

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

Second Reading

Resumed from 10 October 2018.

HON NICK GOIRAN (South Metropolitan) [3.52 pm]: I am pleased to rise as the opposition's lead speaker to contribute to the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. I indicate at the outset that, although I am the lead speaker for the opposition on this bill, it is a bill that I understand from conversations with members has attracted a conscience vote for all 35 members. If that is not correct, no doubt somebody will clarify that later, but that is my understanding. Each and every member of this place will be able to exercise their vote in accordance with their conscience. That does not happen very often at all. Although I am the lead speaker for the opposition, I indicate that my remarks are my personal remarks. They may well be agreed to by one or more of my colleagues, who may or may not express that at a subsequent time. I will say this at the outset: I would encourage members to cherish their conscience vote. Members of the Liberal Party are in the privileged position of always being able to take a position contrary to the position of their party on any bill.

Hon Alannah MacTiernan: It is just by coincidence you always agree with each other!

Hon NICK GOIRAN: Mr Acting President, we have not gone a couple of minutes into this very important debate and we have already got an idiotic interjection by the member opposite.

Withdrawal of Remark

Hon SUE ELLERY: That was clearly unparliamentary language.

Hon Nick Goiran: It was an idiotic interjection.

Hon SUE ELLERY: I am speaking on a point of order. That is unparliamentary language, Mr Acting President, and I ask you to draw the member's attention to it.

Several members interjected.

The ACTING PRESIDENT (Hon Martin Aldridge): Order, members! There is a point of order before the Chair. I am getting advice from the clerks at the table. My understanding is that Hon Nick Goiran was reflecting on the comments made by the Minister for Regional Development and not making a personal reflection on the Minister for Regional Development; therefore, there is no point of order.

Hon Sue Ellery: No!

Hon Nick Goiran: Yes!

Hon Sue Ellery: If I may seek advice.

Hon Nick Goiran: Move a motion of dissent then.

Hon Sue Ellery: If I may seek advice.

Hon Nick Goiran: No, you can't seek advice.

Hon Sue Ellery: Are you in the chair?

Hon Nick Goiran: No.

Hon Sue Ellery: Exactly.

The ACTING PRESIDENT: The Leader of the House.

Hon SUE ELLERY: My point of order related to unparliamentary language; it was not about a personal reflection on a member.

Hon Peter Collier: He has made a ruling.

Hon SUE ELLERY: I have just asked for further advice.

The ACTING PRESIDENT: Members, my ruling was that from what I heard, Hon Nick Goiran made a reflection on an interjection made by the Minister for Regional Development and that interjection was "idiotic". I did not hear Hon Nick Goiran make a reflection on the Minister for Regional Development being idiotic; it related to the interjection that she had made to him. There is no point of order.

Debate Resumed

Hon NICK GOIRAN: If I might continue without interjections from members opposite: I am appalled, at the start of this debate on this matter, that the Minister for Regional Development has already asserted that somehow Liberal members always vote the same way. Unfortunately, that demonstrates the minister is a poor student of history. Whilst that member was out and about in other jurisdictions over previous Parliaments, I was here on more

than one occasion taking a different position to my government. I said that the interjection was idiotic because if the minister had been a good student of history, she would know that of all people that could not be said about me. Nevertheless, that has so far been the contribution by the Minister for Regional Development to the bill before the house, the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. I might indicate to the Minister for Regional Development that it will help me to get through my contribution in a more efficient fashion if she would just restrain herself from providing interjections that I will then feel the need to respond to.

I was saying with all sincerity that I would encourage members to cherish their conscience vote. I was simply making the observation that Liberal Party members are in the privileged position of being able to take a different position from that of their party. However, there is a convention and an understanding within our party that we alert our colleagues before we go and do those things. We are in that privileged position. I understand—I make no disparaging remarks whatsoever—that that is not the same position held by the Labor Party. That has been its longstanding convention and that is fine; it is quite entitled to determine its own rules. It is not for me to tell it how to run its party. I am simply saying that I encourage members to cherish their conscience votes because it happens rarely. It tends to happen on matters dealing with either the creation of life or the taking of life. They tend to be the two types of matters on which conscience votes are allowed by parties in general, including on this bill, given that quite clearly the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 will, if it is passed, facilitate the creation of new life. That brings about various ethical considerations and matters of conscience for members, so I encourage them to cherish their vote in this debate. That is all I was saying, Minister for Regional Development.

Having said that, I indicate to members that I have significant and serious concerns about the bill before the house. The Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 has a number of policy and technical flaws that I will spend some time outlining to members during my second reading contribution. Before I do that, I want to say that it has previously been my position, and it remains my position, that those who want to change the law have the onus to persuade. I have said that before and I say the same on this bill: the onus is on those who want to change the law to persuade the rest of members why the change is necessary. I have previously given examples of that when I believed the law needed to change. At the moment in Western Australia, at least 27 babies have been born alive and left to die, and that state of affairs is untenable from my point of view. The onus is on me to persuade others to join me in changing that situation. If I cannot do that, the law will not change. Equally, in this situation with the Human Reproductive Technology and Surrogacy Legislation Amendment Bill, which seeks to do a number of things, including allowing single men to enter into a surrogacy arrangement, the onus is on those who want the law changed to allow single men to access a surrogacy arrangement to persuade the rest of us to vote for the bill. It is not the responsibility of those of us who have concerns to explain why the bill should not be supported. That is not how law reform works and it is not how it ought to work. I encourage those who hold the view that this bill should be supported to make their case so that other members are in a position to indicate whether that onus has been discharged.

At present, the only information we have at our disposal is, of course, as is customary, the second reading speech provided by the government that explains why it says the law should change. Having read the second reading speech on the bill given by the government's representative in this place, I am not at all persuaded that the onus has been discharged. Indeed, I note that the arguments that have been presented for the change to the legislation have shifted from those proposed in the other place, and I will spend some time outlining that in due course.

To give members and, in particular, the hardworking Parliamentary Secretary to the Minister for Health an indication of the various topics that I would like to cover during the consideration of this bill, I would like to spend some time considering the genesis of the act that we are being asked to amend. In particular, I intend to assess some of the concerns that were raised when this legislation was first enacted 10 years ago. Surrogacy has been in place in Western Australia for approximately 10 years. During the debate in 2008—I remember the debate—concerns were raised about where things would be going, so I would like to look at that. I remember that debate quite well. The debate took place after the Liberal Party had won the election in 2008. Members might recall that there was an early election in 2008. It was the last election called prior to the fixing of election terms. It was in September 2008. During that period at the end of 2008, this legislation was handled by Parliament. I was elected at the September 2008 election, but I was not at that stage a member of Parliament, because, as members in this place will appreciate, the change does not happen in our chamber until 22 May every four years. I was sworn in only on 22 May 2009, whereas the debate took place between September 2008 and when I started in May 2009. I watched with interest, because, as an enthusiastic member-elect, I was waiting for the day to be sworn in. In the meantime, this conscience vote was taking place in both chambers. It was a little frustrating because, obviously, I would have liked to participate but I could not. I remember that debate quite well. It is one of the few times that I can say I watched Parliament with keen interest from my home office. I would like to spend some time on that.

During the passage of that legislation, it was helpfully assessed by the Standing Committee on Legislation. The Standing Committee on Legislation, on which I now serve as the deputy chair, had a look at that piece of

legislation. We often talk about the need for and the importance of committees. It just rolls off the tongue for members, but when the rubber hits the road, 10 years on we want to know what the committee said then that is relevant to this legislation.

I would also like to spend some time looking at what has happened in practice in Western Australia since surrogacy has been permitted over the past 10 years, what has been the uptake, what has been the process with applications and the like. I would also like to spend some time considering the annual reports tabled by the Western Australian Reproductive Technology Council during that time. The Reproductive Technology Council is, in effect, the overseer of the operation of this legislation and has been for the past 10 years. What has it said in its annual reports over the past 10 years that would be instructive to members on the passage of this legislation, which seeks to extend the categories of individuals who can apply for surrogacy arrangements? I would also like to spend some time comparing and contrasting our legislation with that in other jurisdictions. Over the past 10 years, what have other jurisdictions done in this area? Of course, Western Australia is not the only state with surrogacy laws, so what is the situation in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania and Victoria? What lessons can we learn and what improvements can we make to our legislation? What has been their experience that would inform us when we consider the bill before us? Indeed, what statistics have come from those jurisdictions?

I will also spend some time making the case for why criminal record checks are needed. That is based on the Victorian model, which has been in place for quite some time. Members may be aware of this and, if not, I draw it to their attention, particularly government members, because I note that on the last bill we dealt with, many months after notice was given of an amendment by a member, the government was not ready to deal with it.

I will indicate to members that, in fairness, given that this was the very first week that the government indicated this bill would come on for debate, I did provide to the Clerk a series of amendments, which are found on issue 1 of supplementary notice paper 88 that was distributed this week on Monday, 11 February. I draw that to the attention of members and, in particular, the government and ask that they consider that. One of the amendments found on the supplementary notice paper is about criminal record checks. I will spend some time explaining why that is necessary and why it would be appropriate for us to follow the Victorian model. Although I am not supportive of increasing the category of individuals who can access surrogacy arrangements, if that is ultimately the will of the house, we need to give serious consideration to pinching the best bits from legislation in other jurisdictions. In the Victorian legislation, I can find no better example of that than the criminal record check system, which I will spend some time outlining. I want to spend some time having a look at a report on the South Australian act that was authored by Professor Sonia Allan in 2017, and what she says about the South Australian legislation and the welfare of children that will help us when we consider the bill before us and whether any changes are needed, particularly for child protection orders and criminal record checks. Then, naturally, I will spend a little time looking at the Victorian legislation on which my amendment is based.

I would also like to spend some time considering ways in which we can safeguard against commercial surrogacy happening in secret. Commercial surrogacy is not permitted in Western Australia. Indeed, it is not permitted in Australia. But to the extent that it goes on in secret, we need to consider what safeguards could be implemented. That will be an important matter for members to consider. I would simply flag at this early stage that there is a need for a statutory declaration to be provided to the Western Australian Reproductive Technology Council when an application is first made to confirm that those who are entering into a surrogacy arrangement are not doing so on a commercial basis. There is a certain gravity to providing a statutory declaration and that would be a useful tool at the outset of the arrangement to provide to the Reproductive Technology Council. There is a case for saying that an affidavit for obtaining a parentage order should be required when the matter is before the Family Court. I would like to explore that at a later stage.

One of my amendments that I would like to foreshadow in these introductory remarks deals with the extraterritoriality of our laws. This is something that I have borrowed, if you like, from Queensland, the Australian Capital Territory and New South Wales. If our citizens should not be infringing our laws here in Western Australia, I would like us to consider whether the same standards should apply when they are overseas. I will spend some time looking at that. It will be important for us as members considering this substantive legislation to contemplate the departmental review that was undertaken into the Surrogacy Act 2008. Some members may not be aware that a Department of Health review was conducted that I think was finalised in November 2014. It will be important for us to consider the outcomes and the recommendations of that particular review and to what extent that informs us in our debate on the bill before us. I want to pose the question: to what extent is altruistic surrogacy different from commercial surrogacy? I will then spend some time going through the various clauses of the bill and, in particular, the highlights of the bill regarding the major policy changes that the government is seeking at this point in time.

Debate interrupted, pursuant to standing orders.

[Continued on page 359.]

Sitting suspended from 4.15 to 4.30 pm