SECOND READING SPEECH

SURROGACY BILL 2011

Mr Speaker, I move that the Bill be now read a second time.

The *Surrogacy Bill* will assist people to realise their dreams of a family. Even with recent medical advances in the use of assisted reproductive treatment for infertility, there are people in Tasmania who are unable to start a family. The current law in Tasmania prevents these people from using surrogacy as a last resort option to create a family.

The *Surrogacy Bill 2011* heralds a new approach to the regulation of surrogacy in Tasmania. The Bill decriminalises altruistic surrogacy in Tasmania and provides a legal mechanism for the parentage of a child born as a result of a surrogacy arrangement to be transferred from the birth parent or parents to the intended parent or parents. This approach to surrogacy is guided by and implements much of the report of the Legislative Council Select Committee on Surrogacy established in 2008 to investigate certain matters relating to surrogacy in Tasmania.

The Bill is also consistent with model law developed by the Standing Committee of Attorneys-General as a guide for jurisdictions. The Australian Capital Territory, Victoria, South Australia, Queensland, New South Wales and Western Australia have all passed legislation in recent years which allows altruistic surrogacy and regulates surrogacy related matters including providing a legal mechanism for the transfer of the parentage of the child from the birth parents to the intended parents.

Consistent with the Parliamentary Committee's report, the Bill includes principles that will govern the legislation's application. The Bill is underpinned by the main principle that the wellbeing

and best interests of a child born as a result of a surrogacy arrangement, both through childhood and the rest of his or her life, are paramount.

Under the Bill, a surrogacy arrangement is where a woman—the birth mother—agrees to become pregnant and, if necessary jointly with her husband or partner, agrees to relinquish the child to another person or persons—the intended parents—who will be the child's parent or parents. Same-sex couples and single persons are not excluded from entering into a surrogacy arrangement and becoming intended parents.

This government believes that legislation of this type should not discriminate in relation to the nature of the couple who may become the intended parents of the child so there are no restrictions in the Bill based on marital status, gender or sexual orientation.

Consistent with the Parliamentary Committee's report, parties will be able to utilise any of the various methods for conception, including assisted reproduction technology through fertility clinics, self-insemination or natural conception. There are no restrictions upon the use of genetic material used in conception of the child – eggs or sperm could be from the birth mother and her partner; the birth mother and a donor; the intended mother and her partner or the intended mother and a donor or the intended father.

In this context it should be noted that under existing *Status of Children* legislation here and in other Australian jurisdictions a child conceived using donated egg or sperm is by law the child of the birth mother (and in most cases is also deemed by law to be the child of the mother's partner at the time of conception). Under the Act the donors of the egg and sperm have no parental or other rights in relation to the child.

A parentage order as proposed by this Act is necessary to transfer the parentage and rights in relation to the child to the intended parents and to extinguish any rights (as a parent) the birth mother and her partner may have. A parenting order under the Family Law Act has been suggested as a means of addressing this issue but it would not have the same effect – it might determine who should undertake a parenting role but not who was the lawful parent of the child.

To ensure that the wellbeing and best interests of the child are protected and that parties to a surrogacy arrangement understand all the implications of the arrangement, various safeguards are included.

These safeguards are built into the requirements to be met before the pregnancy occurs, after the birth and in the court processes when it is dealing with an application to transfer the parentage of the child to the intended parents.

Before a parentage order transferring the parentage of a child from the birth mother to the intended parents can be made, the Children's Court must be satisfied of certain requirements.

These safeguards include

a) the court having to be satisfied that the parties to the surrogacy arrangement obtained independent legal advice before entering into the original arrangement:
b) the court will also having to be satisfied that the parties to the surrogacy arrangement obtained counselling from an approved counsellor about the social and psychological implications of the surrogacy arrangement prior to entering into the original arrangement.
c) the court being satisfied that the parties have obtained counselling by an approved counsellor after the birth and prior to the application for a parentage order being made to the court;

d) the court being satisfied except in certain limited circumstances that the birth mother and, if appropriate, her partner have consented to the making of the parentage order in favour of the applicants.
e) the Court treating the child's best interests as paramount.

If it is in the best interests of the child to do so the court is given a discretion which will enable it to waive some pre-conditions when making a parentage order. I reiterate that all orders made are to be in the best interests of the child, which is why the court is given the discretion to waive certain pre-conditions.

Consistent with the position taken in the Western Australia Act, the Tasmanian Bill contains a provision (clause 14(5)) that provides where the neither of the birth parents have a genetic relationship to the child, and at least one of the intended parents does have a genetic relationship to the child by donating the egg or sperm, the court is able to transfer the child to the intended parents without the consent of the birth parents.

This provision was added to the Western Australian legislation after lengthy debate in Parliament on the matter. It was introduced where children had a genetic link to the intended parents to address concerns that the intended parents could ultimately be denied the child conceived with the genetic material provided by one or both of the intended parents.

It is anticipated that a birth mother would only refuse her consent in very exceptional cases as the requirements for pre-agreement counselling and legal advice are intended to avoid these situations. It would be even less likely where the intended parents are the donors of the egg or sperm or both.

But the possibility exists and the Bill allows the Court to make a parentage order in those circumstances if it is deemed to be

in the best interests of the child. The court will not be able to make an order against the wishes of the birth parents if the intended parents do not have a genetic link to the child.

I will quote from some figures that were used in the Western Australian debate. In the United States, where surrogacy has been legal for some twenty years, of the 20,000 to 24,000 surrogacy arrangements entered into, only 20 birth mothers failed to surrender the child to the intended parents. The proportion is very low and I would expect, given we are only allowing altruistic surrogacy and we have required pre- and post-birth counselling, that such events would be very rare.

Once a parentage order is made by the court, the parentage order will be lodged with the Registry of Births, Deaths and Marriages so that a new birth certificate will be created showing the intended parents as the child's parents. The original information about the birth, such as the birth mother's name, will be retained and accessible to certain individuals in accordance with the usual practices of the Registry of Births, Deaths and Marriages. These will be similar to the arrangements for adoption records.

The birth mother who agrees to relinquish the child can be reimbursed for and enforce payment of reasonable costs she has incurred as a result of participating in a surrogacy arrangement but otherwise a surrogacy arrangement is unenforceable.

The current prohibitions against commercial surrogacy are maintained, as are prohibitions on the provision of brokerage services for commercial gain.

The Bill will also enable the making of retrospective parentage orders in limited circumstances. This recognises the fact that, although surrogacy has been illegal in Tasmania, there will have been surrogacy arrangements entered into in the past.

Where it is in the best interests of children born as a result of those arrangements to be able to be legally recognised as the child of the intended parents, then a parentage order will be able to be made and the status of the child can be made clearer. Once the intended parents gain legal recognition, they will be able to more easily make decisions in relation to the child, for example medical treatment and schooling.

The Standing Committee of Attorney's General and the Tasmanian Legislative Council Select Committee on Surrogacy both provided extensive opportunities for community comment in relation to surrogacy. The result of both these consultations was that surrogacy was supported. The Bill is based on the reports of both these committees. The draft Bill was also released for community consultation in late 2010.

One aim of this last round consultation was to gauge opinions in relation to the introduction in Tasmania of a provision similar to that in use in Western Australia, as I have outlined earlier. None of the submissions received addressed this issue. Only a dozen or so submissions were received to this consultation, the majority of these opposed surrogacy on moral or religious grounds.

I commend the Bill to the House.