

House of Assembly—No 176A

As divided in Committee, reported with amendments, report agreed to and passed remaining stages, 17 November 2016

South Australia

**Statutes Amendment (Surrogacy Eligibility)
Bill 2016**

A BILL FOR

An Act to amend the *Assisted Reproductive Treatment Act 1988*; the *Equal Opportunity Act 1984*; and the *Family Relationships Act 1975*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Assisted Reproductive Treatment Act 1988*

- 4 Amendment of section 9—Conditions of registration

Part 3—Amendment of *Equal Opportunity Act 1984*

- 5 Amendment of section 5—Interpretation

Part 4—Amendment of *Family Relationships Act 1975*

- 6 Amendment of section 10A—Interpretation
 - 7 Amendment of section 10C—Rules relating to parentage
 - 8 Amendment of section 10F—Interpretation
 - 9 Amendment of section 10HA—Recognised surrogacy agreements
 - 10 Amendment of section 10HB—Orders as to parents of child born under recognised surrogacy arrangements
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Surrogacy Eligibility) Act 2016*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Assisted Reproductive Treatment Act 1988*

4—Amendment of section 9—Conditions of registration

(1) Section 9(1)—after paragraph (b) insert:

- 15 (ba) a condition prohibiting the person from refusing to provide assisted reproductive treatment to another on the basis only of the other's sexual orientation or gender identity, marital status, or religious beliefs;

(2) Section 9(1)(c)(i) and (ii)—delete subparagraphs (i) and (ii) and substitute:

- (i) if it appears to be unlikely that, in the person's circumstances, the person will become pregnant other than by an assisted reproductive treatment;

5 (3) Section 9(1)(c)(iv)(C)—delete "his" and substitute:

the donor's

Part 3—Amendment of *Equal Opportunity Act 1984*

5—Amendment of section 5—Interpretation

Section 5(2)—delete subsection (2) and substitute:

- 10 (2) After the commencement of this subsection, the provision of assisted insemination or assisted reproductive treatment (both within the meaning of the *Assisted Reproductive Treatment Act 1988*) will be the provision of a service to which this Act applies; however, to avoid doubt, the provision of any such service before the
15 commencement of this subsection is not (and will be taken never to have been) a service to which this Act or the repealed *Sex Discrimination Act 1975* applied.

Part 4—Amendment of *Family Relationships Act 1975*

6—Amendment of section 10A—Interpretation

20 Section 10A(1), definition of *qualifying relationship*—delete the definition and substitute:

qualifying relationship means a marriage-like relationship between 2 people who are partners (irrespective of their sex or gender identity);

7—Amendment of section 10C—Rules relating to parentage

25 Section 10C(3a)(a)—delete "(whether they are of the same or opposite sex)" and substitute:

(irrespective of their sex or gender identity)

8—Amendment of section 10F—Interpretation

Section 10F—after the definition of *recognised surrogacy agreement* insert:

30 *registered relationship* means a relationship that is registered under the *Relationships Register Act 2016*, and includes a corresponding law registered relationship under that Act;

9—Amendment of section 10HA—Recognised surrogacy agreements

(1) Section 10HA(2)—delete subsection (2) and substitute:

- 35 (2) A *recognised surrogacy agreement* is an agreement—
(a) under which a surrogate mother agrees—

(i) to become pregnant or to seek to become pregnant;
and

(ii) to surrender custody of, and rights in relation to, a
child born as a result of the pregnancy to another
party to the agreement; and

(b) which complies with the conditions set out below.

(2a) For the purposes of subsection (2)(b), the conditions with which a
recognised surrogacy agreement must comply are as follows:

(a) the only parties to the agreement are—

(i) the surrogate mother (and, if she is a married
woman, her husband); and

(ii) the commissioning parents;

(b) each of the parties to the agreement must be at least 18 years
old;

(c) both of the commissioning parents must be domiciled in this
State;

(d) the commissioning parents—

(i) must be legally married or in a registered
relationship; or

(ii) must have lived together continuously in a
marriage-like relationship (irrespective of their sex
or gender identity)—

(A) for the period of 3 years immediately
preceding the date of the agreement; or

(B) for periods aggregating not less than
3 years during the period of 4 years
immediately preceding the date of the
agreement;

(e) it appears to be unlikely that a commissioning parent would
become pregnant in the circumstances (whether because of
infertility, other medical reasons or risk to an unborn child,
or for some other reason);

(f) the surrogate mother must have been assessed by and
approved as a surrogate by a counselling service—

(i) that is accredited for the purposes of this paragraph
in accordance with the regulations; and

(ii) in accordance with any relevant guidelines
published by the National Health and Medical
Research Council; and

(iii) in accordance with any other requirement that may
be prescribed by the regulations for the purposes of
this paragraph;

- 5
- (g) each of the following persons must be issued with a certificate by a counselling service that complies with the requirements of subsection (3):
- (i) the surrogate mother and her husband or partner (if any);
 - (ii) the commissioning parents;
- (h) the agreement must state that the parties intend that—
- (i) the pregnancy is to be achieved by the use of a fertilisation procedure carried out in this State; and
 - 10 (ii) subject to the issue of a certificate under subsection (5)—human reproductive material with respect to creating an embryo for the purposes of the pregnancy will be provided by at least 1 of the commissioning parents;
- 15 (i) the agreement must state that no valuable consideration is payable under, or in respect of, the agreement, other than for expenses connected with or consisting of—
- (i) a pregnancy (including any attempt to become pregnant) that is the subject of the agreement; or
 - 20 (ii) the birth or care of a child born as a result of that pregnancy; or
 - (iii) counselling or medical services provided in connection with the agreement (including after the birth of a child); or
 - 25 (iv) legal services provided in connection with the agreement (including after the birth of a child); or
 - (v) reasonable out of pocket expenses incurred by the surrogate mother in respect of the agreement; or
 - 30 (vi) any other matter prescribed by the regulations for the purposes of this provision;
- (j) the agreement must state that the parties intend that the commissioning parents will apply for an order under section 10HB after the child is born;
- 35 (k) the agreement must state that the commissioning parents will, in accordance with any requirements in the *State Framework for Altruistic Surrogacy*, take reasonable steps to ensure that the surrogate mother and her husband or partner (if any) are offered counselling (at no cost to the surrogate mother or her husband or partner) after the birth of
- 40 a child to which the agreement relates (including, to avoid doubt, a still-birth).

- (2) Section 10HA(3)—delete "subsection (2)(b)(vii)" and substitute:
paragraph (g) of subsection (2a)

(3) Section 10HA(3)(ab)—delete "subparagraph" and substitute:
paragraph

(4) Section 10HA(5)—delete "subsection (2)(b)(viii)(B)" and substitute:
subsection (2a)(h)(ii)

5 (5) Section 10HA(6)(a)—delete "subsection (1)" and substitute:
the preceding subsections

(6) Section 10HA(6)(c)—after "husband" insert:
or partner

**10—Amendment of section 10HB—Orders as to parents of child born under
recognised surrogacy arrangements**

10 Section 10HB(9)(c)—delete "section 10HA(2)(b)(ix)" and substitute:
section 10HA(2a)(i)