

Tabled by
Hon. P. Pawlby MLC

13/3/12.
[Signature]

**Government Response to
Legislative Council Government Administration Committee 'A'
Inquiry in Surrogacy Bill 2011 and Surrogacy (Consequential
Amendments Bill) 2011**



Recommendation A: *Clause 20 be removed and the Bill redrafted to instead include guiding principles in relation to the paramount interests of the child at the front of the Bill. The guiding principles should prescribe the requirement for all parties with responsibility under the Bill to act at all times in the best interests of the child. The Committee recommends that Section 6 of the Queensland Surrogacy Act 2010 be used as the model legislation for the purpose of the drafting of the guidelines*

The Government agrees in principle with this Recommendation.

Recommendation B: *Clause 39(2)(c) be reviewed and amended as appropriate to ensure that there be no risk of unintended breaches occurring. The Committee recommends that specific consideration be given to the evidence of Mr Stephen Page in relation to this Clause.*

The Government agrees in principle with this Recommendation.

Recommendation C: *Clause 46 of the Bill be amended to prescribe responsibility for the administration of the Act to reside with the Minister for Human Services and the responsible Department being the Department of Health and Human Services.*

The Government does not support this Recommendation.

Recommendation D: *Additional Clause/s be added to prescribe a supporting role for Adoption and Permanency Services under the Department of Health and Human Services, whilst maintaining the existing role of the Magistrates Court in the determination of parentage orders. The Committee recommends that similar provisions to those found under Part II of the Adoption Act 1988 may be appropriate in the circumstances.*

The Government does not support this Recommendation.

Recommendation E: *Adoption and Permanency Services be provided with appropriate resources to undertake this additional role.*

The Government does not support the use of Adoption and Permanency Services.

Recommendation F: *Clause 44 of the Bill be amended to prescribe the minimum standards of accreditation required of a counsellor in order to undertake their functions and that section 10H(4) of the South Australian Statutes Amendment (Surrogacy) Act 2009 be used as the model legislation for the purpose of the drafting of the Clause.*

The Government agrees in principle with this Recommendation.

Recommendation G: *A Clause be added to prescribe minimum standards for legal practitioners who may provide legal advice in relation to surrogacy. It is recommended that the same minimum standards as an independent children's lawyer be required of the legal practitioner, including minimum standards for practice experience in family law and the legal practitioner having appropriate advocacy and mediation experience.*

The Government does not support this Recommendation.

Recommendation H: *An additional Clause be added to provide eligibility (suitability) criteria for intended parents. It is recommended that section 15(1)(b) to (f) of the Adoption Regulations 2006 be used for the purpose of drafting the Clause*

The Government is willing to strengthen the residency requirement for intended parents that are already present in the Bill, but does not support the other components of this Recommendation.

Recommendation I: *Part 6 of the Bill be amended to replace the role of the Registrar of Births, Deaths and Marriages with a prescribed role for Adoption and Permanency Services in relation to the management, of and access to, surrogacy records, whilst maintaining Clause 29, which acknowledges the existing role of the Registrar in relation to birth registration*

The Government does not support this Recommendation.

Recommendation J: *The Bill be amended to provide similar principles in relation to the accessing of birth or genetic information by defined parties as provided for under Part VI, Division 2 of the Adoption Act 1988*

The Government does not support this Recommendation. Access to both these pieces of information is already available and the Government views these provisions as adequate.

Recommendation K: *A child born to a surrogacy arrangement should have the right to access information in relation to gamete donors under the Bill and this information should be managed by Adoption and Permanency Services*

The Government does not support this Recommendation.

Recommendation L: *Clause 4(6) of the Bill be amended to require mandatory written arrangements and that the arrangement must include the birth mother, birth mother's spouse (if any) and the intended parent/s. In certain circumstances, such as in cases where separation or divorce proceedings are afoot at the time of the arrangement, it may not be appropriate for the birth mother's spouse to be a party to the arrangement and to accommodate this, exceptional circumstance provisions should be included in the Bill*

The Government agrees in principle to the recommendation that arrangements are to be made in writing.

Recommendation M: *A Clause is added to prescribe a role for a child advocate to be appointed at the discretion of the Court. It is recommended that Division 10 of the Family Law Act 1975 be used as the model legislation for the purpose of the drafting of this additional Clause*

The Government agrees in principle with this Recommendation.

Recommendation N: *Clause 14(2)(c) of the Bill be amended to include the requirement for the birth mother to have previously given birth to a live child with exceptional circumstance provisions to be available to the Court*

The Government agrees in principle with this Recommendation.

Recommendation O: *Clause 7 of the Bill be amended to provide further criteria in relation to the costs that can be claimed by the birth mother as part of a surrogacy arrangement. It is recommended that section 11 of the Queensland Surrogacy Act 2010 be used as the model legislation for the purpose of the drafting of the Clause*

The Government agrees in principle with this Recommendation.

Recommendation P: *Clause 8(2)(b) of the Bill be amended to enable the costs of the pregnancy to be claimed by the birth mother, when the pregnancy is terminated on a medical indication*

Clause 8(2)(b) as it stands already allows for this.

Recommendation Q: *Clauses 14 and 19(5)(c) and (d) be deleted from the Bill in order to reflect the importance of the biological as well as the genetic linkages to the child as being relevant and important considerations for the court*

The Government is willing to accept the deletion of Clauses 14(5)(c) and (d) and 19(5)(c) and (d).

Recommendation R: *A Clause be added to provide discretion to the Court to request an independent court report*

The Government agrees in principle with this Recommendation.

Recommendation S: *A Clause is added to limit surrogacy arrangements to medical or social need in the determination of parentage orders by the Court. It is recommended that section 30 of the New South Wales Surrogacy Act 2010 be used as the model legislation for the purpose of the drafting of the Clause*

The Government agrees in principle with this Recommendation.

Recommendation T: *That further consideration be given to the definition of "relevant party" (b) and (c) under Clause 3 of the Bill*

The Government does not support this Recommendation.

Recommendation U: *A review of the Surrogacy (Consequential Amendments) Bill 2011 be undertaken in light of these recommendations*

This Government notes that this will occur naturally as appropriate.