the matter raised by Sonia Allan. Certainly, I had not considered this matter before I read her report that was tabled in the Legislative Council. I would like the committee to consider other matters, including the issues identified on the supplementary notice paper; namely, extraterritorial application and screening. Those matters are covered considerably in chapters 9 and 5 of part 2 of her report. In fact, there are eight recommendations on international commercial surrogacy alone, with some very strong recommendations supporting action on extraterritorial application. A further five recommendations relate to the paramountcy of the welfare of the child and screening risk assessment, which is a particularly interesting point and one which I have spent a lot of time considering. How do we ensure that there are adequate screening processes? Some people hold the very simplistic view that the state does not get involved with the conception of a child in people's bedrooms—that is true—but that it has a very active involvement in the approval and consideration of a surrogacy arrangement. Therefore, we have an obligation, particularly given the way that the legislation is framed around the importance of the welfare of a child, to consider that matter most fully. During the briefings I had with departmental advisers, I was told that this is covered by other things and that we do not need criminal checks and the like because we have this thing called psychometric testing. I have never been thoroughly convinced that psychometric testing can identify whether a person is a child rapist, a sex offender, a man who beats his wife or any other type of person who would be precluded from entering into a surrogacy arrangement. It is more of a guide, and sometimes people are quite good at manipulating such assessments. Interestingly, recommendation 9 of the report found —

That current legislative requirements for pre-surrogacy psychological and medical assessments and reports be repealed. (Noting more suitable mechanisms to protect the best interests of children and to support the parties to a surrogacy arrangement are recommended below).

In her report, the inquirer identified what I think she referred to as a model based on the United Kingdom system, which would go some way towards assisting the committee to further examine this matter. A committee would be much more well-placed than I to consider the 520-page report. As I said in my comments on the amendment to the referral motion, many other things are outside my control. I cannot control when, if and how the government will respond to the report. I cannot control when and if the government will bring another bill to the house and in what form, but let me say this: in the short time that I have been in this place, I have seen this Council do extraordinary things when it has needed to. When we were dealing with the City of Perth Bill, which was a bill to form a City of Perth committee and adjust the boundaries of the City of Perth, the Legislative Council decided in its wisdom to expand the bill beyond its scope to allow for things such as funding and disclosure reform of local government councillors across Western Australia. Clearly, we have the power to do these things when we agree to do them. Although the bill before us may not extend to screening and extraterritorial provisions, those two matters and other matters should be seriously considered by the committee. I reiterate that I support the bill insofar as it addresses the issues of discrimination that currently prevent single men and same-sex gay couples from accessing surrogacy in Western Australia.

Division

Question put and a division taken with the following result —

Ayes (14)

Hon Martin Aldridge
Hon Jacqui Boydell
Hon Peter Collier
Hon Donna Faragher

Hon Nick Goiran
Hon Rick Mazza
Hon Michael Mischin
Hon Simon O'Brien

Hon Robin Scott
Hon Tjorn Sibma
Hon Charles Smith
Hon Aaron Stonehouse

Hon Colin Tincknell
Hon Ken Baston (*Teller*)

Noes (13)

Hon Robin Chapple
Hon Tim Clifford
Hon Alanna Clohesy
Hon Stephen Dawson

Hon Sue Ellery
Hon Diane Evers
Hon Adele Farina
Hon Laurie Graham

Hon Kyle McGinn
Hon Martin Pritchard
Hon Darren West
Hon Alison Xamon

Hon Pierre Yang (*Teller*)

Pairs

Hon Colin de Grussa
Hon Jim Chown
Hon Colin Holt
Hon Dr Steve Thomas

Hon Samantha Rowe
Hon Dr Sally Talbot
Hon Alannah MacTiernan
Hon Matthew Swinbourn

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Hon Nick Goiran; Hon Sue Ellery; Hon Alison Xamon; Hon Michael Mischin; Hon Rick Mazza; Hon Aaron Stonehouse; Hon Martin Aldridge; Hon Colin Tincknell

Question thus passed.