

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz;  
Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill  
Johnston; Mr Ian Britza; Mrs Liza Harvey

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## SURROGACY BILL 2008

### *Consideration in Detail*

Resumed from 2 December.

#### **Clause 17: Requirements for surrogacy arrangement to be approved —**

Debate was adjourned after the clause had been partly considered.

**Mr A. KRSTICEVIC:** I would like to change the amendment on the notice paper that states —

Page 9, line 8 — To delete the full stop and substitute —

; and

- (f) both of the arranged parents are the child's genetic parents; and
- (g) the surrogacy arrangement provides that the arranged parents shall provide ongoing medical insurance for the birth mother in the event that the pregnancy results or is likely to result in the surrogate mother needing ongoing medical treatment as a consequence of the pregnancy or birth.

I am not sure what the process is, but I would like to remove paragraph (f) from that amendment, which will mean that paragraph (g) will become the new paragraph (f).

**The SPEAKER:** Before the member moves his amendment, I advise that another member has a prior amendment listed on the notice paper for clause 17. Is the member for Armadale still game to move her amendment to clause 17 as listed?

**Ms A.J.G. MacTiernan:** I propose to.

**The SPEAKER:** All right; that must happen before the member for Carine can move his amendment.

**Ms A.J.G. MacTIERNAN:** My proposed amendment to clause 17 arises out of the debate we have had in this house about whether there should be more protections or more controls on the nature of the surrogacy arrangement. Certainly, I very strongly support the notion of surrogacy, but I recognise that challenges arise and that, potentially, challenges could arise for the child who is the product of a surrogacy arrangement. Although my good friend the member for Fremantle has accused me of having more positions than the *Kama Sutra*, I demur from that unkind suggestion. I have supported the Surrogacy Bill in principle. However, I have not supported amendments that seek to disallow the birth mother from also being a contributor of genetic materials and I have outlined the reasons why I think that. We could have good outcomes in which the birth mother has also contributed genetic material.

The formalisation of surrogacy arrangements will without doubt increase the incidence of surrogacy. We must be careful about the measures that we introduce and the impact they will have on the child learning to adapt to that environment. In my view, we should have a presumption in favour of one of the arranged parents donating genetic material. Under the provision in my amendment, either the father or mother could donate genetic material. This provision does not exclude situations in which the commissioning parents cannot contribute genetic material. However, just as we have certain presumptions in the earlier part of this clause, such as the requirement for a birth mother to have already had a child, unless there are exceptional circumstances I believe that it is appropriate to include this level of presumption in the contribution of genetic material.

This amendment has the potential to address some of the issues raised in debate on other clauses. The member for Southern River, for example, raised the issue of a birth mother who, subsequent to the birth, feels most uncomfortable about wanting to go through with the surrogacy arrangement. In my view, the fact that the commissioning parents have contributed genetic material would make that scenario a bit less likely to occur.

**Mr M.P. Whitely:** What if they can't?

**Ms A.J.G. MacTIERNAN:** The amendment refers to exceptional circumstances, an example of which could be that the commissioning parents cannot contribute genetic material, and this amendment would provide for that. This amendment uses the language of the bill. The bill requires the birth mother to have already had a child, but that is not necessarily a fatal flaw; it clearly is —

**Mr M.P. Whitely:** If it is your intention to grant priorities, why don't you say "where possible"?

**Ms A.J.G. MacTIERNAN:** Because we are using exactly the same language that has been used in the bill, in the previous subclause. It is a presumption; it gives a clear message that we believe that there will be a high

**Extract from Hansard**

[ASSEMBLY - Wednesday, 3 December 2008]

p905b-925a

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degree of integration. I think we must understand that there can be social pressures that occur for a child, and a child's feeling of connectedness to its parents could be enhanced with a connection of genetic material. Sometimes we make changes.

**Dr K.D. HAMES:** Mr Chairman, does the member for Armadale want to make further comments?

**Ms A.J.G. MacTIERNAN:** Let us think about the decision made some decades ago to allow donors of sperm to be completely anonymous and the sequelae of that. When children discovered that they were the product of an anonymous sperm donor, many felt that they had been deprived of the right to know their biological heritage. That decision was no doubt made after the same sorts of considerations being made with this bill today. No doubt the argument then was that it would allow some women to conceive et cetera. However, it had a consequence for those children. I am not saying that we should rule out surrogacy absolutely when there is no biological contribution by a parent. However, I believe that there should be a presumption in favour of there being a biological contribution. The reason for that is to address primarily the interests of the child in what is a relatively novel arrangement vis-à-vis his or her peers, and to ensure that the child feels a greater degree of connectedness because there is a biological connectedness. Secondly, it is to help deal with the issue of conflict that may well arise—on the member for Southern River's evidence from the United States perhaps arises with concerning frequency—when the birth mother wishes to revise her intention to relinquish the child. I strongly support surrogacy. I strongly want us to enable as many people as possible to have the benefit of bearing a child. However, I do say that we should be thinking also about the consequences for the child, and the need for the child, to the extent that it is possible, to have a biological bond with those parents. That is not to put aside the value of adoption et cetera. However, we all know the problems that can emerge in these sorts of relationships. In this surrogacy arrangement, which is moving well beyond that which is currently possible legislatively—we are freeing up the legislation, and I think quite appropriately freeing it up. It is also appropriate for the presumption to be in favour of a biological connection; we should not discriminate on it being from the male or from the female. I am not saying that there will not be circumstances when we will preclude the presumption, but we should have that presumption. It will give a clear message that we believe it is beneficial in this arrangement to have, if we can, a direct genetic link.

**Dr K.D. HAMES:** I do not support this amendment. I do not understand why the member for Armadale wants to be prescriptive and controlling of parents who desperately want a child. These parents are in these circumstances because they have no other choice; they have nowhere else to go. Quite obviously, if those people were able to contribute their genetic material to that mix, by the male contributing his sperm or the female contributing her egg, they would. Why would they not want to do that of their own volition and choice? Why would they not want to have their own genetic material as part of the child to be born and to come into their care? The only time they would not do that would be when they were unable to do so. If they were unable to do so, why would the member for Armadale put these poor people through all these hoops and bars and make them qualify only under exceptional circumstances? Is it because the member for Armadale believes it is better for one to be a genetic parent? I would bet that those parents believe that too and that it is what they want. It seems that we are determined to delay this legislation just for the sake of the member for Armadale having absolute control over what these desperate parents do to have a child.

**Ms A.J.G. MacTiernan:** No, I am not trying to delay it at all.

**Dr K.D. HAMES:** The member for Armadale says that this is what must happen in the best interests of the child; yet I have a report with me that states that artificial reproductive technology in a diverse range of families found that a genetic connection was not a strong determination of the capacity to be a good parent. It further states that the outcomes of families with children born from donor inseminations have been shown to be largely positive. The member for Armadale is saying that that is not good. Where is her evidence that one of those arranging parents as a genetic parent would provide a better end result than if the sperm and egg came from someone else?

**Ms A.J.G. MacTiernan:** Can I ask you this question: is the material that you are referring to about the rearing parent being also the parent who gave birth to the child physically?

**Dr K.D. HAMES:** No.

**Ms A.J.G. MacTiernan:** Was it a surrogacy arrangement then?

**Dr K.D. HAMES:** Only arrangements in which assisted reproductive technology included —

**Ms A.J.G. MacTiernan:** I am sorry but you are using an unfair analogy. I do not think the advice that you are giving here is now correct because we do not have surrogacy in place. You are talking about women who have donated materials and who have given birth to a child.

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p905b-925a

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**Dr G.G. Jacobs:** Yes.

**Ms A.J.G. MacTiernan:** So that is a different arrangement.

**Dr K.D. HAMES:** It included surrogacy. It was not surrogacy alone but it did include a donor. The point I am making is still relevant. The member for Armadale says that the child is likely to have a better outcome if one of those parents has its genetic material in the child. How does the member know that; where is her evidence; and what does she have to show me that that is the case? She is making that assumption.

**Ms A.J.G. MacTiernan:** Where is your evidence that the surrogate mother must have a child already or have reached the age of 25 years? You put that in as a description. You are acting off commonsense, aren't you?

**Dr K.D. HAMES:** This is my five minutes, not the member for Armadale's.

**Ms A.J.G. MacTiernan:** I am interested in the debate.

**Dr K.D. HAMES:** I do not have to talk if the member does not want me to.

**Mr M.P. WHITELY:** I have some sympathy with the amendment in that I believe it is preferable that, if there is a degree of choice involved, the commissioning parents provide the genetic material. However, I am loath to support the amendment as drafted because I do not think it is open enough to the circumstances in which the commissioning parents cannot provide genetic material. The minister said that he could not imagine commissioning parents not wanting to use their genetic material. I want to think outside the square, and I think I can. I have a concern, and it could happen in a small number of cases, that people might want to design a baby. There are people who might get genetic material from someone whom they consider to be an exceptional athlete, combine it with genetic material from someone else and come up with some sort of designer baby that they want to raise. It is probably unlikely and these are obscure circumstances, but I can imagine that parents could choose to, if it were possible, not use their own genetic material. I think that is possible. All of this is gut feel, but I am talking about the best interests of the child, including the rationale for the surrogate mother to be over 25 years of age and to have had a previous child, which it is believed instinctively will make the situation work better. I believe instinctively that it would be better for the child if it had a genetic connection with a parent. I am not as experienced as are other members of this place in the drafting of clauses in legislation; however, I believe that the amendment could be amended to include “, including where it is impossible for a commissioning parent to provide genetic material,” after “unless the Council is satisfied that there are exceptional circumstances”. The amendment would then continue as it is. It would actually achieve that effect; it would actually say that, when it is possible, the expectation is that the commissioning parent would —

**Mr J.A. McGinty:** It might well be possible, but it might well be defective genetic material so “possible” is not the yardstick. This is the third iteration of an amendment on these lines.

**Mr M.P. WHITELY:** So if someone has a genetic disease, there is a high chance —

**Mr J.A. McGinty:** They can still provide the genetic material.

**Mr M.P. WHITELY:** I guess it could be said that in exceptional circumstances, that clause would still cover it. I accept the member's point—it is a valid point—but there would still be enough wriggle room to say that exceptional circumstances exist because the commissioning parent has a history of some severe genetic impairment. I can imagine the circumstances, but I think there is enough wriggle room in the start of the proposed paragraph, which reads “unless the Council is satisfied that there are exceptional circumstances”, because that would be an exceptional circumstance. If I am the father and I have the capacity to provide the genetic material, but I have a high possibility of passing on some life-threatening condition, that would constitute exceptional circumstances. An amendment could be drafted to include after the words “circumstances”, the words “including where it is impossible for a commissioning parent to” —

**Mr J.A. McGinty:** I agree with you as a broad thrust. I support that as an in-principle position, but I come back to the position of asking what purpose is to be served in inserting this into the legislation, given that every arrangement must be approved by the Reproductive Technology Council in any event. There are so many other circumstances that might arise that we are not trying to exhaustively exclude.

**Mr M.P. WHITELY:** Who knows how society may change? I do not want people commissioning designer babies. I guess that is the circumstance. I will be interested to hear from the member for Armadale or the minister their thoughts on what I have proposed.

**Mr P. ABETZ:** I find it very disappointing that the minister seems to want to block any kind of amendment for the sake of getting this bill through, when there is legitimate value in making amendments to it. The point raised by the member for Armadale, which the minister has not actually refuted, is that if the birth mother knows that

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she is carrying the genetic material, at least in part, of the donor parents, the likelihood of the birth mother declining to surrender the child after its birth is significantly reduced. That is a positive outcome, perhaps for the child but certainly for the arranging parents who so desperately want a child. We need to set the surrogacy system up in such a way that will optimise or maximise the likelihood of the surrogate mother being willing to give her child to the arranging parents. That, after all, is the whole purpose of surrogacy. If not, what is it about? The point raised by the member for Bassendean is a very valid one: we want to make sure that we do not allow the designer baby concept. We could also see a situation in which a woman is able to provide the eggs, but she is a highly paid professional and she would rather not take the time off work to go through the trauma of the egg extraction process, and would pay someone else to do it. To me that is abhorrent, and I do not want to go down that road. I do not believe that the community at large would support that kind of notion. This amendment will make it more likely for the surrogate mother to hand over the child after the birth, which is surely a plus, and prevents designer babies, which also must be a plus. If we sat down and spoke to each member individually, we would probably all support this. However, because some of us are so desperate to get this bill through without any amendment at all so that it does not have to go back to the Legislative Council, we are diminishing the quality of the legislation that we are passing for the sake of a month or two. That is not being responsible as a Parliament.

**Ms A.J.G. MacTIERNAN:** The member for Southern River has set that argument out well. I would be happy to endorse, as I gather the member for Southern River would also, the alterations to the amendment proposed by the member for Bassendean. However, I say to the minister that I am a bit disappointed with him. People in this Parliament coming from very different ideological positions and world views are clearly sharing concerns. There are no absolute rights and wrongs in this matter. It is hard and it is challenging. It is unfortunate that the minister has tried to portray those of us who are trying to amend this bill as somehow or other being horrible people trying to negatively impact on other people's lives. That is not what we are trying to do. We are concerned about the consequences. Of course we understand absolutely that people want to have children, but we are trying to think about the possible consequences. The member for Southern River and the member for Bassendean have already canvassed the idea of the designer baby and some of the other problems, but there is also the issue that we are putting children into circumstances in which they will have novel family arrangements. That in itself is not bad, but we need to understand that it poses challenges to children. It is not to say that their parents are not necessarily going to be wonderful and kind people. I ask the minister to provide a bit more detail about the research he has quoted. I want to know whether he is putting into the one category children who were born of their rearing parents—the classic in-vitro fertilisation in which a person has used donated genetic material but physically bears a baby—and those in a surrogacy arrangement. Does this research the minister has quoted make a distinction between those two categories or have they been lumped together to come up with that result? They are quite different sorts of circumstances.

**Dr K.D. HAMES:** I am trying to find the part of the document that I was reading out, where it was stated that 5 000 people took part in the study, but I think the best idea is if I just table this document. It is from the Victorian Law Reform Commission, and is entitled "Outcomes for Children Born of ART in a Diverse Range of Families: Occasional Paper". I will table it and the member can read it for herself.

[See paper 475.]

**Dr K.D. HAMES:** I understand the point of the member for Bassendean about designer babies, and nobody wants to see that. However, we are talking about five to 10 families a year. We have been advised that that is about the number of people who are looking to enter into surrogacy arrangements. These people have tried every other method to have children.

**Mr M.P. Whitely:** We are legislating for the future. Who knows how society's norms will change?

**Dr K.D. HAMES:** We are, but there is a review clause in the bill. There is an opportunity to change things. As important as the member's point may be, the reality is that we are dealing with a couple who are desperate to have a child, and why would we want to put them through hoops?

**Mr M.P. Whitely:** Put them through what?

**Dr K.D. HAMES:** The member is saying that this requires a couple who want to have a child to prove exceptional circumstances. That couple will have to go through all the requirements that the bill imposes.

**Mr M.P. Whitely:** I would really like to hear what he has to say because I'm —

**Dr K.D. HAMES:** I would like to hear what I am saying, too—it is quite hard sometimes. That couple will have to fulfil all the requirements and regulations that are in the legislation, to get through to that situation of being able to have a baby.

**Extract from Hansard**

[ASSEMBLY - Wednesday, 3 December 2008]

p905b-925a

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz; Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill Johnston; Mr Ian Britza; Mrs Liza Harvey

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They will want to have their sperm and their egg as part of that. But if they do not, why is the member saying that that is the worst thing? Why is he saying that there is something wrong with people —

**Ms A.J.G. MacTiernan:** We have articulated that, but you obviously haven't understood it.

**Dr K.D. HAMES:** I understand the concerns, but I do not share them.

**Mr M.P. Whitely:** What is the impost? Before the commissioning parents decide to use genetic material that is not their own, wouldn't they have established that they are incapable of providing the genetic material? What impost is my proposed amendment putting on them? I just can't see a practical impost.

**Dr K.D. HAMES:** The impost is that they then have —

**Mr M.P. Whitely:** If the Minister for Health can demonstrate to me that there is a strong practical impost, I will not move the amendment; but I am not hearing that. What is the impractical impost?

**Dr K.D. HAMES:** The impractical impost is that each and every couple that wants to proceed with a surrogacy arrangement has to then prove that they are unable to provide that genetic material themselves —

Several members interjected.

**Dr K.D. HAMES:** — and I just do not think that it is reasonable. If what the member for Bassendean is saying is true and they have to go through that anyway as part of the process of becoming part of a surrogate arrangement, the amendment is meaningless. It does not need to be in the legislation and the passage of this bill does not, therefore, need to be delayed by having it there.

**Mr M.P. Whitely:** We can delay it for a few minutes, if you don't mind, because it is serious enough to warrant a couple of minutes' conversation. Let's take the reverse situation of the designer baby: I said that it is unlikely to happen, but who knows how society will change? Why isn't it reasonable to require, so as to prevent that designer baby situation, that prospective parents go through some sort of process? You are saying that people who legitimately want a child would go through the process in any case; I am not hearing any extra impost on them. The only people who would have an impost are those who want a designer child.

**Ms A.J.G. MacTiernan:** He is not saying that there will not be exceptional circumstances —

**Dr K.D. HAMES:** I am going to sit down because it is impossible for me to seek advice and provide a response when the member for Armadale keeps interjecting. Perhaps if the member for Bassendean would like to speak, then I will get the advice in peace and quiet.

**Mr M.P. WHITELY:** I want to be clear about what we are talking about—I want to hear what the minister has to say, whether he can actually say that it creates an impost on those legitimately seeking to create a child. But what I am talking about—I am not moving it now, but I am just foreshadowing it—is an amendment that would come after the words “are exceptional circumstances” in the member for Armadale's amendment, then put a comma, and then it would read —

including where it is impossible for a commissioning parent to provide genetic material, ...

The attraction of that amendment is that that would prevent the situation of people having a quick and easy process to get a designer baby, for whatever reason. I do not know that that is likely to happen in current circumstances, but who knows how the world will change? We need to be legislating for and looking to the future. The view has been expressed by a number of members, including myself, that it is preferable for the parents to provide the genetic material, and that amendment seems to offer a way of ensuring that. I am talking primarily because the minister needs time to consider advice.

**Mr T.G. Stephens:** Can I ask a question? Would the member be in a better position, given the definition of this particular part, rather than defining exceptional circumstances as a —

**Mr M.P. WHITELY:** Sorry, I am not as familiar with the bill as the member is; I have come to this late. I will sit down and the member can speak.

**Mr T.G. STEPHENS:** I am actually providing the minister with an opportunity, whenever he indicates he is ready, but maybe Mr Deputy Speaker could tell me—with the assistance of the table—whether it is too late to add a definition to proposed clause 14 of the bill, so that exceptional circumstances for this part could be defined?

**The DEPUTY SPEAKER:** Member for Pilbara, the only way to do it is to move, at the end of consideration in detail, that we reconsider that clause.

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p905b-925a

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**Ms A.J.G. MacTIERNAN:** Because I have not yet formally moved my amendment, is it possible that I can move my amendment and incorporate the amendment of the member for Bassendean?

**The DEPUTY SPEAKER:** The member for Armadale can move it in whichever form she wishes to —

**Mr M.P. Whitely:** I will support it then!

**Ms A.J.G. MacTIERNAN:** The member for Bassendean can second it! So that we can advance this bill, I am proposing—I think, from discussions, that other members would agree with the amendment—to formally move it.

**The DEPUTY SPEAKER:** Member for Armadale, we need your amendment in writing and signed.

**Mr M.P. Whitely:** Can we wait and hear what the attitude of the minister is?

**The DEPUTY SPEAKER:** The member for Armadale can amend it on the notice paper and sign it and hand it up.

**Mr M.P. Whitely:** Perhaps we might want to hear what the minister and shadow minister are —

**The DEPUTY SPEAKER:** Move it first, member for Armadale.

**Ms A.J.G. MacTIERNAN:** I may as well move it, and then people can decide whether or not they are going to vote in favour of it, just to enable them to have advice.

**The DEPUTY SPEAKER:** The member for Bassendean has the call.

**Mr M.P. WHITELY:** I am encouraged by the amount of time that the minister and shadow minister are dedicating to this discussion. If the minister would like to take this question, I am happy to —

**The DEPUTY SPEAKER:** Does the Minister for Health want to speak?

**Dr K.D. HAMES:** Not just yet.

**Mr P. ABETZ:** My question is that my understanding of the bill is that the council that has to approve the surrogacy arrangement obviously needs to be guided by certain parameters; it is not purely totally up to it to decide what it wants to do. This bill provides the parameters within which it needs to operate. If it is not provided with any guidelines by Parliament, it is totally up to it to decide what to do. I believe that what the member for Armadale and the member for Bassendean have put before us simply conveys that we think this is so important that we want to put a parameter there for the council to ensure that surrogacy does not get hijacked with designer babies et cetera. It sends a very clear message that, if it is at all possible, under a surrogacy arrangement at least one of the commissioning parents should provide the genetic material. I believe that is what the amendment relates to.

**Dr K.D. HAMES:** After the comments the member for Bassendean made about the procedures, I sought further advice and I concur with the comments he made. The amendment would in fact prevent any move by a couple to have a so-called designer baby. Although I still do not support the amendment and it does not add to the legislation, I do not wish to see the legislation delayed. My view is that the member's concerns are not an issue, certainly not at this time and place, and that when the bill is reviewed there will be future opportunities to change it. I do not support the amendment.

**Dr G.G. JACOBS:** I have listened to the debate, and I am not against surrogacy as a concept, but I am rather disappointed by the minister's comments. It does not matter what amendment is put forward, what good argument is advanced, what logic is suggested—we are not going to change anything in this bill. Not one word are we going to change.

I support the amendment. Unless there are exceptional circumstances, as the member for Southern River has said, these are to be the guidelines for the reproductive council. This is the sketch. This is where we want to go unless there are some exceptional circumstances that can be considered by the council. That is a fairly good compromise. That is an excellent compromise. I am disappointed that the minister does not concede that this amendment will make the bill better. It will give guidance to the council and it will prevent the concept that we would all feel uncomfortable about in which children would be constructed in some sort of designer way. That being prevented still does not prevent this bill doing what it should do—allowing a couple to have a child by surrogacy because they are otherwise infertile.

**Ms A.J.G. MacTIERNAN:** I certainly do not wish to hold up the passage of this bill, because I support surrogacy. I want to make it clear to members who might be thinking that the minister will have some power to add these sorts of considerations in some direction that he gives to the body that will be overseeing that process—that will be quite ultra vires. If we do not pass a provision such as this tonight, there will be no capacity

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for the minister to introduce new limitations. Either we do it here tonight or it will not get done. We have the arguments. We know what the issues are. I move —

Page 8, after line 9 — To insert —

- (b) unless the Council is satisfied that there are exceptional circumstances because of which it should dispense with this requirement, including where it is impossible for the commissioning parents to provide genetic material, that one of the arranged parents is contributing genetic material; and

**Dr K.D. HAMES:** I would like to make one more point before we vote on this amendment. I have indicated my opposition. I would like members to remember that this is a bill about surrogacy; it is not just a bill about in-vitro fertilisation surrogacy. It covers surrogacy arrangements in which IVF is not involved. If a woman is unable to conceive but is capable of producing her own ova and her husband is infertile and she wants a surrogacy arrangement with another woman by artificial insemination using an alternative person's sperm, presumably she would not qualify under the exceptional circumstances rules because she may choose not to have IVF. As a mother, despite desperately wanting a child, she may not want to go through the extremely traumatic and difficult process of IVF. The couple might come to a surrogacy arrangement. With an infertile husband, the woman is capable of producing her own genetic material but chooses not to do so because she does not want to have IVF. That surrogate mother can have artificial insemination and come to a surrogacy arrangement.

**Ms A.J.G. MacTiernan:** That is absurd.

**Dr K.D. HAMES:** There is nothing wrong with that.

**Mr A.J. WADDELL:** If we are so concerned about the genetic material, perhaps we should consider an amendment to allow for some sort of cloning process. Essentially, it seems that the argument started out with wanting to ensure the most likely outcome, being that the child is handed over to the arranging parents. We feel that if the parents have some genetic stake in it, that is the most likely outcome. The entire purpose of this bill is to put all the parties through a regime of counselling to understand the likely outcomes. I cannot imagine going through this process without wanting that to be the outcome. If a person is given evidence that that is the most likely outcome and that person provides his or her own genetic material, why would that person not go down that path, unless he or she had a very good reason not to? I do not believe that, because a person had a busy lifestyle and did not want to go through IVF or anything like that, would be a reason to find himself or herself in this situation. The only time we would find someone not prepared to give up his or her own genetic material for a surrogacy is when he or she is unable to or carry some fear.

**Mr M.P. Whitely** interjected.

**Mr A.J. WADDELL:** Precisely. The effect of the amendment is exactly the same. There are two ways of looking at the same problem. The practical outcome of the legislation as it stands deals with what the member is asking for. Why are we being so prescriptive? Why do we need to impose our view on everything? If the bill is designed to put the parents, the potential donors, the surrogate mothers and everyone else through such a level of counselling to understand the outcomes —

**Mr M.P. Whitely:** But the point of difference is that you can't imagine circumstances in which it would happen. I can. You're saying it shouldn't happen but it's not going to happen. I'm saying it shouldn't happen but I can imagine it happening. That's our point of difference.

**Mr A.J. WADDELL:** I am saying that if it does happen, it would happen to one person in a thousand, but we will put yet another hurdle in front of the other 999 people in order to get there. Why do we want to do that? Why are we so afraid?

**Mr M.P. Whitely:** You built the argument that it is not a hurdle. I am sorry. Until the point that I interjected, you had very persuasively built the argument. It is not a hurdle because they are going to go through the process of wanting to donate their own genetic material in any case.

**Mr A.J. WADDELL:** I agree.

**Mr M.P. Whitely:** So where is the hurdle?

**Mr A.J. WADDELL:** Why do we need your amendment?

**Mr M.P. Whitely:** Because I can imagine circumstances in which people do not want to incorporate their own genetic material.

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz;  
Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill  
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**Mr A.J. WADDELL:** I can imagine circumstances where in which this amendment will put one more step in the perception of the process that will finally be the straw that breaks the camel's back to some people.

**Mr M.P. WHITELEY:** In flagging the amendment, I wanted to hear the minister's arguments about it and whether it put any practical hurdles in the bill. I am not convinced that it does. The argument that I think he put to me was that it probably would make the bill better but he can see some practical outcomes in terms of how long it will take to get to the upper house and how long it will take to adopt it, and it could put a barrier in the way of the early passage of this legislation. I do not think that is the way we should be legislating. It makes a mockery of this whole process. The minister's argument is that this bill, as it is presented to this Parliament, should not have been —

**Dr K.D. Hames** interjected.

**Mr M.P. WHITELEY:** The minister is basically arguing that this process is a sham and that we should have adopted the bill unamended. However, he made the concession that under greenfield circumstances, it would make the bill stronger. Yes, it has been through this house. I was a member of this house when it went through previously. We have identified that it will make the legislation stronger. I will certainly support the amendment.

Amendment put and a division taken with the following result —

Ayes (21)

Mr P. Abetz	Mr V.A. Catania	Ms A.J.G. MacTiernan	Mr M.W. Sutherland
Mr F.A. Alban	Mr M.J. Cowper	Mr P.T. Miles	Mr M.P. Whitely
Mr I.C. Blayney	Mr J.M. Francis	Dr M.D. Nahan	Dr G.G. Jacobs ( <i>Teller</i> )
Mr I.M. Britza	Mrs L.M. Harvey	Ms M.M. Quirk	
Mr T.R. Buswell	Mr A.P. Jacob	Mrs M.H. Roberts	
Mr G.M. Castrilli	Mr A. Krsticevic	Mr T.G. Stephens	

Noes (31)

Ms L.L. Baker	Dr K.D. Hames	Mrs C.A. Martin	Mr C.J. Tallentire
Mr C.J. Barnett	Mr R.F. Johnson	Ms A.R. Mitchell	Mr A.J. Waddell
Mr A.J. Carpenter	Mr W.J. Johnston	Mr M.P. Murray	Mr T.K. Waldron
Dr E. Constable	Mr F.M. Logan	Mr P. Papalia	Mr P.B. Watson
Mr R.H. Cook	Mr J.A. McGinty	Mr C.C. Porter	Dr J.M. Woollard
Mr J.H.D. Day	Mr M. McGowan	Mr D.T. Redman	Mr B.S. Wyatt
Ms J.M. Freeman	Mr J.E. McGrath	Mr E.S. Ripper	Ms R. Saffioti ( <i>Teller</i> )
Mr B.J. Grylls	Mr W.R. Marmion	Mr A.J. Simpson	

**Amendment thus negatived.**

**Mr A. KRSTICEVIC:** I wish to move an amendment to clause 17. The amendment appears in the supplementary notice paper. I move —

Page 9, line 8 — To delete the full stop and substitute —

; and

- (f) the surrogacy arrangement provides that the arranged parents shall provide ongoing medical insurance for the birth mother in the event that the pregnancy results or is likely to result in the surrogate mother needing ongoing medical treatment as a consequence of the pregnancy or birth.

**Mr P. ABETZ:** Some of the amendments on the supplementary notice paper were drawn up before last night. Because of some of the decisions made last night, some of these amendments fall away because they are no longer relevant. This amendment appears two-thirds of the way down the page. The member for Carine is moving to include paragraph (g), which now becomes paragraph (f).

**Mr A. KRSTICEVIC:** As the member for Southern River has said, paragraph (f) of the amendment on the notice paper has fallen away, so paragraph (g) now becomes paragraph (f). I have moved this amendment because the bill before us does not cover situations in which the surrogate mother could have ongoing medical problems as a result of the surrogacy, whether through postnatal depression or some sort of medical circumstance that results in medical expenses in the first instance. Secondly, in terms of loss of pay if the surrogate mother is not able to go back to work as a result of giving up a genetic child to the arranged parents and having some issues or concerns —



**Extract from Hansard**

[ASSEMBLY - Wednesday, 3 December 2008]  
p905b-925a

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz;  
Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill  
Johnston; Mr Ian Britza; Mrs Liza Harvey

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**The DEPUTY SPEAKER:** The member needs to initial that amendment and hand it up, as he has amended the amendment.

**Mr A. KRSTICEVIC:** Clause 6(3) covers reasonable expenses. I am looking at circumstances from the point of view of the surrogate parents and the arranged parents. A circumstance might cause the medical expenses to blow out, and we have not prescribed at clause 17 that insurance is mandatory. We are setting out the minimum requirements that need to be approved here, and I think medical insurance that covers medical expenses and lost pay is mandatory—it should be mandatory and it should be included in the bill. It is not at the moment. Such insurance would protect both the arranged parents and the surrogate parents.

If an arranged parent does not take out medical insurance because she has been given advice by the council or by a medical practitioner that it is not necessary to take out insurance, or that it is optional, and then something happens in the arrangement that affects the surrogate mother or her circumstances, as an arranged parent she could be up for quite considerable costs, if they are relevant and appropriate costs. Not only that, if the surrogate mother cannot go back to work, the other party might be up for her wages. More importantly, who is going to pay for her wages if she has no insurance cover?

I realise that the council can talk to the arranged parents and the surrogate mother about this and possibly encourage them to take out insurance because it is in their best interests, but they may choose not to do so. If they are not to be required to take out insurance, I think that we will be creating some major problems for ourselves. This amendment, unlike the others, which deal with the genetic make-up of the child, is crucial.

**Dr K.D. HAMES:** I do not support this amendment. There are two components to it, the first part of which is paragraph (f), and I presume the member has moved both?

**Mr A. Krsticevic:** No.

**Dr K.D. HAMES:** So paragraph (f) of the amendment on the notice paper has been deleted. On the issue of insurance, there is no doubt that there may be complications after the delivery of a child, and postnatal depression is probably to be the most likely one. At page 3, clause 6(2), the bill refers to the requirements for any surrogacy arrangement, and to the things that have to be put in place. Clause 6(2) states —

Reasonable expenses associated with achieving, or attempting to achieve, the pregnancy are reasonable expenses associated with the pregnancy.

As part of the process of achieving a surrogacy arrangement, the participants to that arrangement must discuss the potential medical costs to be covered by the arranging parents. The member for Carine was correct in saying that the bill does not specifically outline that expenses incurred after the pregnancy must be covered by the surrogacy arrangement. It may well be that the public health system, for which I am responsible, will treat free of charge any medical condition that results from a surrogacy arrangement under the normal management of any patient in this state who has a medical condition. Secondly, the surrogate mother may well have her own private health insurance, so the only component that might require payment is any additional fees on top of what is covered by her insurance. Members must remember that surrogate mothers are a part of the surrogacy arrangement process. A surrogate mother may have private insurance, but she may say that she will not enter into the surrogacy arrangement unless the arranging parents cover any expenses that are incurred on top of that insurance. If the participants to the arrangement have a falling out and the surrogate mother's ongoing medical treatment is not covered, I, as minister, will be responsible for providing any medical care that is needed through the state public health system.

**Mr A. KRSTICEVIC:** The minister has covered the issue of medical expenses, but what about any loss of pay if a surrogate mother can never go back to work? The woman could be 25 years old. Complications such as postnatal depression do occur. I cannot find any provisions in the bill that cover a potential loss of income by surrogate mothers. The minister spoke about reasonable medical expenses. If untoward consequences result from the pregnancy and medical expenses blow out beyond a reasonable level, the public health system may not be able to cater for that and the surrogate mother may need urgent assistance or may need to go through the private health system. I am most interested in who would cover the loss of pay.

**Dr K.D. HAMES:** The only requirement for pay covers a two-month period, which can be on either side of the pregnancy. However, there is nothing to stop the arranging parents from agreeing in the surrogacy arrangement to cover ongoing costs beyond that period. A premium can also be set for disability or life insurance payments. That is provided on page 4 under paragraphs (c) and (d).

**Mr A. KRSTICEVIC:** I thank the minister for his response. However, all those things are optional. People can choose whether to take out those premiums. If they choose not to do so and issues arise, the arranging parents will potentially carry a huge financial burden and the court system will no doubt be tied up with some very

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz;  
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complicated issues. Under clause 17, the Western Australian Reproductive Technology Council must be satisfied that a medical practitioner has deemed a person to be medically suitable to enter into a surrogacy arrangement. Will that create any problems for the government or the council of liability for any expenses that occur because the council has deemed a surrogate mother to be suitable when she may not be suitable? That potentially creates issues of liability for the council or the government in these arrangements.

**Dr K.D. HAMES:** I again refer to clause 6(3)(d) on page 4 of the bill, which is an enforceable component of the legislation. Paragraph (d) states —

a premium payable for health, disability or life insurance that —

- (i) would not have been taken out if the surrogacy arrangement had not been entered into; and
- (ii) provides cover for a period during which an expense referred to in another paragraph of this subsection is incurred or might be, or have been expected to be, incurred.

That is an enforceable component of the legislation. The member for Carine is right in saying that everything that could possibly happen is not enforceable under that clause. However, I do not think that the requirement to provide ongoing medical insurance is likely to cover all those options. Other potential consequences could occur. Those things are dealt with in the surrogacy arrangements. The member is right; they are not a requirement. However, they are something that the surrogate mother and the arranging parents will agree to. Medical complications may subsequently arise.

**Ms A.J.G. MacTIERNAN:** I am not sure whether the minister is correctly characterising that provision on page 4. That provision basically says that a premium can be payable for health, disability and life insurance, and that that will not bring the arrangement within the purview of being an arrangement for reward. That has nothing to do with what the member for Carine has proposed; that is, that this become some sort of mandatory provision. I do not know whether the wording of the amendment is ideal, but I do not think it is correct to say that this matter is dealt with in any way, shape or form under clause 6. All that clause 6 says is that it is perfectly legal to enter into arrangements that provide health insurance. That is good, and we will support that. The member for Carine is saying that we should go beyond allowing that by making some provision for it. From my point of view, rather than necessarily making it mandatory, I would be happy to ensure that surrogate mothers receive independent legal advice not only about the effect of the surrogacy agreements, but also about the impact of the arrangements on their financial position. That is what is possibly lacking in the list of things—not that we would necessarily want to mandate an elaborate insurance regime. I accept what the minister said; that is, a surrogate mother may have her own insurance in any event. However, the sort of protection that is probably needed is a broadening of the concept of the independent legal advice that surrogate mothers will receive about the effect of the surrogacy arrangements to include independent legal advice on the financial implications for surrogate mothers vis-a-vis their medical expenses.

**Dr K.D. HAMES:** I thank the member for Armadale for her response. I need to clarify the point I made, because the member for Armadale is correct. The requirement I just spoke about results only if an arrangement has been entered into. It is the choice of the participants to that arrangement. They need to consider those matters. If they choose to not include those things as part of the arrangement, those things will not be enforceable, as the member said. If they choose to include those matters, they will be enforceable. If the member for Carine wants to mandate for a person to take out life insurance, he should, obviously, support his amendment.

**Ms A.J.G. MacTIERNAN:** In some senses, I might not want to go as far as the amendment. There is an important matter of principle. We know that people will be advised about these things and will then make a choice. Very occasionally, vulnerable low-income young women who may not be terribly well educated might be encouraged into this sort of arrangement. We would want to provide some protection for them when entering into these arrangements. It is certainly possible to enter into something like that. The legislation allows that. I guess that the member's concern is about the degree of protection. I share that concern. I am just wondering if the minister can perhaps tell us what this independent legal advice will amount to.

**Dr K.D. HAMES:** I wish to make a quick clarification. I accept the member for Armadale's point. It can be made a requirement of the regulations that those things must be discussed.

**Ms A.J.G. MacTiernan:** They won't be ultra vires; that is, they won't go beyond. Can the minister confirm that for us tonight?

**Dr K.D. HAMES:** We can say, yes, that as part of those regulations, those issues must be discussed as part of that surrogacy arrangement. I am happy to make sure they are included.

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz;  
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**Mr J.A. McGINTY:** This legislation provides the most comprehensive pre-pregnancy scheme that applies anywhere in Australia. Clause 17 of the bill refers to counselling, assessment by a clinical psychologist, receiving independent legal advice and a medical assessment. What is envisaged, as the Minister for Health has just said, is that these matters will be addressed. This is a private contract. We are setting up a framework within which that can be supervised to ensure that things are done properly and that all eventualities are covered. Without straining myself too much, I can think of a hundred things that we could add to the bill. What about those people who live in regional Western Australia where by and large, with three exceptions, because there are no private health facilities there, private health insurance is no good unless people travel to the city for treatment? Why not introduce a special provision to cover people who live in the northern part of the state? Why not prescribe that travel expenses to the city shall be a part of the surrogacy arrangement? We could go on forever, dealing with all sorts of hypothetical scenarios. People of goodwill who want to enter a surrogacy arrangement under the supervision of their fertility clinic, the lawyers who will offer them legal advice, and the counsellors experienced in this matter, will be asked, "Have you thought about this? Have you made sure that this is covered?" We could go on forever trying to be prescriptive about the sorts of things that the bill should contain. What has been mentioned is but one. Why do we not also insert provisions to deal with the other hundred aspects of this? Frankly, seeking to be that prescriptive is getting to be nonsensical. It serves no purpose when we will have set up the most rigorous surrogacy arrangement system to operate anywhere in Australia to ensure that all these matters, in all their diversity of human experience, will be adequately covered to cater for the individual circumstances that present themselves, rather than suggest that one size fits all and what is suitable for one person is equally suitable for another. The counselling, the legal advice and those sorts of things will pick up all these matters and will ensure that everything is done properly by professionals who will be very experienced in these matters.

**Mr A. KRSTICEVIC:** Based on the minister's advice that the regulations will have a comprehensive reference to the financial implications for both the arranged parents and the surrogate parents entering into this relationship, I seek leave to withdraw my amendment.

**Amendment, by leave, withdrawn.**

**Clause put and passed.**

**Clause 18 put and passed.**

**Clause 19: Circumstances for seeking parentage order —**

**Mr P. ABETZ:** I have a question of clarification for the minister. At the bottom of page 5 of the notices and amendments, we have an amendment to insert the words "or give birth to" after "conceive". I just want some advice before I move to that amendment.

Clause 19(2) of the bill defines an eligible couple. It reads —

*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);

Subclause (3) refers to age and other reasons. A person who is unable to conceive a child would usually opt for IVF. Most people are able to have a child in that way. Surely, the issue here is "unable to carry a child". It would seem to me that this clause states that simply being unable to conceive entitles a couple to enter into a surrogacy arrangement. I would have thought a couple would have to be unable to conceive or give birth to a child for medical reasons. Could the minister clarify that for me?

**Ms A.J.G. MacTiernan:** It is actually being restrictive and you want to broaden it out.

**Mr P. ABETZ:** Yes; the clause is basically saying "if a person is not able to conceive a child". However, if a couple who have tried to have a kid for X years go to their doctor because it is not happening, they would opt for the normal IVF program; not the surrogacy option. Surrogacy is for those circumstances in which a woman is unable to carry a child, which may have been conceived by IVF with an implanted embryo, but this clause refers only to conceiving. I do not think that that is the intent of the bill. I am wondering if we could have some clarification before we move to the amendment.

**Dr K.D. HAMES:** I do not understand what the member is seeking to do with the amendment that inserts the words "or give birth to". Clause 19, "Circumstances for seeking a parentage order", deals with the transfer of a child's parentage. Subclause 2(a) states —

**Extract from Hansard**

[ASSEMBLY - Wednesday, 3 December 2008]

p905b-925a

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz; Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill Johnston; Mr Ian Britza; Mrs Liza Harvey

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*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 clause then refers to an eligible person. The definition of eligible person at paragraph (c) refers to the point the member is making; that is, the person is “unable for medical reasons to give birth to a child”. I understand that the member is seeking to remove that second component of the legislation—that is, to get rid of the single person.

**Mr P. Abetz:** That has fallen away now.

**Dr K.D. HAMES:** I do not understand why the member needs to insert the words “or give birth to” at page 10.

**Ms A.J.G. MacTIERNAN:** Perhaps I can explain. As I understand it, there might be a couple who are able to conceive but, for reasons of pre-eclampsia, or whatever other factor, the woman is unable to bear the child; that is, she is not able to give birth to the child. Unless we are missing something —

**Mr J.A. McGinty:** Picking up on that, member for Armadale, it relates to a couple who cannot give birth—I think that is the answer—whereas a person can give birth.

**Ms A.J.G. MacTIERNAN:** It refers to the transfer; so a couple can get —

**Mr J.A. McGinty:** A couple still cannot give birth. That is what this amendment is seeking to do; to apply the same rule to a person that applies to the couple.

**Ms A.J.G. MacTIERNAN:** Can a man conceive a child?

Several members interjected.

**Ms A.J.G. MacTIERNAN:** The mischief, I think, that the member for Southern River is concerned about is, I must say, not clear. It would seem to me from reading this clause that the people are being treated as a couple rather than as a single person and that in circumstances where a woman in the couple is able to conceive but unable to give birth, they are not being precluded.

**Dr K.D. Hames:** Whatever way that baby gets out; it is giving birth.

**Ms A.J.G. MacTIERNAN:** We are saying that we hope that this is not an accidental provision.

**Dr K.D. HAMES:** I am advised that it is not. It does not matter how the baby arrives in this world, whether it is by caesarean section or vaginal delivery, it is still regarded as giving birth to a child. I think the point is that only women can give birth.

**Ms A.J.G. MacTiernan:** No, the minister is missing the point. The bill seems to say that couples are only eligible if they cannot conceive. However, there will be situations in which people can conceive but cannot —

**Dr G.G. Jacobs:** Gestate.

**Ms A.J.G. MacTiernan:** Thank you.

**Mr P. ABETZ:** We are concerned that clause 19 will exclude people, which was not the intention. We are concerned that it excludes people who we do not believe should be excluded. Therefore, we want to ensure that we do not accidentally goof it up—that is all.

**Dr K.D. HAMES:** I am advised by my trusty advisers that it does not exclude anybody.

**Dr G.G. JACOBS:** I am not quite clear on this matter. The Minister for Health will forgive me, but he might be able to walk me through this. Clause 19 states that an eligible couple is a couple who are unable to conceive a child due to medical reasons. If “conceive” is to do with conception; that is, the egg and the sperm uniting to form a fertilised egg, I would think that that would be overcome by the in-vitro fertilisation provisions. I believe the previous speakers are concerned that we might by accident be excluding an eligible couple who are able to conceive—that is, the egg and the sperm can get together to form a fertilised ova—but the baby cannot be put into an environment where it can grow to term or it cannot gestate. There is a little confusion about that. Of course, when we were previously having discussions about this we thought to look up the definition of “conceive” because conceive might be not only the fertilisation process, but also the gestation process. Therefore, I think that needs a little clarification.

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz;  
Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill  
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**Mr P. ABETZ:** The member for Armadale has just explained it to me and perhaps it will help other members as well. At the top of page 10, clause 19(1)(b) states —

when the surrogacy arrangement was entered into or after that time but before the application is made —

- (i) the arranged parents are an eligible couple; or
- (ii) one of the arranged parents, or the arranged parent if there is only one, is an eligible person.

The member for Armadale suggested that a couple can consist of an eligible person plus another person. The English reading of that clause would say to me that one is either an eligible couple or an eligible person. If members understand it in that way then, yes, it excludes those people. However, if we interpret an eligible couple as consisting of at least one eligible person, then that is covered by clause 19(2)(c) at the bottom of page 10, which states —

although able to conceive a child, is unable for medical reasons to give birth to a child.

I think the intent is there, so perhaps we can assume it is covered and then we will not need to move our amendment. However, it is very clumsy to say the least.

**Mr J.A. McGinty:** I think it's very clever.

**Mr P. ABETZ:** Because it is able to confuse me!

**Ms A.J.G. MacTiernan:** It could have just said "eligible person".

**Clause put and passed.**

**Clause 20 put and passed.**

**Clause 21: Court may make parentage order —**

**Mr P. ABETZ:** All the other amendments on the notice paper fall away so we do not need to deal with them anymore.

**Mr R.F. Johnson:** Is the member happy to take the rest of the clauses en bloc?

**Mr P. ABETZ:** Yes, we can take the rest of the clauses as a bloc.

**Clause put and passed.**

**Clauses 22 to 69 put and passed.**

**Title put and passed.**

*Third Reading*

**DR K.D. HAMES (Dawesville — Minister for Health) [9.16 pm]:** I move —

That the bill be now read a third time.

**MR T.G. STEPHENS (Pilbara) [9.17 pm]:** I oppose the third reading of the Surrogacy Bill 2008 for many of the same reasons that I opposed the second reading. Tonight it has been apparent that even when we were dealing with amendments that were completely coherent, logical and had inherent persuasiveness, the minister handling the bill could not accept them. It was not essentially because he disagreed at times with the thrust of the amendments. Leaving aside the minister, other members of the house were persuaded by the argument that the legislation could have been and should have been improved but they were apprehensive about losing this opportunity to pass this bill at this time.

One of the reasons I want to give to the house that even now at the third reading the bill could ideally be defeated emerged during consideration in detail; that is, when this legislation passes through this place, it will not only legislate for Western Australia. This bill, with all the deficiencies that were pointed out in the consideration in detail, is about to become the template that gets adopted across Australia. It will become the leading piece of legislation that is to be embraced in the other jurisdictions. People will take on board not only the debate but also the finished product; then it will be argued that this is legislation par excellence to provide for surrogacy that should be replicated in other jurisdictions. There are colleagues of mine on this side of the house who would die in a ditch to prevent genetically modified crops!

Several members interjected.

**Mr T.G. STEPHENS:** Yes, crops; yet when it comes to something as fundamental to the human condition as the creation of human life, no matter how good the argument for the drafting of the legislation, because of the

**Extract from Hansard**

[ASSEMBLY - Wednesday, 3 December 2008]

p905b-925a

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz; Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill Johnston; Mr Ian Britza; Mrs Liza Harvey

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need to rush the damned thing through tonight, off we go with a limp argument from the minister to press on regardless. Now we are at the third reading stage, despite consideration of all the issues, fears and probably opposition by members of this place to the very notion of designer babies; the notion being that people could put in place surrogacy arrangements by which they eschew their own genetic material, look around for the best possible genetic material, pop it together and put it into a surrogacy arrangement that becomes life. That is really this brave new world.

An additional reason for opposing this legislation is that for more than 26 years I have been persuaded to vote for legislation by the best persuaders in this Parliament. I have heard members make the most harebrained, stupid measures sound logical, sensible and persuasive, saying, "All will be well, do not worry about your fears, all will be fine, just go along with us and all of those fears will never fall upon the community of Western Australia." That is the history of life in any jurisdiction, and then there are unintended consequences. The assurances of members count for nothing. I am thinking about assurances that were given on liquor licensing laws and the disasters that flow when people embrace change and do not think through the consequences. I am thinking even further back, with application to this legislation, about those people of goodwill who, for instance, embraced the notion of the stolen generations in Aboriginal communities and the concept of taking children away from parents. We now know that the legacy from human lives that were taken away from parents and given to others to raise is tangible and palpable. I am thinking of all the scars of those stolen generations, whether they be Indigenous stolen generations or stolen generations out of Europe that were taken as child labour into the colonies. These things were done for good intentions but they have left extraordinary consequences and profound social and psychological scarring. For me I fear what this bill will do and for the consequences to the community.

When we look outside the Parliament we can see that we have done many good things. Someone coming out of the car park today described to me the delight and enjoyment in the lilac trees and the beauty of the environment. Those things do not happen by accident; they happen as a consequence of legislators being ever vigilant about environmental law and about ensuring that we protect the environment we have created. This side of the house has supported good legislation to protect old-growth forests. We will have forever the great benefits that flow to the community from the passage of good legislation. Every now and then someone comes up with some crazy concept, persuades the lawmakers to do silly things and they do not put in place adequate protections. This community wears the consequences of those crazy concepts. This bill is at the third reading stage, despite members of this place acknowledging that an opportunity will be created for designer babies to be placed into surrogacy arrangements through the passage of the bill.

Another good aspect of the consideration in detail stage of the bill was the indication that members have different ideologies and philosophies and a different mode of operation in handling legislation in this house. I am talking quite clearly about the members for Armadale and Southern River. One would think they had divergent viewpoints on a range of issues, yet in the consideration in detail stage two clearly good minds came together and articulated to the house the problems that the house would deliver to itself and to the wider community by passing the bill through the consideration in detail stage without accepting the amendments. The amendments were not accepted for the worst of reasons; that is, the treatment of new members of Parliament as though they were simply a rubber stamp and demanding that this place be that rubber stamp. I am disappointed that the house completed the consideration in detail stage of the bill in that way. I am also disappointed about the way members were handled in that process. I have told members that I did not appreciate in the lead-up to the consideration in detail stage that an attempt would be made—as there was on this occasion—to go straight from the second reading stage to the third reading by the Chair putting the question that the house go straight to the third reading without the question being initiated on the other side of the house. I ask you, Mr Speaker, in debate in this third reading stage, to take note of a process that I believe is absolutely inappropriate. It is inappropriate for the table to seek the leave of the house to proceed to the third reading without the question having been put to the table. If a minister or a member handling a bill wants to seek the leave of the house, it is up to the proponent of the bill to put the proposition to the house; it is not for the table to produce suddenly out of nowhere the proposition that leave be granted to proceed to the third reading. I ask members who chair the consideration in detail stage of a bill not to do that. It might be considered funny but certainly —

**Mr P.B. Watson:** We've always done it.

**Mr T.G. STEPHENS:** I have never seen it done before and I do not believe it is appropriate for the Chair to put the question whether leave is granted to proceed to the third reading. I say that particularly because members knew that a host of amendments were about to land on the floor of the house. However, members were in an unusual situation on that day in that the notice paper contained no amendments because the bill was not before the house. New members of this place were therefore placed at a double disadvantage. I say to our new

**Extract from Hansard**

[ASSEMBLY - Wednesday, 3 December 2008]

p905b-925a

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colleagues that that was a rough way for them to be taught politics and process in this place. I believe members got away with it on this occasion because of the conscience provisions that apply to the handling of this bill. However, in my view asking members to deal with legislation that had not technically arrived in this place was rough handling of members. The notice paper had not been published or circulated, and the table was therefore able to pretend that no amendments were before the house. Members could have debated the third reading, therefore, without going through the consideration in detail stage. It was only prevented because I happened to hear out of the corner of my ear that suddenly the question to proceed to the third reading was being put to the house, and not even put by the minister.

**Dr K.D. Hames:** I was about to stop it. I would have stopped it because I knew so many members were in the chamber.

**Mr T.G. STEPHENS:** In my view that question should not have been put by the table until the minister had sought leave, and he had not sought the leave of the table to put the question. That is not an appropriate way for the house to behave. If that is the process of the table, the process of the table should change.

**Dr K.D. Hames:** I think it was an inexperienced person. I cannot remember who was in the chair, but I do not think that person recognised what was going on.

**Mr T.G. STEPHENS:** I am objecting to it now, and I hope that the processes will be fixed so that it never happens again. I do not like it, and I do not think it is right, particularly when there are a number of new members. They are under pressure, unfairly in my view, from the position that the majority seems to have about pushing this inadequate and wrongheaded legislation through.

We are lucky in Western Australia, because we have done so much as a Parliament to protect so much about our community. We have so many good things going for us. That happens only as a result of parliamentarians being vigilant. I will give another reason why I oppose the third reading of this bill. Arguments are put at times from a civil libertarian perspective, and I have found myself persuaded over the years to go along with changes to laws such as the censorship laws of Western Australia. Then I look back at the circumstances that plague my communities in the north west, like those that are now the subject of the intervention in the Northern Territory. There is an issue of the different standards that apply to pornography in domestic settings and amongst young children; with intergenerational modelling that is an absolute disaster. Persuasive, clever people come in to Parliaments and argue for things from the perspective of metropolitan locations and a particular set of circumstances, and then ignore the fears of others at how this will play out in other contexts. Disaster ensues if people are not vigilant.

For me, surrogacy will leave a whole range of unnecessary scars in the community. There will be the scars of people created for the purposes of being taken away from their birth mothers and put into other circumstances. There will be scars that we know exist for others through their own experiences in the stolen generations that we have heard of from Europe and from the Indigenous communities. We know that the challenge to identity comes from that loss of family settings, yet here we are creating statutes and rushing into this brave new world to deliver that for whoever embraces this legislation. When legal possibility is created, it puts pressure on couples to find ways to have children of their own, because it is now not only technically but also legally possible. People will be put under all sorts of subtle and not so subtle pressures that they would not have otherwise felt to head towards surrogacy arrangements. They are almost inhuman pressures. No matter what process they go through, even if it is this surrogacy arrangement, victims can be created. The birth mother and even the child can be at risk of the emotional scarring that comes from a child being taken away from a birth mother.

I oppose the passage of this legislation at its third reading. I want to vote against it, and to be part of a division of this house that votes against it at the third reading. I did not do that the last time the surrogacy legislation was passed through this place. This house did not vote by way of a division when the surrogacy legislation was last considered. One of the reasons I did not push it is that I actually do not like these debates. I know others like them, but I actually hate this whole area. I know this states a lot about my psychological profile, and I guess that is what we bring to these places. I am not enthusiastic about complexity; I like things to be simpler. This is not simple legislation, and it does not create a simple set of circumstances. I have preferred to shy away from complexity, and I would prefer to go slower and say no until there are simpler solutions to these challenges. That is my description of my personal profile. I do not like this kind of legislation. I also do not like the fact that over the years in this Parliament I have been dragged into bioethical debates that have almost become defining of me, yet I do not describe myself as being defined by these bioethical debates. I have a whole range of other preoccupations about where I would like the community to be focused. I have a range of responses to the challenges of Western Australia, yet too often over the past 15 years I have been dragged into these bioethical debates in the Parliament with conscience votes. I get caught up in a definition of myself that has me aligning with issues with which I am not altogether comfortable. I do not like being pushed constantly into the bioethical

**Extract from Hansard**

[ASSEMBLY - Wednesday, 3 December 2008]

p905b-925a

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issues. I am not saying that that is anyone else's fault, but I would prefer not to be constantly in these debates. They loom large in the history of my parliamentary service.

Having said all that, just because I do not like complexity does not mean that life is not sometimes complex, and we are required to use our intellectual skills, powers of observation and experience to look at those issues and, in the face of that, make a judgement call. I have endeavoured to do that with this legislation; that is, look at the bill and the arguments for it and decide whether there is any prospect of me being able to give it my support. I could not provide that support when the second reading of the bill was voted on, and I can certainly vote against it again now that the bill has not been amended to take on board the fears, concerns and the legitimate arguments posed by members supporting the amendments. None of those legitimate arguments has been embraced. That is all the more reason why this legislation should be defeated.

I realise that the numbers on the floor of this house get firmed up pretty early, and that it is a pretty tall order to ask the house, even at this stage, to defeat the bill, but it is a good call to the house to refuse to deliver to not only Western Australia, but also Australia this piece of template legislation that is reflective of people who are good at persuading, cajoling and whipping, but not good at listening to the fears of a broad cross-section of the community. I do not believe that the community of Western Australia supports the brave new world that is being created by this statute. Some constrained operation of surrogacy may have had the majority support of the Western Australian community. As people see how this legislation gets utilised, they will object to its use in that way. By that, I am referring to the creation of "designer" children; I am thinking of career individuals who can afford it and just simply say, "I'm too busy to be involved in the birth process myself. I'll leave that to some person", as though the surrogate mother would be engaged like domestic help for the purposes of motherhood. There will be people who do that, and that would have been prevented if this bill had been improved by this house. It has not happened, and I think that is all the more reason why it should be rejected.

I do not have any other additional great arguments I want to put to the house, other than I hope that people have found the experience educative. To my good friend over there, the member for Morley, the legislative process is sometimes about give and take. During their time as parliamentarians, members get the chance to share some ideas, swap some stories, and gradually the ripple effect from those stories means we win some, and the ripple effect from an argument put forward means that sometimes people learn something from what a member has to say, even though they might not have thought it had happened on that particular occasion.

When Hon Phillip Pandal was member for South Perth during the passage of the abortion laws, he was able to bring together a majority on the floor of the house to minimise some of the worst excesses of that legislation. He had a great skill and a great talent that he deployed to reduce the negative impact of that legislation. That has not happened on this occasion, and I suppose I miss the presence of Hon Phillip Pandal—he was a great shop steward and he brought together people and was able to persuade people to listen to one another to reduce harm and minimise the damage of legislation that was clearly going to pass through the Parliament. He did a great job in minimising that harm. Regrettably, on this occasion—in the absence of Hon Phillip Pandal—we have not been able to minimise the harm that this legislation will deliver to Western Australia.

**The SPEAKER:** Before I give someone else the call, I listened closely to what the member for Pilbara said, and I acknowledge the concerns he expressed about directions that came from the table. It is certainly my impression that none of what the member said is directed to staff at the table. I suggest that if it is an issue that he believes can create undesirable circumstances in this place, then the best course of action is to raise it with the Procedure and Privileges Committee. I am sure the committee will be willing to look at those concerns if he wishes to raise the matter.

**Mr T.G. STEPHENS:** Maybe the Speaker could take it as a request, and if he is happy to raise it there, I will certainly be a willing participant in that process.

**MR A. KRSTICEVIC (Carine)** [9.43 pm]: I would like to say a couple of words. Over the past two days I have listened to the debate, and I am pretty confident that the majority of members in this house believe that this bill is less than perfect. It has some flaws, it has some loopholes and it has some legitimate issues which should be addressed but will not be for the sake of getting the legislation through.

We have talked about surrogacy occurring in Western Australia already. We have talked about protecting the surrogate mother; we have talked about protecting the arranging parents; we have talked about protecting the child, yet members will agree that there are flaws in the legislation. We agree that there are things that can be done better. We agree that we can deliver a better product, not just to Western Australians, but to Australians. But for some reason we seem to be in a hurry so we say, "Yes, we can do these things better but we won't. We won't because—well, no particular reason, we just won't, we just want to get on with it and get it through the door."



**Extract from Hansard**

[ASSEMBLY - Wednesday, 3 December 2008]

p905b-925a

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Before I came to Parliament, during my time at the Australian Taxation Office I used to see legislation coming through. I used to see all these complications, all these loopholes and what I considered to be inadequate legislation in some cases. I used to think it was drafted by lawyers; they put this through, they have debated this, and they have made it so that they can make a lot of money by trying to defend all these issues and deal with all these loopholes and complications. But is not; it is dealt with by us. We are ordinary people with different backgrounds who do not, in some cases, understand what we are really opening ourselves up to. But the legal process, at some time down the track, will show us, as has happened with other conscience bills. I think it is disappointing that we have to rush it through without making these changes.

Probably the most important thing I want to say is that I do not see the urgency of this bill. I do not see the urgency because it is already going on, or the urgency to get it through even though we are trying to introduce something to make this process more robust. It is meant to put safeguards in there. It is actually meant to put legitimate blockers so that we can come up with the right outcome. We can do it the first time properly, without having to potentially, in the future, review and amend the act and try to fix some of the things that the minister has agreed are less than perfect and that he is not necessarily happy with, or that have not been covered—but he needs to get the bill through. That is the bottom line. I understand that we need to get the bill through to protect participants, to set guidelines and rules, and to set up an infrastructure. That is fantastic and it is an admirable thing to do. But why do it when we know there are inadequacies in the legislation?

I am asking the people who are supporting the bill to think about its inadequacies and about the problems that they are creating by supporting it. Irrespective of whether members support the bill, they should think about the problems it is creating and about the fact that we are not putting through a perfect product. As legislators in this state, we need to do the best we can every single time, and if we know that it is not the best we can do, irrespective of what we want to see at the end of the day, that is the primary consideration we need to take into account.

This is what I would like all members of this house to think about: do they think this bill is perfect? Do they think it is the best it can be, based on the debate in this place over the past couple of days, or do they think legitimate amendments should be made to it so that it does cover those areas? There is no reason why this bill cannot be passed at some time in the future, because as we already know, surrogacy takes place and is already happening. We are trying to introduce something that will make surrogacy a better process. This bill does not make it a better process because there are problems with it and things that need to be tightened up. I think most of us agree that amendments need to be put to this house. I would like members to think about whether those amendments should be put to the house and incorporated into the bill, and whether or not the bill should come back with those amendments in place.

**MR P. ABETZ (Southern River)** [9.48 pm]: I commenced my contribution to the second reading debate with an opening paragraph something along the lines that I approached this whole issue of surrogacy with deep empathy for those who are unable to have children. That empathy comes from not only being a pastor and counselling people in that situation, but also from closer to home, as our own daughter has been married for eight years and has been trying to have children for seven years without success. I certainly appreciate the pain and the struggles involved for people who would love to have children but are unable to have them.

I am faced with the difficult situation of being open to the possibility of what I would call a much narrower version of surrogacy. I sought to amend the bill to reflect my view that if the father and the mother provide the genetic material and a very close relative or long-term friend is willing to carry a child, I am open to that possibility. That scenario is still fraught with a lot of dangers and issues, but in that context I would be willing to support surrogacy. I believe that there is community support for that. As I mentioned in the earlier debate, all the contact that I have received from constituents and from those outside my electorate on this surrogacy matter indicates that that is the only form of surrogacy that anyone supports, bar one person who emailed me from outside my electorate who wanted surrogacy to be open to anybody and everybody without any kind of restriction. That person believed that any individual or couple, whatever kind of relationship they were in, should be able to commission a child, but I do not believe that that in any way reflects the view of our community.

I find myself unable to support this bill because I believe it is contrary to the view that the community at large holds. I do not believe that there is significant support for single people to engage a surrogate to provide them with a child. I do not believe that that is in any way reflective of our community standards. I am deeply disappointed that for the sake of hurry, hurry, hurry, this house was not even prepared to accept an amendment that would prevent designer babies. As the member for Pilbara indicated, some people are willing to die in a ditch over genetically modified food for fear that it might harm them in some way, yet we are playing around with designer babies. I find a great contradiction there.

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz;  
Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill  
Johnston; Mr Ian Britza; Mrs Liza Harvey

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I also find it deeply disappointing that the house did not feel that it could support the amendment making it a requirement that the commissioning parents provide the genetic material if they could. I find that staggering. It certainly does not reflect community values in our society.

I have worked with people in many of life's situations; I have certainly dealt with many people who have had struggles with issues of identity and so on. If we open up surrogacy the way that this house is making possible by adopting this bill, the community will have to deal with far more social issues. So often people who struggle with emotional or psychological issues end up trying to douse their internal pain with alcohol, drugs and other substances. Those things have a flow-on effect into every area of society.

I find myself unable to support this bill not because I am totally opposed to every form of surrogacy but because we are saying that it is okay for people to use the forms of surrogacy available in this bill, so they should come and get it and use it. I do not believe that that is reflective of the people whom I represent in the seat of Southern River and I do not believe it is representative of the views of the people of Western Australia.

I plan to move a bill to amend the act—I assume this bill will be passed—sometime down the track when the “hurry, hurry, hurry” element will have been taken away from this house. After talking to some members privately, I believe that they were willing to support some of the amendments that were moved, saying they would be a good idea, but they voted against them because we had to get this bill through before Parliament breaks for Christmas. That kind of approach to legislation brings this house into disrepute. I believe that we need to be cautious in how we move ahead with any legislation, especially legislation that touches the very fabric of what it is to be human, what it is to be part of a family and what it is to be a member of society.

In many things we would want to use the precautionary principle, as people often refer to it. People are worried about nickel and lead being transported from the port of Esperance. Even though nickel is safer than lead, because of what has happened in Esperance people are frightened and overcautious. That is understandable. Instead of making surrogacy available in a very limited way to see how it goes and then open it up a little further if no issues emerge in the future, we have thrown it right open to any form of surrogacy, except commercial surrogacy. If I can garner sufficient support in the house, I will work towards presenting a bill to amend the Surrogacy Act 2008 in the future.

**MR W.J. JOHNSTON (Cannington)** [9.55 pm]: I rise to make a brief third reading speech. As members know, I moved an amendment that I believed would have improved the bill. I am disappointed that that amendment was not accepted. Effectively, the reasons it was not accepted were two-fold. Firstly, some members did not believe that the policy issue that I was raising was valuable. There was also the view that, had this house amended this bill, it would have caused trouble in the other house. We have to understand the reason there was so much pressure to get this bill through this house. It was because the government made this bill an election issue. It said that this bill was included in its 100-day agenda. We needed to accommodate the Liberal Party's agenda to get the bill through this house at this time. I always indicated that I would support the bill, but I did think that there were ways that it could be improved. I am disappointed that I was not able to get those improvements made. I will continue to talk to the members who supported the legislation about looking at the regulations that come forward and the operations of the council that will be required to approve surrogacy arrangements.

I would be interested in the content of any private member's bill that the member for Southern River might introduce. It will be interesting to see whether its provisions have any merit.

I made it clear that I did not support and would not support amendments that excluded gay and lesbian people from the operations of the act. I was pleased to see that the government adopted that position; it also did not want to have gay and lesbian people excluded from the operation of the act. It is not for me to specify to others what lifestyle they should indulge in. Therefore, I did not believe those amendments were appropriate.

Given that the bill specifies that a person can access surrogacy only if he or she is medically infertile is sufficient to deal with the other issues that people might raise objection to, such that it is not a medical issue that relates to the surrogacy. That is an appropriate balance in the bill.

This is not perfect legislation. Very little legislation that comes out of the political process is perfect, because politics is the art of compromise. I will be interested to see how the Parliament deals with other controversial issues that come up. It is not easy to support things when we think that they can be improved, but on balance I do think the house is justified in supporting the bill.

**MR I.M. BRITZA (Morley)** [9.59 pm]: I want to share some things, but I do not need to go over the arguments that I presented before. I state that I thoroughly enjoyed the debate in the sense that I got to hear the other side without obnoxious interjections. I got to hear what the other side was saying, discerning what was coming from the head and what was coming from the heart. That was important for me because that is how I function. I am

**Extract from *Hansard***

[ASSEMBLY - Wednesday, 3 December 2008]

p905b-925a

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz; Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill Johnston; Mr Ian Britza; Mrs Liza Harvey

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not ashamed of that. I look to see the heart of the person because if they speak with anger, I cannot hear what they are saying. I enjoyed that, even if I disagreed or did not understand it completely. One or two statements would come from members opposing amendments we were bringing forward and I would at least hear one or two sentences that would tell me they are thinking about this. I enjoyed that aspect.

I thought it was a very gracious debate considering how much it means to us. This is a very important and personal issue for all of us; one that is very tender to us. Yet my comments in beginning to close—to give you some hope—relate to the abrupt confrontation involving the political process. That is what has disappointed me the most; that the proposed amendments that I felt were good amendments, not every member was in the house to hear these arguments set forth by members, yet it quickly appeared that mindsets were already decided before arguments were even heard.

I have to say I was moved. I even changed my thinking when I heard members with an opposite view share things that made me think, “Heck, I had not thought about that.” It softened my attitude to the opposing view that I was having, yet when a division was called and members came in, they would check to see who was on the other side of the house and walk over there without even really knowing what had gone on here with a lot of care and a lot of passion. I thought to myself, “So is this how we do debates here? Is this what happens?”

I can understand voting on party lines; I have no problem with that because that is the deal. Party lines go right across the board, but on a conscience vote it took me by surprise. I was disappointed and I took note in my heart. It is not really a conscience vote for those people. They already had their minds made up. They were not thinking that they may hear something different than what I heard. They thought, “I do not care if it was two weeks ago, three months ago or six months ago, this was a party line and I am going to push it through.” On a conscience vote, on something as important as this, that was disappointing to me. I thought to myself, “What are you going to do when we have the next conscience vote that you want to ram through?” What is going to happen? Am I going to sit back too and do what I have seen on both sides of the house? Am I not going to listen, especially to a conscience vote? That is what I am talking about here, not party line stuff. Am I already going to have my mind made up and not listen to the other side properly?

I heard opposing views earlier today relating to another issue altogether. I understood the opposing view, but I voted the party line. I thought to myself, “What is my place here and what am I representing?” Even when the member for Cannington moved his amendments, I thought, “He has done it better. He has presented it better than what we were trying to do.” Every time I saw and heard another member say, “I know what you are saying over there, but this is really a better way to do it,” they would in fact say it better. I would think, “Yes, that is right. That is good,” and then, “No, we are not going to have that. We are just going to run it through.” The division will be called, all those who have not even heard the argument will come in, pop over to their side and here we go again.

My opposition to this bill has already been stated in *Hansard*, but for me it was only disappointing because I felt that the political process was rammed through. I trust I do not do that. I trust that in my term of office in this house that if we have another conscience vote before us, whether I agree or disagree with it, I hope that some members, if I am not listening to them and just come in with my mind already made up, will grab me by the neck and say, “Member for Morley, have you done exactly what you accused us of doing when we debated the Surrogacy Bill?” I hope not.

I want to declare that I appreciated the opposite point of view; I really did. It changed my heart towards some of the things that were being said. Nonetheless, I believe that this bill could have been amended and it could have been better presented, except for the time. I appreciate the opportunity to speak to it and I, of course, will oppose the bill.

**DR G.G. JACOBS (Eyre — Minister for Water)** [10.06 pm]: I thank the house for the opportunity to speak to the third reading. As I said during my second reading debate, I am in no way opposed to the concept of surrogacy. I have seen enough pain, suffering and anguish in couples in my practice, in my previous life as a GP, to know that infertility and childlessness for these couples is a great anxiety to them.

As I also said during my second reading debate, I regret a lost opportunity; a lost opportunity not only for the house, but also for me personally. This house had the potential to vote in a very uniform way, on an unencumbered Surrogacy Bill, without the complexities that have made it a very complex bill. I believe that we did not need those complexities to fulfil the needs of the six to 10 couples in Western Australia that truly are deserving of a child, and are childless.

There was a sign right from the start when I moved an amendment to clause 3 of the Surrogacy Bill, which challenged the concept of a person versus persons; the concept of a parent versus parents; and the concept of

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz;  
Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill  
Johnston; Mr Ian Britza; Mrs Liza Harvey

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arranged parent versus arranged parents. That spelt out the difficulties and the complexities that this bill was going to show over consideration in detail that we have been through in this house over the last two days.

Throughout that debate I was very concerned about the proposition that put adults' rights before responsibilities to children. I had some difficulty with that. If this house had been able to consider the issue of the arranging parent or parents in a way that would have reduced the complexities, there would have been a great opportunity for this house to present a bill, in a very uniform way, to fulfil a need for those people in Western Australia. I believe that this was a lost opportunity, because if the bill had been without those complexities, I could have supported it. As I said at the outset, I am not opposed to the concept of surrogacy. I believe that this was a lost opportunity for me because there was the potential for me to vote for a bill that was useful, wholesome and fulfilling and that promoted the interests of deserving childless couples in Western Australia.

**MRS L.M. HARVEY (Scarborough)** [10.10 pm]: I understand that time is of the essence, especially when the house is trying to expeditiously deal with the Surrogacy Bill. I, too, feel that there has been a lost opportunity, especially speaking as a new member of this house. Although I understand that many members of the house have had a lot of time in which to digest and dissect this bill, I am also mindful of the fact that this bill was presented to a government that was towards the end of its term. The opportunity for a fresh set of eyes to look over contentious legislation such as this has perhaps been missed. I dispute the assertion of the member for Cannington that this bill was dealt with expeditiously because of an election promise made by the government. I understood that election promise to be that the government would bring the legislation back to the house for debate as quickly as possible, rather than to pass it through the house as quickly as possible. I note that members from both sides of politics were very keen for the Surrogacy Bill to pass through this house as quickly as possible; it was not a one-sided attempt to deal quickly with the bill.

I wanted to move some amendments to the bill but, over time, I saw that the amendments that were being presented, mostly by new members, were serving more as an irritation to members who had been involved in this debate for a long time rather than necessarily progressing the interests or opinions of the members who were putting forward their arguments for the amendments.

This is imperfect legislation. The fact that members had a free or conscience vote on this bill is indicative of the ethical conundrum that surrogacy presents to many members. I will be voting against the bill. I suppose I will satisfy myself on the outcome of this legislation when, in 12 to 15 months, we are perhaps visited in this place by couples who availed themselves of the opportunity that this legislation presents and who will perhaps be holding babies born as a result of this legislation. I can only hope that, with the passage of time, the fears that have been expressed by some members about the potential adverse outcomes of this legislation within the community will be seen to be unfounded. I will be opposing the bill.

**MR J.A. MCGINTY (Fremantle)** [10.14 pm]: My contribution will be very brief. I thank members from both sides of the house for their contributions. I particularly thank the Premier and the Minister for Health for giving priority to this very important and very, very good piece of legislation, which will ensure that those couples who want to take advantage of surrogacy are able to do so. Those people have had to wait a long time while the bill has made its way through the previous Parliament and now this Parliament in its various manifestations. The fact that the bill was dealt with so expeditiously is a tribute to all members. The way in which the debate was conducted is also a tribute to them. In my mind, we have done something very wholesome and good by enabling the creation of human life for those people to whom life has dealt an unkind hand; in other words, for those people who are medically infertile or incapable of realising what might well be the most important thing in their lives. The children born as a result of this legislation will be brought into loving family arrangements. All members are probably familiar with people who have, to one degree or another, utilised surrogacy arrangements even though such arrangements were not permitted by the law in Western Australia. That is about to radically change. I compliment this Parliament on the passage of this very important legislation.

**DR K.D. HAMES (Dawesville — Minister for Health)** [10.15 pm] — in reply: I thank all members of this house who have made a contribution to this debate. It is always difficult to deal with legislation on which members are given a free vote and on which there are opposing views on particular clauses. All members have conducted themselves well over the course of the debate on this legislation. There has been very little, if any, acrimony in discussing those different positions. On the whole, members have put their heart and soul into the consideration of the legislation.

I also thank my advisers, who are sitting at the back of the chamber, for the assistance and support they gave me in presenting this legislation to the house. It was quite difficult to be the one who had to answer questions on detailed aspects of the clauses when I was not the author of the bill. I congratulate the former Minister for

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Health, who created this legislation with my strong support right from the very start. I believed that this legislation was needed in Western Australia and should be passed.

I feel sorry for those new members who believe that they have not had an adequate opportunity to debate this bill, but this has been one of the most debated pieces of legislation in this house over the past four years. The previous bill was debated at length both in this house and the other house. It was then referred to a committee before being returned to the other place. The bill was again introduced following the commencement of the new Parliament and has again been debated at length both in this and the other house. Unfortunately for new members, they have come in at the tail end of this process. Having said that, they have had the opportunity to put forward their points of view and their alternatives to this legislation.

I do not accept the view of some members that this is not good legislation or that it is flawed. I believe that this is good legislation, especially given the difficulties we have had in getting such a disparate group of people to agree to move in the same direction. Sometimes one has to compromise to achieve that, but I do not believe that the compromises I have made on this bill have been major; they have been minor. While I made the point that I wanted this legislation to be passed quickly and I outlined the reasons for that, I did not support the amendments that some members brought forward. Although those members would like to think that the legislation would be better if those amendments had been agreed to, I do not agree with them. I do not agree that the things they wanted to include in the bill would have made it better legislation. In my view, their amendments would have made it worse legislation. The amendments, which were unnecessary and did not need to be included, would have placed restrictions and difficulties on the process for people to have children through surrogacy arrangements.

We have achieved a great thing for Western Australia. It will no longer just be the rich of this state who will be able to have a baby by way of a surrogacy agreement by going to another state or overseas if they are in the awful position of not being able to have a child. We have now created a wonderful opportunity for five to 10 families in Western Australia every year to have what the majority of Western Australians dream of—not a home, but a child whom they can rear, love, nurture and hopefully bring up to be a wonderful person and contributor to Western Australia, Australia and, indeed, the world. We have created, through this legislation, that opportunity. All the parents who have been desperately waiting for this legislation will be extremely happy with what this Parliament has done. Those members who were unhappy that people would come in here and choose a side on which to vote need to understand that some members have been through this process before and have made up their mind about the direction they will take. They have probably done it by looking through the notice paper and reading the proposed amendments. They have made up their minds about whether they want to support them. Sometimes, it comes down to a matter of trust. Members who are not in this chamber know and trust me or the former Minister for Health to support views that are the same as their own; to support a concept or a direction or a view that they want to have expressed in their Parliament. Even when those members are not here to hear the debate, they will come into the chamber and look to see where I might be sitting or where the former Minister for Health might be sitting and feel comfortable knowing that they can sit down and vote with us and be comfortable that they are making the right choice and decision.

We now go forward with that opportunity. The children may have some of the difficulties members are concerned about because the arranging parents are not the genetic parents, or perhaps because the birth mother is not genetically related or maybe because the egg and sperm have been donated from another source. Maybe those children will have some difficulties dealing with a different name, with their orientation or with the family groups in their life—but they will be here on this earth. They will be in Australia. One day they might be in this chamber, voting and debating the very things that gave them the opportunity for their creation in the future. We have supported that opportunity. I think we have done the right thing and I am passionate and proud not only of the opportunity that has been created, but also that we created it.

Question put and a division taken with the following result —

**Extract from *Hansard***  
[ASSEMBLY - Wednesday, 3 December 2008]  
p905b-925a

Mr Tony Krsticevic; Speaker; Ms Alannah MacTiernan; Dr Kim Hames; Mr Martin Whitely; Mr Peter Abetz;  
Mr Tom Stephens; Deputy Speaker; Dr Graham Jacobs; Mr Andrew Waddell; Mr Jim McGinty; Mr Bill  
Johnston; Mr Ian Britza; Mrs Liza Harvey

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Ayes (36)

Ms L.L. Baker	Mr R.F. Johnson	Mrs C.A. Martin	Mr M.W. Sutherland
Mr C.J. Barnett	Mr W.J. Johnston	Mr P.T. Miles	Mr C.J. Tallentire
Mr A.J. Carpenter	Mr J.C. Kobelke	Ms A.R. Mitchell	Mr A.J. Waddell
Dr E. Constable	Mr F.M. Logan	Mr M.P. Murray	Mr T.K. Waldron
Mr R.H. Cook	Ms A.J.G. MacTiernan	Mr P. Papalia	Mr P.B. Watson
Mr J.H.D. Day	Mr J.A. McGinty	Mr C.C. Porter	Mr M.P. Whitely
Ms J.M. Freeman	Mr M. McGowan	Mr D.T. Redman	Dr J.M. Woollard
Mr B.J. Grylls	Mr J.E. McGrath	Mr E.S. Ripper	Mr B.S. Wyatt
Dr K.D. Hames	Mr W.R. Marmion	Mr A.J. Simpson	Ms R. Saffioti ( <i>Teller</i> )

Noes (16)

Mr P. Abetz	Mr G.M. Castrilli	Mrs L.M. Harvey	Dr M.D. Nahan
Mr F.A. Alban	Mr V.A. Catania	Mr A.P. Jacob	Ms M.M. Quirk
Mr I.C. Blayney	Mr M.J. Cowper	Dr G.G. Jacobs	Mr T.G. Stephens
Mr T.R. Buswell	Mr J.M. Francis	Mr A. Krsticevic	Mr I.M. Britza ( <i>Teller</i> )

Question thus passed.

Bill read a third time and passed.