

## SURROGACY BILL 2008

### *Second Reading*

Resumed from 13 November.

**HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition)** [8.13 pm]: It is interesting that we have this bill back in front of us. It is a shame that the bill was not finalised before the election, but it is positive that the government has reintroduced the bill with all the amendments made as a result of the work done by the committee and by this chamber before the election. That is a very positive thing. I know that I have spoken at length on this bill in the past, but I want to make a couple of additional comments. Over the past couple of weeks, since this bill has been back on the agenda, it has been interesting to see the flurry of correspondence that I assume a number of members have received about potential amendments. We all know how complex this legislation is legally, morally and ethically. It is probably not the most perfect legislation to fit the situation, but it is probably the best we will get at the moment, until we can see how it works, look at it at a later stage and see how it can be made better to assist all the people, particularly the children, involved in this process. This is a highly emotional issue, but as the bill works its way through this chamber—I know that some amendments have been circulated and will be addressed at a later stage—people need to acknowledge that our community is changing its views as we develop and finesse the technology being used in reproductive health. It is amazing technology, and although we may not always agree with what it does, we can see researchers finding new ways to resolve some of the problems that people have had with reproductive health.

The technology moves so fast that sometimes it is hard to predict what we will have to deal with next. We as members of Parliament will have to brace ourselves to deal with these types of ethical issues on an ongoing basis. I encourage members to have a look at the recently tabled annual report of the Human Reproductive Technology Council. I was surprised to see noted in the report that, as a by-product of a component of reproductive technology that some people, depending on their fertility levels, are able to access, under this loophole some people have the potential to create saviour siblings. The proposal in the report is whether Parliament should amend the human reproductive technology legislation so that that area can be opened up. I do not know whether that proposal will get legs and be put to the minister, but the council flagged it in the report. The council did not know whether it would get up, because it is such a contentious issue. I am not saying now whether I would support that measure but I warn members that we will be dealing with some very controversial ethical issues.

As science and our knowledge expands, we must be able to work out the needs of the community and families. How do we provide the right frameworks? That is what this bill is about. Surrogacy has probably been happening throughout time in a range of communities and many different families; it has just been given other names. Children have been brought into the family fold who may not have had the legal status or protection that they require under law. It is very important that those children be given that legal protection and status under law. If passed, this bill will do that. The interests of the children are the most important component of this legislation, and everything else is built around them.

As I said, this is not the most perfect bill. I put some of the imperfection down to the manner in which it was drafted. I think I have said in the past that I thought the drafting was fairly shoddy. It was a skeletal piece of legislation, and we found out that all the detail was tucked away in another document—the directions. The committee tried to pull over a lot of that information to build up the legislation. It has gone part of the way, and that is something that could be dealt with later on. The response from the community is that there is a need for some people to have access to this kind of technology. It is not a huge number of people—maybe 10 or 12 couples a year, if that. We are talking about a very small part of our community. I am sure that everyone in this chamber has known family members or friends who have had to deal with some sort of fertility issue, or maybe some have even had to deal with it themselves. It is a really tough call. Maybe couples who say that surrogacy is their last resort because they cannot conceive or give birth to a child in their own right need to learn a hard lesson. Maybe we should tell them that if they cannot have a child, they should do something else, but that is a hard call to make. This small group of people is asking to use the available technology to have a surrogate child. If a framework is in place that affords protection to all the people involved, I have decided in my mind that we should give it a go. I am firmly of the view that the stage we are now at is reasonable. This legislation imposes a far more rigorous onus on all the people involved because it requires them to maintain contact in all their future arrangements. It is much tougher than the provisions for adoption. When a child is adopted, there is no requirement for the adoptive parents to maintain an ongoing lifelong involvement with the relinquishing mother or father. Similarly, there is no requirement under the appropriate IVF legislation for any of the donors who go through the normal IVF process to be involved in the child's life. I am not saying that that is either a good thing or a bad thing; I am just pointing out that there is no requirement to do that. This legislation imposes a much

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

tighter regime and requirements on the arranging parents, the donors and the birth mother and her partner, if she has one, than does the adoption and IVF legislation. That has been a positive step. It is not easy for any of those people to agree to do that. The perfect situation for most people is for a woman to have a child and to take the child home without the involvement of any other people. Surrogacy potentially provides for a much bigger family than for non-surrogate families, which brings other issues to the fore. We have imposed certain requirements on all the people involved, which is positive.

By the time many couples who are seeking to go down the path of surrogacy have reached the point at which surrogacy is their last call, they are ineligible for adoption. If one member of the couple has had cancer, the couple is automatically ruled out. With my friends who have had a surrogate child, the wife had ovarian cancer and therefore they were automatically deemed to be ineligible for adoption. I have raised this matter in another speech. Perhaps we need to encourage the government to revisit the adoption legislation or to review the adoption processes. It is very difficult to adopt a child from Australia, which opens up a range of issues about accessibility to children. I have always been of the view that the government needs to review its position on the adoption of children from overseas.

I note that since we dealt with this bill back in June, Tasmania and Queensland have held select committees into and tabled reports on surrogacy, while New South Wales has commenced an inquiry into surrogacy and the Victorian Parliament is debating amendments to its surrogacy and IVF legislation. Western Australia is not acting in isolation. There is a national focus on surrogacy. Unfortunately, some of that national focus has restricted some of the measures we would like to introduce to tighten up the legislation. However, that will have to be resolved on a broader scale at a later date.

I am not sure whether Hon Simon O'Brien is representing the Minister for Health.

**Hon Simon O'Brien:** I am managing the bill on behalf of the Minister for Health.

**Hon KATE DOUST:** I am sure that the minister has seen the directions on surrogacy for the Human Reproduction Technology Act. If he does not have a copy of it, I will give him mine. I raised the issue of working with children checks when Labor was in government. Clause 7(7) of the directions deals with the working with children checks of arranging parents. I told the Department of Health that I thought it was rather stupid that parents who were going through this process had to get a working with children check to become parents, and it was agreed that that clause would be removed.

**Hon Robyn McSweeney:** Why?

**Hon KATE DOUST:** Other parents do not have to do it. None of us had to do it and no-one else we know has to do it. Neither adopting parents nor IVF parents have to do it either. I do not see why surrogate parents should have to submit to a criminal check. It was agreed at the time that the department would remove that clause. I ask the minister to check with the Minister for Health whether that has been done.

**Hon Robyn McSweeney:** I hope it has not.

**Hon KATE DOUST:** I hope it has in this situation. Working with children checks are extremely important for people who work with children. However, in this situation it is a matter of a person becoming a parent. There is a difference between a person working with a number of children that are not one's own and having a child that is one's own. I just raise that matter and hope that the minister can get back to me on it.

There is a push to pass this legislation. The government made a commitment that it would pass this legislation before Christmas and a number of amendments will be debated. To paraphrase Hon Jon Ford, in a perfect world I probably would not support this type of legislation. However, this is not a perfect world. As I said earlier, because I have supported my friends who have gone down this path, it is important to provide this opportunity for that very small group of people who require it. I put on the record my belief that if we are to allow access to surrogacy, it must be the final port of call. Access to these surrogacy measures should be allowed to either married or de facto heterosexual couples because it is important for those people. There are other avenues for single women to access IVF. Surrogacy is probably the only opportunity for all the people who made submissions to us to have a family after having exhausted every other opportunity.

I will support the bill. I hope that the gestation of the bill will not continue for much longer. We introduced the Surrogacy Bill 2007 and it came into this place in 2007. It is now 2008. I hope that if the government passes at least one bill before Christmas, it is this one.

**HON HELEN MORTON (East Metropolitan — Parliamentary Secretary)** [8.28 pm]: When the Surrogacy Bill 2007 was previously dealt with, it was done so under the social engineering program of the then Minister for Health, Hon Jim McGinty. That situation has changed. That bill passed through the other place with a very

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

different make-up of members and that situation has vastly changed, too. At lunchtime today, a group of members who are interested in my tabled amendments asked to meet with me. I thought that four or five members would attend but I was astounded to find 15 or 20 members in attendance. There were not enough chairs in the Aboriginal People's Room for everyone. Only one of the Legislative Assembly members was a member of the previous Parliament. Things have changed. All members want a chance to have their say on the Surrogacy Bill and every member wants to make an amendment to it. This is definitely a new Parliament, and we need to remember that, and this is a new bill. I suggest that members give due consideration to the tabled amendments because I do not think that, in its current form, this bill will pass both houses. If these amendments are not passed, they are very likely to succeed in the other place and will be back in this place for us to either support or see the whole bill collapse. I would rather see the bill collapse than see it passed in its current form.

When this house dealt with the bill previously, we referred it to the Standing Committee on Legislation before voting in favour of the second reading. However, the legislation committee did not consider that it could examine the policy issues, so a raft of amendments were drafted to amend the mechanics of the bill. I was greatly disappointed in that. I voted against the bill at the third reading stage because, at that stage, I had given up hope that the bill could be shaped to reflect what I believe the community understands we were seeking to pass. The community understands that we are voting on something I call "pure surrogacy" in which a man and a woman unable to conceive or birth a baby have an embryo—theirs or perhaps that of a donor—implanted into a surrogate mother to grow for nine months, to be birthed and given to the couple. That is what the community thinks we are debating, but that is not all that is in this bill; there is a lot more in the bill. That is what the community thinks we are debating. Every time this proposal is talked about in the media or anywhere else, it is obvious that that is what the community thinks we are debating.

The lapsing of the bill due to the early election seemed like an opportunity to reshape it. It was re-introduced into this house before being sent to the other place to enable the government to honour an election commitment to reintroduce the bill with some urgency. Of course, that has happened. However, we do not have to pass it in its current McGinty form. This is our bill now, so let us take it and shape it and have it reflect the values we place on family. Unfortunately, I thought my hopes had been dashed again—or was I secretly relieved; I am not sure—when I was paired last Thursday and I thought the bill would be passed without my being here. I thought the bill would be done and dusted and sent to the other place before I got back here today.

However, that did not happen and now that I am here, I am compelled to pursue these amendments. I should have tabled them before but I was struggling with the idea that it was a waste of time. The opportunity to redo this work cannot be passed up this time. The amendments cover three areas. They relate to enabling only eligible couples, as defined in the bill, to procure a child by surrogacy. The second area relates to preventing a surrogate mother, a birth mother, to also be the egg donor. Some would actually like that to be expanded to include also the birth father but I am less concerned about the birth father being also the sperm donor. The third area is to require at least one parent of the arranged couple to be genetically linked to the child.

During my previous speech on this legislation, I said that pure surrogacy legislation would have sailed through by now, and I am absolutely certain that it would have. I could see some dangers with that, but as Hon Kate Doust said, we all understand that this is likely to go ahead in some form and that we could iron out any concerns in the four-year period prior to its review. I still say that, rather than with the very expansive range of issues to be considered under surrogacy, we should start with the more narrow range of issues we can pass; namely, what I call the pure surrogacy model. If after four or 10 years we want to expand that to include additional elements of surrogacy, we can go down that track. Once it is out there, it is very difficult to bring something back to where we want it. We should start small and make amendments at a later date.

I also agree that it is being discussed in other states at the moment. I will read material from some of the other states in a minute. One of the letters I have here refers to the consideration being given by the Attorneys General. They are seeking some kind of national approach to it. The letter is about the payment of Medicare benefits for assisted reproductive technology treatment in association with surrogacy arrangements, and reads —

Currently, Regulation 81 of the Health Insurance ... Regulations precludes Medicare benefits for ART treatments, including in-vitro fertilisation, when provided in conjunction with any surrogacy arrangement.

A consistent, national approach to laws that regulate surrogacy is being considered by the Standing Committee of Attorneys-General ... Given the ongoing deliberations of SCAG, changes to the Medicare program for ART services rendered in association with surrogacy arrangements are not being considered at this time.

However, that is likely to happen. I raise this because it is far better for us to start with something that is relatively narrow. If other states want to find some common ground on this, we should be able to identify that

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

core common ground and pursue that, rather than go broadly with these other fanciful, social engineering ideas that were provided before.

This bill fails to protect the interests of the child first. Instead, it is a bill that is primarily about meeting the interests of childless couples. The bill supports and encourages single parenting. I doubt this is what the community would like us to support. It is a bill that supports and encourages a single woman who may be living with another woman to source and procure babies to live with them. This will eventually lead to the sourcing and procuring of babies to live with gay men. It is very clear that that is likely to happen. I will not go through my whole speech again on this, but I want to re-emphasise that I believe our laws should give children the chance of living with a mother and father.

I commenced my speech in the previous second reading debate by saying that I wanted to adopt the basic presumption in favour of the natural when considering these issues. I have a great respect for the natural, albeit, there are always exceptions; I understand that, but, in general, so long as the parenting is okay, I believe the child is better off with a mother and father. That is the natural order. I know some natural mothers and fathers are not good at parenting but, then, others are not good at it either; however, they are unlikely to be the parents who are going through IVF and surrogacy arrangements.

I am quite comfortable in my view that we do not have a right to have a child. I do not feel concerned about those people who are desperate to have a child. That is the last reason to enable someone to enter into surrogacy. It is as though they have a need to be fulfilled and the child is that fulfilment. It puts the needs of those people before the needs of the child. Not all people can, will or want to have children. I know that some of my amendments may stop people from procuring a child through surrogacy, but I am not as concerned for them as I am for the rights of the child—the rights of the child to have a chance of a mother and a father. I cannot overestimate the value of the fathering in that process. I see the bill as it is, without these amendments, as one more iterative step towards diminishing the role of natural families, natural parents and natural parenting. The Commission for Children and Young People and Child Guardian produced advice to the Altruistic Surrogacy Committee of the Legislative Assembly of Queensland in June 2008. Page 8 refers to the other criteria and other conditions that would be necessary to protect a child's best interests. They include —

...the parties must have been married or in a relationship for at least two years (to demonstrate a stable family environment for the prospective child).

That is the recommendation made by the committee in Queensland.

Single parenting is really tough. I see it all the time among my constituents and among my own family, with fly in, fly out arrangements being just a small component of it. Single mums face horrendous difficulties with increased homelessness and increased health problems. They are often in some form of poverty trap. They face employment difficulties and the problem of having the kids looked after while they have some life of their own. Single parenting is really tough. It does not matter where one looks, abundant research shows that, in general, children who grow up in single-parent families are greatly disadvantaged in a number of ways. The general statistical evidence shows that they are disadvantaged in their educational outcomes, they face an increase in the number of teenage pregnancies, they have a high incidence of behavioural problems and they have greater contact with corrective services. As we have this knowledge, why are we passing a bill to enable single women to procure a child through a surrogate arrangement? If we say that we must put the child's best interests first, why are we willingly allowing children to get into that form of disadvantage? Why do we want kids to start with a disadvantage in life? Again, it is to fulfil the desire of the childless woman first, not to give a motherless child a new mother, which is what adoption is.

The second area I am interested in pursuing as an amendment is the birth mother not being the genetic parent of the child. This legislation by design—I do not know whether it is intentional—will cause the greatest possible guilt for a woman who agrees to become a surrogate mother and then changes her mind and wants to keep the child. How tormented would the woman become if she is also the genetic mother and the baby is her own flesh and blood? Let me give members a scenario. A woman agrees to have a child. The bill currently enables a woman and her husband to have a child of their own making and then pass it over to the arranged couple. If these amendments do not succeed, it could quite easily happen. The woman may have received payment in instalments. There may be other children involved. Her own children could be watching the growing of the baby, feeling the baby kick and bonding with the child. The mother could be talking to a child about what is going on and the baby that she is bearing. In this process bonding is developing and growing. Women are often referred to as glowing when they are pregnant. I ask members what they think the word “glowing” means. It means that the mother is physiologically and emotionally naturally bonding with the child and feels wonderful as a result of it. It is not hard to imagine that the mother will start to feel a sense that the baby belongs to her and is her child.

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon  
Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

How would she feel about the obligations she has made if the bonding becomes as strong as I imagine it could? She would have to consider her moral and financial obligations to the arranged parent. She would feel some guilt about not being able to afford to keep the child. She might feel guilt that she is not able to pay the money back and so has let down the arranged parents. She might decide to hand the baby over and then feel guilt because it is her own flesh and blood and the brother or sister of her own children who is being handed over to other people. When the birth mother is also the egg donor, the chance of being caught up in this dreadful conflict is far greater. Why are we not making a simple amendment to reduce this risk? That is what my second amendment is about.

I want to remind members of the case of Mary Beth Whitehead, who agreed to become a surrogate mother. William Stern's sperm was impregnated.

**Hon Kate Doust:** This is the American example, is it not?

**Hon HELEN MORTON:** Yes, and it occurred in 1986. Mary Beth Whitehead signed an agreement for artificial insemination and agreed that she would form no parent-child relationship with the baby and surrender her parental rights. Stern's wife was not a party to the agreement; she was not even mentioned. She had very mild multiple sclerosis and it was not dangerous for her to become pregnant, but rather she wanted to focus on her career and not have a baby. On 27 March 1986 Mary Beth gave birth to a daughter. She took her home and turned down the promised \$10 000 that was to be paid to her. On 30 March, three days later, the Sterns took the baby to their home, but Mary Beth Whitehead wanted her back, so the baby went back home to Mary Beth on 31 March. In the second week of April, two weeks later, Mary Beth advised the Sterns that she could never give up her daughter. The police came to her home. She showed them the birth certificate showing that the baby was hers. The police returned later and, given that the circumstances were now becoming much more worrying to Mary Beth, she passed the infant out of the window of her house to her husband and told him to run, which he did. Mary Beth hid in Florida. The courts took over and a trial began in January 1987. The Sterns had temporary custody and Mary Beth was ordered to stop breastfeeding. The Sterns testified that they did not want to visit the child if Mary Beth got custody, but Mary Beth said that she would visit no matter what and for however long was necessary. During the trial the Sterns painted Mary Beth as mentally unstable and a bad mother. Outside the courtroom 121 prominent women refuted these claims and the expert opinions offered in support of them. They issued a document on 12 March 1988 entitled "By These Standards, We Are All Unfit Mothers". One year after the baby had been born Mary Beth's parental rights were terminated and Elizabeth Stern was immediately ushered into the judge's chambers to adopt the baby. The New Jersey Supreme Court overturned the ruling on 2 February 1988, which was nearly two years after the baby had been born. This invalidated the surrogacy contract, annulled the adoption and restored Whitehead's parental rights. One of the quotes that stuck with me out of this court case was the following —

We do not know of, and cannot conceive of, any other case where a perfectly fit mother was expected to surrender her newly born infant, perhaps forever, and was then told she was a bad mother because she did not.

Custody was awarded to William Stern, the baby's biological father, with visitation rights given to Mary Beth Whitehead. The New Jersey Supreme Court prohibited additional surrogacy arrangements unless the surrogate mother volunteered to do so without any payment and was given the right to change her mind and assert her rights. We have complicated this further by the payments associated with this. The subsequent outcome of this case was that since then the little girl apparently had her mother's legal rights terminated when she turned of age and Betsy Stern adopted her. This is just an example of how we can complicate things when we allow the egg donor to also be the surrogate mother.

The third area that I want to move an amendment to relates to the requirement for at least one parent to be genetically linked to the child. I have to ask these questions: why do even the most successful adoptions fail to erase the desire for adoptees to trace their heritage; and why do adults who were conceived as a result of donor insemination go to the most enormous lengths to find their biological parents and siblings? It is because the natural biological instincts are inherent in each of us and adoption, which is necessary, or donor insemination, which is desired, are merely social constructs and no match for the natural. It is as basic as who am I, where did I come from and who are my people. When I am thinking about this, I wonder why this government has had to apologise for the heartless and wrong policy of taking children away from their parents, another form of social engineering that has had generations of negative repercussions for many of those involved. It is another example whereby we have tried to inappropriately interfere with the biological link.

There is a lot of research around at the moment. We still do not know enough about the implications of surrogacy. Once again, I say that we should start in a minimalist way rather than in an expansive way with this bill. My amendments would help to bring this bill back to a minimalist level.

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon  
Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

I return to the Queensland document from the Commission for Children and Young People and Child Guardian—"Investigation into Altruistic Surrogacy". Under the heading "Research and monitoring", it states —

Due to the lack of evidence regarding the impact of different types of surrogacy arrangements on children, the Commission considers that the Queensland Government should collect information and commission longitudinal surrogacy research to identify and quantify any risks to children, including how they are impacted in adulthood. The results of this research over time could be used to review the appropriateness of surrogacy laws in light of the relevant findings. It is important that this evidence is obtained and evaluated to inform future surrogacy laws and practices for best outcomes for children, as well as meeting the needs of individuals, but particularly the children.

We do not know enough about the impact of surrogacy. I suggest that we start in a minimal way before we open it up to everything else.

With those few comments, I would like to reiterate some comments that I made in my earlier speech. I said that there are always exceptions to what we would like to do, but what should be the norm by which families are established in our society? Do I want to keep the biological link between parents and children? My answer is absolutely yes. Do I want the biological link to be the norm? Again, my answer is yes. Do I want natural parenthood to be replaced as the norm by legal parenthood? My answer to that is no, I do not. I want natural parenthood to be the norm but I expect that there will be some exceptions. We must support and protect those exceptions, such as adoptions, but we should not actively help to create the exceptions whereby there is no biological link and no heritage. Similarly, I do not want to actively help create single-parent families, although we must support and protect them when they happen. If I want to protect the rights of children in general, I must project the norm that gives them links to their biological parents and families. I ask members to support my amendments.

**HON SUE ELLERY (South Metropolitan — Leader of the Opposition)** [8.55 pm]: I want to make a few comments. I do not want to take a lot of time. I want to place on record my support for the legislation. I want to make some points about the scrutiny that this legislation has already received and also about what I think constitutes good parenting. Some comments have been made that need to be responded to. I will start by addressing the nature of the scrutiny of the previous bill, noting that the bill before us is the same as that which was amended by this house and then sent to the Legislative Assembly and assented to there.

We have been somewhat misled by the proposition that this is our opportunity to throw out what the previous speaker referred to as a piece of McGinty's social engineering. I have the sense that the proposition was being put that this was an opportunity to re-visit matters that had not been properly considered previously. I want to remind members what we went through. It is not the case that the previous bill was somehow subject to some form of trickery—that is the tone that I picked up—because of the way the reference was made to the committee, which precluded examination of the policy of the bill. That was not trickery; that matter was debated by the house. The house decided to refer the bill to a committee.

**Hon Helen Morton:** That was before the second reading vote.

**Hon SUE ELLERY:** Honourable member, I listened in silence.

At any point in the proceedings any member of the house could have referred the bill to a committee, thereby ensuring that the policy of the bill could have been considered by the nature of the reference.

**Hon Helen Morton:** That's what happened. It went before the second reading debate.

**Hon SUE ELLERY:** I listened to the honourable member in silence.

The proposition was put that the committee could not consider the policy of the bill because of the nature of the way the bill was referred. In fact, this house always has choices. Every member in this house has choices about at what point they seek to refer a particular bill. Given the fact that the bill allowed a conscience vote, every single one of us had a choice about at what point we chose to stand and say, "I want the house to consider referring this bill at this point because I want a committee to examine the policy of the bill." It is not true to suggest that there was some trickery in that. That was a conscious decision by the house. Any member could have sought advice from the Clerks, or anybody else for that matter, about how to do something of that nature in a different way.

The bill then went to the committee. It came back to the house with a report that canvassed a range of recommendations, which were accepted by the government of the day. On top of that, we considered that report and its recommendations and further amendments to the bill were made in the house. It then went to the Assembly for consideration and further scrutiny and debate occurred there. This matter was subject to a

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

conscience vote. I am regarded as being on the progressive side of the Labor Party. In fact, from the time I was made a parliamentary secretary in 2004 until the change of government, I had responsibility in this chamber for those matters that might be described as being matters of life in which conscience votes are dealt with. In my electorate office I was therefore subjected to a lot of comments, letters, emails and phone calls from people taking issue with my strong views; and I welcomed that in a democracy. The point I am making about that is that this bill was subjected to pretty intense public scrutiny at all of its stages of consideration by the house. Members of the house were lobbied and members of the public had the opportunity, either through the public debate or through the various groups they were associated with, to get their point across to us, and indeed they did.

The second point I want to address briefly is the notion of what constitutes a good family. Good families are about care, love, support and safety, whatever the make-up, permutation or number of adults that provide that care, love, support and safety and whatever their gender and sexuality. Two heterosexual parents, I am afraid, is not a guarantee of greater care, love, support and safety. Today there are members of this house wearing white ribbons because today is White Ribbon Day. There was a ceremony over the road at lunchtime today where Western Australian men took a stand against violence by men against women. We heard from a number of speakers during the ceremony today. Attention was drawn to the experience of family violence perpetrated by men against women and children. The overwhelming number of police incidents of attendance at family and domestic violence indicates that the majority of violent incidents against women and children occur in the family home and are perpetrated by the adult male in the family home against the adult female. Assistant Commissioner Chris Dawson indicated that police have attended about 6 000 incidents of family and domestic violence in Western Australia so far this year.

**Hon Anthony Fels:** Six thousand, seven hundred.

**Hon SUE ELLERY:** I thank Hon Anthony Fels. Thousands and thousands of children are damaged, if not actually physically damaged, by what they witness as part of the violence.

**Hon Barbara Scott:** You're going to get rid of all classes, are you?

**Hon SUE ELLERY:** No. If the honourable member listens to what I am saying in the way I listened to her, without interrupting, she will hear the point.

**Hon Barbara Scott:** I am listening. You weren't here when I spoke.

**Hon SUE ELLERY:** I listened to Hon Barbara Scott and I read her speech. If she listens to what I am saying, she will hear the point I am trying to make. As children witness that violence or are subjected to that violence themselves, the cycle of domestic violence becomes perpetuated because they grow up learning that that kind of violence is how they deal with conflict or how they in fact relate to other human beings.

My next point picks up on the interjection by Hon Barbara Scott and I do not want to be misinterpreted. Most families, whatever their make-up, are indeed loving, caring, supportive and safe. My point is that good parenting is about those criteria. It is not about the criteria of the gender or sexuality of the adults in that family. It is about whether the family is loving, caring, supportive and safe.

This bill has its own safeguards built into it and they have been canvassed in the debate that occurred earlier. Those safeguards were put in place by this house, whose membership has not significantly changed since the matter was last debated. This bill has been subjected to scrutiny, review and amendment. I commend it to the house. I respect honourable members' rights to move further amendments, but I guess I would ask them to be honest about doing that. Let us not pretend that somehow this bill was subjected to less scrutiny or that we are dealing with the original bill that came before the house before it was referred to a committee and before it was amended, because we are not. We are dealing with a bill that all members of the house, bar two, have considered; we have all had to take our particular positions; we have read the committee's reports; and we have listened to the debate that occurred in the house. I commend the bill to the house.

**HON MATT BENSON-LIDHOLM (South West) [9.04 pm]:** I completely concur with the thoughts and sentiments of Hon Sue Ellery. I agree that the Surrogacy Bill 2008 in its previous form was subjected to much scrutiny, review and amendment. I acknowledge that we are debating a particularly sensitive issue. I do not, however, intend to speak for long. I supported the 2007 bill and to my way of thinking, given the level of scrutiny, review and amendment, nothing much has changed. I tend to believe that I have a fairly broad approach to the issue. For personal reasons I did not speak in the debate on the previous bill, but I do have a few words to say today, particularly given that my wife and I have been down the pathway of some form of assisted reproductive technology, albeit unsuccessfully. Without going into detail, I simply say that had the technology and legal framework of today been available during that time, my wife and I probably would have accessed it. I

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

cannot say that we definitely would have or would not have, because that is—dare I say it?—ancient history these days.

I believe the bill is both timely and necessary, and I think that was proven with the previous bill that we dealt with. I suggest to members that it will give new hope to couples otherwise unable to realise a dream that many, if not all, people take for granted. I would defy anybody to tell me otherwise.

I will quote from the second reading speech in support of the use of modern reproductive technology and what it offers prospective parents —

The use of surrogacy as a means of helping women who are unable to bear a child has a long history in various cultures. In Australia, the demand for surrogacy has increased since the 1970s with the decline in the number of babies available for adoption and the increased availability of assisted reproductive technology. The use of assisted reproductive technology has increased options for conception in connection with surrogacy and allows the creation of embryos that are genetically related to the arranged parents.

Bills such as this Surrogacy Bill are invariably controversial, presenting ethical and moral challenges that we all should understand. However, it is the rights of the child, as indicated by all members who spoke on the bill prior to me rising to speak, that are of paramount importance and override all other concerns, as couples pursue their dream. The second reading speech acknowledges a number of surrogacy challenges, and not only those relating to the rights of the child. I note and again quote from the second reading speech —

The regulation of surrogacy presents challenges because of the need to balance the possibly conflicting interests of the parties who may be involved in a surrogacy arrangement. These interests include the child's right to be protected and to know about the circumstances of its birth, the arranged parents' interest in being able to have a child and to be recognised by law as parents of that child, and the birth mother's right to be protected from exploitation.

I believe the bill addresses these particular concerns. I feel that Western Australia, with no current legislation relating directly to surrogacy, is embarrassingly placed, with I believe only New South Wales in a similar position. This must be changed. I believe this bill must be passed as soon as possible. Members voted for this bill before. I believe that the checks and balances were deemed appropriate and, as I said before, I do not believe much has changed. There are particular regulatory strengths associated with this bill. I again quote from the second reading speech. It states —

Under this bill the regulation of surrogacy is provided by: allowing access to IVF for a woman who has agreed to bear a child for a woman or couple who would be eligible for IVF; a comprehensive assessment and approval process for people seeking to have a child through a surrogacy arrangement; providing for the transfer of the legal parentage to make the arranged parents the legal parents of the child; and regulating activities around the making of surrogacy arrangements.

Given the previous informed and focused amendments to the 2007 bill, and given the extensive debate that we have had on that bill, I expect the current bill to be passed, and I support that.

**HON GIZ WATSON (North Metropolitan)** [9.10 pm]: I support the Surrogacy Bill 2008. I understand that the bill that we are debating tonight is substantially—if not exactly—the same as the legislation that passed through the Legislative Council, according to my records, exactly 12 months ago. I note that I spoke on this bill on 13 November 2007. That does not seem that long ago. I take it as a good sign that the government has seen fit to reintroduce this legislation into the Legislative Council fairly rapidly. The government has certainly recognised that this legislation has strong community support, and that there was quite a strong public reaction when the early election meant that this legislation would be delayed.

Like other members who have spoken tonight, I believe that this particular initiative has been the subject of thorough examination. As a member of the Standing Committee on Legislation, I can tell members that the discussion within the standing committee was very thorough. The committee produced a report that made a number of recommendations that were taken up by the house. I see that as a good example of how members of this place can work together cooperatively to provide good legislation for the people of Western Australia, without any particular party-political emphasis. Indeed, the previous bill, which as I have said is almost the same as the bill that we are debating tonight, passed through this house on a conscience vote. Therefore, in my view this is not legislation that has a particular party-political brand. It is simply legislation that recognises that the state and the community will be better served by the introduction of laws to regulate surrogacy arrangements—which as we know are already being entered into in this state. For those reasons, I supported the bill when it passed through this place 12 months ago, and I support the bill that is now in front of us.



Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon  
Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

This bill is not perfect. This is a very difficult area of legislation to get perfect. The fact that this bill contains a review clause is very good. It is essential that we be able to revisit this bill in four years. That is very important in a novel area of law such as this. I do not wish to talk at any more length about the bill before us. However, I do want to talk about some comments that were made by Hon Sue Ellery, the Leader of the Opposition. Hon Sue Ellery made the comment that the composition of this chamber is substantially the same as the composition of the chamber that passed this legislation in the first place. I must say, in response to the amendments that have been proposed by Hon Helen Morton, that I think it should be left up to the Assembly. If the Assembly wants to propose changes, that is its business. I recognise that the Assembly now has a different composition and includes some members who have very extreme views, as no doubt will become apparent during the debate.

I argue that in this place, unless members have changed their minds in the past 12 months, there is no reason to revisit this legislation because we have already passed it. I encourage members to recall that we have already debated this bill at great length, and I think that it was a very respectful and constructive debate that we had in this place, as we often do. I am surprised that some members wish to amend this bill because members had that opportunity previously. The issues that are now being raised again by way of amendments on the supplementary notice paper have already been debated and canvassed in the last debate. I honestly do not think that there is much point in having that debate again.

I will speak some more to the amendments when we are in the Committee of the Whole. Suffice to say this legislation should be passed because simply I see it as a means of reinstating the work that we have already done and, in my view, work that was done well by members of the Legislative Council, and it should stand.

**HON ANTHONY FELS (Agricultural)** [9.16 pm]: I rise to say a few words on the Surrogacy Bill 2008. At the outset I indicate that I cannot support this legislation. Call me old fashioned or whatever, but I have a lot of difficulties with the bill. A lot of the things that would be allowed by passing this legislation do not make sense to me. We have existed for thousands of years without such legislation. Areas of surrogacy have possibly occurred in the past over hundreds or thousands of years—who knows? They may or may not have been dealt with previously, but by legislating now in this area I think we will create more problems than we have without the legislation. Quite often when we have got a problem and we legislate on it, we end up creating more problems than we had before we started or we may create another problem.

It is a very emotive issue, mostly around fertility issues of couples who wish to raise a family, and that is a most natural thing. Whether they are married or not married, or whether they are men or women, I think it is a natural instinct to wish to raise a family or contribute to reproducing your own kind in one way or another. It is obviously a very difficult situation for a married couple, preferably a couple of both sexes, but on some occasions I understand there will be couples of the same sex who wish to raise a family. Obviously, in that situation, they cannot. It is a difficult situation if they really wish to do that, but I cannot support legislation that may allow same-sex couples to raise children.

The issue has been raised of what is in the best interests of the child. It is impossible for us as legislators or law-makers to say what is in the best interests of a child that has not yet been conceived or born. There are a range of issues that can develop through a person's life—from conception through to birth, childhood and thereafter—and what we might legislate now, or what a court might determine in two to three years' time, might not necessarily be what was in the best interests of the child. We can have Family Court judges and we can have members of Parliament trying to do the right thing, and think they are doing the right thing, but they really do not know whether they are. There are so many combinations of events that may occur that we might not even be aware of, or the people making those decisions may not be aware of, that might not necessarily be in the best interests of the child.

Another issue is that all we are doing with this legislation is creating a lot of issues that will only be determined in the long term by lawyers and the courts. They do not always make those decisions for the right reasons. Some people—for example, parents or others involved in the process—make decisions that they do not necessarily agree with, but that seem like the only course available.

Hon Jon Ford made a very moving speech about a lot of issues. He asked what would happen without this legislation. He indicated that he would support it because it is better to have it than not. Generations of people have lived without this legislation. There are many issues that hurt and affect a lot of people, but we are not necessarily going to solve those problems by passing this bill. There will be events and cases that could make the situation worse. So many combinations of issues can occur. The example has been given of a couple reaching an agreement with another couple to conceive a child either naturally or through in-vitro fertilisation. An agreement is reached that, after the birth of the child, it is to be handed over to the couple who want to be the legal parents. However, many factors can happen in the meantime to change the outcome for the adopting parents, when faced with the possibility of bringing up a child. Many events could alter the original intentions of the biological

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

parents who conceive and carry the child. They may well change their views in the period between conception and birth about handing over the child. I know this legislation makes a number of rules to deal with that situation up front, but in the natural process of raising children in any species, there are a number of chemical and hormonal reactions. For a mother carrying a child, in many cases these may lead to a change in view of the biological parents towards handing over the child after birth.

There has been a change of government in the past few months. It is most welcome, and I am very excited about the Liberal Party now being able to form government in Western Australia with the National Party and three Independents. After May next year, the conservative parties will have a 20-16 majority in this house. I will put on the record one thing that I am really disappointed about. The first serious piece of legislation we are debating in this place is the Surrogacy Bill 2008, to the extent that it has been introduced in this chamber even before it has gone through the Legislative Assembly, which would normally be the case. I am quite disappointed that the bill has been introduced in the same form that was passed by the previous government. Some people might say that there are now two new members in this chamber and that it will not make a difference to the vote, but the fact is that when the bill was passed through the last Parliament, it was really pushed through the lower house by Hon Jim McGinty when he was Attorney General. It was his legislation; it had a number of amendments, but it ended up being passed. However, it was never assented to. The bill has been reintroduced to this place in the same form. Many Liberal members of Parliament and many average voters are not totally happy with a number of the issues involved. To now introduce the bill into this place with the intention of amending it either in the Legislative Council or the Legislative Assembly to make it better is a very sloppy way for a government, particularly a new government, to introduce legislation. If the government supports this legislation, it should have been introduced in a form acceptable to government members. I am not a member of the Liberal Party, so I do not know what process was followed, but if I had been there I would certainly have raised issues that the party room should have contemplated, including all the aspects of the legislation that party members are not happy with. It could have been dealt with in the party room, and the party could have devised a form that it would be prepared to support in government, as I am sure the Labor Party did in the lower house when it was in government. The Liberal Party should have reached a decision; if it had to give members a conscience vote, I would have welcomed that. If the Liberal Party could arrive at some consensus about the best form of legislation, it would be far better than bringing to the house a bill that was passed in the lower house and basically sponsored by Jim McGinty during the last Parliament. The Liberal-National government cannot expect the new Parliament to make amendments to improve the legislation. I do not think that is the way that governments should work in this state.

There is obviously a cost factor involved in using IVF, surrogacy and alternative methods of fertility. I do not think anyone should be excluded from raising a family because of financial costs or burdens. In this country we are very fortunate. There is a \$5 000 baby bonus for anyone who wants to raise a family; the amount may even be higher now—I think it was heading towards \$7 000, although I am not sure whether that has happened yet. Children can get free education in this country. Families receive family benefits and a lot of support. Many people say that that is not enough and that they still struggle. That is the case, but pretty well everyone in this country has the opportunity to raise a family unless they are unable to do so naturally. There will certainly be an extra cost involved in allowing surrogacy through IVF programs and whatever other programs are available.

I put on record that I do not support legislation that will allow this sort of thing to happen for same-sex couples if it will allow them to gain access to the same programs that would otherwise be available to couples for natural methods of fertility and childbearing. I do not refer to the Greens (WA) in particular, but there are members in this chamber who are very much opposed to the use of genetically modified organisms for food production, and the advancement of food production technology in agriculture to feed the world, yet many of the same members embrace technologies that will allow other sorts of things to happen. It is only over the past 10 or 20 years that medical technology has advanced to the point at which same-sex couples are able to have children. People who previously may have been infertile are also now able to have families.

**Hon Giz Watson:** You understand that they are medically infertile? The person's sexuality does not matter. A person has to be medically infertile to access the technology. It has nothing to do with a person's sexuality.

**Hon ANTHONY FELS:** The point I was getting at is that a man in a same-sex couple relationship in the United States bore a child recently. I do not know how that can be done or what had to be done to do that. I do not support those types of issues or the type of legislation that would go anywhere near allowing that sort of thing to occur. This legislation will not allow that to happen. However, it basically draws a line in the sand and says what can and cannot happen.

I have seen it, for example, in the provision of financial support for farmers. When an exceptional circumstance is declared, a farm in one shire can be declared drought affected but the farm on the other side of the shire

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

boundary, which has experienced the same drought conditions, is not declared drought affected. Therefore, the farm in one shire is eligible for assistance and the other is not. When we legislate for and make rules like that, we allow situations to occur whereby some couples will want to do something that was never envisaged under this legislation. That could happen in several years' time when new technology becomes available or whatever. If we legislate in certain areas, it will become far too difficult to prevent certain situations from occurring that would otherwise not have been legal. For that reason, we must have a series of checks and balances in this legislation. I am pleased that there is to be a review after a period. I hope that future Parliaments revisit this legislation, whether it is done through the sunset clause in the bill or another requirement. As technology changes and more people partake in surrogacy and new issues arise that have not yet been contemplated, I hope they can be addressed and dealt with properly and that this type of legislation is used in the proper and responsible way that most members genuinely plan for it to be used. I hope that this legislation allows the best interests of the child to be taken into account and that we do not allow children to be born who might have some issues with their identity or with the way they were brought into the world.

As I said at the beginning of my speech, I cannot support the legislation but I will support the proposed amendments to it. I hope they are passed through this place in a form that improves the legislation and achieves a general consensus. I hope that we do not pass legislation through both houses whereby some members agree with just some aspects of it and many members are not totally happy with it. I hope that when the Liberal Party in the other place considers this bill and thrashes it out in the party room, it takes into account a lot of issues and is not hijacked by a minority of members who might believe that they are able to get passed some amendments because there is some dissent in the Liberal Party and the Labor Party is then prepared to go along with it.

**HON SIMON O'BRIEN (South Metropolitan — Minister for Transport)** [9.35 pm] — in reply: If there are no further speakers, I shall briefly close the debate.

The house finds itself in unusual circumstances when considering the Surrogacy Bill 2008. As we know, and perhaps we need to remind ourselves, the bill that is currently before us is the same as the Surrogacy Bill 2007 as passed by an overwhelming majority in this house some little while ago—in June this year. The Surrogacy Bill 2007 was carefully scrutinised by the Standing Committee on Legislation, the recommendations of which were accepted, and amendments were made to the bill to reflect those recommendations. There was wide debate in this chamber, in another place and in the wider community. The product of all of this deliberation and process was that a bill passed through this house in June that awaited the consideration of the amendments contained in the message that was sent from this place to the Legislative Assembly. Now, who knows what might have been the fate of that bill had it progressed through the final stage in the Assembly? Who knows? It is pointless to hypothesise, but I think it likely that the bill would have been passed, and in due course would have passed into law. That did not happen because Parliament was prorogued in quite remarkable circumstances. A whole lot of bills were left in limbo, having been dealt with in this house and returned to the Assembly for its further consideration. I cannot help but think how much trouble would have been saved if the then government could have just waited until 12 August, at which time Parliament was due to resume after the winter recess. That did not happen, as a few days before that an election was called, and so all of these bills disappeared into the ether.

The present government very publicly undertook, during the course of the election, to reintroduce this legislation into the Parliament as a matter of priority. That commitment has been honoured. There was no specific date given, be it 14 December or any other date, for the bill to be passed, but we certainly made a commitment to introduce the bill. That has been done and it is being progressed. It is now up to Parliament to decide what it wants to do with the bill: to pass it again; to amend it; to defeat it—that is in the hands of Parliament. It will be very interesting to see what happens if and when this bill proceeds to another place, which has a lot of new members. I hope that new members on either side of the house take the trouble to look at the work that took place during the thirty-seventh Parliament, including specifically the work undertaken by members of the Legislative Council, because that might help guide them in their deliberations.

The position I find myself in is quite extraordinary. The government has brought on this bill in the circumstances I have described because it is the will—to the extent we can define its will—of the community that this bill be dealt with. The government is therefore facilitating that will by bringing on the bill. It even brought it on in this house, bearing in mind the experience of the 2007 bill, with a view to getting it through this half of the Parliament with some despatch so that it could be presented to the Assembly without delay. Although, in a sense, it is a government-sponsored bill introduced by the Minister for Health, we do not have a party position on it—nor, do I believe, does any other party in this Parliament have a party position on it. That leaves me in an extraordinary position because I happen to have the honour of being the minister in this house who represents the Minister for Health, so I have carriage of the bill. For all that members know, I might be opposed to it. That would be an interesting twist in the debate! You will find out in a minute, Mr President. My role, essentially, is to facilitate the progress of the business of the house. The point I want to make to members—I hope it reaches

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon  
Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

members in the other place—is that they can be in favour of things and be against things and want to amend bills but we must remember that this place needs to work. We must deal with bills. That means enabling them to come to a point of resolution. That will happen soon if this second reading is passed and we move into committee.

In conclusion, I make the following observations. Many of the points raised in the second reading debate were raised with sincerity by members here; however, with respect, they have been raised in one form or another before. On a technical matter, Hon Kate Doust referred to the surrogacy directions, of which she had an early draft possibly related to an earlier bill. I have had a talk with Hon Kate Doust behind the chair to give her some feedback. We can pursue that matter, if she wishes, in the committee stage. However, it is my understanding and my advice that the offending part of the directions she referred to does not exist and has been taken out of the new draft, which is not available for me to table; it is being worked on at this time.

My personal observation, to which I am entitled in this unusual situation, is that this bill deals with some matters that are of such concern that many of us would prefer not to have to come to grips with them. Surrogacy, as has been expressed by many members, is a highly problematic area of human activity. That is true. However, that is why, in the view I imagine of most members of this house as previously expressed, there should be some regulation of the field. This is why the former bill was supported in this house. These provisions, as every member wants to indicate, cannot deal with every situation. They cannot be perfect, but, without this proposed law, nothing in the Western Australian statutes prohibits commercial surrogacy. I think most members would see that as highly undesirable. At the moment there is nothing to prohibit that. There is nothing to regulate surrogacy and to provide a framework to ensure that parties contemplating, from whatever their perspective, entering into a surrogacy arrangement having thoroughly considered all the implications of a surrogacy arrangement. These include the capacity of arranged parents to properly care for a child, considerations that should be undertaken by the birth mother, and providing a mechanism for the transfer of legal parentage of a child to the arranged parents in a manner which is in the best interests of the child. All these things need to be considered by Parliament. That is why we have to progress this bill. Without further ado, I conclude my remarks and leave the second reading question to the will of the house.

Question put and passed.

Bill read a second time.

*Committee*

The Chairman of Committees (Hon George Cash) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

**Clauses 1 and 2 put and passed.**

**The CHAIRMAN:** Before we proceed to clause 3, I indicate that in accordance with standing orders, I will be leaving the chair at five minutes to 10.

**Clause 3: Terms used in this Act —**

**Hon BARBARA SCOTT:** I have an amendment to clause 3 on the supplementary notice paper that I will withdraw in favour of Hon Helen Morton's, which is identical.

**Hon HELEN MORTON:** I move —

Page 2, line 14 — To delete “a person or”.

In essence, this amendment is consequential to a further amendment that I have on the supplementary notice paper that deals with clause 19, “Circumstances for seeking parentage order”. If my amendment relating to page 10 of the bill to delete the references to “and eligible person means a woman who” and leaves in place the “eligible couple” reference is successful, my amendment to this clause is necessary. I do not know how you, Mr Chairman, would like to handle that. I have had a discussion about surrogacy enabling only a couple to procure a child through this method. I would like to pursue that as an amendment.

**The CHAIRMAN:** I am just having a look at Hon Helen Morton's proposed amendment to see how it fits in with clause 19 and whether we should defer her first amendment until we have regard for amendment 19/2. As Hon Helen Morton has said, this amendment relates in part to clause 19. However, a number of other amendments on the supplementary notice paper relate to a number of other clauses. It seems to me that it will not be convenient to go to those other clauses, deal with them first and then come back. It will be necessary to test the will of the chamber in respect of the proposed amendments to clause 3. If they are carried, there will be some consequential amendments in due course. If they are not carried, that will also have some consequential effects.

Hon Kate Doust; Hon Helen Morton; Hon Sue Ellery; Hon Matt Benson-Lidholm; Hon Giz Watson; Hon  
Anthony Fels; Hon Simon O'Brien; Chairman; Hon Barbara Scott

---

As long as members understand that when we are considering proposed amendment 4/3 of Hon Helen Morton, in fact it relates to some issues further in the bill.

**Hon KATE DOUST:** I have a couple of questions on the amendment. It is something that we need to think about. If these words are to be deleted, what will be the impact upon other legislation associated with this? How will it impact upon single or gay people who may be accessing IVF? How does it relate to legislation that we have already passed that affords these two groups of people access? What impact would this deletion have on children who have already been born under surrogacy arrangements to single women who may not have been through the process of having an arrangement put in place? I am just curious to know, if this is removed, what will happen to those children who are already here and in those situations that have not been ratified, as it were, and what connection does this have to other bills? Does it open up an avenue for discrimination against those groups by denying them access in this bill that they have through other pieces of legislation? I just wonder whether those sorts of questions could be responded to.

**The CHAIRMAN:** Members, I will give Hon Barbara Scott the call. However, Hon Kate Doust was asking questions of Hon Helen Morton, and if Hon Helen Morton wishes to respond, I will give her the call first. Does Hon Helen Morton wish to expand on any comments made by Hon Kate Doust?

**Hon HELEN MORTON:** I understand that Hon Kate Doust was asking the questions of the minister, and I would rather leave it to the minister to answer them.

**The CHAIRMAN:** That is fine. In that case Hon Barbara Scott has the call.

**Hon BARBARA SCOTT:** I believe Hon Kate Doust asked very good questions. They epitomise the concerns that some of us have. This amendment is the same as the amendment that I put on the supplementary notice paper for last Thursday, and it is very clear. It goes to the heart of the matter; that is, that many people in this community would perhaps have assumed that surrogacy was going to be an arrangement between persons. This amendment seeks to delete "a person". If there are problems with that, they are problems for the lawyers to sort out if there are ramifications further on in the bill. However, this is where we must begin. Those issues that Hon Kate Doust has raised are valid. We all know that the Sex Discrimination Act allows a single woman to access in-vitro fertilisation, so that will not bar people, but if we are saying that a person may be able to be a parent in a surrogacy arrangement, we need to know now whether that has complicated legal implications for other legislation.

**The CHAIRMAN:** Order, members! Having regard to the time, I am required to leave the chair, but obviously the minister will have an opportunity, no doubt overnight, to consider matters that have been raised, because in due course we will invite the minister to respond to some of the questions asked by Hon Kate Doust, should the minister so desire.

**Progress reported and leave granted to sit again, pursuant to standing orders.**