

Mr John Carey; Amber-Jade Sanderson; Mr John McGrath; Dr David Honey; Ms Mia Davies; Mr Peter Katsambanis; Ms Lisa Baker; Acting Speaker; Mr Sean L'Estrange; Ms Libby Mettam; Mr Zak Kirkup; Mr Kyran O'Donnell; Mrs Alyssa Hayden; Mrs Jessica Stojkovski; Mr David Templeman; Mr Tony Krsticevic; Ms Janine Freeman; Mr Bill Marmion; Dr Tony Buti; Mr Roger Cook

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

Second Reading

Resumed from 23 August.

MR J.N. CAREY (Perth — Parliamentary Secretary) [4.22 pm]: It is my pleasure to speak to this piece of legislation, in part because it is also deeply personal to me as one of the three openly gay members in the lower and upper houses of this Parliament.

I came into politics to believe in the best of people, to appeal to the best of our humanity, to show great kindness and to understand that, despite our differences, there is much that brings us together. This is why I proudly stand here today as a member of this Parliament to support progressive change and humanity in our community. That is why today, as one of the three openly gay members of this Parliament, I stand on behalf of the gay and lesbian community to support this important social change for Western Australia.

Much has happened and changed over the past 20 years when it comes to the rights of gay and lesbian people. We have had the decriminalisation and expungement of historic homosexual convictions, which actually was the first critical point in recognising that, as human beings, we should all be respected regardless of our sexuality. Since that time, a tranche of reforms has been made. All those reforms have been important steps for future generations. Multiple changes have also been made at the federal government level to provide for de facto relationship property rights and so forth. Most recently, we had the debate and subsequent referendum on marriage equality, in which Australians overwhelmingly wanted, and voted for, recognition of same-sex couples and their right to choose marriage.

We are now at another turning point in our state's history: that is, to allow same-sex couples the right to surrogacy. We know, and the statistics show, that the recorded number of same-sex couples has been increasing. I note, as was mentioned in the Minister for Health's second reading speech on this bill —

Australian census results indicate an increase in reporting of family diversity, with 23 700 male same-sex couples in 2016, which is a rise of 2.6 per cent compared to the 2011 census. The proportion of male same-sex couples with children was 4.5 per cent

This debate shares many similarities with the marriage equality debate and other debates about the rights of all people in Western Australia. I want to state this very clearly on the public record: there are many children in Western Australia who are being raised now, lovingly, by same-sex parents, many of whom are male couples. Those children are loved and respected. They are supported in their aspirations and dreams. They go to school, they go to playgroups, they visit friends and they mix with their peers. I know many of those parents personally. They are in my constituency and my community. They do an outstanding job. They do a brilliant job in raising their children. I want to, first of all, celebrate all those same-sex couples who are successfully raising children every day in our community. We should celebrate their achievements.

From what I can understand and determine, the arguments against same-sex male couples are often the same arguments that are used against same-sex marriage. Those arguments are based on trying to preserve some traditional view of the institutions of marriage and parenting. I say to those people: these institutions have changed over time. We have seen that in married life. We have also seen that in family life. What constitutes a family in the twenty-first century is remarkably different from what was imagined 100 years ago. We now have single parents, both men and women, who are raising children; grandparents who are raising children; traditional men and women who are raising children; and same-sex couples who are raising children. We also have co-parenting arrangements. All those parents are working hard to realise the aspirations of their children, and ultimately they are all aspiring to the same thing—to create a safe and loving environment for their children.

I am concerned that those who argue against surrogacy for same-sex couples and do not recognise how the changing nature of those institutions is reflected in our community are doing so based on fear. They fear the unknown. They fear that a same-sex couple will do something wrong or will not be able to provide the same parenting as a heterosexual couple. We have all seen that fear, and I know it personally. That fear stems from and creates homophobia in our society. It creates discrimination and even hatred against gay and lesbian people. We know that gay and lesbian youth often struggle to come to terms with their sexuality and that for them it can be a harsh world. I can tell those members who have not ever encountered discrimination that as an openly gay man, a state candidate and now a member of this Parliament, I am still subject to homophobia and discrimination, whether it is being called a faggot by someone in the street or whether it was being texted during the election campaign and called a paedophile. The reality is that in the twenty-first century, homophobia still exists. As I said, I am tough, although it can get me down occasionally. I am a tough individual and I know the tumblers of politics

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and understand them, but for younger people, for younger generations, who are not born into politics or do not deal with politics, these are still difficult issues. Every bit of reform that tackles discrimination and removes those barriers is critically important not just for those same-sex male couples who wish to have a child, but also to all those younger generations who will see another path of discrimination dismantled from our legislation. We are on a pathway; we have seen it: decriminalisation, social security reforms, marriage equality. Now, here is another reform.

I know that opponents will use research—this is a classic case—to say that having same-sex parents has a detrimental effect on children. Either it is based on the fear of same-sex male couples, the fear of the unknown or perhaps the fear of deviance, or it is based on the fear of children not being given the ultimate loving environment. I refer to two research summaries that have been done that bust those myths and call them out for what they are. I refer to a great piece published last year by Jacky Hewitt. It is an opinion piece, but it looked at a summary of research. It has the title “There is no harm caused by same-sex parenting. Studies suggesting otherwise are skewed”. She is a paediatrician and she said —

On review of a large body of research, paediatricians and other experts repeatedly come to the same conclusion: children raised by same-sex parents are no different from those raised by heterosexual parents. Of 79 research studies on this topic, 95% support no difference between same sex or heterosexual parents. However, much attention has been drawn to the results of the outlier 5%, which suggest poorer outcomes in same-sex parented families.

She says that if we scratch the surface of this research, if we have a little look, we will see something interesting. She says —

... it's unusual that recent papers reporting outlier outcomes have been led by non-expert authors, including an economist, a sociologist with particular interest in religious matters and an academic whose stated expertise is in faith and religion.

One can already see the risk of bias in this five per cent of research that is often quoted against same-sex couples and parenting. I also note the Australian Institute of Family Studies research summary of 2016, which is published on an Australian government website. I want to directly quote it in preparation for those who will quote other research studies. It states —

Overall, the evidence does not support the view that same-sex parented families are harmful to children, with a review of Australian and international research (Dempsey, 2013) concluding that children in same-sex parented families do as well emotionally, socially and educationally as those in opposite-sex parented families. Further support for this came from an Australian study by Crouch, Waters, McNair, Power, and Davis (2014), which involved a convenience sample of 500 children of same-sex parents, and found that they did just as well on a range of measures of child health and wellbeing, compared to children in broader population samples.

There they are—two clear research summaries of current work and evidence that overwhelmingly demonstrate that same-sex parenting couples produce successful and happy children. I will say that again—produce happy and successful children. This is ultimately what this is about. It is about understanding that people want to create a safe and loving environment for their children. That is the majority across same-sex or opposite-sex couples. They want to create a safe and caring environment for their children.

I come back to where I started. I come back to all those Western Australian same-sex couples—women and men—who already on a day-to-day basis are leading by example, caring for and loving their children, and ensuring that they get the best opportunities in their lives, like every other neighbour who might be part of a heterosexual couple. The question is: why are there those who support this discrimination? It is not based on research, because the research is clear; it is based on fear. It is based on the same fear that drove the against side of the marriage equality debate. I can say this: there was not the downfall of society with the realisation of same-sex marriages. I have only been invited to two weddings, and they are both on the same day, which is a little bit difficult for me, and I have to get very good presents, because I know it is going to be a tough crowd! There were all these ideas that there would be doom and gloom and that the institution of marriage would be destroyed because same-sex couples would be permitted to marry. I have to jokingly say that heterosexual couples have already done that to the institution of marriage without any help from my community! The point is that ultimately this is about removing discrimination against caring, loving potential parents. That is what this debate is essentially about. As I said at the start of my contribution, this is a conscience vote, but I appeal to the best of humanity. I ask that members look at the kindness in their hearts and that they consider all individuals and treat them in the same way, to strip away the barriers of discrimination, and ultimately realise that, regardless of sex, loving committed couples can, and do, create a safe and loving environment for children. I ask members to support this legislation.

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MS A. SANDERSON (Morley — Parliamentary Secretary) [4.37 pm]: I rise to also lend my support to the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 that we are debating today. I rise because I support the substance of the bill, and essentially because I support the removal of discrimination. I support the removal of barriers and institutional and legislative discrimination for access to anything. As a society, we should not create boundaries for some and allow others access to certain technologies or laws. That is the fundamental principle I come from when making my decision about whether to support this bill, which will be decided on a conscience vote. The bill is as much about surrogacy as it is about equality of access. Currently, under the Human Reproductive Technology Act 1991, those who can access IVF and surrogacy are single women—irrespective of their sexual orientation—heterosexual couples and female same-sex couples. The act explicitly excludes same-sex male couples and single men. It is odd, at the very least, that same-sex female couples are not excluded but same-sex male couples are. This is a fundamental discrimination that needs to be removed. That is the point of view I come from in regard to this bill.

This is also about loving, committed families and allowing people to fulfil what is in many instances the most fundamental human desire—that is, to have children. It is our biology; it is why we are here. One of the main reasons we are here is to have children. Whether we are male, female, straight or gay, those fundamental needs do not change, and neither does the ability to fulfil those roles. The ability to fulfil the role of a parent has nothing to do with whether someone is gay or straight. The member for Perth outlined that straight people have probably done more disservice to marriage than the introduction of same-sex marriage.

The Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 will allow same-sex couples and single men to access surrogacy. Over the last 18 months or so there has been an overwhelming acceptance by the community of same-sex couples and their rights to marry under the federal act. Western Australia produced the highest “yes” vote in the country at 64 per cent. I am always proud to be a Western Australian, but I was particularly proud that day when we saw Western Australia say no to the bigotry, scaremongering and division. Western Australia said yes to embracing diversity and removing discrimination. That made me very proud to be not only an Australian, but also a Western Australian.

Surrogacy has had a very long journey in Western Australia since the parliamentary committee report in 1999 to the passing of the act some 10 years later; we are now a further 10 years on from that. In 2013 a number of amendments were made to the commonwealth Sex Discrimination Act, which essentially has meant that Western Australia’s HRT act has been in breach of the commonwealth discrimination act. That was a situation that the previous government seemed relatively comfortable with. Some exemptions had been offered to WA by the commonwealth, and quite rightly those exemptions have expired and will not be granted again, nor should they be. It is absolutely right that this Parliament does its job to remove the discrimination that has seen this state in breach of the commonwealth discrimination act. That will bring it into line with all other states and territories, bar the Northern Territory. That is why it is urgent that we pass this bill. Those exemptions expired in July last year.

A number of amendments probably need to be made to the HRT act, and they will be examined as part of a broad-ranging review, but we urgently need to remove this discrimination. Hopefully, allowing surrogacy in Western Australia, which has a well-regulated regime, will limit couples travelling overseas. I am uncomfortable with some of the overseas models of surrogacy and the potential for exploitation of women and their families in those countries who are at times in desperate and difficult circumstances. Those women may have limited education on, and understanding of, the scenarios they are entering into. In Western Australia we can ensure that all parties are aware of the circumstances and that they go in with their eyes open and have access to all the advice and support they require to engage in this incredible act of altruism for another family. To carry a baby for someone and hand that baby over is the act of an incredible person. It is really, really hard to do. I pay tribute to those women who are willing to provide that gift to couples. Everyone who feels the need should have access to surrogacy, and we should not limit that access. I want women who become surrogates and are involved in this process to have all the protections they need and the information they require to go through what is an incredibly difficult thing to do.

There has been a lot of focus on access to surrogacy for same-sex couples, but what about single men? I have someone in my electorate who has had some really devastating personal circumstances, and this bill could potentially change his life and fulfil his dreams of becoming a parent. His name is Rick, and he is happy for me to talk about his circumstances. He came to see me a few weeks ago about this issue. He and his wife were very happily married and had been trying to have a baby for many, many years. As with a lot of couples, it was not easy and did not go as smoothly as anticipated. They had started the IVF process and had several embryos in storage. Tragically, Rick’s wife was diagnosed with cancer, and through the diagnosis and treatment the couple continued to plan their future, which included having children. The freezing of embryos was incredibly important because cancer treatment can often ruin fertility, and due to the impact of the cancer treatment they were already in the

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process of finding a surrogate. They knew that IVF was not an option and had already gone down the track of finding a surrogate. Devastatingly for Rick, his wife and family, his wife passed away from cancer. With the support of his wife's family, with whom he is still very close—they all live in or very close to my electorate—they still want to fulfil the family wishes by using the existing embryos and accessing surrogacy. That baby will be incredibly wanted, loved and cherished. It will not be a straightforward family, but there will be many people around who will just adore this child. What a wonderful life and potential gift that would be for Rick and his family in light of such terrible circumstances. As a widower, he is no longer one half of a straight married couple and so is not eligible to access surrogacy arrangements in WA. I hope that this bill passes and that members think of Rick's circumstances when making their decision on whether to support this bill with their conscience vote.

I have said that for me this is fundamentally about removing discrimination. That is one of the reasons I am a member of Parliament. One of the things I am most passionate about is ending discrimination of all types, but it is also about hopefully providing Rick and other constituents in the Morley area with the comfort of knowing that they will also have access to surrogacy arrangements.

MR J.E. McGRATH (South Perth) [4.47 pm]: I rise to speak on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 because this is a complex medical, social, legal, ethical and often emotional issue. As a legislator, I tell myself not to shy away from addressing difficult issues, but to speak about them, debate them and ask questions. Like all members of Parliament, I shoulder a big responsibility in scrutinising bills. It is my role to acknowledge that although many bills are driven by good intentions, it is important to take time to explore any unintended consequences. The Surrogacy Act 2008 underwent a review in 2014 in accordance with section 45 of the act. The report of the review into the operation and effectiveness of the Surrogacy Act 2008 was tabled in Parliament in November 2014 by the then Minister for Health, Dr Kim Hames, MLA. I will say a few things about this review, its findings and recommendations.

When the Surrogacy Bill 2007 was introduced into Parliament, it was acknowledged that deliberations were necessary on the need for regulations that provide safeguards. The second reading speech accompanying the introduction of the bill stated —

The Surrogacy Bill seeks to balance and protect the interests of all parties to surrogacy arrangements by providing a framework for the best interests of the child to be paramount in any decision about surrogacy and legal parentage, requiring careful preparation and assessment of the parties and preventing surrogacy for commercial gain.

From the nature of the bill and the second reading speech that introduced it, it is clear that the original intent of the bill was to assist couples and women who, for various reasons, are medically incapable of bearing children. The Human Productive Technology and Surrogacy Legislation Amendment Bill 2018 now seeks to go beyond that original intent to expand the scope of eligibility to same-sex couples and single men. The "Review of the Surrogacy Act 2008" report concluded also that all aspects of surrogacy arrangements are under-researched and suffer from a lack of robust evidence. It states —

There is a lack of research on all aspects of surrogacy. The Department of Health is working with fertility clinics to undertake research on experiences and perspectives of people who have been, or are currently, involved in an altruistic surrogacy arrangement in Western Australia. This study could help to shed light on a complex life event, which may help to inform policy and increase public understanding of altruistic surrogacy in Western Australia.

I am not sure where we are at with that research or whether it was ever commenced or concluded. It seems as though there is not a strong basis of evidence to guide us in proposing a scope for the expansion of surrogacy in Western Australia. I am happy to be corrected, but it is my understanding that the former government did not formally respond to the review report; nor did it assess its findings and recommendations.

The second reading speech on the Surrogacy Bill 2007 referred to the need for safeguards. Whenever safeguards are mentioned or needed, there must be risks. We have not heard much about those risks in this surrogacy debate. I have looked into this a bit deeper to inform myself. I start with the Legislative Council's "Standing Committee on Legislation in Relation to the Surrogacy Bill 2007" report, published in May 2008. That report found and noted that some surrogate mothers —

... experience psychological problems at the moment they relinquish the child, and there have been reports of ... cases where the surrogate woman decides to keep the child.

... The psychological consequences for the surrogate's child(ren) of giving away the newborn birth sibling are unknown.

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... the available information is extremely limited.

The report also stated that risks to the prospective child of commissioning parents are unknown due, again, to the extremely limited available information. It continues —

... some risks are known (risk of rejection or risk of being the object of a conflict between the parties), others are not known as long-term follow-up studies have only just started.

In some cases, significant difficulties have arisen in the course of the arrangement. Problems can occur if the surrogate decides that she does not want to relinquish the child; if the commissioning couple decides that they do not want the child because, for example, he or she is born with a disability; or if the parties have different views about how the pregnancy or childbirth should be managed. These risks were not addressed in the Surrogacy Bill 2007 and do not seem to be addressed in this bill now. As per the Surrogacy Act 2008, surrogacy arrangements continue to be unenforceable and non-binding.

Another risk is that the surrogate may have been coerced into carrying a child on behalf of a family member or friend and is not acting autonomously. The underlying assumption that the issues relating to surrogacy are more or less the same as those that arise in connection with assisted reproductive technology is questionable. Although there are clearly issues in common, it is sufficiently different from other forms of assisted reproductive technology and warrants a cautious regulatory approach with an additional set of requirements for access to treatment services.

The eligibility criteria that apply to surrogacy should address the risks associated with surrogacy arrangements that do not arise in other forms of assisted reproductive technology. In particular, surrogacy involves another party—the surrogate mother—who carries a child throughout pregnancy but who will be asked to relinquish that child upon birth. The report also states —

The Committee recognises that there are risks associated with pregnancy and childbirth and that some women will experience physical or psychological complications as a result.

That is not to mention the recognised and objective medical risks associated with in-vitro fertilisation in general.

In Western Australia there is no requirement under the act for parties to a surrogacy arrangement to have a criminal record check. In June 2017, one of my colleagues in the Legislative Council asked a question on this matter. The question stated —

... in each calendar year since enactment how many child protection order checks have been carried out on:

- (a) arranging parents; and
- (b) any other party to a surrogacy arrangement?

The answer provided by the Department of Health states —

- (a-b) The *Surrogacy Act 2008* does not require an arranged parent/s or any other party to a surrogacy arrangement to undergo a child protection order check.

The 2014 report of the review into the Surrogacy Act 2008 states —

Criminal record checks may be an issue for consideration in the provision of consistent surrogacy legislation across jurisdictions.

Once again the McGowan government is proposing to expand the scope and accessibility of surrogacy arrangements without giving any attention to any of these serious matters, and provides no answers to these serious questions. The bill proposes to expand the category of persons eligible to access a surrogacy arrangement to now include same-sex couples and single men. I am not here to comment or pass judgement on the ability or suitability of people who belong to those categories to act as parents or a parent. I would like to focus not on the adult participants of a surrogacy arrangement but on the child or prospective child. I repeat a quote from the second reading speech accompanying the introduction of the Surrogacy Bill 2007, which states —

The Surrogacy Bill seeks to balance and protect the interests of all parties to surrogacy arrangements by providing a framework for the best interests of the child to be paramount in any decision about surrogacy and legal parentage,

The Human Reproductive Technology Act 1991 contains a provision that states that when procedures may be carried out —

- (e) consideration has been given to the welfare and interests of —

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...

(ii) any child likely to be born as a result of the procedure,

Section 13 of the Surrogacy Act 2008 states —

- (1) In deciding whether to make a particular decision concerning a parentage order or proposed parentage order about a child, the court must regard the best interests of the child as the paramount consideration.

Additionally —

For the purposes of this Act it is presumed to be in the best interests of the child for the arranged parents to be the parents of the child, unless there is evidence to the contrary.

So what are the best interests of a child? I cannot seem to find any clear information or explanation attached to the act or to this bill. The Family Court of Western Australia has a set of guidelines on the best interests of the child within the context of marriage separation involving two biological parents. One of the court's main considerations is the benefit of the child having a meaningful relationship with both parents. The court has to presume that giving both parents equal shared responsibility is in the best interests of the child. The considerations stress the importance of the child knowing and maintaining a relationship with both parents.

I also consulted the United Nations Declaration of the Rights of the Child, proclaimed in 1959. Principal 6 states —

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not ... be separated from his mother.

The 1989 United Nations Convention on the Rights of the Child proceeds along the same lines. One of its statements, among others, states —

All organisations concerned with children should work towards what is best for each child.

It also states —

Children also have the right to know their parents and, as far as possible, to be cared for by them.

It also states —

Children should not be separated from their parents unless it is for their own good.

It also states —

Children should be protected from any activities that could harm their development.

In the Surrogacy Act 2008, there is no requirement for the child to have a genetic link with the arranged parent or parents. The above considerations and declarations were not established out of thin air. Social, psychological and scientific reasons form the basis for declaring why the above considerations are necessary in the best interests of the child. As I went through these points I am reminded of what the 2008 Standing Committee on Legislation report said, and I quote —

The prospective child of commissioning parents. Again the available information is extremely limited; some risks are known (risk of rejection or risk of being the object of a conflict between the parties), others are not known as long-term follow-up studies have only just started.

The Standing Committee on Legislation report also included quite a number of quotes from a 2007 report by the Victorian Law Reform Commission titled "Assisted Reproductive Technology & Adoption, Position Paper Three: Surrogacy", highlighting the risks associated with surrogacy arrangements. A quote from the Victorian Law Reform Commission report states —

Because surrogacy involves the relinquishment of a baby by the woman who gives birth to it, the commission views it as having important similarities to adoption.

However, the regulations and requirements of a surrogacy arrangement are far, far less stringent and restrictive than an adoption arrangement. The shadow health minister has tried to seek some information from the Department of Health regarding surrogacy in WA, but the data is either vague or not available. The department provided the following statement in response to the opposition's request on statistical data regarding the types of persons seeking access to surrogacy and the relationships —

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There are no requirements to provide information about relationships and sexual orientation in relation to surrogacy arrangements in this state or other jurisdictions.

What is the point of creating a list of eligible people or couples and their relationship in the act if they are ultimately irrelevant?

In summary, in its current form the Human Reproductive Technology and Surrogacy Legislation Amendment Bill contains proposals to amend the Surrogacy Act 2008 to expand its scope and accessibility, which departs from the original intent of the act to assist married or de facto couples or women who are not able to naturally conceive or carry a pregnancy due to medical reasons without the requirement, still, for a child to have a genetic link with the arranged parent or parents. Interestingly, the 2008 standing committee report on the Surrogacy Bill 2007 quoted a submission provided by an approved counsellor, who suggested that for some childless couples, surrogacy may be the preferred option because —

They do not want a special needs child. They do not want an older child. There are probably those available for adoption, but people want actually to have a baby and preferably one that they are biologically related to ...

In its current form, the bill also contains proposals to amend the Surrogacy Act 2008 to allow for a prospective child to be procured by a same-sex couple or a single man without the requirement for parties to a surrogacy arrangement to have a criminal record check; without any discussion or decision on further safeguards to prevent and/or mitigate the risks I have raised; without further consideration on whether the proposed amendments are in the best interests of the child or prospective child; without any robust or convincing supporting arguments that the amendments are really in the best interests of the child or prospective child. Without telling us why in the midst of recent debates about the urgency to have equal gender representation in politics and business et cetera, equal gender representation in parenting, we are told, is not important

All the emails I have received from my constituents about this bill have asked me to oppose it. I have not received a single email asking me to support it. I therefore cannot support the bill.

DR D.J. HONEY (Cottesloe) [5.04 pm]: I also rise to oppose this Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. Matters that we discuss in this house that consider gender and sexual orientation can be difficult to debate because we are talking about people and about some people in this chamber who might be affected by this legislation. This legislation is seeking to change the current position. If we maintain that current position, it does discriminate, we might say, or choose between people of sexual orientation in raising children.

Ms J.M. Freeman: Single men.

Dr D.J. HONEY: Single men and male couples. I have found that public debate on these matters is almost impossible; that is, emotion and personal belief often completely cloud any potential for a rational debate or discussion of the issues. However, it is incumbent on us to have a logical and evidence-based discussion and not base this purely on personal opinion or belief. That is something we have to go through. It is easy for it to degrade into pejorative labels or for one side to claim that anyone who has a particular view belongs to a group that opposes other issues such as same-sex marriage. However, it falls upon us now to debate this topic thoroughly. I am certainly not going to resile from that through fear of labels or the like—I echo strongly the member for South Perth's comments—because this concerns the most vulnerable members of our society: children. This legislation must squarely focus on the best outcomes for children. With all due respect to the affected parties, the feelings and emotions of adults are immaterial in comparison to outcomes for children.

When we debate in this place—I have heard it many, many times—we rely on our personal experiences but we also should consider expert opinion. I echo the previous speaker's comments on the bill. The second reading speech states that the bill, firstly, will provide equal access to surrogacy through the use of assisted reproductive technology for male same-sex couples and single men and, secondly, will provide for no discrimination in clinics in providing that service. The justification on the first page of the second reading speech states —

This bill recognises that the best interests of children are served when they can grow up in an environment in which they are cared for, loved and supported.

I doubt there is a member in this house who does not absolutely support that sentiment. That clearly is a goal I think everyone would wish for. However, it is followed by —

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A growing body of sociological and psychological research shows that it is a supportive and loving environment, not sexual orientation or whether there are two parents or one, that is important for the development of happy and well-adjusted children.

I certainly agree with the first sentiment and strongly believe that we need that loving, caring environment. I understand that many adults have a strong desire to raise a family. I think that, not everyone, but many people have that strong desire to raise a family. I do not know how it feels because I have been in the lucky position of having children, but I can empathise how disappointing it must be when that desire for an individual or couple to raise a family cannot be fulfilled. However, I say again, this bill cannot be motivated by individual desires. It can focus only on the best outcomes for children. Members may know that my wife and I have been lucky enough to have six children. We have three boys and three girls. In my own family, I have observed that my wife and I bring similar but very different aspects to enrich the lives of our children. There are many values and attributes that we share as parents, but there are also very different attributes that we bring to our family. When I look at those in my own family—I am talking about my personal circumstances—the focus on mental wellbeing, the subtleties, the personal relationships and the preparedness to allow the children to take risks, I see a strong difference in the role that we both play with our sons and daughters. It is my observation that these differences are not simply personality differences; many of them, I believe, are common gender differences. As we saw, the bill claims that there is no gender difference in raising children. I have the strong conviction that a child has the best possible chance of reaching their full potential when they are raised by a loving, supporting mother and father. I listened keenly to the member for Perth in this debate. I am not having a debate about harm to a child. I am not contending that children will be harmed by a loving individual or a loving parent. I am talking about the opportunity for that child to reach their full potential. I would not have chosen to have a family by myself. I strongly hold the belief that my wife provides aspects to raising my children that I simply do not. Equally, I believe that I provide aspects in raising my children that my wife does not, and I believe that between both of those my children have the best possible outcome. I understand, in saying this, that many families do not have a father or mother, and there can be many reasons for a child being raised in a single-parent family. I also understand that children in those families may have happy and productive lives. However, when we consider this legislation, we are not talking about individual outcomes. We are inevitably discussing likely outcomes. That is the nature of legislation. We must consider the best possible outcomes for a child. As I said, my own experience, and, I also believe, credible sociological studies, show that children have a better chance of achieving their full potential when they are raised by a loving mother and father. As I said before, and I now reinforce, I am not talking about any assertion or allegation of harm. It is about achieving that full potential.

The member for Perth quoted one particular piece of research. There is a fundamental problem with this research, and that is that the research is poor quality research. The reason is that it is not dispassionate scientific research; it is research motivated with a particular view in mind. An interim report was published in 2013 of “The Australian study of child health in same-sex families”. This is probably the most widely quoted piece of research to justify the conclusion that there is no better outcome with heterosexual parents. The detail of the study shows a fundamental problem for anyone here who has had any background in sociological or scientific research. To quote from the study itself —

Initial recruitment will involve convenience sampling and snowball recruitment techniques ... This will include advertisements and media releases in gay and lesbian press, flyers at gay and lesbian social and support groups, and investigator attendance at gay and lesbian community events ... Primarily recruitment will be through emails posted on gay and lesbian community email lists aimed at same-sex parenting. This will include, but not be limited to, Gay Dads Australia and the Rainbow Families Council of Victoria ...

The fundamental problem with the research is that the people who are invited to participate knew the intended outcome of the study. They knew that it was going to be used for political purposes and to justify political debate in that area, and it was in no sense at all any sort of legitimate scientific study. No other piece of sociological or scientific research would be carried out on that basis, when it is a highly skewed, highly distorted study, not looking at the outcomes from the child's perspective, but those from the parents' perspective. It is not a dispassionate piece of research; it is a highly partisan piece of research. That is the fundamental problem with the great majority of research. I listened to the member for Perth talking about percentages, but that is the principal problem with most of that research. In that case, participants were self-selected, and were aware of the purpose of the research and the potential political impact it could have. It was not credible, peer-reviewed scientific research. I can understand that people have very strong views about this. Again, listening to the member for Perth, this was somehow tied up in the general debate around rights for gay people and gay couples. I can understand how it is very self-reassuring

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to hear those outcomes and to want to believe them, but it has to be credible scientific research. Peer-reviewed research does not support that outcome. This does not mean that people are being harmed, but if we are talking about children being able to achieve their full potential, there is no doubt, in the peer-reviewed research, that that is best in a family that has a mother and father.

I can understand why members in this chamber would have a strong belief that males and male couples should be able to have access to surrogacy rights. However, I believe that that view is overwhelmingly looking at the rights of the adults. I believe that that view ignores the interests of the children. We must consider likely outcomes and base our decisions on valid scientific research, not self-supporting, poorly designed research outcomes. I will not go through the research here, but I am happy to make it available to members. I have no doubt that children are most likely to achieve their full potential with a loving mother and father and, as I said, that view is supported by credible research. I do not believe that we have the right to deny a child that outcome. In this debate, like the member for Perth, although I care about people's emotions and I understand and respect that people have particular views, in this matter I do not believe that that is the seminal issue. It is, in fact, about the children, not the adults. I will not be supporting this legislation, and I strongly urge all members in this house to oppose the bill.

MS M.J. DAVIES (Central Wheatbelt — Leader of the Nationals WA) [5.18 pm]: I want to put on record that the National Party, as with every piece of legislation, has a conscience vote on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. Every member of the National Party, on every piece of legislation that comes to this house, has the right to vote according to their own conscience or to the wishes of their electorate. I am not the lead speaker for the National Party, but I am happy to stand and put my comments on the record on this bill on behalf of the electorate that I represent, and also from my perspective. I attended the briefing from the Minister for Health's department and office, and we were provided with a significant amount of information. I thank the minister for providing that to us and making it available to members who are interested in the potential impact of this legislation.

In my understanding, this legislation has come about as a result of the amendments made in 2013 to the commonwealth Sex Discrimination Act. For some time since then, a number of jurisdictions have been provided with an exemption from changing legislation affected by those amendments, and Western Australia is one of those.

We were given that exemption on the basis that we would work towards making sure that we rectified any legislation within our jurisdiction so that we were not exposed under that legislation. Although I understand why members take the opportunity when issues such as this come to Parliament, we are not necessarily debating the nitty-gritty of the surrogacy arrangements in Western Australia, other than to broaden the range of people who have access to it. From my understanding of the briefings that we were provided—I was not part of the original debates in—sorry, when did the original Surrogacy Bill come through?

Mr R.H. Cook: It was 2008.

Ms M.J. DAVIES: I must have been. I take it back. My memory does not —

Mr R.H. Cook: No, it was 2007.

Ms M.J. DAVIES: It was 2007. I was thinking, I was in the —

Mr R.H. Cook: No, it got introduced in 2007, but it was not passed until September 2008.

Ms J.M. Freeman: It was before we went to the election in 2008.

Ms M.J. DAVIES: Either my memory is failing me or it was one of the very first pieces of legislation that I would have dealt with in the Legislative Council.

Mr R.H. Cook: That is right. I think the new government at the time was saying that we do not have any legislation to do and the Minister for Health at the time—potentially in conspiracy with the shadow Minister for Health at the time—suggested it go to the upper house in the first instance. It would have been the first piece of legislation —

Ms J.M. Freeman: The 2007 bill was more to do with when they do gene technology and stuff like that. The original bill that brought in our framework around surrogacy was 2001.

Ms M.J. DAVIES: That predates my time with the National Party even as a staff member. Every member brings their personal views and those of their electorate on this sort of legislation and there can be contentious issues to debate. In this case, from my perspective, I think it is right that we as a state are not opening ourselves up to potentially creating a discriminatory environment. Certainly, other states have gone down this pathway. From my perspective, I will be supportive of the legislation.

Extract from Hansard

[ASSEMBLY — Tuesday, 9 October 2018]

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Mr John Carey; Amber-Jade Sanderson; Mr John McGrath; Dr David Honey; Ms Mia Davies; Mr Peter Katsambanis; Ms Lisa Baker; Acting Speaker; Mr Sean L'Estrange; Ms Libby Mettam; Mr Zak Kirkup; Mr Kyran O'Donnell; Mrs Alyssa Hayden; Mrs Jessica Stojkovski; Mr David Templeman; Mr Tony Krsticevic; Ms Janine Freeman; Mr Bill Marmion; Dr Tony Buti; Mr Roger Cook

When we look at the number of applications made under the current arrangements since 2008, we see that it is a very small number. I do not think that there will be a flood of people. I do not have a problem if there is, because for me, if someone desires a family and they meet the very rigorous standards that have been debated in this house and put in place, they deserve that opportunity. A number of experts on the Reproductive Technology Council—including those from non-academic backgrounds, such as the clergy, as well as those with medical backgrounds, such as doctors—provide advice to the minister and the council ultimately makes the decision on whether people are appropriate to go through this process. Some very stringent mechanisms are already in place to make sure that we are putting the interests of the child at the centre of that decision—as well as those who are embarking on wanting to become parents. I am not a parent; the closest I have come to it is watching my niece and nephew and my sister and brother-in-law and my friends go through the process, but I have absolutely no illusion about how difficult this is. I do not think anyone is going to go through this process without having had serious thought. Then they are questioned again and again through the surrogacy process. The numbers bear that out, because since 2008 there have been 35 applications and 34 of which have been approved, according to the information that I have been provided. Of those approved, at the present time, only 10 births have come to pass, because obviously it is not a perfect science.

I think that those parents who have been through that process have undoubtedly had a life-changing experience. If people want to bring life into this world and provide a child with love, I cannot think of one reason that we should not make that opportunity available to people. I am very supportive of the amendments in the bill that allow for embryos to be collected for those who require that. I understand that this is to create clarity for doctors who at this point think that there is a grey area around whether they are allowed to do that. For someone who is going through a cancer treatment or something that could prevent them from having a family in the future, I think that is a sensible amendment and one that would be welcomed by many who have to face those types of decisions of potentially not being able to have a family although desiring one.

I say to those who hesitate with some of these decisions around who has the right to be a parent, I have friends who have had to seek out surrogates to achieve a family. The child whom I am thinking of is one of the most loved, cared for and appreciated child in a community in which many people support the parents. The parents are a same-sex couple and for them it was their desire. I hear the arguments of those who have stood and said it is about our desires and not about the child's, but I can promise members that in this experience this child is loved and will be raised and provided with an amazing experience and have a fantastic opportunity to be a success in our community and make a contribution. We have these debates and it is right to air some of these concerns. This is the place to do that in a respectful way, but when we have had debates such as this in the past—such as the same-sex marriage debate and this bill when it was introduced originally—and legislation was passed, the world carried on. I think if we take a very human approach to all this, we realise that if we are talking about people who genuinely love and want to raise and nurture happy families, no matter what they look like, we cannot go too far wrong. There are checks and balances. I also understand that a review of the broader act is underway for some of the concerns that have already been raised about some of the regulations, and it is due to report by the end of the year. Because we have lost the exemption from the federal government, there was some urgency to bring this forward to enact these particular pieces that we could go through more quickly.

From my perspective, having seen and knowing people who are unable to start their own family, if we were to broaden the debate, I would like to broaden the debate about making adoption far easier, because many children and many potential parents in Australia could be matched wonderfully. I have many friends who were adopted in the 1970s. Over time, it has become a far more rigorous process and a path less chosen because of how difficult it is. My perspective is that if we can find a loving family for a child, whether that family is a same-sex couple or a single individual who is surrounded by an extended family or a community, as long as we have a set of processes in place to provide confidence to the community that we are not jeopardising the health, wellbeing and safety of that child—because we cannot do that for every other child; everybody else gets to make that choice outside government regulation—we should be making these steps towards removing the discrimination from the legislation in our jurisdiction of Western Australia.

MR P.A. KATSAMBANIS (Hillarys) [5.29 pm]: I rise to speak on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. I point out at the outset that I do not support this bill and I will be exercising my right and my vote as a member of this chamber to vote against the bill, for reasons that I will outline. Right at the outset, I commend my friend the member for South Perth for his extremely valuable contribution. It was well researched and very thoughtful and covered a range of very important issues about this bill that I will not repeat today in my contribution, but I really endorse it and I congratulate the member for South Perth for his contribution.

We all acknowledge and recognise that children in our community are being brought up in various kinds of families—the old, traditional nuclear family of mum and dad; single parents, either mothers or fathers;

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co-parenting agreements post-separation or divorce; foster families or adoptive families; or grandparents or other family members as their primary carer. Many children are being brought up in same-sex households. I put on the record that I have friends in male same-sex relationships and friends in female same-sex relationships who are bringing up children. From my observations, they are doing as good a job as a parent in any other type of family in bringing up their children. They are all grappling with the same issues that all parents grapple with, particularly in their children's teenage years. Therefore, I cast absolutely no judgement and no aspersion on any of those people in our community. That includes the often-forgotten step-parents, who play a massive role in many families, including my own. I commend all the step-parents in our community, including my wife, for the work they do in raising great children and in maximising, as the member for Cottesloe rightly said, their potential in life to become well-functioning adults in our society. It is a hard job being a parent. I should know—I have five kids. Every person in a parental relationship grapples with the same types of issues and they all give it their absolute best, and they ought to be commended for the work they are doing, sometimes in very difficult circumstances.

This bill seeks to extend the laws that apply to surrogacy to well beyond the common conception of surrogacy. Surrogacy has primarily been about assisting a female, whether in a marriage or a de facto or same-sex relationship, or a single female, for that matter, who cannot for some reason bear children of her own, to access parenthood through surrogacy, particularly when other medical treatments have failed. This bill seeks to extend that right to males. The issue that particularly concerns me is extending that right to single males. I would have thought that when we are proposing to make such a radical change that will impact on children and the raising of children, we would be presented with some pretty strong evidence about how our current laws are working, and the need or demand for the laws we are proposing to introduce, and perhaps also some evidence about outcomes in other jurisdictions that have introduced this type of regime. I commend the member for Cottesloe for pointing out in his contribution that not only has the evidence that has been presented been limited, but also it is not what we could call well-researched and academically rigorous evidence but rather tends to be self-selecting evidence. That is not a criticism. It is just a fact. I have not seen any of that evidence presented. I would have thought that would be fundamental in justifying why this bill should be brought before the Parliament.

Previous speakers in this debate, particularly the member for South Perth, have highlighted the lack of a protective mechanism to vet prospective parents for criminal records, particularly certain types of criminal records. When we combine the lack of a protective mechanism with giving single men, in particular a certain cohort of single men, the right to access this regime, we can see the potential for malfeasance. I do not want to cast aspersions. As the member for Central Wheatbelt, the Leader of the National Party, pointed out, I do not believe there will be a floodgate and that thousands of people will apply for the right to access surrogacy. However, there is a risk, and little, if anything, has been done to protect against that risk.

My primary opposition to this bill is the fact that it pays scant, or some would say no, respect to ensuring the best interests of the child. This was put very eloquently by the member for Cottesloe. This legislation says a lot about the rights of adults but very little about the obligations of adults. I think we all understand that the basic obligation of every parent is to act in the best interests of the child. There is very little, if anything, in this legislation about what is in the best interests of the child. That is, as I have said, because of the absence of research and evidence. That is a failure in this bill. The proponents of this bill have not made out the case that what they are proposing is in the best interests of the child. The member for South Perth pointed out in his very valuable contribution the way in which the best interests of the child is weighed up in the Family Court and the family law jurisdiction in Australia, and also in the United Nations Convention on the Rights of the Child, which is the primary instrument that sets out the rights of children. In both those cases, the best interests of the child are considered to be having access to two parents, and to both parents having an involvement, when possible, in the life of the child. Extending that to single males does not fit in any way with the best interests criteria set out in the Family Court Act and the processes of the Family Court, and in the United Nations convention. The case has not been made out that this legislation will be in the best interests of the children who may be produced under it.

It is interesting to note that, like all members of Parliament, I regularly receive representations from constituents on this type of legislation. This particular bill has been no exception to that. I have received significant representations from residents in my electorate of Hillarys. I need to point out to the house and the general public that every single one of those representations has been in opposition to this legislation. I have not received one phone call, email or piece of correspondence asking me to support this legislation. From that evidence, I deduce that there is not a groundswell of support in the community calling for this legislation. It is the case that even people who support this legislation think it is not a bad thing to do, rather than having the total conviction that this must happen. I respect the views of those people who have taken the time to write to me, ring me or speak to me in the street. I will try to summarise those views, because I want to do justice to them. A lot of them—practically all of them—are around the test of the best interests of the child. They are not convinced that this

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legislation is in the best interests of children. A number of my constituents have raised the aspect that we all grapple with; that is, the commodification of children. I am not suggesting that this bill would be a catalyst for that, but we know that in many ways there are questions out there that children have become less a loving part of the family and more of a commodity, and that extending surrogacy rights to single males in particular, would reinforce that, admittedly, negative view, but one that is out there. Others have highlighted the fear, and I think it is a real risk, that extending the realms of surrogacy beyond existing groups increases the risk that although people may seek to or suggest that they will comply with the legislative regime, they are really using it as cover to engage in what I would term commercial surrogacy by stealth. That is an issue. I know that in other jurisdictions across the globe commercial surrogacy is regulated. We, as Western Australians, have taken the view that we do not support commercial surrogacy. I would not want to be party to anything that opens up the possibility that the risk of commercial surrogacy by stealth is increased in our community.

I thank those constituents who took the time to contact me and express their concerns about this legislation. I want to stand up in this place today and represent their issues and concerns. I share a lot of them. At the end of the day, the reason that I will not support this legislation is that I think there are inadequate protections around checking the criminal history of applicants. I think there is a paucity of evidence either on the need for this legislation or, more particularly, the potential outcomes of introducing it. Primarily and above all else, I am certainly not convinced that this legislation would in any way enhance the best interests of children in Western Australia.

MS L.L. BAKER (Maylands — Deputy Speaker) [5.42 pm]: I rise to make my contribution to this debate on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. I want to start by saying this the first time in the 10 years I have been in this house that I have been afforded an opportunity to have a conscience vote on a subject that is not just near and dear to my heart, but very near and dear to my lifestyle, my chosen way of living and everything about my life. I have listened while many people in this place have seen fit to debate me and my choices—not me personally by name, but my choices, my lifestyle—without having had an opportunity to necessarily put a personal vote to that. I think this is an opportune moment for me to stand and say that I fundamentally believe that it is not up to us to say that it is okay for a lesbian couple, people like myself and others, to choose to have children, raise families, access surrogacy and do those kinds of things to bring children into our lives, but that other members in this house who might be gay males would not be allowed to bring children into their relationships. I cannot possibly say that I am or would be a better parent than my male gay friend. What gives me the right to make a decision about whether they may or may not have a child? My personal experience on this issue is that I have friends, both male and female same-sex couples who have children, who have used surrogacy to have babies, bring them into this world and care for them. Their journey is far more complex, challenging and extreme by the very nature of the barriers they have to confront. The decision to have a child through surrogacy is not an easy one, and at the moment, to make that decision a married gay couple in Western Australia has to go offshore. The stress involved in the journey itself is a horrific start to what should be a happy and joyous event.

I have a couple of case studies. I think it is interesting that I have heard many members who say they will not support the bill cite people who have contacted their offices. To my knowledge, I have had under 10 people contact my office, and they have basically given pro forma responses that have obviously been engineered by someone who does not want the legislation to progress. That is okay, because that is a campaigning strategy that everyone uses; it is all good. I can say that I have many friends who absolutely want this legislation to pass, so for those members who do not know anyone who would support this bill, I am personally here to tell them that many people out there would support it. Members will not get hundreds and thousands of people knocking at their doors, because we are not running a plebiscite—thank heavens!—on this issue. They will not get hundreds and thousands of people coming to the doors of their electorate offices saying to pass this bill because it is going to impact only on a minute number of people, on a very small number of men who have chosen to marry or begin a relationship and want to enrich their relationships by having and raising children in it. When we cite the rights of the child, we have to bear in mind that United Nations conventions are extraordinarily complicated and quite longwinded. I just look to article 2 of the UN Convention on the Rights of the Child. It says that the convention applies to anyone, whatever their race, religion or abilities; whatever they think or say; and from whatever type of family they come from. I just gave an abridged version of article 2, but the detail of article 2 states —

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's ... parent's or legal guardian's ... sex ...

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It gives a lot of other defining characteristics, but I will not read them all. It also refers to political, national, ethnic background and so on. When members read out UN conventions, they really ought to quote the whole lot, because they can put as many arguments up that support as detract from this kind of debate.

When I support the amendments to the Human Reproductive Technology Act and the Surrogacy Act that we are here to discuss, I will definitely be doing so in the knowledge that there is a growing body of evidence that says that the best way we can ensure a child's health, safety and future is to make sure its parents, whoever they are, are loving and dedicated to that child's wellbeing. I hate to say it, but every day in my office I see examples of that system failing in heterosexual marriages. We fail children every day in relationships that are historically being defended by those who would oppose this bill. I chaired the Joint Standing Committee on the Commissioner for Children and Young People of this Parliament in the term of the previous government, and we had an extensive inquiry into the sexual abuse of children. So for me to sit here and listen to any implications in comments made that a single man is more likely to attack or abuse a child, sexually or in any other way, is not only deeply offensive, but also most seriously misguided. I find that quite abhorrent. As to the implication that there should be criminal record checking for people who want children, in some respects when I look at what heterosexual couples do to children, maybe people should have to have a criminal record check before they have a child. I doubt whether that will make any difference to the safety of that child in the long term.

I turn now to a couple of very quick case studies that I want to specifically speak about to put into stark relief some of the comments I have heard around this legislation not applying to anyone. Biological children, adopted children and foster children are all equal under the law in Western Australia. The Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 will see children born through surrogacy being treated equally under the law. I do not think parenthood is genetically linked. If we look at our current society and consider the comments I have made about couples raising children, that is a fact. Good parenting is not necessarily about genetics; it is about love, care and management of the relationship with the child.

I will take members to the story of a couple who live on a farm in Amelup, in the Porongurup in the south west of this state. Darren Moir—a farmer—and his husband of last weekend, Nigel Lock, have been together for quite a few years now. They have a farm in the great southern that is framed by the Porongurup and has been run by five generations of the Moir family. Darren was a local football club player and a cricket club legend. He came out to his family and friends when he was in his early 30s. He met Nigel, who owned a business in Albany, and basically the rest was history. Nigel sold his business, and together they farm. More than five years ago they thought the time was right for them to start a family; however, there was nowhere in Australia where they could access altruistic surrogacy.

Darren and Nigel were forced to look into other options. They looked into adoption and fostering, but ultimately decided they would rather raise their own child in a happy family and stable relationship. At that stage there was nowhere in Australia where they could access altruistic surrogacy, so they thought about going to the United States. They decided Thailand would be better, mainly because of its proximity to Australia. They thought they could keep a check on the health of the surrogate mother, go to the scans and hospital appointments and help her out. It was more cost effective for them. They could not afford to spend the time in the United States, but they could support a woman in a closer location.

They were three months into the pregnancy and living in Thailand with the mother of their baby, and everything was going really well. Then, as members will remember, the baby Gammy scandal broke. Members will remember the situation with the twin babies and the surrogacy arrangements that were so complicated and awful. Darren says that basically everything went haywire for them at that point, because there were threats that all surrogate babies would be immediately put into Thai orphanages, so that any arrangements that were in place would no longer be in effect. He has asked me to thank the then federal member for Perth, Alannah MacTiernan, who worked very hard with the Department of Foreign Affairs and Trade to make sure that they could keep their baby safe.

Darren and Nigel finally left Thailand with their son, Andy, after he was born in January 2015. They brought him to Amelup for the first time and their community was absolutely supportive. Members might find that, in some respects, it is quite an unusual family in a small country town, but they have been overwhelmed with the support they have received. Darren says surrogacy was the most stressful experience of his life because it had to happen in a foreign environment with people he did not know, and he was very concerned about the health of the mother and their baby. Darren and Nigel really want a sibling for their three-year-old, Andy, but they could not face going overseas to again go through this process. Darren said that they have a potential surrogate lined up and are just waiting for the law to change so they can move ahead and get a little sister or brother for Andy, to complete their family.

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If made legal in WA, this process would be well regulated, with psychologists involved, and they could properly ensure the support of the mother of their baby. Darren's comment to me was that being a gay family does not mean that they should have to face extreme barriers to bringing a child into their safe and loving family. I want members to think about Darren and Nigel, who have just got married and have their little boy, Andy, and would really like to add to their family. That is a very successful and positive family, and I think it is a great role model to think about when members consider their vote on this bill.

I want to talk about a second case study.

The ACTING SPEAKER (Mr S.J. Price): Just before you go on; members, there is just a low-level rumble coming from all over the chamber at the moment, so if you could keep it down. There is plenty of room outside if you want to go and have a chat, but the member should be heard in silence, please.

Ms L.L. BAKER: I was contacted by two of my Bayswater constituents—Oliver and Matthew. I will read quite a bit of their letter to me. It is not very long, but it pretty much pinpoints the issues I feel need to be made. The letter reads in part —

After years of research and planning of how we can start our own family, my partner and I were thrilled to hear that the McGowan Labor Government has introduced a Bill into Parliament that would correct outdated and discriminatory legislation.

Currently, the law states that altruistic surrogacy is only permissible for women who are unable to conceive. Lesbian couples have the option of accessing reproductive technology, however gay couples and single men are unjustly offered no options of starting a family of their own.

The Surrogacy Bill 2007 which was passed by the Legislative Assembly in September 2007 and the Legislative Council in December 2008, contained amendments that ban same-sex male couples and single men from altruistic surrogacy arrangements. These ... amendments are contradictory to the Federal anti-discrimination laws outlined in the Sex Discrimination Act 1984, which make it unlawful to discriminate on the basis on one's sexual orientation and gender.

While some may argue that a child needs a traditional family of a mother and father, research evidence indicates that children raised in same-sex parented families do as well emotionally, socially and educationally as other children raised in heterosexual parented families.

Our options of starting a family in our own state are abated by the current law, and we are forced to look overseas at extraordinary expense and legal uncertainty. The journey of bringing a child into the world, becoming a parent for the first time, is one full of equal parts excitement and uncertainty. As an intended parent, having a known surrogate in your home state and assisting with the pregnancy, would provide comfort and support to all those involved.

With precedence of male couples having access to altruistic surrogacy and reproductive technology in all other states in Australia, it is time we update our own laws.

I thank Oliver Pincott and Matthew Clements for their words. Their case exemplifies why I will vote yes for what I consider to be a very important change to the Human Reproductive Technology Act and the Surrogacy Act 2008. I think there is plenty of evidence that this is about getting the books right, the balance right and affording equal rights to people who deserve them. It is not up to us to say that single men such as the man who my friend the member for Morley spoke about earlier tonight, with his tragic story and circumstances around him losing his wife, should not have a baby. He so wants to have a child in his family to both recognise his wonderful wife and continue her legacy. That is something that I would not dare to block. I just think it is not up to me to stop that happening. I also think that it is up to me to make sure that male same-sex married couples or couples thinking about having children can have them. Just because they are men does not mean that they would not be good parents, and this Parliament should vote to support them. We should support them; diversity should be embraced, not denied. When we can, we all have a responsibility to support loving and committed families in whatever shape they take, and to most of all make sure that children are born into families who really, really want them and will really, really care for them and love them forever. This is one way that we can ensure that the families who want children can go through surrogacy, and it will definitely ensure their health and wellbeing into the future. In 2016 there were 23 700 male same-sex couples.

Sitting suspended from 6.00 to 7.00 pm

MR S.K. L'ESTRANGE (Churchlands) [7.01 pm]: I rise today to speak on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. I will focus on three areas. I will be as brief as

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possible, but I want to make sure that I outline what I am going to do. First of all, I will clarify what the bill is doing, and will focus on the government's key motivation, as I see it, in bringing this bill to the house. I will then outline my key concerns with the bill and why I will not be supporting it. I am the lead speaker for the opposition.

Firstly, I refer to the current situation with the Human Reproductive Technology Act 1991. I will share with members some of the key points from notes that the advisers from the minister's office shared with me. I thank the minister for providing access to those advisers to help better understand this bill. Under the Human Reproductive Technology Act 1991, the current meaning of a couple is restricted to a couple who are married or in a de facto relationship with each other, whether they are different sexes or both female, but male same-sex couples do not have access to in-vitro fertilisation for surrogates. The Surrogacy Act 2008 does not allow male same-sex couples and single men access to surrogacy and only an eligible couple or eligible person can seek a parentage order. It states —

eligible couple means 2 people of opposite sexes who are married to, or in a de facto relationship with, each other and who, as a couple —

- (a) are unable to conceive a child due to medical reasons not excluded by subsection (3); or
- (b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease;

The act defines an eligible person as meaning a woman who, it states —

- (a) is unable to conceive a child due to medical reasons not excluded by subsection (3); or
- (b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease; or
- (c) although able to conceive a child, is unable for medical reasons to give birth to a child.

That is the current situation with the two acts that are being amended by this bill. This bill will essentially change the Human Reproductive Technology Act to allow male same-sex couples who are married or in a de facto relationship to be eligible to access a surrogate who will undergo IVF, and will amend the Surrogacy Act to allow single men and male same-sex couples, married or in a de facto relationship, access to surrogacy. We know what the bill is changing. What amendments are being made to the Human Reproductive Technology Act itself? They are quite interesting because the bill makes some slight amendments to clarify that a woman or a married or de facto couple are eligible for in-vitro fertilisation treatment if they are "likely to be unable to conceive or give birth". I understand the rationale behind that, because sometimes a medical condition might not be assured or fully understood.

Mr R.H. Cook: Chemotherapy.

Mr S.K. L'ESTRANGE: Yes, for people who may be receiving cancer treatments or whatever may have an effect down the track, the bill is adding the words "likely to be".

The other key amendment is to "Preamble" paragraph B in the Human Reproductive Technology Act 1991 to insert the words —

or who are unable to conceive children naturally due to social reasons and are parties to a lawful surrogacy arrangement,

That is a key aspect of this bill. This is intended to mean male same-sex couples and single men who seek to be arranged parents. The amendment to section 21 proposes that the meaning of "couple" is no longer restricted to those who are of different sexes or both female and now includes male same-sex couples who are married or in a de facto relationship with each other. Proposed section 23(1)(a) will extend eligibility for an IVF procedure to include circumstances which, and it states —

- (i) would be likely to benefit a couple who are likely to be unable to conceive a child due to medical reasons; or
- (ii) would be likely to benefit a woman who is likely to be unable to conceive or give birth to a child due to medical reasons; or
- (iii) would be likely to benefit a couple or woman whose child would otherwise be likely to be affected by a genetic abnormality or a disease; or

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(iv) is for the purposes of a surrogacy arrangement that is lawful and for which there are medical or social reasons under the *Surrogacy Act 2008* ...

All those amendments make provision for a woman to be eligible for IVF treatment if there is a likelihood of her becoming infertile or unable to give birth and for a medical condition or medical treatment, as I said. But the reason for infertility must not be age—that has not changed. The last new provision extends the category of persons who may access surrogacy by permitting a surrogate to undergo an IVF procedure for a male same-sex couple or single man when these men seek to become arranged parents, provided the surrogacy arrangement has been approved by the Western Australian Reproductive Technology Council. The amendment to section 23(1)(b) removes the restriction that members of a couple in a de facto relationship are to be persons of the opposite sex. We are very clear on the amendments to the Human Reproductive Technology Act and similarly the amendments of the Surrogacy Act introduce that there has to have been medical or social reasons for the surrogacy arrangement. The bill will introduce social reasons into that act. Proposed sections 19(1A) and (2) provide the circumstances of a medical or social reason, for the purposes of section 19(1)(b); that is, if there is one arranged parent, that person must be an eligible woman or a man, or if there are two arranged parents, the couple must be married to or in a de facto relationship with each other and be an eligible woman and a man, two eligible women, or two men. The eligible woman criteria is defined as likely to be unable to conceive a child due to medical reasons, not by reason of age or for a prescribed reason; or, although able to conceive a child is likely to be unable to give birth to a child due to medical reasons; or, although able to conceive a child, the child is likely to be affected by a genetic abnormality or a disease.

This now brings me to what I see as the government's motivation; members opposite can correct me if they think I am wrong. That motivation centres on something in Minister Cook's second reading speech. About halfway down the first page of *Hansard*, it says —

... 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 Human Reproductive Technology Act and the Surrogacy Act from application of the Sex Discrimination Act expired on 31 July 2017.

The second reading goes on —

To delay action in response to this would be unwise. Consequently, there is some urgency for making these amendments to the state legislation to address issues of discrimination and any inconsistency arising under the Sex Discrimination Act. Clearly, this is the right thing to do. Failure to do so presents 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.

It goes on —

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.

I see that as a key motivation of the government for making these amendments to the act through this bill.

I now want to focus on the changes to section 19 of the Surrogacy Act 2008 and look at how that compares with proposed new section 19, which is clause 18 of the bill. I have already outlined pretty much what the old section 19 said—that is, as I said earlier, it defined what an eligible couple is and what an eligible person is—so I will not go through that again. Clause 18, “Section 19 amended”, introduces this aspect of social reasons. It keeps the medical reasons for an “eligible woman”. She remains defined as being —

- (a) is likely to be unable to conceive a child due to medical reasons not excluded by subsection (3); or
- (b) although able to conceive a child, is likely to be unable to give birth to a child due to medical reasons; or
- (c) although able to conceive a child, is likely to conceive a child affected by a genetic abnormality or disease.

That will more or less stay the same, other than the bit that is being introduced, which are the words “likely to be”. Members might wonder why I am focusing on this. I am focusing on this because these changes allow the provision

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for one man or two men as a couple, but there is no eligibility criteria for a man other than for the man to be a man. There remains the eligibility criteria for a woman. A woman simply being a woman does not make her eligible; she must satisfy the criteria as outlined in the bill, which is predominantly for medical reasons. If we then look at the explanatory memorandum, which was with the bill, and how it explains this point, it states —

This has the effect of expanding the category of persons who may enter into a lawful surrogacy arrangement and make an application for a parentage order, to include a male-same sex couple who are married to, or in a de facto relationship with, each other and a single man. If a same-sex female couple were seeking to be arranged parents under a surrogacy arrangement, both women would need to be an “eligible woman”.

“Eligible woman” is defined in new section 19(2) and means a woman who —

- is likely to be unable to conceive a child due to medical reasons (not by reason of age or excluded for a prescribed reason under section 23(1)(d) of the *Human Reproductive Technology Act 1991*); or
- although able to conceive a child, is likely to be unable to give birth to a child due to medical reasons; or
- although able to conceive a child, the child is likely to be affected by a genetic abnormality or a disease.

This has the effect of retaining the requirement that there be medical reasons (not social reasons) for a woman who is an intended arranged parent, to enter into a surrogacy arrangement. Those reasons must not arise due to the woman’s advanced age.

Members will see now that by bringing this explanation back to the minister’s second reading speech and reference to the Sex Discrimination Act, I have some issues with the bill. The issues I have with the bill are that the intent, as outlined in the second reading speech, is about trying to avoid an equal opportunity lawsuit; however, the eligibility criteria for men under the bill are less than the criteria for a woman. That is something that needs to be reflected upon. Men are eligible simply by virtue of being men and not being biologically able to give birth themselves, obviously. But these questions could therefore be asked: Should social reasons be expanded to women? Is it discrimination towards women that they have to fulfil more criteria to be eligible to access surrogacy than men? That is a question that could exist. The next questions I ask are: Will the bill, therefore, come back to Parliament in a few years’ time to extend social reasons for access to surrogacy to women; and will the bill be at risk of challenge on equal opportunity grounds? I think those are fair questions. That then poses a further question in my mind, which is: could the bill come back again for a further extension of what social reasons could lead to women actually wanting surrogacy to use the surrogacy arrangements? For example, women may not want to use their bodies to give birth to protect their body or their career or for whatever reason. They may want to access surrogacy on those grounds. It has been reported, and there are articles internationally, that that is called social surrogacy, which is interesting, because this bill introduces social reasons for men. By extension, if this was challenged in the court under equal opportunity provisions, could a woman then argue that their social reasons are as justifiable for accessing surrogacy as the social reasons underpinning this particular bill? These are just questions. I am not proposing at all to give the answers to these questions, but I am highlighting that these questions start to make us think how far do we go and how far will this keep going if we open up social reasons and keep redefining what those social reasons might be. Some might call that the phrase that is often used in these instances in which things can start to get their own momentum—they call it a slippery slope. What is the slippery slope to how we are socially re-engineering how we access surrogacy and family arrangements in this state of Western Australia? When it is justified on an equal opportunity platform, what does that mean? What does the interpretation of the Sex Discrimination Act actually mean? Furthermore, with this social surrogacy aspect, could we end up with amendments down the track that actually lead to surrogacy arrangements for social reasons, which are akin to genetic shopping with regard to the woman’s egg or the man’s sperm? Would those social reasons be justifiable? Is that really the type of society we want to create through legislation? Again, I am posing these questions without an expectation of getting answers tonight; I am just putting it out there that these are my concerns about where we are headed with this bill.

I look to read to members now section 5B of the commonwealth Sex Discrimination Act 1984, which states —

Discrimination on the ground of gender identity

- (1) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person’s gender identity if, by reason of:
 - (a) the aggrieved person’s gender identity; or
 - (b) a characteristic that appertains generally to persons who have the same gender identity as the aggrieved person; or

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(c) a characteristic that is generally imputed to persons who have the same gender identity as the aggrieved person;

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who has a different gender identity.

Under that definition, are we not discriminating in this bill through a difference between an eligible woman and what is not defined as an eligible man, a man, and this aspect of social reasons? Can this aspect of social reasons come back again and again to be redefined to suit somebody saying, “If that can happen for that sex, why can’t it happen for me”? Where does this stop? I fear that, in using this aspect of the Sex Discrimination Act as a cause for this bill, there is no real thought for the second and third-order consequences moving forward over time. Most importantly, as many of my peers in the chamber have already articulated on this bill, what is in the best interests of the child? Although we can put the legal argument or debate the argument about non-discrimination and equality, and we may, in isolation or in a vacuum on that debate, have very sound reasons for arguing against discrimination, we still have to reflect—I know that the member for South Perth, the member for Cottesloe and others have done so—and think: “What is going to be the effect on the child? Who is the, for want of a better term, by-product of this legislative change? What will the effect be on them?” Clearly, there is some concern from members who have spoken today about how that child will view the world around them in the future. I am not saying right, wrong or otherwise. I am certainly not judging whether a man or a woman is a better parent. That is not what I am doing at all. I am just making the point that if we force ourselves almost into panic through fear of litigation and then start trying to make changes to legislation to satisfy that fear, are we doing what we think is in the best interests of the child? That is the key question that I am focusing on today. As I have said, there will be a minor amendment to the definition of “eligible woman” to include words to the effect of “likely to be”, but, other than that, the provision in the act will not change.

If this bill gets through this house and the upper house, it will set a new course. It will set us, as a society, on a new journey. But it does not clearly tell us where the end of that journey will be and what the end of that journey will look like. To my mind, this bill creates more uncertainty connected to this aspect of discrimination based on sex. It is that unknown end point of what this bill is doing—the unknown impact and effect on the child—that is a key outcome of this journey. It is because of these issues, and particularly, as I said before, the slippery slope concern linked to the Sex Discrimination Act, that I will not support this bill.

MS L. METTAM (Vasse) [7.22 pm]: I also will not support the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. For many Western Australians, having children and founding a family is an important and natural part of their lives. The desire to be a parent is an instinct that is shared by many people from different backgrounds and our society now recognises many different forms of blended and adoptive families—ones that are not based solely on genetic connections or the traditional definitions of a family consisting solely of a mum and dad. However, for some, the dream does not come easily. The desire to have a family is often complicated by many issues, including age, infertility or being single or in a same-sex relationship. As our society’s definition of family and familial relationships is expanding, so, too, is our society’s advancement in medical reproductive technology, which can assist many Western Australians in achieving their desire to have a family. For some, after all those avenues have been exhausted, options for surrogacy are considered. There is no question that the concept of surrogacy raises challenging and complex ethical and legal issues in both Western Australia and countries around the world. Many western European countries, including Sweden, France, Germany, Spain, Italy and Denmark, have banned surrogacy outright, and in 2015, the European Parliament rejected surrogacy in a non-binding resolution.

What makes this interesting is that it is not just the Christian right that wants it banned; it is also the hard feminist left. Susanna Tamaro, one of Italy’s most famous novelists who has studied natural sciences and animal behaviour, has said that separating the concept of biological relationship from parenthood goes against human nature and that therefore the human being is made of memory— affective memory, genetic memory, epigenetic memory and historical memory. To conceive a child on demand is to knowingly deprive a human being of what makes them— genealogy.

A number of high-profile offshore surrogacy cases involving Australians have also highlighted these ethical issues and the possibilities for exploitation, including, as we all recall, the infamous baby Gammy case in 2014. This is why it is important that the best interests of the child remain paramount in any regulatory response to surrogacy and that any amendments to the existing legislation do not create either a direct or indirect pathway towards commercial surrogacy. It is also why I have concerns not with the intention of the proposed amendments, but with whether these changes, which appear quite rushed, have been adequately considered, especially by the

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Western Australian public. This is one piece of legislation that we need to be particularly careful about getting right, and the questions and concerns of all Western Australians need to be adequately considered. It is why we must make sure that we do not rush any amendments through to merely address changing attitudes towards equality as a result of the postal vote on marriage equality. The 64 per cent of Western Australians who voted yes in the postal survey voted yes to changing the law to allow same-sex couples to marry. That was it—nothing else.

The debate on surrogacy has been occurring in this state for well over two decades, and in 2008, the then Liberal–National government, as part of its 100-day program, initiated and passed the Surrogacy Act, which regulates surrogacy arrangements. Under the current legislation, the grant of a parentage order is contingent upon a surrogacy arrangement having been approved by the Western Australian Reproductive Technology Council. The arranged intended parent who may apply for a parentage order must be infertile or unable to carry a pregnancy or give birth, or there is likely to be medical risk to the mother or baby if a pregnancy is carried out. Thus, a single woman or a woman who is married or in a de facto heterosexual relationship who meets these criteria is eligible to apply to enter into an approved surrogacy arrangement. Single men were excluded, as were same-sex couples. This bill proposes to amend section 19 of the Surrogacy Act to enable an application to be made for a parentage order in circumstances in which there are medical or social reasons for the surrogacy arrangement at the time that the arrangement is entered into. This will enable and allow eligible male same-sex couples and single men to apply for a parentage order, provided that all the usual requirements under the act are met, including that the arranged parents must reside in WA, at least one parent is 25 years of age, the arranged parents must meet the eligibility criteria and the surrogacy arrangement has first been approved by the Reproductive Technology Council. All existing requirements remain, including that the council may approve a surrogacy arrangement only if the arrangement has been entered into before the birth mother becomes pregnant, the birth mother has reached 25 years of age, the arrangement is in writing and signed by all parties involved, including any donors, and the parties must have undertaken counselling et cetera. This has the effect of expanding the category of persons who may enter into a lawful surrogacy arrangement and make an application for a parentage order to include male same-sex couples who are married to or in a de facto relationship with each other, and a single man. If a same-sex female couple were seeking to be arranged parents under a surrogacy arrangement, both women would need to be an “eligible woman”. I will speak on this in a moment.

It is unfortunate that, for some, the desire to have a family is often a difficult and complicated journey, often ending in heartbreak. There are couples who can conceive when the egg and sperm unite to become a fertilised egg that then develops into an embryo and finally into a baby. Then there are couples who cannot conceive. With today's technology, we can bring the egg and sperm together. We can allow fertilisation to take place outside the body, in vitro or in a jar or test tube and then implant and embed the egg into the womb. Suffice to say, there are also couples for whom the process of embedding cannot happen naturally or by means of in-vitro fertilisation. Those couples cannot have a baby, because for some reason the woman does not have a normal uterus or implantation cannot occur and the woman has what we call habitual miscarriages. There may be a uterine disorder, endometriosis or many other issues. There are many medical reasons why a woman cannot gestate a baby.

It seems more than reasonable to address the needs of those desperate couples who either cannot conceive and cannot gestate or can conceive but still cannot gestate, including allowing those couples to arrange a surrogate birth. However, I question the reasonableness of the bill in providing the same eligibility for surrogacy to single males, especially on the grounds of allowing consistency with the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act. I note in the 2008 debate on the Surrogacy Bill—an interesting debate with some valuable contributions from all sides of this chamber—that the intention of the original legislation was to address the needs of those couples in long-term relationships and those eligible women who cannot conceive under the conditions that I have already spoken about. I refer to the second reading speech of the Surrogacy Bill on 2 December 2008, which states —

The use of surrogacy as a means of helping women who are unable to bear a child has a long history in various cultures. In Australia, the demand for surrogacy has increased since the 1970s with the decline in the number of babies available for adoption and the increased availability of assisted reproductive technology. The use of assisted reproductive technology has increased options for conception in connection with surrogacy, and allows the creation of embryos that are genetically related to the arranged parents. The regulation of surrogacy presents challenges because of the need to balance the possibly conflicting interests of the parties who may be involved in a surrogacy arrangement. These interests include the child's right to be protected and to know about the circumstances of its birth, the arranged parents' interest in being able to have a child and to be recognised by law as parents of that child, and the birth mother's right to be protected from exploitation.

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That is a true and altruistic intention, which is completely different from addressing, in legislation, the desire of a single man to have a child. I wish to stress that this is not to say that single men are in any way less of a parent than a couple or a single female. In fact, there are numerous examples of men who are fantastic single parents and who do an exceptional job raising their children. However, surrogacy legislation is not about the right of everyone in our society to have a child or family through surrogacy because having a child is not a right; it is a privilege.

I note the following comment during the debate on the Surrogacy Bill 2008 from the former Minister for Health, Hon Dr Kim Hames, himself a former GP and advocate for surrogacy —

People assume that surrogacy laws are new, and that in passing this legislation we will suddenly open up the opportunity for people in Western Australia to access surrogacy arrangements. Surrogacy exists now, but not by way of in-vitro fertilisation. A couple who cannot have a child themselves can donate sperm to, or the man can have intercourse with, the woman who is prepared to have the child. There is nothing to stop that from happening. Even non-heterosexual couples have the opportunity to do that. This legislation puts in regulations and rules, and it puts in a system that provides for the proper care of a child and makes sure that that child has the best possible outcome. This includes traditional surrogacy, which is not in-vitro fertilisation.

According to the minister in his second reading speech, this bill recognises and embraces the diversity of our modern families and removes discrimination experienced by men with regard to surrogacy.

As a woman, a wife, a daughter and also a mother, I believe that women have a more central role in reproduction than men and that this primacy needs to be cherished and protected in the best interests of the child. I would also like to say that the proposed amendments, which will remove any potential discrimination against men with regard to surrogacy, are discriminatory as they require a single woman or, in the case of a female same-sex relationship, both women seeking to be arranged parents under a surrogacy arrangement, to be an “eligible woman”. “Eligible woman”, which our lead speaker has spoken about, is defined under proposed section 19(2) as a woman who is likely to be unable to conceive a child due to medical reasons; or, although able to conceive a child, is likely to be unable to give birth to a child due to medical reasons; or, although able to conceive a child, is likely to conceive a child affected by a genetic abnormality or a disease.

This is the effect of retaining a requirement that there be medical reasons, not social reasons, for a woman who is an intended arranged parent to enter into a surrogacy arrangement. Those reasons must not arise due to the woman’s advanced age. Those same conditions do not apply to single men. Under this bill, a 65-year-old single man is considered eligible for surrogacy; a 65-year-old single woman is not, due to her advanced age. Even more than this, women and heterosexual couples are limited in only accessing surrogacy for medical reasons. Although I fully understand the concerns placed on male same-sex couples in a long-term relationship and the bill’s intention to address this, I am not convinced that these same social reasons should apply to single men, regardless of their sexual orientation, in seeking surrogacy. Furthermore, I am not convinced that the concerns raised over any potential appeal on the grounds of sexual discrimination when access to surrogacy is denied is actually warranted. The exclusion in the original legislation was written in the interests of the child, which were held paramount and with no thought of discrimination, and that should remain so.

When we look at the issue of surrogacy and IVF, it is not hard to get caught up in the continuing advances in medical science. We can now, through IVF, allow a man and a woman who cannot conceive to have a baby. We can now allow a woman and a man to have a baby if the woman does not have an egg. We can allow a woman and a man to have a baby even if the woman does not have an egg and even if the man does not have sperm. We can even allow a woman who has an egg, but has no male partner, to get donated sperm and have a baby—and it goes on.

Another proposal contained within this bill concerns the provision for fertility preservation for medical reasons; in particular, to benefit cancer patients. Doctors have expressed uncertainty about whether a woman who is presently fertile, but who is soon to become infertile as a result of a medical disease, condition or treatment, such as chemotherapy, is permitted to have her eggs fertilised to create an embryo through IVF. This raises concerns over whether it is lawful for medical practitioners to create embryos through IVF for women who are not yet but are about to become infertile. Yet we need to remember that the end result of all of this advancement in medical science and the decision of couples to access surrogacy; the outcome of that is the child.

Article 3 of the “United Nations Convention on the Rights of the Child” states —

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

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As stated in international human rights law, children are rights holders and any attempt to commodify them is a contravention of these norms. States, regardless of their perspectives on surrogacy, must create safeguards to prevent the sale or traffic in children in the context of surrogacy. I appreciate that we are talking about altruistic surrogacy here, but there are outstanding concerns about where this may lead. It is of the utmost importance to resist the pressures created by those in our society who wish to provide a pathway towards any form of commercial surrogacy arrangements.

Strict regulation based on human rights is consequently required in order to ensure that surrogacy does not amount to the sale or commodification of children. Every child at one point asks the questions, "Who am I? Where do I come from?" In most families, these questions are easily answered. In some, they are a bit more complicated. With surrogacy, we still remain in uncharted waters.

The minister referred to a growing body of research in his second reading speech in his support for this bill. I would welcome the provision of this research so that we are all better informed about what this legislation will mean.

MR Z.R.F. KIRKUP (Dawesville) [7.42 pm]: I rise, with all members in this place, to speak on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. It is the first opportunity I have had to vote on conscience, which is an important consideration for me in terms of my responsibilities to this place. The member for Maylands made the point that she has been in this place for 10 years and it is only now that she has managed to vote on conscience on something that is of importance to her. I think it is great that all parties in this place have adopted a conscience vote for what I think is a very important piece of legislation. The member for Perth made the point that 1988 marked the introduction of a suite of landmark legislation that made sure there is better access and equality for all Western Australian citizens.

Initially, I was not fixed in my position on this surrogacy legislation. To be frank, it was not something I had considered and it was not something I was particularly well aware of. In my research I became aware that my predecessor Dr Kim Hames brought in the more recent suite of surrogacy legislation, which many members in this place have spoken about. In the course of understanding the burdens and responsibilities that come with a conscience vote, I spoke with as many people as I could about this when the time came up, even if it was just a casual chat amongst my mates about what they thought. A total of two people have contacted me. One was from outside my district and one was from inside my district. In that case, the individual asked me not to vote for this legislation.

Mr R.H. Cook: Is that the same one who contacted the member for Mandurah?

Mr Z.R.F. KIRKUP: No, not the same one. He dare not contact me, it seems.

I respect the views of the individual who wanted me not to vote for this legislation and of all members in this place. However, I intend to vote for this legislation. I think it is an important bill and I will explain why.

I previously commented that my position was not particularly fixed. The predominant reason I arrived at this decision was the result of a lot of conversations with my wife, Michelle, about this. She is very interested in health policy and takes it to heart. She is involved in it in any case. We had a good number of conversations about what this legislation will mean. I totally appreciate the views put by the member for South Perth, the member for Vasse and the member for Churchlands, who outlined their positions. I respect them entirely, as I do those of the constituent who wrote to me and anyone in my district who may feel aggrieved that I am voting for this legislation. It is a good reflection of our society —

Mr J.E. McGrath: I'm not aggrieved at all. It's your choice.

Mr Z.R.F. KIRKUP: That is right. However, members of the community may feel aggrieved. I appreciate the member's support.

It is an important reflection of the civil society that we have here that we can have important conversations such as this. Our opinions may differ, even within the same party, which is representative of the broad church that we are. The conversations that I had with my wife largely dominated and are the reasons that I have arrived at my decision. Quite seriously, I got out some of the first speeches by Robert Menzies in a book about the forgotten Australians to try to see the relevance of family. It was very important when the Liberal Party was established in 1944 or 1945. Speeches made then had completely different connotations and definitions about what family means compared with this day and age. Families have evolved quite significantly. Blended families and single-parent families have larger statistical representation than they did when our party was first founded. Something that hangs in our party room states that in the Liberal Party we believe in a just and humane society, where the importance of the family and the role of law and order is maintained. It is a fairly important part of the Liberal Party's beliefs. I genuinely believe that this legislation goes a significant way to ensuring that family can exist, whatever the

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modern-day definition is. We need to recognise that a defined family is no longer that traditional nuclear family and that circumstances change.

The member for Perth largely spoke about his own experiences as an openly gay member of Parliament and as a gay man. Michelle's brother and his partner, Scott, are a gay couple who would make outstanding parents if they so chose. Many options are available to them, such as fostering and adoption, as the member for Central Wheatbelt pointed out. I think those options should be much more accessible than they are in this day and age. I support any individual if they want to commit to a genuine and caring relationship and bring a child into the world. I think they should be supported in that. I would support Michelle's brother—my brother-in-law—and his partner doing so if they chose. It is not something they have considered or anticipated at this time, but I think that they would make outstanding parents. I know a number of gay men who now care for children and have had the opportunity to care for them through adoption, which in some instances is an exhausting process. They are very nurturing and very loving families. Again, the definition of family has changed over time and I think we should support those families where they are. To be frank, all of us in this place know of situations in which the nature of family in any traditional sense has deteriorated. There has been bitterness and the absolute dissolution of some family units that has resulted in awful violence and sexual abuse. The notion of family now is completely different and I think we need to support any measure to make sure we have loving and caring environments in which to raise children.

As I said, I look at the experience of my brother-in-law and other men I know who are in a gay relationship. If that is something they choose or if they have already adopted children, I absolutely support their ability to care, love and raise a child. One of the reasons that this piece of legislation is important is that it will restore a sense of equality to people who have missed out on that and have not had that opportunity, whereas other members of the community have. When I came into this place, I said in my inaugural speech that I would stand for equal rights and defend the liberties of any person, irrespective of their race, gender or sexuality. I think this is an important step in making sure that much more equality is given to people who have not had the opportunity to have children and who have been specifically segregated from the opportunity, through surrogacy, to raise a child. I note, and I think the member for Vasse made the point, that there are options such as fostering and adoption, but this is something that we can explore. It should be open for anyone to take up in terms of a technological method of conception, I suppose, if they so choose.

The other more predominant point that Michelle and I were talking about, which helped me to arrive at this decision, is that she is 27 and I am 31 and we are at that point at which we will start —

Mrs A.K. Hayden: Getting old!

Mr Z.R.F. KIRKUP: Thank you very much, member for Darling Range.

We are at the point now of discussing our family, if we have the opportunity to have a family. For what it is worth, I do not think Michelle is quite ready yet, but I certainly am. I am all for campaigning with children in arms but Michelle would like to wait another electoral cycle until we bed down our family unit. We are having that conversation about what our family will look like.

Mr J.E. McGrath: Wait until we win government again.

Mr Z.R.F. KIRKUP: Wait until we win government; sure, that is only 854 days' time, member for South Perth.

We are having that important conversation. If we are blessed to have children, it is a very serious responsibility that we will take on. We are looking at where we live right now in Seascapes. The member for Mandurah lives in a much more private part of Mandurah because he has a large family. I am trying to think about what having a family means for our household composition. Do we have to look at moving to a new house? What does schooling look like and what do the financial implications look like?

Mr J.E. McGrath: You can move in with the member for Mandurah!

Mr Z.R.F. KIRKUP: The member for Mandurah already has a tribe; I am sure he will not take in two interlopers, as it were!

It is a very serious conversation. The older members in this place who have had the opportunity to have families have no doubt gone through this. I am at the very start of it. It is something that Michelle and I talk about on a weekly basis. It is a very serious consideration. When I looked at this legislation, I imagined for a moment—assuming that this is the “what if” for me—that Michelle comes from a family that has a history of cervical cancer or anything that might interrupt her fertility. God help us that that is not the case from what we know, but what if that is something that has to be considered? If we knew that such a diagnosis meant radiation or more serious surgery that might result in the removal of her cervix or uterus, which would mean she could no longer produce

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any children, why would this place stand in the way of us freezing her eggs? If she was to unfortunately pass on, why is it that her legacy and our relationship should not continue with me being able to raise a child of our own without her being present? The more predominant consideration for me is what that would mean about my relationship with my wife and our ability to have children in the future. I am aware of the conversations that we have had in the house. As I said, I respect the views of all members in this place about the impact of this on family. But the more serious consideration for me is what impact that would have on our family unit. I love my wife absolutely and dearly and if there were ever a circumstance in which she got cancer or her fertility was interrupted or she later passed away, I do not understand why I could not have the ability to continue to have her children—our children. There are lots of tests and medical procedures that allow children to be looked after in the womb in a life that we did not envisage decades ago. Technology has moved at a rapid pace to foster life that is a gift given to us. I absolutely and seriously support the notion that as a widower and a single male, I could continue my wife's legacy as if we were lucky and blessed enough to have children. That is probably the part that weighs on me, not insignificantly, because it is a very serious threat in our relationship with family history on Michelle's side. It is something that we have been seriously contemplating as we have very serious and lengthy discussions about our family going forward. That has quite seriously been a most serious consideration. I appreciate the views that have been put by others. I note that other members in this place have spoken about constituents who have reached out to them. The member for Morley talked about a gentleman, Rick, who is probably in not too dissimilar a situation to my catastrophic "what if" that could absolutely impact on us. I do not think any person in a position like Rick—I could be one of those, I do not know at this point—should not have the opportunity to continue the legacy of their spousal relationship. I would expect to be able to do so in this state. I commend the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 to the house.

MR K.M. O'DONNELL (Kalgoorlie) [7.56 pm]: May I first—it is my turn—congratulate the West Coast Eagles. It pains me to do so, but I do. I know I did not want to. The worst part is that I found out that like me, the Speaker also coached Jeremy McGovern so two Collingwood supporters coached him in his junior years.

I would like to speak from a different perspective. It was sad to hear the member for Maylands say that this is the first time that she can cross the floor to vote how she wants to.

Mr J.E. McGrath: She is not crossing the floor—it is a conscience vote.

Mr K.M. O'DONNELL: I do hope that I do not have to wait 10 years for that. I try to imagine what it would be like if I were gay—I am not gay. A person is either gay or they are not. I am left-handed; I did not choose to be left-handed, but I am. I have both male and female friends in the police department who are gay. I try to imagine what it would be like being on that side of the coin where people say, "You wouldn't make a very good parent" and things along those lines. The wellbeing of children is the major part of this debate. As a police officer, I went to many homes in which the children of heterosexual couples had been abused physically and mentally, so who am I to say that a single male person will not make a good father? I believe I was a good father. Single males should not be restricted in their decision to have children.

Ms J.M. Freeman: Good on you!

Mr K.M. O'DONNELL: Thank you.

The benefits of having children are huge. Some people miss out on those benefits through their own choice—they do not want to have children—but others cannot have children. A few men whom I grew up with have not been able to find a partner even though they are nice guys. Sometimes even the girls cannot meet a nice guy, but I believe they would make great parents. When I read that a single male could be involved in surrogacy, one of my first thoughts was that I remembered back in the 1980s, public servants would drive up to Kalgoorlie-Boulder and go to hotel rooms with young children. From my recollection, none of those public servants had any record to imply that they were sexual predators. My first thought was that I would not want those types of people to be able to go through surrogacy and then start grooming children. Then I thought to myself that we have to see the good in people who have never been in trouble. In my opinion, people are being very harsh in saying that we should not allow this bill to pass. I think we should let it go through. I have had various emails about live sheep export and taxi reform. I have had hardly any emails about this subject. I was disappointed to hear from the member for Churchlands that in various clauses women and men are not equal for social reasons. Men and women should be regarded as equal in this legislation, where applicable. As an example, if a clause relates to a woman who cannot have a baby, we cannot put in if a man cannot have a baby. I think that should be taken into account. I am not going to keep talking about this but when we found out that our friend could not have a child, my wife said that she would be prepared to be a surrogate. We knew that those two people would be very good parents. Having been told they could not have kids and after spending all their money on in-vitro fertilisation and trying everything that

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the doctors told them to do, one afternoon after work, she fell pregnant. They have two lovely daughters. I will not keep going. I regard myself as a Christian person but I will support this bill. I commend it to the house.

MRS A.K. HAYDEN (Darling Range) [8.02 pm]: I, too, rise to join the many members who have stood tonight to speak on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. The bill we are debating largely provides for amendments to the Human Reproductive Technology Act 1991 and the Surrogacy Act 2008 with the intent to enable male same-sex couples and single men to access surrogacy on the grounds of unjustifiable discrimination due to one's sex and sexual orientation. Members need to realise that this is the main intent of the bill. It is to enable male same-sex couples and single males access to surrogacy. It is set out in the second reading speech and in the explanatory memorandum that the basis for and the argument of the legislation is to enable same-sex couples and single men access to surrogacy. Currently, surrogacy is allowed for eligible women. It is for couples who are struggling to have children and cannot have them for medical reasons. It is for a male and a female who would like to have a child and, for medical reasons and medical reasons alone, they cannot. In my view, the bill should uphold, respect and protect that, not dilute, amend or erode those acts. I do not support enabling same-sex couples and single men access to surrogacy, therefore I will be voting against the bill. I am more than happy to explain why.

The rights of children is one of the biggest things that is always overlooked when we have this discussion. We never discuss or debate in this place the rights of children when we are talking about the equality of another person's rights. In this case, it is the equality and decriminalisation of same-sex marriages or single men who choose to be in same-sex relationships. Again, we are forgetting the rights of the children who will be brought into these relationships. Whenever we discuss surrogacy, adoption and fostering, the child should always be at the forefront of our minds and should always be the priority and the main focus of this legislation. Single parenting is difficult enough, no matter where a person comes from. I am extremely fortunate with my parents celebrating being married for 52 years. I say the word "fortunate" because they gave me an amazing upbringing. I have been a stepmother for 30 years. I have not had children of my own but my stepdaughter was eight years old when she entered my life; she is now 38 years old. I know how difficult it was for her to go through a split marriage, getting a stepmother and so forth. Our children already face so many complications in society, including single parenting and divorced families. I do not believe that adding another hurdle for our children is something that we, as legislators and people who are protecting our community, should be doing.

I want to read out an article that I found after a quick google to see what was out there. The first article that came up was an interview on ABC about a Facebook post. The article is about a woman called Millie Fontata. She is 24 years old and she tells her story. I would like to quote parts of the article. It states —

She grew up in Melbourne as the child of lesbian parents, and she says she supports same-sex marriage.

But that's not the end of her story.

While she's for same-sex couples marrying, she has deep concerns about what same-sex marriage would mean for family structures. Families like hers.

"Same-sex parenting is not something I'm against," Millie told ... "It's got to be done ethically. There's no easy way of raising a child in a same-sex scenario."

"Same-sex marriage coming in basically says we don't need biology," she said. "Marriage itself has been so intertwined with child reproduction, and what I want to see happen is the preservation of child rights, regardless of who gets married."

...

Millie didn't meet her dad until she was 11 years old. His absence had a big impact on her life.

She'd asked her mums to meet him as a young child, and they'd said no.

By no means am I saying that all same-sex marriage couples would not allow a child to meet their father, but in this case, they said no. It continues —

She started acting out and having problems at school.

"It was very hard for me to establish a stable identity," Millie said. "It was negatively impacting my development."

'There was always something missing'

Mr John Carey; Amber-Jade Sanderson; Mr John McGrath; Dr David Honey; Ms Mia Davies; Mr Peter Katsambanis; Ms Lisa Baker; Acting Speaker; Mr Sean L'Estrange; Ms Libby Mettam; Mr Zak Kirkup; Mr Kyran O'Donnell; Mrs Alyssa Hayden; Mrs Jessica Stojkovski; Mr David Templeman; Mr Tony Krsticevic; Ms Janine Freeman; Mr Bill Marmion; Dr Tony Buti; Mr Roger Cook

No one ever teased her at school, and her mums were loving and provided all she needed for a stable home life. But Millie said she still clung to the “missing gender” in her life.

This is one example and it is not an example led by religion; it is not an example of someone who is anti-same-sex marriage. It is an example of a child who was brought up in a same-sex marriage who outlines the difficulties she had.

I will go back to my original argument that we should always protect the welfare of the child—the welfare of the subject of the legislation we are going to pass in this place. The subject is a child.

Through our briefing, we were advised that no single women have applied for surrogacy in the last 10 years since the act was introduced. My question is: if no single women have tried to be involved in surrogacy, why are we even debating the possibility for single men? Surrogacy is not a decision made lightly by anyone who is currently eligible and, in the last 10 years, I believe there have been only 10 births from surrogacy in Western Australia. By no means is there a high demand for surrogacy or an overwhelming call for this to occur. The government’s argument is not that demand is overwhelming; it is a personal opinion of discrimination. Surely the 5 000 children who are in care and the many more who are at risk because of the huge shortage of foster carers deserve the government’s attention and to be its priority over this legislation.

As I said at the beginning of my contribution, the original intention of this bill was to enable couples—a man and a woman—to be able to have a child when, for medical reasons, they could not. I believe this legislation will erode and delete the original intention of the act, which needs to be respected and upheld. We are talking about creating another human life; we are not talking about traffic infringements. A life is not a commodity that one can buy off the shelf; it is actually a gift. Not everybody is able to have that gift, whether they are in a male and female relationship or not. I return to the equality argument put up by the government that this bill will lift restrictions on same-sex couples and single men. However, it is only single men who can apply under this legislation, due to the social reasons provision. As the member for Churchlands outlined, female same-sex couples need to meet the eligible woman criteria; however, a single man, or a man in a same-sex couple, has to meet only the social criteria. The eligibility for a woman is defined in new section 19(2), which states —

eligible woman means a woman who —

- (a) is likely to be unable to conceive a child due to medical reasons not excluded by subsection (3); or
- (b) although able to conceive a child, is likely to be unable to give birth to a child due to medical reasons; or
- (c) although able to conceive a child, is likely to conceive a child affected by a genetic abnormality or a disease.

A woman, whether she is in male–female or a same-sex relationship, must meet the medical criteria. However, a male can meet the social criteria, for which there is no real definition, and the only reference to it I could find is in the explanatory memorandum, which says that the proposed new clause 19(1A) is —

... to include a male-same sex couple who are married to, or in a de facto relationship with, each other and a single man.

That is the definition of “eligibility”. If we are arguing about equality, surely it is a flawed argument, because the legislation is not equal. I struggle with the argument about equality that was put in the explanatory memorandum and the second reading speech, because not all women in same-sex marriages may want to have a child and may not be eligible for medical reasons. A man can just want a child, but medically he cannot have one either—it is pretty obvious why a man cannot have a child.

Like the member for South Perth, I have also received many emails from the electorate to my office. I have had over seven meetings with people coming to talk to me about this issue. The people of Darling Range have asked me not to support this legislation. Also, my own personal beliefs and the fact that I do not believe that we are actually meeting a demand in the community mean that I do not support the legislation. I do not believe that this legislation reflects any demand. There is no overwhelming outcry for this legislation and there are more far better things that this government could focus on. I will not be supporting the bill.

MRS J.M.C. STOJKOVSKI (Kingsley) [8.12 pm]: The Human Reproductive Technology and Surrogacy Legislation Amendment Bill is an emotional issue for many members here tonight. It is bound to be; family relationships are emotional.

Extract from Hansard

[ASSEMBLY — Tuesday, 9 October 2018]

p6638a-6672a

Mr John Carey; Amber-Jade Sanderson; Mr John McGrath; Dr David Honey; Ms Mia Davies; Mr Peter Katsambanis; Ms Lisa Baker; Acting Speaker; Mr Sean L'Estrange; Ms Libby Mettam; Mr Zak Kirkup; Mr Kyran O'Donnell; Mrs Alyssa Hayden; Mrs Jessica Stojkovski; Mr David Templeman; Mr Tony Krsticevic; Ms Janine Freeman; Mr Bill Marmion; Dr Tony Buti; Mr Roger Cook

I have received a couple of emails asking me not to support surrogacy. The problem with these points of view is that we already have surrogacy in Western Australia with a very rigorous process and stringent safeguards, including age limits for surrogate mothers and mandatory counselling, which I fully support. The changes we are discussing tonight are about removing discrimination for same-sex couples and specifically single men.

For many people, the drive and desire to have a family is very powerful. That is how it was for my husband and me. Those who are able to conceive naturally and easily are truly blessed. I would never wish the pain and heartbreak of infertility on anybody. I also challenge people to stop and think before they deem themselves to be experts on other people's happiness, desires and dreams. I was married at 26 years, with a pre-diagnosed condition that meant I would struggle to conceive. My husband and I began our in-vitro fertilisation journey shortly after we were married. I will not pretend that IVF is an easy journey; it is not. My determination to become a mother and subsequently to complete our family saw me undergo 22 physically draining and demanding IVF cycles. But the emotional toll that IVF takes on individuals and couples is far harder. Those days when we faced the very real possibility of never becoming parents were very dark. Naturally, we began to research other avenues for achieving our dreams of a family, including surrogacy and adoption. We were fortunate; we were a heterosexual couple, so we qualified. We were eligible to explore surrogacy as an option however, others would have been excluded by the eligibility criteria based on their sexual preference or their circumstances.

Like the member for Morley, I was contacted by a widowed husband who had been attempting to have children with his wife, but she was tragically killed in a car accident. They had embryos in storage, but he was not allowed to use them to create the family he desired. We have heard, "in the best interests of the child" repeatedly tonight. I agree that we should be discussing what is in the best interests of the child. Children need many, many things, but primarily they need love. A parent, or parents, who had to fight for their beloved child and had a love for that child before they were even conceived understands unconditional love.

I subscribe to the view that it takes a village to raise a child. Although I agree that, where possible, a child should have a connection and a relationship with both parents, if there are two parents, it would be foolhardy to imagine that it is only parents who love, care and provide role models for a child. In the absence of two parents, it is often the extended family or the community that forms the village that steps in around the child to provide love, support and guidance, and to act as those role models children need.

I challenge those who respond to the issue of surrogacy by saying that adoption is an option to look at our country's adoption laws—I did. When I thought that I would never have a child, I looked into what it would take for us to adopt. It is a terribly tough road to go down. The adoption process is difficult to negotiate, and I think our adoption laws need amendment. Unfortunately, that is not a topic for us in this place; it is a federal government responsibility.

We heard the member for Cottesloe say that he is lucky to have six children, I believe. Why do people who are lucky to be in the position to have already had children feel that they have the right to pass judgement on the lives of those who are not so lucky? I could have so easily been one of those who are not so lucky. The idea that a child requires both a mother and father to succeed, grow and achieve their full potential is antiquated. It also flies in the face of the many single parents, either loving mothers or loving fathers, who work very hard—probably harder than some of us—every day to ensure that their children are happy, healthy and successful. The arguments of the members for South Perth and Cottesloe undermine these hard-working families and their efforts in raising their children. On behalf of those families, I say, "Shame on you." Despite some members' ignorance and fearmongering, the primary need for children, as I said, is love, whether that love comes from a mum or a dad, or from two mums or two dads, or any combination of extended family and village that surrounds a child.

I know of a couple of children who have two dads who were born from overseas surrogacy arrangements. I can tell members unequivocally that these children are loved.

These children are well balanced. They know who their family is and they know that their family is the heart of their world. Given our current legislative framework, I do not begrudge couples who are forced to seek overseas surrogates. However, I am of the firm belief that in Australia, and specifically Western Australia, we have the capacity and framework to manage surrogacy in a sensitive and, more importantly, safe manner. For those who want a family and who have the love in their hearts to care for and raise a child, why should someone be eligible for surrogacy and not someone else based purely on their sexual preference or circumstance? I challenge those in both the chamber and the community who feel it is their right to have a say on somebody else's happiness to think about how they would feel if they were faced with the very real possibility of not having children, whom they so desperately wanted. When I was in those very dark moments of trying to decide whether to give up or to pursue my dream of being a mother, it is very hard to think now that somebody in this chamber could have sat here and

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made a decision on my life just because they thought a child needed to be conceived in a certain way. I commend this bill to the house and fully support it.

MR D.A. TEMPLEMAN (Mandurah — Minister for Local Government) [8.21 pm]: I will make a very short contribution to the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. It is not often we get an opportunity to debate a bill or an issue such as this, but it is an important one. Look, I respect the views of members in this place. It is important that we should have an opportunity to express our view, whether or not we agree with each other. It is a matter of opinion, but it is a right. I respect the comments made by members in this place so far in this debate. I do not agree with most of them at all. I strongly support this bill for a number of reasons.

I want to comment on some of the contributions, like that of the member for Dawesville, my good colleague across the way, who is sitting in one of the most fertile seats in this chamber. I remind the house that the two seats —

Mr J.E. McGrath: Unlike yours.

Mr D.A. TEMPLEMAN: No, I sat there.

Mr J.E. McGrath: Yours is cocooned.

Mr D.A. TEMPLEMAN: Cocooned? This one here? It is probably soiled, but I do not know about that. Those two seats in which the member for Dawesville and the member for Vasse now sit have, in the last decade, produced more children than perhaps any other seats in this place. The Minister for Transport and I sat over there for eight long, hard, lean years with not much to do, apart from just stirring up the then government as much as we possibly could. In the meantime, seven children were produced out of those seats—not to each other, I might add! Seven children—what a blessing. I acknowledge those members who talked in their contributions about the blessing that children are. I listened intently to the member for Dawesville's aspirations.

Mr Z.R.F. Kirkup: Maybe you could tell Michelle.

Mr D.A. TEMPLEMAN: Next time I see Michelle in a social context, I will take her aside and just give her a few words of advice from this fatherly figure of Templeman. She will probably take no notice of me!

I want to particularly applaud the Leader of the National Party for her contribution to this debate this afternoon and this evening. I listened intently to the Leader of the National Party, who I think encapsulated the essence of this debate in terms of how we are coming to it and where we land in relation to this. In her contribution she talked about non-judgement—as simple as that—and about acknowledging that if somebody wants to be part of bringing into this world something so precious as a child, who are we to prevent that, essentially.

I am not having a go at the member for Darling Range, but I was a little concerned when she talked about the number of emails she had received and then based her judgement on that.

Mrs A.K. Hayden: No, I said it was one of.

Mr D.A. TEMPLEMAN: No. If the member looks at the *Hansard*, she will see that her final comment was that it was for the reason of having been inundated, as I think she said she was, by seven people. The member would be aware that her constituency voted very strongly in favour of same-sex marriage. I do not know whether she would bring that same view to this place, but that is her choice. That is not my choice; that is her choice. I had two people email me and I respect their views. One of them was actually an A. Hastie. I am sorry, but Andrew did mislead because he said he was a constituent of mine. In fact, he does not reside in the seat of Mandurah; he resides in the seat of Dawesville, from my understanding. I hope he wrote the same letter to the member for Dawesville; I am not sure whether he received the same one. It was from this interesting thing called One Click Politics; it was prepared by One Click Politics. I need to read this —

One Click Politics provides online communications tools for supporters of a cause, issue, organization or association to contact their elected officials.

I respect Andrew's view. Andrew has a very specific view about a range of issues of this nature and I respect that. I disagree wholeheartedly with that point of view, but I respect it. This debate is essentially about understanding that times have moved on. For goodness sake, 60 years ago women who fell pregnant were victimised essentially for the sake of falling pregnant. That is a reality. The reality was that a woman who might fall pregnant out of wedlock was effectively viewed with disdain. Times have changed. Goodness gracious, families are different. Families are made up of a whole broad church, if people like to use that term, of circumstances. We have grandparents, including single grandfathers, who are now parenting grandchildren for a second or third time because of the circumstances they face. Families are very, very diverse. Circumstances, be it by the grace of God,

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go on the situation you find. Let us put aside perhaps some prejudices we might have and recognise, taking the point made by the member for Kingsley, that, essentially, love is the central focus. Indeed, in the case of surrogacy, it is a very clear choice about wanting to have a child. Surely that should be respected. Whether a person is male or female, is in a same-sex relationship or a blended family relationship, or has other circumstances should have no bearing upon it. This is an important bill. It is reflected in other jurisdictions in Australia. I think it is the right thing to do. I commend those members who have spoken in favour of this. I respect those who have spoken against it, but I do not think they are correct in this particular perspective.

MR A. KRSTICEVIC (Carine) [8.28 pm]: I would also like to make a short contribution to the debate on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. I have paid attention to every word that has been spoken by all speakers up to this point.

This is obviously a very complicated issue. All speakers during the course of this debate have made some very good points and have covered some very serious areas for consideration. From the point of view of support for the bill, probably the strongest argument I have heard is from the member for Dawesville about consideration of what the bill is there for. Unfortunately, that is probably the strongest case I have heard. I have obviously heard a lot of very strong points from people opposed to the legislation and they have raised some very serious concerns for me in the information they have presented. I am not going to say that I am an expert by any stretch of the imagination in this area, or on what is the best for mums and dads, single parents and so forth; I can only work from my experiences. As we know, surrogacy was introduced in this state for the first time in 2008 under a Liberal–National government. Since then 34 couples have been approved and as at 2015, there have been 10 births. Interestingly enough, all those situations have revolved around medical issues and the definition of “eligible woman” when the woman was not able to otherwise have a child. I believe that those 10 births, including those 34 approved couples, have all been heterosexual couples. There have been no same-sex female couples or single women who have taken up this offer since the introduction of surrogacy into Western Australia. That is a very important message about the legislation as it currently stands. Who has taken it up? What are their circumstances? What has the demand been? When we extend the legislation to, for example, single men, I firstly benchmark against single women and ask: how many single women have done this since 2008? None. I could be wrong, but I always assume that women have a stronger disposition towards children than men; that is not to say that men do not have a strong disposition, but, as a general feeling, I lean towards the fact that women will be more strongly supportive of that occurring for themselves as opposed to men. The member for Dawesville outlined a very good example of a man whose wife might have passed away and therefore uses her egg to have a child. I have heard of that occurring around the world. When the Surrogacy Act was introduced in 2008, I do not think there were any restrictions on the bill being debated or amended to allow single men to have children, but obviously no-one in Parliament raised that question, that I am aware of. Nobody moved an amendment to allow a single man to do it back then, but it was definitely something that was on the table. Likewise, the issue of a male couple was not raised and put on the table, because, fundamentally, this surrogacy legislation was focused on a woman not being able to naturally have her own child. It was about recognising the seriousness of that situation and putting an opportunity on the table to allow a heterosexual couple or a single woman to have a child, which, in any other circumstances, could naturally occur. That is the starting point, and at that time nobody raised these other issues.

The member for Mandurah said that the world has moved on and we have come a long way down the track. Who knows where the world will have moved on to in 10 years' time? It may well be all test-tube babies. Who knows where we might end up? Internationally, debate and discussion is going on now about designer children and what colour eyes, what colour hair, how tall, what complexion and what characteristics people would like them to have. We may be sitting here in 20 years' time saying, “This is now where we have moved to and this is now normal. Surrogacy and natural births are no longer a part of society and it's all done in a different way.” I know that society always moves on, but sometimes we need to look at where we started and why we started from that position.

One of the other issues mentioned during the debate was criminal checks.

Dr A.D. Buti: Why would you need those?

Mr A. KRSTICEVIC: I think the member for Hillarys mentioned criminal checks. People say, “Look, a normal couple who have kids don't have criminal checks et cetera.” That is true. The member for Armadale said, “Why would you have that?” The reason for me, and again maybe the minister can clarify this for me, is if, for example, a single male convicted paedophile decides to go through surrogacy to have a child and there are no criminal or background checks. If the process is that they tick a box to get to the end and they have a child, that is a real concern to me.

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Mr R.H. Cook: That would be a concern for me if that was the case; it's not.

Mr A. KRSTICEVIC: That is right. I do not know how else we would be able to know whether that was happening if there are no criminal checks, but that raised that issue.

Dr A.D. Buti interjected.

Mr A. KRSTICEVIC: I know the member for Armadale is getting all excited, but I think this is a legitimate question.

Dr A.D. Buti: Why wouldn't you have it for heterosexuals then?

Mr A. KRSTICEVIC: I think surrogacy law should have criminal checks for everybody who is going through it.

Dr A.D. Buti interjected.

Mr A. KRSTICEVIC: I am not talking about now, because we are changing it.

Point of Order

Mr Z.R.F. KIRKUP: I refer to the standing order in relation to debate in the chamber. This is on a conscience vote, being debated with dignity and discipline, until the members for Armadale and Burns Beach walked in. I ask that the member be heard in silence.

Dr A.D. Buti: I asked a question and he answered it.

The DEPUTY SPEAKER: Member for Armadale, I call you to order for the first time. Can I just check with the member for Carine: would you like to take interjections?

Mr A. KRSTICEVIC: I do not mind the member for Armadale asking me a question.

The DEPUTY SPEAKER: That is fine.

Debate Resumed

Mr A. KRSTICEVIC: The member for Armadale has helped me refine my point—that the Surrogacy Act 2008 should have provided for criminal checks. I am not saying that it should be any different now all of a sudden because we have single men or same-sex married men; that is not the reason that I think we need to have criminal checks. I think it needs to be right from the beginning.

Dr A.D. Buti: I'm glad I could help.

Mr A. KRSTICEVIC: Thank you very much, member for Armadale.

It is an important point because it is not about discriminating; it is about the responsibility of the state government, when it introduces legislation that allows things to happen under the control and watchful eye of the state, to make sure that the child is going into the best possible environment. We have all seen examples in society. I am sure we have all come across it in our electorates and we think, "Those people should not have children. They have children but they shouldn't because they are either drug addicts, serious criminals or something." There are reasons they should not have children, only because it is not the right environment for children to be brought up in.

It was interesting listening to the member for Kingsley talk about adoption laws being so complicated. It is disappointing that surrogacy laws will be easier than adoption laws, because there are a lot of children out there who need good families to go to and need good parents. That should really be a much easier process than it is at the moment. I think it is very important to make sure that we do something there.

The other issue is that many children who find out when they are adults that they were adopted or were conceived in some other way would like to know who their biological parents are. Theoretically, if a single man decides to go through the surrogacy process, there could be a male sperm donor, a female egg donor, a surrogate mother and the father who ends up with the child, and when the child grows up and says, "Please explain my situation to me" or "Who is my mother and who is my father?", it will be really complicated. There could be some serious confusion when trying to explain that to the child: "It's a mishmash formula, but, at the end of the day, this is what I decided was the best way to have you and hopefully that is okay, but you may not be able to know those answers." It is a little concerning for me that the formula can be confusing—at least I assume it can be confusing.

There are many layers to this. It is not as simple as it sounds. A man's age will determine whether or not he can have access to this service. I am not sure whether there is a panel or how that will be determined. I think whether a female is still fertile will determine whether she can access a surrogacy service. If she is no longer fertile, she may not be eligible. Who will make those decisions? That is probably a question for the minister to answer during consideration in detail. Who is going to make these rules? Who is going to make the judgement and say, "You're in

Extract from Hansard

[ASSEMBLY — Tuesday, 9 October 2018]

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but you're out", because there are criteria? Are we going to look at a man and say that he seems to be a young 60 or he seems to be an old 60 or that this person seems to have enough money or that this person does not seem to have enough money? What is the cut-off point? Will there be an appeal process? If people are knocked back, will there be an appeal process? Will they have to go to court? Will these cases be debated by lawyers? I can see the judiciary potentially getting involved in this process at some point, depending on the circumstances that people find themselves in.

I know that we talk about the best interests of a child. Obviously, we have Mental Health Week. These days, young people find it difficult in this world. Some people made the point that heterosexual couples are not doing that well and that children are not being raised that well. I think I heard that debate from the other side. It is concerning that we are not investing enough in helping children. There are children possibly in harm's way. We do not have enough resources to help the children who need help and to make sure that we create a safe environment for them. Wherever we look in society at the moment, children are finding it difficult, whether it is in schools or whether they are getting bashed. There are so many complications and levels of difficulty that there is no easy solution. I do not think having a mum and a dad or a single dad or two dads will fix that. I think the problem is well beyond adults and parents. There are other issues behind all the difficulties at the moment, whether it is technology, parents who are too busy and do not have time to spend with their kids, drugs or indifference. There are myriad issues at the moment for families who are raising kids being able to do the right thing. Now we are obviously adding another layer of complication. I do not know whether it is better or worse, but it is another layer of complication. People say that since surrogacy began in Western Australia in 2008, there have been no case studies to see what impact it has had on the families and the children. Obviously, it is too early to tell because it started only in 2008 and there have been 10 births and obviously it has been for heterosexual couples. It has been a little less complicated from a traditional perspective. Whether that is any more or less complicated in today's world is another matter altogether.

Sometimes people who want to go through a particular process want to see the research to back up the effectiveness of what they are doing, to see how well it is working and to make sure that the checks and balances are in place so that they get the best possible outcome. I have not yet heard a strong argument that this needs to happen, that this is important and that there is a great demand out there. Like other members, I have not heard anybody in my electorate say to me, "Tony, this is a great idea; let's do this." A number of people have said, "We don't need to go there." I ask myself: what are the people in my electorate telling me? They are not knocking down my door saying that this needs to happen. I look at the statistics and the data. Obviously, the minister does not have a lot of information from the other states; they are not sharing much information. But my understanding is that there is no great demand for this. I am not sure how many single men will use this service once it is available. Based on the example of single women, which shows that zero women have used this service in 10 years, I do not know that the number of men who will use it will be much higher than that. There may be some demand by same-sex male couples, but that is probably the only reason why I would logically think this would have some merit. The member for Dawesville raised an interesting point, and that made me think about the single-man perspective. I could logically think that someone would want to do that. We hear every day in the news and through other avenues about the difficulties at the moment of people coping financially and psychologically with the everyday issues of life, trying to raise a family on two incomes and trying to pay the bills. Parents do not have time to spend with their kids. That obviously applies to two parents as opposed to a single parent, which is even more complicated, not just financially but also from the point of view of raising children. There are lots of difficulties in that space at the moment. To be honest, I do not know how I would cope if I were a single man who wanted to have a baby. It would not be easy. Others may be able to cope very well. I am saying that from my perspective, especially with the role that I have now. I could not imagine having a newborn baby. For me it would be difficult. Others may find it easy and it may not be an issue.

Drawing it back to the current demand from single women, do I think that it needs to be open slather? We could have done it in 2008. There is no reason that that legislation could not have been amended then, but nobody saw the need to do it then. All of a sudden, it is now a priority, there is a massive demand and the legislation has to go through. If it gets through, I would be surprised if there was an avalanche of men wanting to do this in the next 10 years. I do not know whether the minister can tell me of any examples around the world of single men doing this as a general rule. I believe that in Western Australia there have not been any single men, but, again, the minister can confirm that. I understand that this bill has been introduced to allow all options—to put everything on the table. It does not really matter whether it is necessary. It does not matter whether we have thought it through. It does not matter whether we have the research to back it up. It does not matter whether the best interests of the child are being taken into consideration. We just assume that all of that is obvious. We are not going to refer to any research. We are not going to look at any data or statistics. We are just going to go with the gut feel. We are going to go with the trend. We are going to go with the flow. This is where the flow is taking us. This is where the

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trend is taking us. This is where the gut feel is taking us. It may take us somewhere good, it may take us somewhere indifferent or it may take us somewhere bad, but we do not know that from the empirical evidence. We do not have any history to refer to. Unless some evidence or information can influence me otherwise, at this stage I am leaning towards not supporting this piece of legislation. Hopefully, I have made some sense with some of the things I have put on the table. Hopefully, I have been able to express my concerns and my difficulties with this area.

MS J.M. FREEMAN (Mirrabooka) [8.49 pm]: I find this debate on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 remarkable. Member for Carine, the reason we are changing this piece of legislation that was enacted in 2007 is that it discriminates against men. For a Liberal Party that says that its members are here on merit—the whole bunch of men opposite are here on merit—it should absolutely be out there saying that something that discriminates against men should be changed. I find it extraordinary that the member for Carine can say that we should just go with the trend. The trend is discrimination. That is why we are changing the legislation.

I, too, rise to speak on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. In the past, I would have found it extraordinary that I would support a bill for surrogacy. When the world changed in 1978 with the first IVF child born in the United Kingdom and there was outrage that a child was born that way, I was 13 years of age. As I grew up, the debate changed and went towards surrogacy. In Western Australia, we had PIVET. I do not know whether anyone remembers PIVET. It was the first organisation in the whole world to put IVF on the stock market. Suddenly, reproductive technology was a commodity. Suddenly, the idea of children was a commodity. Because I was a strong feminist, I was absolutely opposed to IVF and surrogacy. I was opposed to the commodification of women. I was absolutely opposed to the idea that women have to be mothers to have an identity, so why do we have to create a system? Why could our society not have other roles for women such that they did not feel that they were not complete if they had not had children? I was opposed to surrogacy because it functionalised motherhood. It said that we had a function to have babies and we had that function because we had a womb. I was absolutely opposed to the idea that we could rent out a womb. I was opposed to surrogacy because it was about outsourcing the womb. I was opposed because it risked the idea of child trafficking.

I was so opposed to surrogacy that I got myself on an ALP committee and worked on ALP policy. That policy went to the Labor Party and we had a policy that opposed surrogacy. When we came in around 1991, we enacted the Human Reproductive Technology Act 1991. That regulated access to in-vitro fertilisation procedures and restricted access to IVF connected with surrogacy. We banned surrogacy in Western Australia in 1991 because there was an excellent feminist argument for banning it. That same argument is in France, Germany, Spain, Italy and Sweden, which have all banned surrogacy. The European Parliament rejected surrogacy in 2015.

What happened? What did we do? We pushed a demand. We pushed a need into poor countries. We pushed it unregulated and we ended up with a situation in which people went overseas to gain access to their beloved child. I am a realist. I know that if we think something is necessarily wrong, banning it does not work. Banning it in a globalised world just means that we offshore it to places that cannot regulate it, to places that cannot ensure safety, to places that cannot ensure that the rights of a child are guaranteed, to places that cannot ensure that the rights of women are guaranteed, and to places where women are absolutely and completely exploited. That is what we started to see.

In 1991, the Select Committee on the Human Reproductive Technology Act 1991 released its report. In 2007, action was finally taken that incorporated the recommendations of that report. That report made surrogacy in Western Australia legal as long as it was not commercial. It made altruistic surrogacy possible for women and men and for couples and single women to gain a surrogate parent.

If members are so opposed to surrogacy, they should move an amendment to this bill and ban surrogacy. Members should just remind themselves that France, Germany, Spain, Italy and Sweden banned it outright. This is not such a left-field thing. I always find it interesting when the right meets the left. In Europe, the Catholics meet the feminists on these sorts of issues. If members are so appalled by the idea of surrogacy, they should ban it. They should not say that one section of our society cannot have it while everyone else can, because that is hypocritical, discriminatory and outrageous. Basically, it is a fallacious and pointless argument. If members want to have the argument, they should have the argument over surrogacy. We should not have the argument over restricting surrogacy to certain people, because that is not the argument. The argument is about whether surrogacy should be around. We decided in 2007 that it is here, and so be it. We have decided that we will put in place guidelines and parameters over the capacity for a woman to bear a child for another person.

I had to get over my idea that surrogacy was a womb for rent. I had to get over the fact that it was against some of my ideals because I am a liberal feminist. I get that these things are about making sure that we maintain women's

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representation in society on a broad range of things so that they have choice. But I will not stand in this place and have someone tell me that a man rears a child differently from a woman and there is a maternal aspect and a paternal aspect. Let me tell members that I do not do the washing, I do not do the shopping, I do not do the cooking and I do not rear children. That is not the thing. It is not a gender thing. The only difference between genders is that we can bear a child for patriarchy.

Mr J.E. McGrath: Where are all your members? You've got a conscience vote. Why haven't you brought it in as a party position? You know why? Because you have other members who might have a different opinion from you. Where are they tonight?

Ms J.M. FREEMAN: If the member is against surrogacy, he should move an amendment to get rid of surrogacy. He should not come into this place and say that he opposes surrogacy. If the member for South Perth has a problem with surrogacy, he should have the guts to move an amendment to get rid of it altogether.

Mr J.E. McGrath: I don't have a problem, but don't you tell us you haven't got a party position on it. If you are so right, why doesn't the Labor Party just bring it in with a party position? Why have you made it a conscience vote for your members?

Ms J.M. FREEMAN: I think it was because there was a conscience vote in 2007.

Mr J.E. McGrath: You're critical of people who don't agree with you.

Ms J.M. FREEMAN: Member for South Perth, I just think it was because there was a conscience vote in 2007. There was a conscience vote when we changed it. It is just a continuation of that.

Mr J.E. McGrath: Get Margaret Quirk in. Where is she?

Ms J.M. FREEMAN: She is not here.

Mr J.E. McGrath: Why isn't she speaking tonight?

Ms J.M. FREEMAN: She is not well.

So many members listened to the member for South Perth in silence and when I challenged him and said that if his issue is with surrogacy, he should do something about it but do not discriminate against one particular portion of the community, he came in and heckled me.

Mr J.E. McGrath interjected.

The ACTING SPEAKER: Members! Member for Mirrabooka, would you like to continue with your speech?

Ms J.M. FREEMAN: I would like to continue my speech. We know that people can have these views, but reproductive technology has been going on since the fourteenth century. The member for South Perth, as a horseman, would know that Arabs practised artificial conception of horses in the fourteenth century and there was artificial insemination in the 1900s.

Dr A.D. Buti: Yes, you'd know that.

Ms J.M. FREEMAN: Yes, that is right. You were around in those days, weren't you?

Several members interjected.

Ms J.M. FREEMAN: He heckled me. I want to finish with this.

Actually, I do not want to finish. We will have to debate a really important issue in this house. Western Australia has strongly stood against commercial surrogacy and has maintained that reasonable surrogacy should exist in this state. There have been only 10 births through surrogacy in this state and there have been only 34 surrogacy agreements. We are being told that people are finding it so difficult to go through the process that they are going offshore to other countries to have surrogate pregnancies. We saw that previously with baby Gammy. We clearly have a greater issue than the one that confronts us today. There is clearly an issue with the Surrogacy Act. The argument we are going to have to have is about the juxtaposition of altruistic surrogacy and moving that further towards altruism or even towards commercialism. I, for one, given my strong feeling about surrogacy, urge the government to ensure that we stay very much in the altruistic space. We need to do things to ensure that women in other countries are not exploited by people from Australia entering into surrogacy arrangements in less developed nations.

I commend the bill for increasing the capacity for advisory, investigation and search powers in surrogacy. That seems like a gap that needed to be filled. I think we need to keep surrogacy as a controlled and regulated space.

Mr John Carey; Amber-Jade Sanderson; Mr John McGrath; Dr David Honey; Ms Mia Davies; Mr Peter Katsambanis; Ms Lisa Baker; Acting Speaker; Mr Sean L'Estrange; Ms Libby Mettam; Mr Zak Kirkup; Mr Kyran O'Donnell; Mrs Alyssa Hayden; Mrs Jessica Stojkovski; Mr David Templeman; Mr Tony Krsticevic; Ms Janine Freeman; Mr Bill Marmion; Dr Tony Buti; Mr Roger Cook

It is strange for me, given my history, to support a surrogacy bill. I still believe that it is unfortunate that people feel compelled to use the womb of another woman to have a child and that they cannot find it within themselves to feel fulfilled in their own right without having a nuclear family. I worry that we think that family is only our progeny. Family is much broader than the children we bear. However, we have a Surrogacy Act. It changed in 2007, which was before I had a conscience vote. I would have been hard pressed to support the surrogacy legislation in 2007 and I know that, but for completely different reasons from those of many of the people who have stood in this place today. We have that act now and not to allow all of the community to access it—all those people in our community who are in legal and loving relationships or men who are single—is discriminatory, and we are here to fix that.

MR W.R. MARMION (Nedlands) [9.04 pm]: I begin my comments on the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 by saying that I respect everyone's views tonight, whatever they are. I do not anticipate or want any interjections. This is a difficult bill to debate, let alone having interjections or criticisms of any members who have already spoken today. I will not raise anyone's comments so I do not expect any interjections. I will not be referring to anyone who has a different view from mine. I will not be supporting the bill.

My primary concern is the rights of the child. I have five children, so that is where I am coming from. A lot of the comments made by the member for South Perth echoed my concerns and it was put rather succinctly by the member for Darling Range, so I will not go over that ground. My principle is the rights of the child, reflecting on that with my own children and how I feel about this bill. That is why I will be voting no and I will not go over that ground.

I want to highlight some comments I have received from constituents. They also have a right to be heard. Some people will not necessarily agree with their views and I do not necessarily agree with all their views. However I want to put on the record some of the points that I got. I received an email from Ray. He wrote —

Dear Bill

I am not in the habit of pestering our local politicians but I am getting increasingly concerned about legislation and other social policies that seem to undermine the primary position of a mother & father-based family as the core social structure in our society.

I'm fully aware that there are such families that are less than ideal but I believe the sociological data from many countries supports the social structure as providing the best context for children ...

I am aware that the broad umbrella of equality and individual choice provide a context for introducing a wide range of social changes and you as our representative have to consider any proposals from all angles. However, can I ask respectfully you to always vote for any legislative proposals that strengthen the mother-father family unit and to not vote for proposals that legitimise other social structures.

Thank you for taking time to consider this.

I also got a number of what could be called form responses, which people have mentioned before, from One Click Politics. I received an email from Steve. He added his own comments, but the One Click Politics comments that I received from a number of people stated —

Giving single people the right to surrogacy deliberately denies a child of the right to a mother or a father.

We should never do away with mothering or fathering both are essential to children, that is why it is an absolute tragedy when kids miss out on one through unfortunate circumstances.

Please vote against the Human Reproductive Technology and Surrogacy Legislation Amendment Bill ...

Steve added —

Please get back to supporting the working and middle class people. Despite what you may believe about gender ... I believe that it is less than ideal that the parliament supports anything other than a woman and a man being able to biologically create and raise a child and family. Any other family structure being a second best option, though better than nothing when a mum and dad are not available.

I received another email from a different Ray. It states —

Dear Honourable Member

As parents we know just how difficult it is to raise well-adjusted happy children. For children to have the best chance of having such a "normal" life they surely have a better chance with a Mum & a Dad. You yourself, having four children —

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They got that wrong. I actually have five. It continues —

know it isn't always plain sailing and having to be a parent in a surrogate arrangement is extremely difficult (if not impossible) and why should any child be deprived for their basic human right of commencing their lives with a Mum & a Dad. We are asking you Bill, not to support the Human Reproductive Technology and Surrogacy Bill which is about to be introduced into Parliament.

This one is from outside my electorate.

Mr R.H. Cook: Is that an A. Hastie, by any chance?

Mr W.R. MARMION: It is not. It is Moira from Attadale. I will not read it out. She does not support surrogacy. She is not in my electorate so I will not read out her email. I have another letter from Ron, which reads —

Dear Bill Marmion,

It has now come to my attention that the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 will allow single men access to surrogacy. This just heightens my unease at the whole matter. Surrogacy is already an emotive and controversial issue following the Baby Gammy affair just a few years ago which lead to Thailand rightfully, in my opinion, banning commercial surrogacy. But somehow some people in WA seem to think we should allowed and even expanded here. Please do not expand surrogacy any further.

I have also received emails from Elizabeth, Rochelle, Jessica, Richard, Jill and Kathryn asking me to oppose the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. I did not get any emails asking me to support the bill. I wanted to make sure that Parliament heard some of the views from people in my electorate. I thought it was appropriate that their views be heard by, and read into, Parliament. I will not support this bill.

DR A.D. BUTI (Armadale) [9.10 pm]: I will make a couple of very brief points about the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. I congratulate the member for Mirrabooka for her speech. Whatever our moral views are on this issue, they are really quite irrelevant. Legally, we have no choice but to pass this legislation. We will be in violation of the federal Sex Discrimination Act if we do not pass this law. Section 109 of the Australian Constitution states —

When a law of a state is inconsistent with a law of the commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

We were given an exemption until 31 July last year to allow a law to be in violation of the federal Sex Discrimination Act. We now have no choice.

Mr S.K. L'Estrange: Why is it a conscience vote?

Dr A.D. BUTI: That is a very good question. We have no choice but to pass this bill otherwise we are in violation of a federal law and anyone could challenge this in the High Court with the Western Australian law —

Mr J.E. McGrath: You should be Premier, you could have told us about this.

Mr I.C. Blayney: He's got a purple tie on.

Dr A.D. BUTI: It is the Dockers!

The only point I want to make is that regardless of one's moral position on this issue, we as lawmakers have to ensure that our laws are consistent with federal laws. If we do not pass this amendment bill, our legislation will be in violation of the Sex Discrimination Act and, for that inconsistency, under section 109 of the Constitution it is invalid.

MR R.H. COOK (Kwinana — Minister for Health) [9.12 pm] — in reply: I rise to close the debate and thank members for their contributions. From the outset, the member for Armadale is quite right; that is exactly what we are doing. We are aligning our laws with the laws of the commonwealth under the Sex Discrimination Act and in concert or harmony with the laws of every state and territory in Australia that has surrogacy laws. Of course, the Northern Territory does not have any laws of this sort so it cannot make a discrimination. From that perspective, the purpose of the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 is simply to bring Western Australian laws in line with the commonwealth Sex Discrimination Act and, as I said, we are the final jurisdiction to do it. The member for Churchlands interjected, "Why make it a conscience vote?" That is a very good question, member. We had that discussion in our group and within government. Ultimately, we understand—I remember the 2008 debate—that this is an issue about which people have very strong moral views regardless of the technicalities of this particular bill. In the spirit of being respectful about those views, we thought

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this was a better way to proceed. From that perspective, I thank all members for their contributions tonight and for the respect and, in many cases, good humour in which tonight's debate was conducted.

Mr A. Krsticevic: What would happen if we voted against it and it did not get through this house?

Mr R.H. COOK: Ultimately —

Mr P. Papalia: It was in the second reading speech.

Mr R.H. COOK: Yes, we did touch on this. The laws would be at risk of being declared invalid and they could be subject to challenge in the courts. We know from people's inquiries that that is a very real prospect if these changes do not go through, and that would be a pity because as many members have observed, we have made a couple of technical changes around that core issue of the current discriminatory nature of it, which means that it comes together in a much better way to make better legislation. As I pointed out to members in my second reading speech, these laws are currently subject to an extensive independent review by Associate Professor Sonia Allan on behalf of the government. The review will look at both the Human Reproductive Technology Act and the Surrogacy Act to see how they can be modernised. We had the choice of doing the independent review and making the changes in one hit or of making the changes now and allowing the independent review to take place in its own good time. We chose the latter because we thought it was a better way to proceed and we did not want the independent review to be undertaken with undue haste. From that perspective, that was the right approach.

I thank all members for their contributions. I will go through some of them in summary. Obviously, I thank the member for Perth for his passionate appeal for the recognition of same-sex rights. He provided us with a very forthright description of the stages that that debate has gone through and sees this is an important next step for us in this jurisdiction in the recognition of those rights. In particular, I thank the member for Morley for her contribution in which she talked about her constituent Rick, a man who I think we would all agree should be given the opportunities of parenthood given where he and his wife were in their journey towards parenthood. From that perspective, it was very real example of why it is important to pass these laws and make parenthood available to single men and same-sex couple men.

The member for South Perth raised a number of issues. I thank him for his contribution. As he was first up, he dealt with the lion's share of the issues and concerns that are occasionally raised about these laws. This bill is very technical in nature and simply deals with the issue of discrimination. I will go through and have a discussion about some of the issues he raised. The member made the observation that the McGowan government is seeking to extend the scope of surrogacy laws. I point out that it is not. We are actually being compelled to pass this law by the federal Liberal-National government under the changes it made to the Sex Discrimination Act. As the member for Armadale reminded us, we were provided with an exemption for sex discrimination laws, which expired in July last year, and now we are in a position to move forthwith to bring them into line with commonwealth legislation. The member for South Perth mentioned that there are no background police checks for surrogacy. I will paint members a picture of the surrogacy process. It is not about approaching a counter, filling out a form, sliding the form across the desk and saying, "Can I go off and enter into the surrogacy process?" It is a very arduous process that is governed by the Reproductive Technology Council, or the RTC as it is referred to. The screening process is arduous and it goes to a whole range of psychosocial issues, which allows the Reproductive Technology Council to come to a view about the appropriateness of that person being eligible for a surrogacy arrangement. For instance, the member raised the issue of checking criminal records. This was raised during debate on the 2008 legislation and the response at that time was that the RTC felt that requiring the check was discriminatory and that no-one else undergoing artificial reproductive technology or planning to conceive a child was required to have screening of that nature. However, psychosocial screening was recommended as a more suitable and effective way of identifying prospective parents who were undertaking a surrogacy arrangement. It would allow the council to assess the risk factors that would contribute to poor, inadequate or abusive parenting. It is not simply a matter of saying, "Hello; how are you? Have you filled out the form correctly?" It is a long process of consideration and counselling. Members also mentioned working with children checks. They are more about working with children and a contract for employment or service provision, and surrogacy is not considered to be covered by that legislation. It is simply not there to do that. I want to let members know that, under the Surrogacy Act, we already impose a number of requirements for a surrogacy arrangement to be approved by the council, including: that the council is satisfied that at least three months before approval is given, the parties to a surrogacy agreement have undertaken counselling about the implications of surrogacy arrangements that the surrogacy regulations require; they have been assessed by a clinical psychologist and confirmed to be psychologically suitable to be involved in a surrogacy arrangement; and they have received independent legal advice about the effect of the surrogacy arrangement. The council must also be satisfied that at least three months before approval is given, the surrogate parents, the birth mother, and any donors have been

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assessed by a medical practitioner and confirmed to medically suitable to be involved in the surrogacy arrangement. It is a complex process, which takes a good deal of time.

A number of members said, “But surely, at the end of the day, the child’s welfare should be at the centre of this issue.” Indeed, that is a central tenet of the surrogacy laws. One of the key elements of the surrogacy laws are the parentage orders. In part 3 of Surrogacy Act, section 13 specifically sets out that the child’s best interest must be paramount in assigning the parentage orders. To refer back to a point made by the member for Carine about when a child wants to know where they came from, under the surrogacy laws, there is a donor register through which a child can ultimately access that information.

The member for Cottesloe gave a rather spirited attack on research and the role it has to play in these things. I thought that as a chemical engineer, it was an unusual attack to make. We rely on science to guide us in these things. Internationally renowned peer-reviewed research is an important part of what we do. It guides the policymakers all the way along. The member for Vasse expressed some interest in seeing some of these studies. I am very keen to make them available to members so they can see the sorts of issues that have been considered in the studies. In particular, a longitudinal study was done by Dr Jadvá at Cambridge University into the trauma to a surrogate in the event that they have to relinquish the child, and this was raised by a member. The longitudinal study found there were no major issues with the relinquishment for a surrogate and they showed no psychological health problems. It is important to note that in Western Australia we have only altruistic surrogacy arrangements, not commercial surrogacy arrangements, and this legislation in no way goes to visit that issue.

Particularly regarding the best interests of a child, people are currently seeking surrogacy opportunities overseas in jurisdictions that have fewer regulatory regimes available and poorer health systems that guide the process. From that perspective, in the best interests of the child, we really should be encouraging surrogacy to be undertaken here. We will not stop people from seeking the opportunity to raise a family through surrogacy. From that point of view, we have a very important challenge to make sure that how it takes place in Western Australia is highly regulated and very well supported by our health services, and that all parties involved are protected.

I would like to join the Minister for Local Government in congratulating the member for Central Wheatbelt, the Leader of the Nationals WA, for her contribution. It was a very lucid and clear description of what we are trying to do. It is really an important issue to clarify our understanding. This is about not judging; it is about accepting that everyone should have the right to be a parent and be part of a family. It is not for us to judge or say whether one parent is better than another simply on the basis of their sex. I thought that the clarity the Leader of the Nationals brought to this debate was very powerful.

The member for Hillarys made some comments that he has many friends who are same-sex couples and parents and that he respects them, but he was quite comfortable with this legislation continuing to discriminate against them. I would respectfully suggest that that is not respectful to his friends. I think that the member for Hillarys should firmly cross-examine his conscience because, to be respectful of his same-sex couple friends and to see what a good family looks like is not anchored to the idea of a family where there is a mother and a father. We can see that a loving opportunity for that child is a very valuable opportunity.

I thank the member for Maylands for her contribution. I loved the way she said, “It’s not up to me to tell someone that they are not good parents” and, indeed, it is not up to this Parliament either. Paramount to these issues is that we provide a loving, secure environment for our children and, from that perspective, I welcomed her support for the legislation.

The member for Churchlands, shadow Minister for Health, raised some important issues so I want to go through them carefully. One particular point was that, in eliminating the discrimination against men in this legislation, are we not discriminating against women in the context of saying that men can access surrogacy arrangements for something other than medical reasons, but women cannot? It is a point of technical difference, but ultimately we can overcome the fact that women can have children and men cannot. In particular, we are keen to impress upon the community that women have the opportunity and men do not to have access to insemination. In addition, there are good policy reasons for not having invasive in-vitro fertilisation or surrogacy processes available for women who simply do not, for a range of social reasons, want to have a family through either natural means or through insemination. I note that in the 10 years that the Surrogacy Act has been in place, no same-sex female couples have approached the RTC to access that service. There are obviously some fairly clear biological reasons for that. There are also good policy reasons why we have not gone there. Some of those reasons are: preventing unnecessary access to invasive procedures, thereby minimising associated medical risks; preventing surrogacy being used as a tool of convenience by women to avoid the consequences of pregnancy on their bodies or career trajectories; and the medical profession may regard it as unethical to provide treatment where there are no medical grounds to do

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so. As I said, social access will be on a needs basis. Artificial insemination has no eligibility criteria under the Human Reproductive Technology Act, so from that perspective, simply by virtue of the way in which we access the reproductive process, for want of a better description, there are some issues we cannot overcome in relation to that.

The member for Churchlands also raised that there are no age restrictions for men. I want to advise that with respect to that, regard will be given to the object of the HRT Act that the prospective welfare of any child to be born is properly taken into consideration. The National Health and Medical Research Council's "Ethical guidelines on the use of assisted reproductive technology in clinical practice and research" provides that the interest and wellbeing of the person who may be born is an important consideration. Ultimately, the Reproductive Technology Council would make a finding in relation to the welfare of the child, taking into account the age of the father.

In addition, the member for Churchlands asked, "Where will all this lead?" Indeed, member for Churchlands, that is a great question. We know where it will lead in the first instance, which is the current independent review being undertaken by Associate Professor Sonia Allan, but ultimately it is to the conscience and to the minds of future Parliaments to continue to strike the right balance on these issues.

I want to thank the member for Dawesville for his contribution that provided us with a very personal insight into the sorts of issues that parents have to consider. That continues to inform us of the complex journey that people have to undertake and the issues that people have to consider. I think that from time to time we do members of the community a disservice in thinking that we are holding them back, and somehow we are more informed and have greater insights into the complexity, difficulties and challenges of these journeys, when the people living it are really the ones with the greatest insight. In addition to the member for Dawesville's contribution, I would like to thank the member for Kingsley for her personal story and the heartfelt and passionate way in which she described her journey and the importance of sharing the opportunity for people to have children, because that is what this legislation is about.

Finally, I want to touch upon comments from the members for Carine, Mirrabooka and Nedlands. The member for Carine asked where this legislation is coming from, why we are doing this and what the compelling reason is for doing it. The compelling reason is that the Liberal-National government in Canberra has decided time is up, and it is time for our laws to be brought into line with all the other states and the commonwealth legislation. I guess one option would be for us to simply wait for some sort of court decision somewhere, but that would be having our destiny taken from us, and it would not be a good look for a legislature to do that. From that point of view, this is the right thing to do. I hope I have covered the member's other concerns; I think he echoed some of the member for South Perth's thoughts about the screening of people applying for the surrogacy process.

Mr A. Krsticevic: It is also about men and women, and the cut-off ages or cut-off reasons—who will make that determination?

Mr R.H. COOK: The Reproductive Technology Council will take a whole range of issues into account, including psychological and physiological reports. The council will also take into account the National Health and Medical Research Council's "Ethical guidelines on the use of assisted reproductive technology in clinical practice and research", which place the child at the centre of the process. If it is an older set of parents coming for surrogacy, the council will very much take that into account as part of whether it thinks the person should be able to access surrogacy services. As I said, this is not a process whereby they have a glimpse into people's lives; it is a very rigorous process of examination, interview and counselling, including legal counselling, that is undertaken to make sure the people accessing the facilitation of the Surrogacy Act are appropriate people to do so.

The member for Mirrabooka gave a typically spirited contribution to the debate, and we are always the better for her contribution. There was a look of shock somewhat on the member for South Perth's face when he realised that potentially he was in the same corner as the liberal feminist from Mirrabooka. That will take some time for the member for South Perth to get over, but I think he will adapt to it.

I thank the member for Nedlands for his comments. I understand that, yes, a range of issues and thoughts, both morally and intellectually driven, are out there, and I understand and respect that. These are ultimately technical changes to the laws, as the member for Armadale reminded us, but we took the course of making it a conscience vote, because we understand that this is a tough issue, and it is one that people grapple with. I very much thank everyone for the respectful and considerate way in which they have come to the debate on this legislation. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Extract from *Hansard*

[ASSEMBLY — Tuesday, 9 October 2018]

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Mr John Carey; Amber-Jade Sanderson; Mr John McGrath; Dr David Honey; Ms Mia Davies; Mr Peter Katsambanis; Ms Lisa Baker; Acting Speaker; Mr Sean L'Estrange; Ms Libby Mettam; Mr Zak Kirkup; Mr Kyran O'Donnell; Mrs Alyssa Hayden; Mrs Jessica Stojkovski; Mr David Templeman; Mr Tony Krsticevic; Ms Janine Freeman; Mr Bill Marmion; Dr Tony Buti; Mr Roger Cook

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr R.H. Cook (Minister for Health)**, and transmitted to the Council.