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Queensland's proposed surrogacy legislation: An opportunity for national reform

Tammy Johnson*

Surrogacy has existed since Biblical times when Hagar, the maidservant of the infertile Sarah, acted as a surrogate to bear Sarah and her husband, Abraham, a son. Despite the longevity of the practice of surrogacy, modern society has been reluctant to embrace surrogacy arrangements due to the ethical and sometimes practical debates they spark. This reluctance is evidenced by the general lack of legislative support for surrogacy arrangements in Australia and worldwide. In 2009 it was announced that Queensland will decriminalise altruistic surrogacy. While this decision is a step towards bringing Queensland in line with other Australian jurisdictions, it also has the potential to open up a Pandora's Box of legal and ethical issues. This article provides a snapshot of the anticipated new Queensland surrogacy legislation together with a brief overview of the regulation of surrogacy in all Australian jurisdictions. Recommendations are made as to whether there is a need for further reform of surrogacy regulation in certain Australian jurisdictions and if so, whether the proposed Queensland legislation constitutes an appropriate model on which to base such reform.

<DIV>INTRODUCTION

The word "surrogate" comes from the Latin term "surrogatus", meaning "a substitute". Surrogacy has been defined as "the practice whereby one woman carries a child for another with the intention that the child should be handed over after birth".[1] The first known surrogate pregnancy occurred in Biblical times when Hagar, the maidservant of the infertile Sarah, acted as a surrogate to bear Sarah and her husband, Abraham, a son.[2]

Despite the longevity of the practice of surrogacy, modern society has been reluctant to embrace surrogacy arrangements due to the ethical and sometimes practical debates they spark. This reluctance is evidenced by the general lack of legislative support in recognising the parental rights arising from surrogacy arrangements.

There are two types of surrogacy arrangements:

- altruistic: the surrogate is not entitled to payment for the pregnancy, other than reimbursement of reasonable expenses; and
- commercial: the surrogate is entitled to payment for the pregnancy in addition to reimbursement of reasonable expenses.

In April 2009 it was announced that Queensland will decriminalise altruistic surrogacy.[3] While this move can be seen as a positive attempt to revisit the issue of surrogacy, it also has the potential to

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[1] United Kingdom Department of Health and Social Security, *Report of the Committee of Inquiry into Human Fertilisation and Embryology* (July 1984) at [8.1].

[2] Scripture Studies, *Old Testament Study – Genesis 16*, http://www.scripturestudies.com/Vol3/C1/c1_ot.html viewed 13 January 2009.

[3] Hon Anna Bligh and Hon Cameron Dick, "Altruistic Surrogacy to be Decriminalised in Queensland", *Queensland Government Ministerial Media Statements* (23 April 2009).

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open up a Pandora's Box of legal and ethical issues.[4] It will be shown in this article that Queensland's legislators have taken care when drafting the proposed legislation to avoid the shortcomings of the other Australian regimes.

This article is both comparative and descriptive in nature. It provides a brief overview and comparison of existing surrogacy regulation in Australia and then a description of the provisions of the *Surrogacy Bill 2009* (Qld) (the Bill). By comparing the Bill with the regulation of surrogacy in the other Australian jurisdictions it will become clear that further surrogacy reform is required in a number of these jurisdictions. Further, it will be apparent that, due to its comprehensive nature, the proposed Bill makes an appropriate model on which surrogacy reform in other jurisdictions could be based.

<DIV>CURRENT AUSTRALIAN POSITION

The Australian legislative regime is fragmented. Despite a recent recommendation by the Standing Committee of Attorneys-General[5] that Australia adopt national surrogacy legislation, Australia has not yet reached a consensus on the issue of surrogacy. The legal debate in Australia regarding surrogacy continues, with a significant number of legislative reviews being conducted at both State and federal levels since the issue was first considered in the early 1980s.[6]

A comparison of the current Australian position on surrogacy follows. The purpose of this comparison is to demonstrate the depth of fragmentation of the Australian law, in particular highlighting the conflicting approaches of the States and Territories.

<subdiv>New South Wales

At the time of writing this article (in November 2009), New South Wales had no active statutory regulation of surrogacy, despite early recommendations by the New South Wales Law Reform Commission[7] that all forms of surrogacy be prohibited. The lack of surrogacy regulation and easy access to fertility clinics has in the past made New South Wales a popular jurisdiction for many parties to undertake a surrogacy arrangement. One well-publicised case of surrogacy which occurred in New South Wales was that of Victorian Senator Stephen Conroy and his wife Paula Benson. Senator Conroy and Ms Benson travelled from Victoria to Sydney to facilitate a surrogacy arrangement because at that time, the *Infertility Treatment Act 1995* (Vic) precluded surrogates from accessing Assisted Reproductive Technology (ART) services in Victoria.[8]

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[4] Some examples of these potential issues include the enforceability of agreements; the court's ability to resolve disputes between the parties in the best interests of the child; identifying who the relevant stakeholders are in a surrogacy arrangement; and properly regulating surrogacy arrangements to prevent parties engaging in unregulated commercial surrogacy.

[5] Attorney-General for Australia, Standing Committee of Attorneys-General, Australian Health Ministers' Conference, Community and Disability Services Ministers' Conference, Joint Working Group, *A Proposal for a National Model to Harmonise Regulation of Surrogacy* (January 2009).

[6] Attorney-General for Australia, Standing Committee of Attorneys-General, Australian Health Ministers' Conference, Community and Disability Services Ministers' Conference, Joint Working Group, *A Proposal for a National Model to Harmonise Regulation of Surrogacy* (January 2009); National Conference on Surrogacy, *Surrogacy – In Whose Interest?: Proceedings of National Conference on Surrogacy, Melbourne, February 1991: Ethical, Social, Legal and Policy Issues in Surrogacy* (1991); National Bioethics Consultative Committee (Australia), *Surrogacy: Report 1: The National Bioethics Consultative Committee* (1990); New South Wales Law Reform Commission, *Artificial Conception: Surrogate Motherhood: Australian Public Opinion, Research Report No 2* (1987); New South Wales Law Reform Commission, *Artificial Conception: Surrogate Motherhood, Report LRC 60* (1988); New South Wales Law Reform Commission, *Review of the Adoption of Children Act 1965 (NSW), Report No 81* (1997); Queensland Government, Special Committee, *Report of the Special Committee Appointed by the Queensland Government to Enquire into the Laws Relating to Artificial Insemination, In Vitro Fertilization and Other Related Matters* (March 1984) Vols I and II; Queensland Parliament, *Report of the Taskforce on Women and the Criminal Code* (2000); Queensland Parliament, Investigation into Altruistic Surrogacy Committee, *Report* (October 2008); Parliament of Tasmania, Legislative Council Select Committee, *Report on Surrogacy* (2008); South Australia Legislative Council, Social Development Committee, *Inquiry into Gestational Surrogacy, Report 26* (November 2007); Victorian Law Reform Commission, *Assisted Reproductive Technology & Adoption: Final Report* (2007); Western Australian Legislative Council, Standing Committee on Legislation, *Report in Relation to the Surrogacy Bill 2007* (2008).

[7] New South Wales Law Reform Commission, *Artificial Conception: Surrogate Motherhood, Report LRC 60* (1988).

[8] *Infertility Treatment Act 1995* (Vic), s 8.

New South Wales has now taken steps to put in place legislation to regulate surrogacy arrangements. The *Assisted Reproductive Technology Act 2007* (NSW) (the NSW Act) largely commenced[9] on 1 January 2010. The NSW Act permits altruistic surrogacy agreements to be entered into but it makes those agreements void and legally unenforceable.[10] The effect of this provision is to remove any doubt about contractual or common law rights which may be thought to have existed in favour of the intended parents seeking to enforce the relinquishment of the child by the surrogate to them.

Unlike surrogacy legislation in some Australian jurisdictions,[11] the NSW Act does not prescribe any eligibility criteria, such as a minimum age, for parties entering into surrogacy arrangements nor does it have any specific requirements regarding the intended parents' genetic relationship (or lack thereof) to the child.

The procedure for transfer of legal parentage requires the surrogate to surrender the child for adoption by the intended parents. The adoption process is regulated by the *Adoption Act 2000* (NSW). Same-sex couples are prohibited from adopting in New South Wales; however, adoption applications can be made by a sole applicant.[12] In this regard, one party from a same-sex couple would be entitled to adopt a child born of a surrogacy arrangement. While this is not an ideal situation for same-sex couples, it provides the only available mechanism for legal parentage of the child to be transferred.

The NSW Act prohibits any person from entering into, arranging or accepting any benefit under a commercial surrogacy agreement.[13] Any commercial surrogacy agreement entered into will be void.[14] Further, it is illegal to advertise or solicit for participants in commercial surrogacy agreements.[15]

<subdiv>Australian Capital Territory

The Australian Capital Territory regulates surrogacy through the *Parentage Act 2004* (ACT) (the ACT legislation). The Explanatory Statement of the ACT legislation states that the Act was enacted to "remove discrimination relating to parentage". The ACT legislation prohibits commercial surrogacy arrangements and makes it an offence to facilitate a commercial substitute parenting agreement[16] or to enter into, procure or advertise with the intention of inducing someone to enter into a commercial substitute parenting agreement.[17]

The ACT legislation addresses altruistic surrogacy arrangements under the heading of "substitute parent agreements" which are defined as:

<blockquote>

> a contract, agreement, arrangement or understanding under which ... a woman agrees ... that the woman will become, or attempt to become, pregnant and ... that a child born as a result ... will be taken to be ... the child of someone else.[18]

</blockquote>

For those surrogacy arrangements that are recognised in the Australian Capital Territory, strict conditions are imposed requiring satisfaction of the following criteria:

- the child was conceived via a procedure performed in the Australian Capital Territory;
- neither the surrogate nor her partner is a genetic parent of the child;
- there is a substitute parent agreement (and the intended parents intend to apply for a parentage order);

[9] Other than s 6(1) which will commence on 1 March 2010.

[10] *Assisted Reproductive Technology Act 2007* (NSW), s 45.

[11] Australian Capital Territory, Western Australia and, from 1 January 2010, Victoria.

[12] *Adoption Act 2000* (NSW), s 26.

[13] *Assisted Reproductive Technology Act 2007* (NSW), s 43.

[14] *Assisted Reproductive Technology Act 2007* (NSW), s 45.

[15] *Assisted Reproductive Technology Act 2007* (NSW), s 44.

[16] *Parentage Act 2004* (ACT), s 44.

[17] *Parentage Act 2004* (ACT), ss 40-43

[18] *Parentage Act 2004* (ACT), s 23.

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- at least one of the intended parents is a genetic parent of the child; and
- the intended parents are resident in the Australian Capital Territory.[19]

The conditions imposed by the ACT legislation reveal two distinct difficulties:

- the requirement that neither the surrogate nor her partner is a genetic parent of the child has the effect of preventing traditional surrogacy arrangements; and
- the requirement that at least one of the intended parents is a genetic parent of the child precludes circumstances where both donor sperm and ova are required to achieve conception.

The ACT legislation provides a mechanism for registration of legal parentage by the intended parents.[20] Parentage orders are made by the Supreme Court, the application for which must be made when the child is between six weeks and six months of age.[21] The ACT legislation has a minimum age requirement of 18 years for intended parents[22] and permits same-sex couples[23] to be recognised as the parents of a child born of a "substitute parent agreement".[24]

<subdiv>Victoria

Victoria has recently introduced surrogacy legislation. The *Assisted Reproductive Treatment Act 2008* (Vic) (the Victorian Act) was assented to on 11 December 2008. Aside from a few administrative provisions which commenced on 12 December 2008, the operative provisions of the Victorian Act commenced on 1 January 2010.

One aspect of the Victorian Act which is particularly significant is the removal of the previously essential condition contained in Victoria's ART legislation that a woman seeking to access ART must be infertile.[25] The elimination of the infertility requirement will now allow women to access ART for the purpose of becoming pregnant pursuant to a surrogacy arrangement. While the Victorian Act demonstrates a willingness to recognise surrogacy arrangements, those arrangements involving ART will still be closely monitored and will require approval by a Patient Review Panel before any ART procedure is carried out on the surrogate.[26]

Before a surrogacy arrangement can be approved by the Patient Review Panel, all parties to a surrogacy arrangement will be required to submit to criminal history and child protection order checks.[27] Further, before approving a surrogacy arrangement, the Patient Review Panel must be satisfied that:[28]

- the commissioning mother must be unlikely to become pregnant, carry a pregnancy or give birth or there is a likelihood of placing herself or the baby at risk if she becomes pregnant, carries a pregnancy or gives birth;
- the surrogate will not use her egg;
- the surrogate must have previously given birth to a live child;
- the surrogate must be at least 25 years old;
- counselling and legal advice is received by all the parties, including the surrogate's partner (where applicable); and
- the parties are aware of the consequences if the arrangement does not proceed as planned.

Amendments to the *Status of Children Act 1974* (Vic) took effect with commencement of the Victorian Act to provide a mechanism for intended parents to transfer legal parentage of a child born

[19] *Parentage Act 2004* (ACT), s 24.

[20] *Parentage Act 2004* (ACT), ss 23-26.

[21] *Parentage Act 2004* (ACT), s 25.

[22] *Parentage Act 2004* (ACT), s 26(3)(b).

[23] Whether or not their relationship is registered under the *Civil Partnerships Act 2008* (ACT), s 7.

[24] *Parentage Act 2004* (ACT), s 24; *Legislation Act 2001* (ACT), Dictionary, Pt 1; *Civil Partnerships Act 2008* (ACT), s 5.

[25] *Infertility Treatment Act 1995* (Vic), s 8.

[26] *Assisted Reproductive Treatment Act 2008* (Vic), s 39.

[27] *Assisted Reproductive Treatment Act 2008* (Vic), s 42.

[28] *Assisted Reproductive Treatment Act 2008* (Vic), s 40.

as the result of a surrogacy arrangement.[29] Same-sex couples will be permitted to enter into a surrogacy arrangement and apply for parentage orders.[30]

The Victorian Act will prohibit a surrogate from receiving any "material benefit or advantage as a result of the surrogacy arrangement".[31] The surrogate may, however, receive reimbursement for actual expenses incurred as a "direct consequence of entering into the surrogacy arrangement".[32] It is an offence under the Victorian Act for a person to advertise that they are offering brokerage services or a willingness to enter into a surrogacy arrangement.[33]

<subdiv>Tasmania

Tasmania's *Surrogacy Contracts Act 1993* (Tas) (the Tasmanian Act) is concise, containing only nine sections. While the Tasmanian Act does not expressly prohibit altruistic surrogacy, it does prohibit the provision of technical or professional services to achieve a pregnancy which is the subject of a surrogacy contract.[34] Advertising in respect of surrogacy contracts is also prohibited under the Tasmanian Act.[35] For those surrogacy arrangements that do take place in Tasmania, the only recognised method for intended parents to become the legal parents of the child born is through the adoption process.[36] Same-sex couples in Tasmania are permitted to adopt a child born through a surrogacy arrangement but only if one partner is a biological parent of the child.[37]

Recent law reform initiatives in Tasmania have seen the appointment of the Tasmanian Legislative Council Select Committee on Surrogacy in April 2008. The committee was appointed to investigate "how Tasmanian law currently deals with the issue of surrogacy" and "whether Tasmanian statutes require amendment to better deal with surrogacy and related matters".[38]

The committee reported on its investigation in July 2008 (the Thorp Report) recommending that an exemption be made to the existing prohibition on accessing legal, psychiatric and psychological services in Tasmania. This would have the effect of allowing parties to a surrogacy arrangement to access those services.[39] The Thorp Report refrained from recommending the removal of the prohibition for the provision of technical services to achieve a surrogate pregnancy.[40] While the legislation is somewhat unclear as to what it means by "technical or professional services", it is submitted that those terms include the provision of ART to create a surrogate pregnancy.

The Thorp Report relied heavily on the findings of the Standing Committee of Attorneys-General[41] (SCAG) in recommending that the Tasmanian Parliament wholly adopt the SCAG recommendations in relation to "legal recognition of parentage achieved by surrogacy".

The Thorp Report also included the following recommendations for the eligibility to enter into, and regulation of, surrogacy agreements:

- the Family Court should have authority to deal with "pre-conception altruistic surrogacy agreements";[42]
- all parties to a pre-conception altruistic surrogacy agreement must receive counselling and legal advice;[43]

[29] *Assisted Reproductive Treatment Act 2008* (Vic), s 147; amendments to the *Status of Children Act 1974* (Vic), ss 20-30.

[30] *Assisted Reproductive Treatment Act 2008* (Vic), ss 3, 40.

[31] *Assisted Reproductive Treatment Act 2008* (Vic), s 44(1).

[32] *Assisted Reproductive Treatment Act 2008* (Vic), s 44(2).

[33] *Assisted Reproductive Treatment Act 2008* (Vic), s 45.

[34] *Surrogacy Contracts Act 1993* (Tas), s 5.

[35] *Surrogacy Contracts Act 1993* (Tas), s 6.

[36] Tasmania, Legislative Council, Select Committee, *Report on Surrogacy* (2008) p 27.

[37] *Adoption Act 1988* (Tas), s 20.

[38] Parliament of Tasmania, *Surrogacy Select Committee: Motion to Move* (1 April 2008) p 1.

[39] Tasmania, Legislative Council, n 36, Recommendation 1.

[40] Tasmania, Legislative Council, n 36, p 22.

[41] Attorney-General for Australia, "Standing Committee of Attorneys-General", *Communiqué* (28 March 2008).

[42] Tasmania, Legislative Council, n 36, Recommendation 4.

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- all parties to a pre-conception altruistic surrogacy agreement must be over the age of 21;[44]
- the surrogate should have already successfully carried at least one child to term;[45] and
- an application for "relevant parent recognition orders" must be made by the parties to the pre-conception altruistic surrogacy agreement between six weeks and six months of the child's birth.[46]

While the Tasmanian Government has voiced its support for all of the recommendations made in the Thorp Report,[47] to date no move has been made to amend the Tasmanian Act to give effect to those recommendations.

<subdiv>Western Australia

Before the introduction of surrogacy legislation in Western Australia, surrogacy was largely unregulated. If a child was born through a surrogacy arrangement, registration of parentage was required to be effected by way of a formal adoption; however, until the amendment of the *Adoption Act 1994* (WA) in 2003,[48] same-sex couples were ineligible to adopt. Further, access to ART was prohibited for same-sex couples and those parties seeking to carry out a surrogate pregnancy.[49] It can be seen from this snapshot of legislative history that the parties wishing to enter into a surrogacy arrangement were faced with considerable legislative barriers.

It took two attempts to ultimately succeed in legislating for surrogacy in Western Australia. After a failed second reading speech in March 2007, the *Surrogacy Bill 2007* (WA) became the subject of a Western Australia Standing Committee Inquiry. The committee delivered its report (the Giffard Report) in May 2008 and consequently the *Surrogacy Act 2008* (WA) (the WA Act) was enacted. The WA Act came into force on 1 March 2009. The long title of the WA Act recognises a need for the proper regulation of surrogacy in Western Australia by describing the Act as being "an Act about arrangements for surrogate births and children born under those arrangements". In the second reading speech of the first attempt at passing the *Surrogacy Bill 2007*, the Minister for Health, Mr Jim McGinty, stated:

<blockquote>

> This Bill will give couples … the chance to be a family and to love and care for a child they so desperately want. It is an example of using technology and the law to fulfil their dream to be a family.[50]

</blockquote>

The WA Act permits pre-conception[51] surrogacy arrangements where:

- the birth mother is at least 25 years old[52] and has (except in exceptional circumstances) previously given birth to a live child;[53]
- the surrogacy agreement is documented and signed by all the parties;[54]
- all parties must, at least three months before the Reproductive Technology Council gives approval to the agreement, undertake counselling and receive psychological assessment and legal advice;[55] and

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[43] Tasmania, Legislative Council, n 36, Recommendation 5.

[44] Tasmania, Legislative Council, n 36, Recommendation 6.

[45] Tasmania, Legislative Council, n 36, Recommendation 7.

[46] Tasmania, Legislative Council, n 36, Recommendation 8.

[47] Tasmanian Parliament, *Government Response to the Tasmania Legislative Council, Select Committee, Report on Surrogacy*, tabled 28 October 2008.

[48] *Adoption Amendment Act 2003* (WA).

[49] *Human Reproductive Technology Act 1991* (WA), s 23.

[50] Western Australia, Legislative Assembly, Second Reading, *Surrogacy Bill 2007* (1 March 2007) pp 193b-194a/1 (Mr Jim McGinty).

[51] *Surrogacy Act 2008* (WA), s 17(e).

[52] *Surrogacy Act 2008* (WA), s 17(a)(i).

[53] *Surrogacy Act 2008* (WA), s 17(a)(ii).

[54] *Surrogacy Act 2008* (WA), s 17(b).

- the Reproductive Technology Council must be satisfied that (at least three months before consent is given) the parties to the agreement are "medically suitable to be involved in the surrogacy arrangement".[56]

The "arranged parents"[57] are permitted to make an application for a parentage order when the child is between 28 days and six months old.[58] There are restrictions on who is eligible to become an arranged parent. Specifically, the arranged parent(s) must reside in Western Australia and, where there is more than one, at least one of them has reached the age of 25 years.[59] Same-sex couples (particularly male same-sex couples) are excluded from applying for parentage orders as they do not satisfy the definition of an "eligible couple".[60]

Potentially, one of the partners in a female same-sex relationship may be able to satisfy the definition of an "eligible person"[61] and could thereby undertake the surrogacy arrangement as an individual. While this would not be an ideal situation because both same-sex partners would normally desire to be listed as the child's parents, this may be the only way that female same-sex couples would not fall foul of the WA Act. For male same-sex couples, unless the Act is amended, there is no avoiding the WA Act's restrictive definitions.[62]

<subdiv>South Australia

At present, the *Family Relationships Act 1975* (SA) (the SA Act) makes surrogacy contracts and procuration contracts[63] illegal and void.[64] There is some debate[65] as to whether a surrogacy agreement (also referred to as a surrogacy arrangement) is a surrogacy contract as defined by the SA Act. Indeed, it has been suggested that a surrogacy "agreement" is not a surrogacy "contract" for the purposes of the SA Act, thus making altruistic surrogacy (where no actual payment is made) permissible in South Australia.[66] It remains to be seen whether this analysis would withstand judicial scrutiny.

Further hindering the ability to undertake a surrogacy arrangement in South Australia, s 13(3)(b) of the *Reproductive Technology (Clinical Practices) Act 1988* (SA) only allows an infertile married person to access ART. These legislative requirements have the effect of excluding those parties seeking to partake in a gestational surrogacy arrangement because it means that the surrogate herself must be infertile in order to undergo the ART necessary to become pregnant. In the case of a

[55] *Surrogacy Act 2008* (WA), s 17(c).

[56] *Surrogacy Act 2008* (WA), s 17(d).

[57] *Surrogacy Act 2008* (WA), s 14.

[58] *Surrogacy Act 2008* (WA), s 20(2)-(3).

[59] *Surrogacy Act 2008* (WA), s 19(1)(a).

[60] Section 19(2) of the *Surrogacy Act 2008* (WA) defines "eligible couple" as "2 people of opposite sexes who are married to, or in a de facto relationship with, each other and who, as a couple – are unable to conceive a child due to medical reasons not excluded by subsection (3); or although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease."

[61] Section 19(2) of the *Surrogacy Act 2008* (WA) defines "eligible person" as "a woman who – is unable to conceive a child due to medical reasons not excluded by subsection (3); or although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease; or although able to conceive a child, is unable for medical reasons to give birth to a child."

[62] To date there has been no judicial challenge to the definition of "eligible couple" contained in the *Surrogacy Act 2008* (WA).

[63] *Family Relationships Act 1975* (SA), s 10F: "Procuration contract means a contract under which – a person agrees to negotiate, arrange, or obtain the benefit of, a surrogacy contract on behalf of another; or a person agrees to introduce prospective parties to a surrogacy contract."

[64] *Family Relationships Act 1975* (SA), s 10G.

[65] South Australia, Legislative Council, Social Development Committee, *Inquiry into Gestational Surrogacy, Report 26* (November 2007) p 30; Redman J, "Weaving the Legal Maze of Surrogacy in South Australia Today", paper presented at South Australian Council on Reproductive Technology Annual John Kerin Symposium, "Surrogacy – The Emerging Issues", Adelaide, 31 March 2008, p 8.

[66] South Australia, Legislative Council, n 65, p 30.

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traditional surrogacy though, these provisions[67] may have little effect because there are some circumstances where medical intervention may not be required in order to achieve a pregnancy.[68] It is apparent from the uncertain provisions contained in the current legislation that the need for reform is immediate.

The South Australian Government has recognised that there are deficiencies in the existing regulatory regime. In November 2007 the Social Development Committee, chaired by the Hon Ian Hunter, MLC, handed down its report into gestational surrogacy[69] (the Hunter Report). The Hunter Report recommended that altruistic gestational surrogacy be permitted in order to allow a gestational surrogate to access ART.[70] To give effect to this recommendation, an amended *Statutes Amendment (Surrogacy) Bill 2008* (SA) was reintroduced to the Legislative Committee in September 2008 and passed on 26 November 2009. The Bill amends the SA Act to permit "recognised surrogacy agreements"[71] where the following circumstances exist:[72]

- all parties are over the age of 18 years;
- the commissioning parents must have lived together for at least three years or be married;
- the commissioning parents must live in South Australia;
- the surrogate is assessed and approved as a surrogate by a counselling service;[73] and
- at least one of the commissioning parents must be a genetic parent of the child. An exception would be allowed if both commissioning parents could provide medical evidence of infertility or state some legitimate reason why it is reasonable not to use their own genetic material in the surrogacy.

The SA Act will prohibit same-sex couples from entering into a surrogacy arrangement.

The amended SA Act requires the surrogacy agreement to be evidenced in writing and signed by all the parties. Each party must separately obtain independent legal advice and counselling. It is proposed that a mechanism will be incorporated into the SA Act for the commissioning parents to apply for an order recognising them as the child's legal parents, such application to be made when the child is between four weeks and six months old.[74]

None of the existing penalty provisions of the SA Act have been amended. It is an offence under the SA Act:

- to advertise in relation to a surrogacy contract; or
- to pay consideration; or
- if there is an expectation of payment of consideration in relation to a procuration contract or a surrogacy contract.[75]

<subdiv>Northern Territory

Despite widespread surrogacy reform throughout Australia, the Northern Territory has remained silent on the issue of surrogacy. There is no current or proposed surrogacy legislation, nor have there been any formal inquiries into surrogacy. Services for ART are generally provided by practitioners who travel from South Australia, and the Northern Territory Department of Health requires clinics to adhere to the South Australian ART regulations.[76] It is noted from the examination of the South

[67] *Reproductive Technology (Clinical Practices) Act 1988* (SA), s 13(3)(b).

[68] For example, a surrogate may self-inseminate with the commissioning father's sperm in order to become pregnant.

[69] South Australia, Legislative Council, n 65. The Hunter Report was prepared as a result of the failed *Statutes Amendment (Surrogacy) Bill*. That Bill had been introduced to the Legislative Council in June 2006. The Bill was subsequently withdrawn and the task of investigating gestational surrogacy was referred to the Social Development Committee.

[70] South Australia, Legislative Council, n 65, Recommendations 2 and 3(a).

[71] *Statutes Amendment (Surrogacy) Act 2009* (SA), s 7.

[72] *Statutes Amendment (Surrogacy) Act 2009* (SA), s 10.

[73] *Statutes Amendment (Surrogacy) Act 2009* (SA), s 10.

[74] *Statutes Amendment (Surrogacy) Act 2009* (SA), s 10.

[75] *Family Relationships Act 1975* (SA), s 10H.

[76] Fleming S and Cooke S (eds), *Textbook of Assisted Reproduction for Scientists in Reproductive Technology* (Vivid Publishing, Australia, 2008) p 366.

Australian position above that the South Australian legislation limits the provision of ART to married couples only.[77]

Due to the lack of statutory regulation in the Northern Territory, the intended parents in a surrogacy arrangement would be required to formally adopt the child born. The Northern Territory's adoption laws prohibit adoption by same-sex couples, thus further limiting the availability of surrogacy to same-sex couples in the Northern Territory.[78]

<subdiv>Queensland

At the time of writing this article, the *Surrogate Parenthood Act 1988* (Qld) expressly prohibits all forms of surrogacy,[79] whether for payment or not.[80] All surrogacy contracts in Queensland are void[81] and any form of surrogacy advertising is prohibited.[82] The prohibition applies to surrogacy arrangements made either pre- or post-conception. A person who does any act which is prohibited by the legislation is liable to a penalty of $10,000[83] or three years imprisonment[84] and the legislation even attempts to transgress into other jurisdictions by prohibiting Queensland residents from travelling outside Queensland in order to engage in a surrogacy arrangement.[85]

Recognising the need for reform of its surrogacy laws, Queensland recently undertook an investigation into altruistic surrogacy. The committee, headed by Mrs Linda Lavarach, MP, released its report in October 2008 (the Lavarach Report). The Lavarach Report recommended that altruistic surrogacy in Queensland should be decriminalised. The issue of commercial surrogacy was excluded from the committee's terms of reference.[86]

On 18 August 2009 the Queensland Government tabled its proposed model for the Decriminalisation of Altruistic Surrogacy and the Transfer of Legal Parentage.[87] In its paper, the Queensland Government affirmed its commitment to making "altruistic surrogacy legal and developing a mechanism for the transfer of legal parentage from the birth mother to the intending parents".[88]

On 29 October 2009 the Queensland Government released a consultation draft of its proposed *Surrogacy Bill 2009* (Qld). The *Surrogacy Bill 2009* was introduced into the Legislative Assembly on 26 November 2009. While Queensland has, in principle, adopted the recommendations made in the Lavarach Report,[89] it remains to be seen whether the *Surrogacy Bill 2009* will pass through Parliament unopposed.

<DIV>EMERGING THEMES

In conducting a comparison of the legal regimes which exist throughout Australia, certain themes emerge from the legislation. The most pronounced theme which emerges from the Australian legislation is that commercial surrogacy is in all instances expressly prohibited.

The various legislative regimes unvaryingly declare that surrogacy arrangements are unenforceable, save so far as they relate to the surrogate's ability to recover her reasonable expenses.

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[77] *Reproductive Technology (Clinical Practices) Act 1988* (SA), s 13(3)(b).

[78] *Adoption of Children Act 1995* (NT), ss 13-15.

[79] In this instance reference is made to traditional and gestational surrogacy.

[80] *Surrogate Parenthood Act 1988* (Qld), s 3.

[81] *Surrogate Parenthood Act 1988* (Qld), s 4(1).

[82] *Surrogate Parenthood Act 1988* (Qld), s 3(1)(a).

[83] The maximum penalty is 100 penalty units. One penalty unit is equivalent to $100: see *Penalties and Sentences Act 1992* (Qld), s 5(1)(c).

[84] *Surrogate Parenthood Act 1988* (Qld), s 3.

[85] *Surrogate Parenthood Act 1988* (Qld), s 3(2).

[86] Queensland Government, *Investigation into Altruistic Surrogacy* (2008) p 1.

[87] Queensland Parliament, *Queensland Government Model for the Decriminalisation of Altruistic Surrogacy and the Transfer of Legal Parentage*, Parl Paper No 5309T708 (2009) p 1.

[88] Queensland Parliament, n 87, p 2.

[89] Bligh and Dick, n 3.

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This stance is designed to protect the best interests of the child and to ensure that surrogacy arrangements are not viewed as a way of commodifying children.[90] It is understood that "a court would generally not enforce such an agreement on the grounds of public policy and also in light of the irrebuttable presumption in ... the *Status of Children Act*".[91] Throughout Australia, the various pieces of legislation addressing the status of children presume that parenthood rests with the birth mother.[92]

Some jurisdictions still require intended parents to formally adopt the child born as a result of a surrogacy arrangement rather than providing an effective mechanism for the transfer of legal parentage. This requirement leaves intended parents in a potentially vulnerable position as they are then required to conform to the relevant jurisdiction's adoption legislation. Same-sex couples are often ineligible to adopt and face the additional barrier of sometimes being ineligible to access ART.

On the whole, it can be seen that there has been widespread legislative reform of surrogacy in the past few years. Queensland is in the midst of reform, South Australia recently amended its surrogacy legislation and both Victoria and New South Wales have surrogacy legislation which commences in 2010.

<DIV>PROPOSED QUEENSLAND MODEL

Queensland's surrogacy legislation will have the best interests of the child as its primary principle.[93] These interests will be protected by recognising and ensuring that children born of surrogacy arrangements have the same status and legal protection afforded to children born naturally.[94] Further, the Queensland Government has recognised the need to minimise intervention into the lives of the parties to the surrogacy arrangement while at the same time ensuring that those parties' interests are protected.[95]

The proposed legislation will address a number of critical issues, including:

- requirements for surrogacy arrangements;
- eligible parties;
- the legal effect of surrogacy arrangements;
- court procedures for transfer of parentage and the registration of such orders; and
- offences.

The relevant provisions of the Bill concerning each of these issues are discussed below. In addressing each of these issues, the positive and negative (if any) aspects of the Bill are exposed.

<subdiv>Requirements for surrogacy arrangements

It is a requirement of the Bill that all surrogacy arrangements must be entered into prior to conception of the child.[96] The effect of this provision is to positively preclude post-conception surrogacy arrangements and to preserve Queensland's prohibition on private or unauthorised adoptions.[97]

As anticipated by the Queensland Government model, the Bill requires that all surrogacy arrangements must be evidenced in writing and signed by the surrogate, the surrogate's spouse (if any) and the intended parents.[98] The Bill defines a "surrogacy arrangement" as an arrangement where the surrogate agrees to become, or try to become, pregnant with the intention that the child born of the

[90] New South Wales Parliament, Legislative Council, Standing Committee on Law and Justice, *Legislation on Altruistic Surrogacy in NSW*, Report 38 (2009) p 95.

[91] New South Wales Parliament, n 90, p 96, citing the submission of Mr Iain Martin, Manager of Legislation, NSW Department of Health.

[92] *Status of Children Act 1974* (Vic), s 10E; *Parentage Act 2004* (ACT), s 11; *Status of Children Act 1978* (Qld), s 19; *Family Relationships Act 1975* (SA), s 10C; *Status of Children Act 1996* (NSW), s 14; *Status of Children Act 1974* (Tas), s 10C; *Status of Children Act 1978* (NT), s 5E; *Artificial Conception Act 1985* (WA), s 5.

[93] *Surrogacy Bill 2009* (Qld), cll 5(b)(ii), 6(1).

[94] *Surrogacy Bill 2009* (Qld), cl 6(2)(b).

[95] Queensland Parliament, n 87, p 3.

[96] *Surrogacy Bill 2009* (Qld), cl 7(a).

[97] *Adoption of Children Act 1964* (Qld), s 46; or upon its commencement in 2010, the *Adoption Act 2009* (Qld), s 302.

[98] *Surrogacy Bill 2009* (Qld), cl 22(2)(e)(v).

surrogacy arrangement will be the child of the intended parents and will be permanently relinquished by the surrogate into the care and custody of the intended parents.[99]

The Bill does not prescribe specific matters for inclusion in a surrogacy arrangement; however, when an application for parentage orders is made, the court must satisfy itself as to the content of and circumstances surrounding execution of the surrogacy arrangement.[100] These specific matters are discussed in further detail below.

<subdiv>Eligible parties

While the Queensland Government stated that "any person ... will potentially be able to enter into a surrogacy arrangement",[101] the Bill will, in fact, place restrictions on who can be an eligible party to a surrogacy arrangement. The restrictions mentioned come under the guise of safeguards which are designed to "protect the rights, wellbeing and best interests of a child born as a result of a surrogacy arrangement".[102] The safeguards are intended to be built into that part of the legislation which will prescribe the requirements of the court application for parentage orders.

The Bill will require that the parties demonstrate to the court[103] that certain requirements have been satisfied including that:

- the granting of the parentage orders is in the best interests of the child;
- the child has resided with the intended parents for at least 28 days before the making of the application and the child continues to reside with the intended parents both at the time of the application and the hearing;
- the intended parents are a couple or a single person;
- there is a medical or social need for the surrogacy;
- the surrogacy arrangement was made after all parties had received independent legal advice and counselling about the surrogacy arrangement and its implications;
- the surrogacy arrangement was made with the consent of all parties;
- the surrogacy arrangement was made before conception;
- the surrogacy arrangement is evidenced in writing and is signed by all parties;
- the arrangement is not a commercial arrangement and therefore no payment, reward or other material benefit is made to any party to the surrogacy arrangement;
- any intended parent was at least 25 years of age when the surrogacy arrangement was entered into;
- any intended parent is resident in Queensland;
- consent is freely given by all parties to the making of the parentage order at the time of the hearing; and
- a surrogacy guidance report issued by an independent counsellor supports the making of the parentage orders.

There will be no legislative restrictions on same-sex couples wishing to enter into a surrogacy arrangement. The days of Queensland fertility clinics discriminating against same-sex couples by refusing them access to ART appear to be firmly in the past.[104]

<subdiv>Legal effect of surrogacy arrangements

The Bill will decriminalise altruistic surrogacy[105] but commercial surrogacy will be expressly prohibited and will be an offence.[106] The only payments permitted to be made to a surrogate under a surrogacy arrangement will be the reimbursement of reasonable costs associated with the surrogacy incurred by the surrogate. These reasonable costs will include:

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[99] *Surrogacy Bill 2009* (Qld), cl 7.

[100] *Surrogacy Bill 2009* (Qld), cl 22(2)(e).

[101] Queensland Parliament, n 87, p 5.

[102] Queensland Parliament, n 87, p 5.

[103] The relevant court will be the Children's Court constituted by a District Court judge who will be given the authority to make an order transferring legal parentage of the child.

[104] See *Morgan v GK* [2001] QADT 10.

[105] *Surrogacy Bill 2009* (Qld), cl 15.

[106] *Surrogacy Bill 2009* (Qld), cl 56.

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- those medical expenses not recoverable from Medicare or a private health scheme which are associated with pre-conception, conception, pregnancy, birth and after-birth care of the child;
- any premiums paid for private health insurance that was taken out specifically for the purpose of the surrogacy arrangement;
- the cost of any counselling obtained which is required as a result of the surrogacy arrangement, including any costs incurred in obtaining psychosocial assessment and/or reports;
- legal costs associated with the surrogacy arrangement and/or the application for and subsequent registration of parentage orders;
- loss of income for up to a two-month period during which the child was expected to be born or for any other period during the pregnancy where, on medical grounds, the surrogate is unable to work; and
- other reasonable costs associated with the surrogacy arrangement including travel and accommodation where such cost is incurred as a direct consequence of the surrogacy arrangement.[107]

The enforceability of surrogacy arrangements was an issue much discussed in the Investigation into Altruistic Surrogacy undertaken by the Queensland Parliament.[108] Intended parents, members of the medical profession and the Queensland Law Society all expressed the view that surrogacy arrangements should be legally enforceable. Comments from these parties included:

<blockquote>

> The commissioning parent should have legal rights to the child; the surrogate should not have any legal right to keep the child.[109]

</blockquote>

<blockquote>

> The legislative framework should include the mechanisms for entering into binding surrogacy agreements with recourse to the Supreme Court or a statutory body where issues surrounding the agreement's interpretation, variation or enforcement are required.[110]

</blockquote>

<blockquote>

> Altruistic surrogacy arrangements must have enforceable preconception agreements, allowing for adequate preparation including medical, psychological and legal counselling and advice. Agreements must be contractual and enforceable allowing for the greatest moral and legal certainty for all parties. It is unreasonable that a surrogate should enter a well defined prospective agreement to carry a child to whom she has no genetic relationship and then elect to keep the baby. This amounts effectively to theft of a couple's genetic material.[111]

</blockquote>

Notwithstanding the numerous submissions in favour of legal enforceability of surrogacy arrangements, the investigative committee voiced its concerns about "the prospect of forced relinquishment and commodification of women and children".[112] The committee adopted the view that surrogacy arrangements should be legally unenforceable and as such, by entering into such an agreement, the parties accept the "inherent risks of surrogacy".[113]

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[107] *Surrogacy Bill 2009* (Qld), cl 11.

[108] Queensland Parliament, *Investigation into Altruistic Surrogacy Committee, Report* (October 2008) p 70 (Lavarach Report).

[109] Queensland Parliament, n 108, p 70, citing the submission of Melanie Douglas, Submission No 43.

[110] Queensland Parliament, n 108, p 70, citing the submission of the Queensland Law Society, Submission No 112, p 1.

[111] Queensland Parliament, n 108, p 70, citing the submission of the Queensland Fertility Group, Submission No 91, p 6.

[112] Queensland Parliament, n 108, p 71.

[113] Queensland Parliament, n 108, p 71.

The committee's view was embraced by the Queensland Government and can be seen in the Bill's enforceability provisions which will prescribe that surrogacy arrangements will be legally unenforceable, save for repayment of the surrogate's reasonable expenses.[114] This provision is designed to protect the surrogate in the situation where she feels unable to relinquish the child once it is born.[115]

The ability for the surrogate to recover her expenses is contingent on her relinquishing the child to the intended parents. There will be no "double dipping" permitted under the Bill. The surrogate will be unable to recover any expenses incurred if she chooses not to relinquish the child to the intended parents or, upon the application for parentage orders, refuses to consent to those orders being made.[116]

The Bill will further protect the surrogate by ensuring that the surrogate's bodily autonomy is respected during the pregnancy.[117] The intended parents will not be entitled to insist, pursuant to the surrogacy arrangement or any other oral or written agreement that is made between the parties, that the surrogate manages her pregnancy in a particular manner.[118] This provision in the Bill embodies the liberal view of the investigative committee that:

<blockquote>

> birth mothers in an altruistic surrogacy arrangement should have the same rights and the same level of autonomy as other pregnant women and birth mothers.[119]

</blockquote>

When the child is born, pursuant to the provisions of the *Status of Children Act 1978* (Qld), the surrogate will be presumed to be the legal mother of the child.[120] If the surrogate is married or in a heterosexual de facto relationship[121] at the time of conception, then the surrogate's husband or de facto is presumed to be the legal father of the child.[122] If the surrogate is unmarried at the time of conception, there is no presumption as to the paternity of the child.[123]

The surrogate, as birth mother, will be required to register the birth of the child in the same manner as that of children born of natural parents.[124] It will then be incumbent on the intended parents to make an application for parentage orders to transfer legal parentage to them.[125] Once registered, the parentage orders will prevail over the original birth record for the child.[126]

<subdiv>Court procedures for the transfer of parentage and the registration of such orders

The Bill provides that applications to transfer legal parentage of a child born of a surrogacy arrangement will be heard in the Children's Court constituted by a Children's Court judge.[127] This provision is contrary to the recommendation of the Lavarach Report that the "transfer of legal parentage should come under the jurisdiction of the Supreme Court".[128] The Children's Court is the

[114] *Surrogacy Bill 2009* (Qld), cl 15.

[115] Explanatory Notes, *Surrogacy Bill 2009* (Qld) p 22.

[116] *Surrogacy Bill 2009* (Qld), cl 15(2).

[117] *Surrogacy Bill 2009* (Qld), cl 16(2).

[118] *Surrogacy Bill 2009* (Qld), cl 16(1).

[119] Queensland Parliament, n 108, p 69.

[120] *Surrogacy Bill 2009* (Qld), cl 17; *Status of Children Act 1978* (Qld), s 19(2).

[121] *Status of Children Act 1978* (Qld), s 15.

[122] *Status of Children Act 1978* (Qld), ss 17(2), 18(2), 19(2)(c) and 19(2)(d).

[123] *Status of Children Act 1978* (Qld), ss 21(1), 22(2).

[124] *Surrogacy Bill 2009* (Qld) cl 18.

[125] *Surrogacy Bill 2009* (Qld), cl 21.

[126] Queensland Parliament, n 87, p 4 and proposed amendment to *Births, Deaths and Marriages Registration Act 2003* (Qld) by incorporating a new s 41D.

[127] *Surrogacy Bill 2009* (Qld), cl 13.

[128] Queensland Parliament, n 108, p 77.

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more appropriate environment in which to seek parentage orders because one of the primary functions of that court is to decide matters where the best interests of the child are paramount.[129] Similarly, the Bill's objects put emphasis on the principle of safeguarding the child's wellbeing and best interests.[130]

While all parties to the surrogacy arrangement will be parties to the court proceedings, the intended parents must make the application to the court. The court has the discretion to refuse to make the parentage orders if it considers that such refusal is in the best interests of the child.[131] It is envisaged that any of the parties to an application for parentage orders will have the right to appeal in the event of a refusal by the court to make (or to set aside) those orders.[132]

All proceedings will be held in a closed court[133] and the court records will not be accessible unless the court gives permission to release the records to any of the parties to the surrogacy arrangement or to the child.[134] The Bill will impose restrictions on the publication of any information that may lead to the identification of the child or of any of the parties to the application.[135]

The court will have the discretion to make any other orders, such as orders regarding the child's name, that it deems are necessary and in the best interests of the child.[136] Where the application relates to children born from a multiple birth, the court will not be permitted to make parentage orders in respect of one child only. Where the application relates to a multiple birth, parentage orders will be mandatory for all living birth siblings.[137]

The Queensland Government has foreseen that there may be instances where parentage orders should be set aside. In this regard, if the court is satisfied that there has been "fraud, duress or other improper means or the consent of a party was obtained through fraud, duress or other improper means",[138] then the court will have the discretion to set aside any parentage orders previously made.[139] The only persons with standing to make such an application are the child, any of the parties to the original application or the Attorney-General.[140] In accordance with the objects of the Bill, at all times the court must hold the best interests of the child paramount.

The Bill is silent on the issue of who bears the cost of the court proceedings; however, it should be noted that the permitted recoverable expenses of the surrogate will include the recovery of legal fees.[141] In this regard, the intended parents would normally bear all costs associated with the surrogacy arrangement and any court application(s).

The Bill prescribes amendments to the *Births Deaths and Marriages Registration Act 2003* (Qld) in order to provide a mechanism for registration of parentage orders with the Registrar of Births, Deaths and Marriages.[142] A Parentage Order Register will be created to record changes effected by way of parentage orders.[143] It is envisaged that once the parentage orders are lodged with the Registrar, the child's original birth record will be closed, a new birth certificate will be issued for the

[129] The Children's Court has jurisdiction to decide matters in accordance with the *Child Protection Act 1999* (Qld). The *Child Protection Act 1999* (Qld), s 5, states: "This Act is to be administered under the principle that the welfare and best interests of a child are paramount."

[130] *Surrogacy Bill 2009* (Qld), cl 5(b)(ii).

[131] *Surrogacy Bill 2009* (Qld), cl 22(2).

[132] *Surrogacy Bill 2009* (Qld), cll 49, 50.

[133] *Surrogacy Bill 2009* (Qld), cl 51.

[134] *Surrogacy Bill 2009* (Qld), cl 52(1).

[135] *Surrogacy Bill 2009* (Qld), cl 53(2).

[136] *Surrogacy Bill 2009* (Qld), cl 35.

[137] *Surrogacy Bill 2009* (Qld), cl 24(2).

[138] Queensland Parliament, n 87, p 8.

[139] *Surrogacy Bill 2009* (Qld), cl 47(1).

[140] *Surrogacy Bill 2009* (Qld), cl 45.

[141] *Surrogacy Bill 2009* (Qld), cl 11(2)(e).

[142] *Surrogacy Bill 2009* (Qld), Pt 3.

[143] *Surrogacy Bill 2009* (Qld), cl 72.

child and a notation will be made on the register linking the child's original birth record to the new record.[144] It will be incumbent on the intended parents to provide all necessary information for the Registrar to register the parentage orders and issue a new birth certificate for the child. No information regarding the child's original birth record will appear on the new birth certificate.[145]

The Queensland Government appears committed to ensuring that the privacy of the child and that of the parties to the surrogacy arrangement is respected. In this regard, only the child, intended parents, surrogate and her partner at the time of the surrogacy (if any) will be permitted to access the child's original birth record.[146] If the child is under the age of 18 years and access to the original birth record is required, the consent of all parties to the surrogacy arrangement will be required before that record will be released.[147]

Once the child reaches the age of 18 years, the child may request the information directly. The information provided by the Registrar of Births, Deaths and Marriages will contain an addendum with the birth certificate advising the child that there is further information available about her or his birth record.[148] It is anticipated that information about counselling will be provided with the addendum, in the event that the child is unaware of the circumstances of her or his birth.

<subdiv>Offences

Reminiscent of legislation in most other Australian jurisdictions, the Bill will make it an offence to advertise a person's willingness to enter into a surrogacy arrangement or to advertise in a manner designed to induce a person to enter into a surrogacy arrangement.[149] In addition to the prohibition of commercial surrogacy arrangements, it will also be an offence under the proposed legislation to knowingly provide any technical, professional or medical services associated with the carrying out of a commercial surrogacy arrangement.[150]

In relation to the court processes, it will be an offence for any person to publish restricted information in relation to an application for parentage orders without consent.[151]

<DIV>RECOMMENDATIONS AND CONCLUSION

It can be determined from the analysis provided above that the *Surrogacy Bill 2009* (Qld) addresses all the crucial issues relevant to the regulation of surrogacy. The model is non-restrictive in nature, allowing single persons, married couples, de facto and same-sex couples to enter into surrogacy arrangements. Provision has been made for the legal transfer of parentage of children born of surrogacy arrangements and registration of parentage orders with the Registrar of Births, Deaths and Marriages. Such registration will ensure that the child's birth certificate accurately reflects the transfer of parentage while maintaining the child's, intended parents' and surrogate's privacy.

The Bill will:

- protect the wellbeing and best interests of the child;
- respect the privacy of the child and the parties to a surrogacy arrangement;
- provide mechanisms for transferring and registering changes to legal parentage; and
- prohibit commercial surrogacy.

It would be constructive for other Australian jurisdictions, including South Australia, Tasmania, Victoria and New South Wales, to revisit their surrogacy legislation. In addition, those jurisdictions should engage in immediate reform to put in place effective mechanisms for the regulation of surrogacy and the transfer of legal parentage of children born of surrogacy arrangements. Queensland's proposed surrogacy legislation provides a comprehensive and effective model on which other jurisdictions could base their reform.

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[144] Queensland Parliament, n 87, p 9.

[145] *Surrogacy Bill 2009* (Qld), cl 78.

[146] *Surrogacy Bill 2009* (Qld), cl 79.

[147] *Surrogacy Bill 2009* (Qld), cl 79.

[148] *Surrogacy Bill 2009* (Qld), cl 80.

[149] *Surrogacy Bill 2009* (Qld), cl 55.

[150] *Surrogacy Bill 2009* (Qld), cl 58.

[151] *Surrogacy Bill 2009* (Qld), cl 53(2).

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