## HUMAN REPRODUCTIVE TECHNOLOGY AND SURROGACY LEGISLATION AMENDMENT BILL 2018

*Second Reading*

Resumed from an earlier stage of the sitting.

**HON NICK GOIRAN (South Metropolitan)** [5.12 pm]: Prior to the interruption of the debate for the taking of questions without notice, I was in the midst of my remarks on the issue that the bill that has been provided by the government of Western Australia and that is before us for consideration will, ironically, create discrimination rather than remove it. The government asserts that there is discrimination that needs to be addressed and I have already dealt with, at length, this afternoon the problems with the government's assertion, and particularly its lack of provision of information to Parliament specifically on the relevant sections that it says have caused this problem.

Even if the government were able to provide the section of the commonwealth legislation of which it says we are in contravention and the section of the Western Australian legislation that it alleges contravenes the commonwealth legislation—if it were true—members would nevertheless need to conclude and form an opinion on a secondary matter prior to casting their conscience vote. That is the question of whether the bill that is before the house will create rather than remove discrimination. Prior to debate being interrupted for the taking of questions without notice, I said that the second reading speech by the parliamentary secretary on 10 October last year identified that under Western Australian law, eligible women are required to undertake the least invasive treatment necessary. That is the status of the current law in Western Australia, according to the second reading speech by the parliamentary secretary, and that will continue to be the case under Western Australian law in the event that this bill is read a third time. I agree with the parliamentary secretary that that is the case. However, if this law were passed, men would always require the most invasive treatment necessary. Prior to the interruption of debate, I was indicating to members the remarks that had been made by Minister Roger Cook, the Minister for Health, in correspondence to one of my constituents in November last year. In summary, surrogacy is therefore the only means. It is not one of the options, but the only means by which a single male or same-sex couple can acquire a child biologically related to the male person.

If we look at the bill before the house, members will note that it seeks to require or make Western Australian men eligible for this scheme by virtue of what the government describes as social reasons. I compare and contrast that to what would be required of women in Western Australia, who would have to meet eligibility requirements and have medical reasons. According to the government's bill, men will be able to have an express direct pathway through to the surrogacy regime by virtue of them accessing it for social reasons, but women will be able to access it only if they meet eligibility requirements and have medical reasons. Interestingly, when we look at the various sections that the government seeks to amend in the bill that is before the house and, specifically, the section that deals with social reasons, we see that under clause 18 in part 3 titled "Surrogacy Act 2008 amended", the government seeks to amend section 19. It seeks to delete section 19(1)(b) and replace it with a new or alternative section 19(1)(b) —

> there were medical or social reasons for the surrogacy arrangement when the surrogacy arrangement was entered into.

If we read that in isolation, members could quite rightly conclude that perhaps all Western Australians would be able to access the regime for medical or social reasons, but that is not the case. I note that further in clause 18, in particular clause 18(2), the government is seeking to delete section 19(2) and insert a new section 19(1A) —

> For the purposes of subsection (1)(b), there are medical or social reasons for a surrogacy arrangement if —
>
> (a) in the case of a surrogacy arrangement involving 1 arranged parent, the arranged parent is an eligible woman or a man; or
>
> (b) in the case of a surrogacy arrangement involving 2 arranged parents, the arranged parents are married to, or in a de facto relationship with, each other and are —
>
> (i) an eligible woman and a man; or
>
> (ii) 2 eligible women; or
>
> (iii) 2 men.

The government also seeks to insert by virtue of clause 18(2) a new section 19(2) —

> In subsection (1A) —
>
> ***eligible woman*** means a woman who —
>
> (a) is likely to be unable to conceive a child due to medical reasons not excluded by subsection (3); or
>
> (b) although able to conceive a child, is likely to be able to give birth to a child due to medical reasons; or

(c) although able to conceive a child, is likely to conceive a child affected by a genetic abnormality or a disease.

The government finishes off in clause 18(3) by seeking to amend section 19(3) of the primary legislation, in this case, the Surrogacy Act 2008 —

In section 19(3):

(a) after "being" insert:

likely to be

(b) delete "the definitions of ***eligible couple*** and ***eligible person***" and insert:

paragraph (a) of the definition of ***eligible woman***

Members can therefore see that by virtue of the government's proposed amendments in the bill that is presently before the house, women will be able to access the surrogacy regime only if they are deemed eligible, but men will always be eligible to access surrogacy for social reasons. The government pretends that the motivation for the bill that is presently before the house is to remove discrimination. I therefore call on the government, and in particular the parliamentary secretary, to explain to the house why the government is prepared to enshrine and entrench that type of discrimination in Western Australia.

That is just one element of the discrimination that the government is seeking to entrench by way of this regime. I draw to members' attention page 4 of the explanatory memorandum provided by the government in support of its bill, which states in the third and fourth paragraphs —

> The amendment is consistent with Recommendation 5b of the Select Committee Report 1999 on the *Human Reproductive Technology Act 1991*, "That all women be eligible for IVF treatment if there is any likelihood of them becoming infertile as a result of disease or a medical procedure."
>
> The Government of the day supported Recommendation 5b, but noted an exception should not be used to allow treatment as a 'hedge' against a general age-related risk of infertility, rather than in response to a risk specific to a particular woman.

Therefore, a man—who can never become pregnant—will be given express or direct access to surrogacy. Why? Simply by reason of his gender. A male in Western Australia will be given express or direct access to the surrogacy gateway. If that were not outrageous enough for those who are hot to trot on the alleged discrimination issue, a male will be given express or direct access to surrogacy at any age. As a result of this bill, a 90-year-old single male will be given direct access to the surrogacy regime in Western Australia. Will a 90-year-old female be given direct access to the surrogacy regime? Not on your nelly. I find that outrageous. The government has said that the purpose of this bill is to remove discrimination. That is one of the government's prime motivations. However, when we interrogate the bill, we find that the government is creating discrimination. Men will be treated differently from women as a result of the bill that is presently before the Parliament. I want an explanation from the government about the basis on which it says that is acceptable. The government has told the Parliament that it is trying to address discrimination. However, when we interrogate the bill, we find that the government is creating discrimination.

It is particularly interesting that the eligibility requirements are even more onerous for female same-sex couples. We will see what the explanatory memorandum states at page 7 on this particular point. Page 7 of the explanatory memorandum—which is provided not by me, the opposition or anyone else, but by the government, with its massive resources—states in paragraph 2 at page 7 —

> If a same-sex female couple were seeking to be arranged parents under a surrogacy arrangement, both women would need to be an "eligible woman".

The explanatory memorandum goes on to say —

> "Eligible woman" is defined in new section 19(2) and means a woman who —
>
> - is likely to be unable to conceive a child due to medical reasons (not by reason of age or excluded for a prescribed reason under section 23(1)(d) of the *Human Reproductive Technology Act 1991*); or
> - although able to conceive a child, is likely to be unable to give birth to a child due to medical reasons; or
> - although able to conceive a child, the child is likely to be affected by a genetic abnormality or a disease.
>
> This has the effect of retaining the requirement that there be medical reasons (not social reasons) for a woman who is an intended arranged parent, to enter into a surrogacy arrangement. Those reasons must not arise due to the woman's advanced age.

This is straight out of the explanatory memorandum of this government. The government says it is trying to address discrimination, yet its own explanatory memorandum makes it crystal clear that this bill will entrench so-called discrimination. A man will be given direct access to the surrogacy regime on the express pathway. A woman will not be given access to the surrogacy regime on the express pathway but will have to go through the various hoops and hurdles. According to the parliamentary secretary and the Minister for Health in this government, a woman will be able to access surrogacy only for medical reasons, not social reasons. The government wants to keep social reasons as a special criterion for just the men of Western Australia. Under this McGowan government, a male in Western Australia will be given special privileges. The government wants to elevate the rights of men in Western Australia and give them direct access to special regimes that women are not able to access, and it then pretends that it is dealing with discrimination.

It is even worse for a female same-sex couple because both females have to go through all the hoops and hurdles. What happens if the same-sex couple are men? That is okay because they are men and they have express and direct access to the surrogacy regime. And do you know what? It will not even matter how old the men are. It will be okay if the same-sex couple are two 90-year-old men. I shake my head at the government's approach to this bill and the pretence that it is dealing with discrimination. As I indicated to members earlier, we now have, albeit the government was reluctant about it, new evidence before the chamber, which, I might add, was not available to us when we first started the debate in February. This new evidence may be yet another reason why the government sought to hide information from us. I ask members to look at part 1 of the review by Sonia Allan and, in particular, at what she has say about this issue at pages 276 and 277. She looks at this issue by determining what other matters require further consideration or action. She specifically looks at, first, the issue of eligibility and, second, the age limits that apply. Members should remember, of course, that Minister Cook will not be happy that I am quoting from this review because, according to his remarks to the media, it has nothing to do with the bill before the Parliament. Really, Minister Cook? Let us look at what is written in chapter 12.2 on page 276. It reads —

> Under the current *HRT Act*, section 23 prescribes criteria for when IVF procedures may be carried out, including but not limited to a requirement that persons, as a couple, or a woman, are unable to conceive a child due to medical reasons, but that *'the reason for infertility is not age…'*.

She continues in the second paragraph —

> A number of clinicians and the ANZICA Fertility Counsellors suggested that age restrictions for access to ART should be revised and/or clarified.

In the footnote she cites the submissions to which she referred. Of course, these submissions are the ones that the government refuses to table in Parliament. I have asked the government to table them. In fact, in March last year, the parliamentary secretary said that she would table them. I am still looking at the table. We have had question time and there has been an opportunity for further documents to be tabled, but still there is no sign of the submissions that the government wants to keep secret. The reviewer goes on —

> The clinics noted that the RTC —

Which, of course, is the Reproductive Technology Council —

> has been inconsistent regarding when it has viewed a woman's age as acceptable and that the age of menopause is unclear. They also raised that there is a need to consider other factors such as the ability for women to use an egg donor, and thus being able to conceive provided medically fit to do so. Some clinics were of the view that age limits should apply for men also.

That is interesting. All of a sudden the government's quarter-of-a-million-dollar review suggests that age limits should also apply to men. Does the bill before the house provide an age limit for men? It absolutely does not. The reviewer goes on to state —

> For example, one clinic raised the concern that they had been approached by a number of men who were 60 or 70 years of age seeking treatment with 30–45-year-old partners. They questioned whether they should treat in such circumstances and raised the inconsistency of applying age limits to women, but not to men. One clinic suggested that a combined age limit should apply.

What is the government's position on these matters? How would we know, because the government keeps hiding information from Parliament. It is obsessed by secrecy and loves to hide information, and that is why we are no further informed despite the fact that it spent a quarter of a million dollars of taxpayers' money on the review. At page 277, the reviewer goes on to state —

> In contrast, the submission of Rodino and Clissa (fertility counsellors) supported age restrictions.

There the review refers to submission 8. Where is submission 8, parliamentary secretary? It is not on the table in front of us. Why does the government keep hiding this information from us? The reviewer goes on to state —

> The review found that there had been some inconsistency over time in how age limits were applied and that issues regarding access based on age in modern times need to be further considered. In the first instance, it is incumbent upon the Minister for Health and his Department —

I pause there to indicate that these are not my words; these are the words of Associate Professor Sonia Allan. She said that it is incumbent upon the Minister for Health and his department to do what? The quote goes on —

> to provide clear and consistent communication regarding how the current age limits should be interpreted and applied.

I pause again to tell the parliamentary secretary that she and the Minister for Health have been told that it is incumbent upon them and the Department of Health to provide clear and consistent communication. What is she doing about that? Has the government done any work whatsoever to provide clear and consistent communication about how the age limits should be interpreted and applied? If work has been done, can she tell us what that work is? Stop hiding that information. The list of information that the government is hiding is so long that I have lost count. The reviewer continues —

> This may occur via the recommended new Directions, conditions of registration and/or education of clinics and community.

The reviewer concludes this section by stating —

> Beyond this, further research and consultation should be conducted regarding the current limitation on women not being able to receive treatment by way of s 23(1)(d) having been interpreted as post 'average age of menopause'. Such research and consultation should consider whether a cut-off age or stage of life such as 'post-menopause' or otherwise continues to be appropriate; and, if so, the RTC —

That is, the Reproductive Technology Council —

> should provide guidance on this matter to clinics. Consideration should also be had as to whether such limitations should apply only to women (as it appears is current practice) or whether age limitations should also be applied to men, or whether a combined age cut off (for example, 110 years as suggested by one clinic) would be justified. If a cut-off age or stage of life such as 'post-menopause' or otherwise is deemed appropriate, then the limit should be explained and justified, based on evidence that such limitations are, for example, in the best interests of children who may be born as a result of ART. Any matters relevant to age discrimination should also be considered.

My question to the parliamentary secretary is: what is the government's response to and position on those matters articulated by Associate Professor Allan in paragraph 12.2 of part 1 of the independent review? This all has to do with the issue of age. The parliamentary secretary and her government have said that they are trying to deal with discrimination when, in fact, they are allowing men to access surrogacy at any age whatsoever, because apparently under the McGowan regime, men receive special status and privilege and can access surrogacy at any age, but women do not have access at any age. Why is it, parliamentary secretary, that the government finds that acceptable but asks us to ask cast our conscience votes to support the government in this endeavour? This is a bad bill. Every time I look at another clause and another area, it becomes increasingly clear that this is a bad bill. People may have a different view on the core issues. Some people might say that it is appropriate for single men to access surrogacy. Members are entitled to hold that view. I am not one of those who think that single men need to access surrogacy. Members might have a different view and they are quite entitled to that view, but they have a responsibility to ensure that the bill that passes through this Parliament is not a bad bill—and this bill is a very bad bill. This government in unable to articulate what sections it says we are in contravention of. The government is unable to explain why men should have direct and express access to the surrogacy regime in Western Australia, while women have a far more convoluted and complicated access to this regime. Why does the government say that that is acceptable? If it is the so-called champion of anti-discrimination, it should have a good and cogent explanation for these things.

I note that when the debate was interrupted earlier this afternoon for the taking of questions without notice, a very interesting question was asked by the shadow Attorney General, Hon Michael Mischin, of the parliamentary secretary representing the Minister for Health about the issue of consultation on legal advice. As I outlined to the house earlier this afternoon, especially for the benefit of the Leader of the House, who wanted matters of significant substance to be raised, it is clear that the government has not provided to the house the extent to which our laws are said to be inconsistent with the commonwealth legislation. It is also clear that if we pass this bill in its current form, it will create discrimination; it will entrench any so-called discrimination. I would have thought that the government would have received advice on all these matters. Whom has it consulted? Whom has it obtained this advice from? The answer that was provided by the parliamentary secretary to Hon Michael Mischin is partly instructive. As per usual with this government, it ends up creating more questions than answers. This question was asked by the learned shadow Attorney General earlier this afternoon —

> I refer to the Human Reproductive Technology Act 1991, the Surrogacy Act 2008 and the minister's claims in the second reading speech introducing the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 that there is a risk that the relevant legislation is invalid due to inconsistency with the commonwealth Sex Discrimination Act 1984.
>
> (1) Before instructing the drafting of the bill, did the government seek, receive or have to hand legal advice on the question of invalidity from —
>
> (a) Solicitor-General Quinlan, SC;
>
> (b) Solicitor-General Thomson, SC; or
>
> (c) the State Solicitor's Office;
>
> and, if so, what is the date of that advice and when did it receive that advice?

I pause there to indicate the answer provided by the parliamentary secretary to that part of the question. The question was a multi-part question and I have just dealt with part (1), but, of course, there are still parts (2), (3) and (4) to be dealt with, and I will get to those in a moment. Remember, this part of the question was about whether the government sought any advice from Solicitor-General Quinlan, Senior Counsel, who of course is now the Chief Justice of the Supreme Court in Western Australia. The answer provided by the parliamentary secretary to part (1)(a) of the question was —

> Yes, dated 28 September 2017 and received by the Department of Health on 29 September 2017.

We know from that answer from the parliamentary secretary that, if nothing else, this government, after it was elected in March 2017, sought and obtained advice from the then Solicitor-General, Mr Quinlan, and that advice was dated 28 September 2017 and it was received by the Department of Health the next day. The response to the part of the question from the shadow Attorney General, my learned friend Hon Michael Mischin, about whether the government sought and received any advice from Solicitor-General Thomson, SC, who is of course the gentleman who succeeded Mr Quinlan after he was sent to the Supreme Court, was no. The response from the parliamentary secretary to part (1)(c) of the question, which was about whether the government received any information from the State Solicitor's Office, was —

> Yes, dated 18 February 2016 and received by the Department of Health on or about that date.

I ask the parliamentary secretary why she was able to be so precise about the advice that was provided by Solicitor-General Quinlan, SC—she provided the date of it and the precise date that it was received by the Department of Health—but she was unable to do so for the State Solicitor's Office. When did the Department of Health receive the advice? Why did she say "on or about that date"? Why was she so vague in that respect but so precise about the Solicitor-General's advice? Nevertheless, what we do know from this partial answer that was provided by the parliamentary secretary earlier this afternoon is that the government has in its possession two pieces of advice. I wonder whether the government has any other advice. As I have found in the past, usually when this government is asked for some information, it gives a little bit of information but it does not give all the information. It likes to hide certain bits of information. It is obsessed with secrecy. If Hon Michael Mischin were inclined to continue to interrogate the parliamentary secretary about this matter, it would not surprise me if we found out that more advice is available. Nevertheless, according to this advice from the parliamentary secretary, two pieces of advice have been received by the government—one from Solicitor-General Quinlan, Senior Counsel; nothing from Solicitor-General Thomson, Senior Counsel; and a piece of advice from the State Solicitor's Office dated, interestingly enough, 18 February 2016. That was prior to this government coming to office in March 2017. That is rather curious. The parliamentary secretary is suggesting that the government did not have any other information or advice from the State Solicitor's Office prior to drafting this bill during the time that it was in government. It seems remarkable, but that is what the parliamentary secretary has told us today. Maybe the parliamentary secretary and the massive team that the government has at its disposal might be able to check that answer to ensure that it is not incorrect and that it is not the case that the State Solicitor's Office has provided advice to the government in this fortieth Parliament. That would be a good thing to do. We might have another correction, a bit like the one we heard earlier this afternoon from the Leader of the House on behalf of the Premier, who had provided incorrect information to Parliament. We will wait and see what the parliamentary secretary does with that one.

I note that Hon Michael Mischin, the shadow Attorney General, went on in his four-part question to ask —

> (2) Is all that advice consistent in respect of the need to amend the legislation?

Quite remarkably, the parliamentary secretary responded to that part of the question by saying —

> This question contravenes standing order 105(1)(b) in that it seeks a legal opinion and, in any event, the legal advice is subject to legal professional privilege and the question cannot be answered without waiving privilege in the advice.

There are a few things to say about that. Firstly, what is this famous standing order 105(1)(b) that the government thinks is appropriate to use to block information from getting to Hon Michael Mischin? Standing order 105(1)(b) states that questions shall not seek an opinion or a legal interpretation or opinion. Despite the fact that the government did not want to quote this particular standing order, I note that immediately underneath that is standing order 105(2), which states —

> Any question that infringes upon this Standing Order may be amended, disallowed or withdrawn as ordered by the President.

I note that no such order was made by the President with respect to that question. That tells me that that question asked by my learned friend Hon Michael Mischin did not contravene standing order 105(1)(b), otherwise the President would have issued an order. Once again, we find that this government thinks it is appropriate to pretend to answer questions by saying, "We refer to standing order 105(1)(b)", Or, "We allege that it contravenes a particular standing order", yet we find that it does not. How could it anyway? The shadow Attorney General was simply asking whether the advice was consistent with the need to amend the legislation. Was it consistent or not? I am not asking for the government's opinion. It said that it received advice from Solicitor-General Quinlan, SC, and the State Solicitor's Office. Is it consistent, yes or no, not, "What is your opinion about the opinion?" That is not what the shadow Attorney General asked. He simply asked for a statement of fact—a response about whether the advice was consistent. Instead of the government being open and transparent and adhering to its own commitment that it gave to the people of Western Australia prior to March last year when it said that it would adhere to a gold standard of transparency, it pretended to give an answer to Hon Michael Mischin and simply said to him, "Sorry, your question contravenes standing order 105(1)(b)." With due respect to the parliamentary secretary, that in itself is an opinion. How ironic that the government would try to obstruct the Parliament from having information and, in particular, the shadow Attorney General, and pretend that he asked for an opinion when it gave an opinion in response.

Nevertheless, it is the case that, once again, the government has sought to pretend that it cannot answer these questions without waiving privilege in the advice. Why? On what basis does the government keep saying that? It is one thing to say it but it is another thing for it to be true. On what basis does the government say that it cannot answer that question about whether the advice was consistent without waiving privilege? The only way that it would be able to come to that conclusion was if the advice was inconsistent. If it was consistent, there would be absolutely no problem responding to that question. The only reason it would want to hide behind the shield of legal professional privilege and not want anything to pierce that shield is that the two pieces of advice that the government has must be inconsistent. That is the only conclusion one can draw about why the government would respond in such a fashion.

I note that Hon Michael Mischin, the shadow Attorney General, went on in part (3) of his question to specifically ask —

> Which specific provisions of the Human Reproductive Technology Act 1991 and the Surrogacy Act 2008 does the advice say are inconsistent with the … Sex Discrimination Act 1984 and need to be corrected by this bill?

That has to be the most staggering of all the responses provided by the government. In fairness to the parliamentary secretary, she is only doing her job on behalf of the Minister for Health, so I blame him entirely. Honestly, I would ask the parliamentary secretary in future to read these answers before she reads them out in Parliament and if she is not satisfied, go back and tell the minister, "This is rubbish what you are asking me to read out. This is embarrassing what you are getting me to read out here." Hon Michael Mischin asked, "Which specific provisions of the act does the advice say are inconsistent with the Sex Discrimination Act?" The response from the parliamentary secretary was —

> This question contravenes standing order 105(1)(b) in that it seeks a legal opinion …

No, it does not. It simply asks the minister to pick up the document that he says he has access to and tell us which section is mentioned in there. It does not ask for a legal opinion; it is asking for a statement of fact. It is a simple piece of evidence and the government pretends that somehow evidence is now legal opinion. This is a strange new world that the McGowan government is taking us into.

In answer to part (3) of the question from the learned shadow Attorney General, the parliamentary secretary went on to say —

> … in any event, the legal advice is subject to legal professional privilege and the question cannot be answered without waiving privilege in the advice.

Why? We are not even asking for the basis upon which the government has come to that conclusion. I understand that it might want to hide that from prospective litigants but the government cannot tell us which section of the Human Reproductive Technology Act or the Surrogacy Act contravenes the commonwealth legislation. The reason

it says it cannot tell us that is it pretends that we are asking for a legal opinion and the legal advice is subject to legal professional privilege and it cannot answer the question without waiving privilege in the advice.

I am one of the people encouraging members to oppose the second reading of this bill because it is a bad bill. Irrespective of where members sit on this matter, either way it is a bad bill. Nevertheless, imagine for a moment that it did pass through the second reading stage. How will we make any progress in Committee of the Whole House if the government says it cannot tell us which section is inconsistent with the Sex Discrimination Act 1984? It will be impossible to make progress, not impracticable. We have already had the debate in this chamber about the difference between impracticable and impossible. It will be impossible to make any progress because this is the heart of the bill. The whole reason the government says we need the bill in the first place is that apparently sections are inconsistent. When the shadow Attorney General asked today which sections are inconsistent, the government said, "We can't tell you." That is absolutely ridiculous. A number of members opposite take the scrutiny of legislation very seriously. In all sincerity, I suggest they knock on the door of the Minister for Health and say to him, "Minister, this is ridiculous." In fact, they should satisfy themselves of the section. I would go so far as to say that it is unconscionable for a member of this place to vote for this legislation if they do not know what section is said to be inconsistent with the commonwealth legislation. If they do not know what that section is, how can they vote for this legislation? If they do know the section, can they let the rest of us know, because the government will not tell the shadow Attorney General; it has said no to him.

To conclude this particular point, I note that this afternoon the shadow Attorney General asked the parliamentary secretary —

> Did … Professor Sonia Allan have access to any of this advice during her review of the legislation; and, if so, which?

The answer was no. This is how secretive this government is. The government even says to a person to whom it has given a quarter of a million dollars of taxpayers' money to prepare these two weighty volumes, "Sorry, we're not going to give you the advice either. We're going to hide that from you." The government loves hiding things. Nobody is allowed to know, except the Minister for Health, presumably. Who knows whether anybody else knows what section we are apparently contravening in commonwealth law. Nobody else is allowed to know that. I find that appalling. I foreshadow to the government that it will be impossible for us to make progress while it continues with this deceptive bullying approach to this legislation. It is really not that complicated for the government. It should just provide the information that will enable members to cast their conscience vote without wearing a blindfold.

I would like to move to an area that I foreshadowed last week. I put it on hold temporarily, mainly in response to the inappropriate remarks made by the Leader of the House to the media yesterday. Instead, I wanted to spend this afternoon looking at legal analysis.

*Sitting suspended from 6.00 to 7.30 pm*

**Hon NICK GOIRAN**: Prior to the interruption of the debate for the dinner adjournment, I had been taking members through a number of very important areas as we consider the bill presently before the house. In particular, I was looking at whether there is currently any sex discrimination under our law in Western Australia. Having looked at that, and in particular identifying that the government had been unable or unwilling to provide information to the house about that matter and therefore obstructing our progress, I then looked at the issue of the bill itself ironically creating discrimination and entrenching any discrimination that the government says exists.

This evening I want to look at another topic that has been put forward by the government in its prosecution seeking support of members for the bill presently before the house. In particular, I draw to members' attention the explanatory memorandum provided by the government of Western Australia in support of this bill. If members have the explanatory memorandum available at their fingertips, I ask them to turn to page 5. There is a section on page 5 dealing with the proposed amendments set up by the government in clause 12. Clause 12 of the bill seeks to amend section 26. As members may be aware, two acts are sought to be amended by this legislation. The first is the Human Reproductive Technology Act and the second is the Surrogacy Act. It is the first of those two acts that is impacted by clause 12. As I say, clause 12 seeks to amend section 26 of that legislation. In accordance with what the government has suggested to the house, it states on page 5 —

> Clause 12(a) amends section 26(1)(c) to delete the reference to "woman" and replaces it with "person". This reflects changes that will permit a single man access to lawful surrogacy. The amendment has the effect that where upon fertilisation, the rights to an egg undergoing fertilisation or an embryo vest in a single person on whose behalf the egg or embryo is developed, that person is not restricted to a being a woman.

I ask Hansard, when recording that, to quote precisely from that paragraph. That is not me who has misspoken, but that is the explanatory memorandum on page 5. Although it is grammatically nonsensical, nevertheless that is what the government has decided to provide to the house, so I ask Hansard to faithfully record precisely the erroneous explanatory memorandum by the government. The primary point is this: the government seems to

suggest that there are some rights of adults in the application of this surrogacy regime. In particular, it says in the explanatory memorandum that there are rights to an egg and they will vest in the person for whom the whole arrangement has been developed in the first place. I note the Minister for Health, Hon Roger Cook. I would like to look at what he had to say about this issue. I draw to members' attention that on 9 October 2018 the minister had this to say. I quote from the corrected *Hansard* of 9 October 2018 —

> It is really an important issue to clarify our understanding. This is about not judging; it is about accepting that everyone should have the right to be a parent and be part of a family.

We see there that the health minister, who has primary carriage of this matter and this legislation and who has delegated responsibility to his long-suffering parliamentary secretary in respect of the matters before this chamber, says that everyone should have the right to be a parent. Should everyone have the right to be a parent? It is one thing for the Minister for Health to say that, but is that in fact true? Is there such a thing as a right to be a parent, as has been proffered by the health minister? I suggest that what the Minister for Health has said is false and that there is no such thing as a right to be a parent. I compare and contrast what the current Minister for Health in this fortieth Parliament has had to say on this matter with what one of his predecessors had to say. I draw members' attention to what was said by Hon Dr Kim Hames in December 2008 about this same issue. Dr Hames was at the time the member for Dawesville and he made these remarks on Tuesday, 2 December 2008—some 11 years ago. I quote again from the corrected *Hansard*. Dr Hames said —

> 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. 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.

In that one paragraph from that debate in 2008, we see that the then Minister for Health, Hon Dr Kim Hames, encapsulated the three competing interests that exist in these arrangements. Very interestingly, Hon Dr Kim Hames has referred to the arranged parents' interest in being able to have a child, whereas the current Minister for Health refers to it as a right. I ask members to give due and proper consideration to the distinction between an interest and a right. I agree with Hon Dr Kim Hames. I think that it is entirely understandable that adults have a desire or an interest in being a parent; however, just because a person has a desire or an interest, it does not create a right. They are two distinctly different things.

Hon Dr Kim Hames in 2008 quite correctly identified that a child has a right—of course they have an interest, and no doubt they have a desire, but it is elevated beyond that to a right—to be protected and to know about the circumstances of their birth. A child has a right to those two things, and that right is distinguished from the understandable desire and interest of arranged parents to be able to have a child. However, he does not go as far as Hon Roger Cook's assertion that people have a right to be a parent.

In December 2008, Hon Dr Kim Hames quite correctly identified that a birth mother has a right to be protected from exploitation. I support that encapsulation of the rights and interests as articulated by Hon Dr Kim Hames on 2 December 2008, and I put to the government and to the parliamentary secretary that there is a requirement for government to clarify whether it is indeed an all-of-government position that there is suddenly now a right to be a parent in Western Australia, because that is what Hon Roger Cook said on 9 October last year. I vigorously disagree with him. I very much suspect that the significant majority, possibly even all the members of this place, would also disagree with Hon Roger Cook on that point, and that the significant majority, if not the unanimous, view of members of this place would be that there is no such thing as a right to be a parent. However, I think that we would all unanimously agree that there is an understandable desire and an interest to be a parent, and that they are two different things.

For any of those members who would prefer to associate themselves with the Minister for Health's position that there is a right to be a parent, I would draw their attention to some of the learned academic research and thinking in this area that has already addressed this. In particular, I would like to draw to members' attention the comments made by Tom Frame in his book, *Children on Demand: The Ethics of Defying Nature*. On page 32, under the heading "Families and Children", he says —

> Article 16 of the Universal Declaration of Human Rights (1948) states: 'Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family.' The first part of this right (to marry) is largely free from controversy, the second part (to found a family) less so, because it is susceptible to a range of interpretations. Clear violations of the second part would certainly include the forced sterilisation of married women or the mandatory termination of pregnancy. It might even be possible to declare the long-standing 'one child' policy in China to be a violation of human rights, because the state has decreed that it will disadvantage families that have more than one

> child. But what should we make of situations in which a couple cannot achieve pregnancy without assistance from a third party? Does the denial of this assistance constitute a violation of the couple's right to found a family, given that Article 16 links marriage with founding a family?
>
> It must first be noted that no-one has a legitimate right to something that is impossible for them to obtain. There is a memorable scene in the 1979 satire *Life of Brian*, depicting a disparate group of first-century Jewish revolutionaries plotting the overthrow of Roman imperial rule in Judea. The purpose of the film-makers is to mock the ludicrous and unrealistic demands of extreme political radicals in every generation when their ideals are completely divorced from reality. One of the male characters announces that he has changed his name from Stan to Loretta. He goes on to announce that he wants to have a baby. The leader of the group is incredulous: 'Where is the fetus going to gestate? Are you going to keep it in a box?' The only female member of the group suggests that they agitate for the right of Stan–Loretta to have a baby. It is, of course, an exercise in utter futility. Men cannot claim a right to give birth because they cannot become pregnant. It is crucial to distinguish between actually producing children and attempting to produce children. Even with all the assistance that science can offer and the best help money can buy, there may be factors that preclude a couple from producing any children.
>
> …
>
> The existence or otherwise of certain reproductive 'rights' was considered by an official inquiry into human fertilisation and embryology established by the British Parliament in 1982. The moral philosopher Professor (later Baroness) Mary Warnock of Oxford University served as its chair. Its report, entitled 'Question of Life', was delivered to the UK Government in July 1984. In a subsequent study entitled *Making Babies: Is There a Right to Have Children?*, Warnock summarises her own thinking on this question. She notes that 'a right is an area of freedom for an individual that someone else has a duty to allow him to exercise, as a matter of justice. It is a freedom that one claims, for oneself or for another, and that one can properly prevent other people from inhibiting'.

At page 34, the author refers to Professor Warnock, who chaired this inquiry, and says —

> But she also noted that more than two decades of media reporting on near-miraculous technological achievement had encouraged the mistaken belief that all adults had a right to children whatever their circumstances.

Further down the page, he says —

> Dr Brian English, a former senior lecturer in social work at the University of New South Wales, has made a similar observation in relation to Australian attitudes: 'It is fair to speculate that many people now believe, with whatever justification, that everyone has a right to parenthood and a right to expect the State to help them achieve it by one means or another'.
>
> There is, however, strenuous denial of this purported right within some segments of Australian society. TangledWebs, a support and advocacy group for those born through donor conception … is adamant that no-one has a right to children: —

The author then goes on to quote that particular organisation, which is, of course, an advocacy group for those born through donor conception —

> To claim the right to a child is to treat that child, another human being, as an end to satisfying one's own desires, as an object and not a person. To claim the right to a child is to claim jurisdiction over another human being's life when they have no say in the matter, when they have not given their consent, informed or otherwise.

This section of the book under the heading "Reproductive rights" concludes by saying —

> If, then, parenthood is more of a privilege than a right, attention must be focused on the purpose for which parents exist and on those who are its subjects (that is, children) to ensure the privilege is not abused.

I found that particular extract from that article to be particularly helpful in unpicking the distinction between people's understandable desire to be a parent and the erroneous view put forward by Minister Cook that there is somehow a right to be a parent. Tom Frame, in his 2008 book, is not the only person to have said such things. Indeed, I draw members' attention to what the United Nations Human Rights Council has said on this point. In particular, I draw members' attention to comments in the "Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material". In relation to the sale of children and the rejection of a right to a child, the United Nations at paragraph 64, on pages 15 and 16, states —

> International and regional human rights instruments protect the right to "found a family" or the right to "respect for … private and family life." The language of a "right to procreate" is used in some national legal systems, though this terminology is not found in international human rights instruments. On bases such as these, it is sometimes argued that all adults are entitled to create a family and raise children. However, it is recognized that there is no "right to a child" under international law.

I draw members' attention to the fact that these are the words of the United Nations in the General Assembly and the Human Rights Council in the thirty-seventh session on 26 February to 23 March 2018. At this point, the United Nations seeks to make the point that there is no right to a child. Unlike Hon Roger Cook's proposal to Parliament last year, the UN document draws our attention to Chantal Saclier's article "Children and adoption: which rights and whose?" and Van Bueren's *The International Law on the Rights of the Child*, and goes on to say —

> A child is not a good or service that the State can guarantee or provide, but rather a rights-bearing human being. Hence, providing a "right to a child" would be a fundamental denial of the equal human rights of the child. The "right to a child" approach must be resisted vigorously, for it undermines the fundamental premise of children as persons with human rights.

One could say that presently I am resisting vigorously Minister Cook's proposition that there is a right to a child and I am simply doing what the United Nations has said on this matter. I encourage members to familiarise themselves with the position articulated by the United Nations and compare and contrast that with the erroneous remarks made by Minister Cook last year when he was prosecuting the case for this particular bill and the government once again bullied its legislation through Parliament. As I have mentioned, that is something I will not condone.

These are not the only people who have said there is no right to have a child. Indeed, some commentators have been more specific in articulating that there is no right to surrogacy. Of course, if the government were able to prosecute the case that there is a right to surrogacy, we would have no option but to facilitate the bill. If there is a right for all to surrogacy, it would be impossible for us to stand in the way of such rights. But, as I say, unlike Minister Cook, I do not accept, and it appears that nobody else seems to accept, that there is such a right. Nevertheless, let us look at what people have said about whether there is, indeed, a right to surrogacy, let alone a right to be a parent, which of course would create a reciprocal obligation to facilitate that right. Another excellent article "Gay Rights and Surrogacy Wrongs: Say 'No' to Wombs-for-Rent" was produced by journalist, author and feminist campaigner Julie Bindel and political activist and educator Gary Powell for the organisation Stop Surrogacy Now. The two authors say —

> We are a lesbian and a gay man who have been involved for many years in the struggle for gay and lesbian equality and for broader human rights issues. We both unequivocally oppose all forms of surrogacy as unethical; as legally, medically and psychologically dangerous; and as an abusive commodification of women and of babies that also carries significant and barely-reported health risks for the women and babies involved.
>
> …
>
> We view with alarm the increasing clamour to regard surrogacy arrangements as a "gay right" and to automatically stigmatise and shout down anyone who opposes surrogacy as a "homophobe".
>
> The silencing of debate on this topic, and this false association with the "rights" of gay men to access the wombs of poor and desperate women, is demeaning to the genuine struggles of the lesbian and gay community.

I remind members that these are the words of Julie Bindel and Gary Powell who described themselves as —

> … a lesbian and gay man who have been involved for many years in the struggle for gay and lesbian equality and for broader human rights issues.

These particular individuals, who clearly do not support surrogacy in any form, go on to say —

> We therefore appeal to the gay and lesbian community to take a step back from a position of indifference or acceptance with regard to this issue, and to refuse to be taken in by the glamorisation of surrogacy, promoted by a superficial media that focuses on wealthy celebrities.
>
> The right of gay couples to have children through surrogacy is increasingly seen as an advance for equality, and a triumph of tolerance over prejudice.

I pause there to note that this seems very similar to some of the remarks that were made in the second reading speech. I note that this article has a little footnote at this point, which states —

> In April 2018, a competition featured in the German LGBT+ website Queer.de offered a prize of egg donation plus the services of a surrogate mother in Bangkok, at a value of €36,000. This turned out to be

> a rather unfunny April Fool joke. When criticised by Julie Bindel, co-author of this letter, on the grounds that using the womb of a desperate and poor woman was a human rights abuse, she was accused of bigotry.

In this article they then go on to say —

> When the Italian designers Domenico Dolce and Stephano Gabbana described the IVF children of Sir Elton John as "synthetic", there were calls for a boycott of Dolce and Gabbana's products. Elton John responded by saying, "Shame on you for wagging your judgemental little fingers at IVF—a miracle that has allowed legions of loving people, both straight and gay, to fulfil their dream of having children."
>
> More recently, when Dustin Lance Black revealed that he and his husband, Tom Daley, were expecting a baby via surrogacy, some critics claimed that it was "wrong" that two men should raise a child. The authors of this letter have no objections to same-sex parenting *per se*. However, when we raised our general objections to surrogacy in response to the announcement by Black and Daley, we were both accused of bigotry.

We can see that these two individuals, Julie Bindel and Gary Powell, who describe themselves as a lesbian and gay man who have been involved for many years in the struggle for gay and lesbian equality and for broader human rights issues, seem to be fairly exasperated that any time they raise any concerns around surrogacy, they are accused of bigotry. They go on in their article to say —

> The rights-based discourse has removed any sense of responsibility. But in reality, it is not a right for anyone to use the womb of a woman in order to have your own child.
>
> Some heterosexuals who wish to justify renting wombs and egg buying are using our community as a shield, and as justification for their exploitative choices. As one straight couple said to one of us, "If gay men are doing this in the name of equality, then surely there is nothing wrong with it?"
>
> In other words, our community is leading the way now in normalising, sanitising, and destigmatising this practice. Those who are proposing that surrogacy should be legalised, using the arguments of "gay rights" and equality, are subverting the core aims of the gay liberation movement, which is about dignity and respect for all, and not the abuse of other people's rights.

Because I simply do not have time to quote the entirety of the article from these two individuals, one that I recommend to members, I will quote a couple of shorter portions, including the following later in the article where the authors say —

> The authors of this letter are both human rights activists who have been involved in our community overcoming oppression and bigotry for a number of years. We are for, not against, equality for all.
>
> Surrogacy simply reduces women and children to a means to a desired end product. The universal right to a child does not exist. Yet we believe that a climate has arisen where anyone who expresses this view risks being called a "homophobe".
>
> Surrogacy has become so normalised as a practice for gay men that it is now seen as entertainment as well as a right. One surrogate mother, who gave birth to a baby "belonging" to a star of a TV remodelling programme and his partner, claims to have had no idea that the birth was being filmed and subsequently screened.

Later in this article the authors go on to say —

> Surrogacy potentially harms the baby as well as the mother. We are calling upon you to consider how any baby might feel after developing a bond with the birth mother over nine months, only to be wrenched away from her as soon as the baby is born.
>
> Let us, as proud lesbians and gay men, condemn this exploitative, cruel practice, and stand up for *true*rights. We need to set an example as a group that has done much to challenge bigotry and exploitation. We need to speak out *against all* surrogacy, and *for* true equality. The aspiration by gay individuals or couples to acquire a child via surrogacy arrangements has nothing to do with gay and lesbian rights. This practice is one that pretends to be about equality, but in fact is primarily concerned with extending the privileges of the rich, who are the only people able to access the services of the commercial surrogacy industry.

I can well imagine that if I had made those remarks in my contribution to the second reading debate today as my comments, rather than quoting somebody else's, I would not have heard the end of it for days and days and weeks and weeks ahead. I would have been bombarded with emails and the like about my remarks, yet I remind members that those remarks are not mine, they are the remarks of Julie Bindel, journalist, author and feminist campaigner, and Gary Powell, political activist and educator, who describe themselves in this article, "Gay Rights and Surrogacy Wrongs: Say "No" to Wombs-for-Rent", as a lesbian and a gay man who have been involved for many years in the struggle for gay and lesbian equality and for broader human rights issues. I hasten to say that for any

enthusiastic person either listening or in future reading this speech who does not like what I just read out, talk to the authors of that particular article. Do not even bother writing to me, because they are not my words, they are simply the words of Julie Bindel and Gary Powell. If people do not like what they had to say, take it up with them. I would, however, encourage members to give those comments serious consideration.

I already mentioned that it appears a number of individuals around the globe would want to distance themselves from the remarks of Minister Cook, the Minister for Health in our state, who has suggested that there is a right to be a parent. We can already see from the short things that I have been able to bring to members' attention this evening that there are people around the globe who have a very different view and say that there is no right to a child and no right to surrogacy. As I said, it strikes me that there is a clear and distinctive difference between rights and desires. I would like to draw to members' attention something that was said in 2014 by a couple of authors, Liz Bishop and Bebe Loff. These two individuals wrote an article published in The Conversation. Members may well ask: who are these two individuals who have written this article in The Conversation? Liz Bishop is a lecturer in public health and human rights at Monash University and Bebe Loff is an associate professor and director of the Michael Kirby Centre for Public Health and Human Rights, also at Monash University. This article, published on 21 August 2014, is entitled "Making surrogacy legal would violate children's rights". I regret that I simply do not have the time to quote the article in its entirety. However, I want to quote certain extracts from this piece from 2014, particularly on the distinction between rights and desires—in other words, the rights articulated by Minister Cook compared with the desires articulated by then Minister Hames. The authors say, under the heading of "Rights vs desires", in this article —

> Claims to rights do not, in and of themselves, create rights.

I pause there to associate myself very much with that statement by the authors. That is precisely the point; indeed, this has happened all too often already with the government in this debate. Simply making claims or statements does not make them true. We need to support the assertions we make. Indeed, as I said earlier today, I remain of the view that we will be unable to make any progress on this matter while the government is unable to articulate what section in the commonwealth legislation we are supposedly contravening or being inconsistent with. The claim by the government that this is the case does not suddenly make it correct or create it as a declaration of the High Court. Far from it. At the very least, the minister needs to quote the sections. Nevertheless, I return to the article in The Conversation. The authors go on to say —

> International law recognises both the right to found a family (article 16), and the right to benefit from scientific progress (article 15).
>
> But neither of these rights, however cobbled together, can defensibly form a right to outsourcing the creation of child. Indeed, the creation of a child through commercial surrogacy could not have been contemplated in their origin.
>
> Since the claim to create a child by means of a surrogate mother falls short of characterisation as a right, how is this claim to be understood? It is most readily recognised as a desire or interest.

I pause there to indicate to members that this seems to very clearly support the position articulated by Hon Dr Kim Hames and seems to rebut quite vigorously the remarks made by Minister Cook. The article continues —

> The strongest argument for recognition of these desires or interests is that of same-sex couples. A same-sex couple will always be incapable of creating a child without the involvement of a third party.

I pause there to say that that should be abundantly self-evident but sometimes in the course of the debate, in particular the second reading speeches by the government, this seems to be something that has been missed. The authors go on to say —

> But this lack of capacity doesn't produce the right to a child, let alone the right to a child resulting from a contractual arrangement. Although the desire for a child may be great, desires are not rights.

Further on in this article, the authors go through various other things, including the rights of the child—I will get to that in the fullness of time—and they talk about the concept of an inalienable responsibility. They conclude their article by saying —

> Internationally recognised human rights often conflict. When they do, a balancing exercise is required to minimise the restrictiveness of the outcome. But in this circumstance, what we're seeking to balance are strongly held desires against internationally and nationally recognised rights.
>
> … This violation of the dignity of the child says something about those who are content to return to historic understandings of a child as the property of its parents or, more correctly, its father.
>
> We can't ensure that all children will be born to loving parents to whom they are genetically related. Parents may abuse and abandon their children and not all parents are genetically related to their children.

> But surely we don't need to create a scheme in which the immediate desires of adults are knowingly placed ahead of the rights of the child …
>
> The cacophony of voices in the surrogacy debate is silenced only with recognition that the individual without choices and with rights is the child.

That is another article that I recommend members familiarise themselves with and give due consideration to these well-researched remarks by these individuals. There is no point in members being dismissive about those matters. As I have mentioned, I would like to hear the government clarify the remarks made by Minister Cook in this respect and whether it now concedes that the way in which Hon Dr Kim Hames expressed the competing interests is a superior way of articulating those positions, rather than, if I can say respectfully, the erroneous way in which the minister has articulated those matters.

If the ability of reproductive technology is simply being made so good that it can grant adults their desires—note I say "desires", so I associate myself with that concept articulated by then Minister Hames, not the rights as asserted by Minister Cook—the question needs to be asked: how far will we go in such a respect? I draw to members' attention another article that seems to encapsulate this concern. This article is entitled "Designer Grandchild: Wealthy British Couple Paid to Create a Grandson", which is a quite recent article. I note that something else was also quite recently in the media about these matters. This article is dated 24 September last year, approximately the same time as this bill arrived in this chamber from the other place. Indeed, it was the month immediately preceding that sequence of events. This article has been authored by E. Christian Brugger. That individual had to say in this article —

> Two grandparents in the United Kingdom have confirmed the adage that if something *can* be done, no matter how bizarre, somebody will eventually do it. According to the U.K.'s Mirror Online, these grandparents, described as "extremely rich," created a designer grandchild for themselves from sperm harvested from the corpse of their son, who had died in a motorcycle accident.
>
> Reportedly "desperate for an heir," the couple bypassed U.K. fertility law by having the sperm frozen and then shipped to a San Diego fertility clinic. Although their son never consented to having his post-mortem sperm used to create a child, his mother said she believed "it's what her son would have wanted." Apparently the couple paid the San Diego clinic $130,000 to use a gender selection technique, illegal in Britain, to help ensure that only a grandson would be born.
>
> The doctor who facilitated the request, David B.Smotrich, MD, advertises his services to anyone "regardless of nationality, sexual orientation or marital status … any individual or couple" so long as the desire is "to start or to complete their family."
>
> The grandparents searched for a U.S. egg donor/surrogate "who matched the kind of woman they believed their son would have married and had children with." They created four embryos from her eggs, and selected one for gestation. No mention was made of the fate of their other three embryonic grandchildren.

Later in this article, the author, having dealt with issues such as eugenics and rationalisation, continues under the heading "Arbitrary Self-Preference" —

> The Mail Online account is replete with the wishes of the grandparents and devoid of concern for the child. But the little boy is the one who will suffer the most painful consequences of his grandparents' choice.
>
> Even presuming he will escape long-term physical disabilities from his reproductive manhandling, he will still awake into self-consciousness to find he was sired by a dead man and an anonymous woman; that the whereabouts of his three siblings is unknown, but they are probably dead; that he's being raised by aging grandparents who broke the law to fulfill their "desperate" desires, and who, though willing to speculate about what their dead son would have wanted, gave no weight to what *he* would have wanted.

In their concluding remarks, the author states —

> By refusing to acknowledge that children should come into the world as a result of spousal intercourse, the field of reproductive medicine has blinded itself to the grave injustices it commits every day, all in the name of granting adults their reproductive desires. After saying how "desperately" the grandparents "wanted an heir," Dr. Smotrich went on to say: "It was a privilege to be able to help them." I wonder what the boy will have to say about that *privilege* in 15 years.

Members can see that a number of people around the world have expressed concern about the so-called right to be a parent, right to surrogacy, right to reproductive technology and the like. I call on the government to precisely clarify its position on whether, as Minister Cook has previously said, there is a right to be a parent. Was he misquoted by *Hansard* when he said that, or did he simply misspeak and instead mean to say that there is a desire to be a parent—not to be confused with a right to be a parent?

I will move on to the rights of the child. It is interesting that there seems to be much discussion in these matters about the rights of adults—particularly Western Australians, and particularly male Western Australians—and how male Western Australians need to have access to this regime that women have had access to for the last 10 years. According to the government, it is unjust that single men cannot access this scheme despite the fact that, according to the briefing with government officials that I went to, single women have never applied for a surrogacy arrangement in the last 10 years. Nevertheless, there seems to be much discussion about the so-called rights, desires or interests of arranging parents and those who would like to be parents. But I urge members to consider the question: what about the rights of the child? If we are going to extend the category of individuals who can access this regime, ought we not consider the rights of the child in the situation?

The United Nations has identified surrogacy as a demand system that may endanger the rights of children. Members may recall that on a previous occasion when the government decided to make this bill its top priority of the day, I questioned whether there would be a sufficient supply of altruistic surrogate mothers to meet the demand of single men and male couples that the government says will result from the legislation presently before the house.

As I said, the United Nations has identified that this demand system may endanger the rights of the child. That is something that I have given quite a lot of consideration to during the course of my research into this matter, not the least reason for which is that it is, in part, my responsibility as the shadow Minister for Child Protection to give consideration to the rights of the child, in not only this legislation, but also any legislation that appears before the Legislative Council of Western Australia.

I draw members' attention to what the United Nations Human Rights Council had to say about this matter. It had some urgent concerns about this topic. I will quote, once again, from a document that I referred to earlier, but to a different section. This time I will look at page 4, whereas I previously looked at page 13. Sorry; I previously looked at page 15. I will get to page 13 on another occasion, but it will probably not be this evening. For the benefit of *Hansard*, the document is the United Nations "Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material", which was distributed on 15 January 2018. Under the heading "Urgent Concerns" the report states —

> Surrogacy as a reproductive practice is on the rise. Indeed, as intercountry adoptions have fallen in number and increasingly become subject to international standards, the numbers of international surrogacy arrangements have rapidly increased in the absence of international standards.

To support that assertion, the United Nations refers to a piece of research from 2013 titled "International Surrogacy Arrangements". For members who want to have a closer look at that article, the authors, or editors, of that publication are Trimmings and Beaumont. The report continues —

> Therefore, surrogacy, like intercountry adoption in the 1980s and 1990s, has emerged as an area of concern where a demand-driven system may endanger the rights of children.

The United Nations refers to a number of research documents to support this position. It starts with a report on intercountry adoption, prepared by Van Loon. It also refers to "A Preliminary Report on the Issues Arising from International Surrogacy Arrangements", "Intercountry Surrogacy—A New Form of Trafficking?" and "Children and Adoption: Which Rights and Whose?" I would encourage members to look at all these reports, which can be found in the document under the heading "Urgent concerns".

The United Nations has quite clearly set out its concerns about the demand-driven style or approach of these types of regimes. We need to ask whether we are going to learn any of the lessons from the past on the issue of children and their rights. It was not that long ago that an apology was made to mothers who had been forced to put their children up for adoption. As recently as Thursday last week, the Minister for Culture and the Arts, Hon David Templeman, the member for Mandurah, made a statement in the other place about the establishment of a memorial that recognises forced adoptions. The memorial is in the Town of Victoria Park, which, of course, is within my electorate of South Metropolitan Region. Incidentally, I congratulate the minister and the government for the statement he made in the other place on 4 April 2019. As an aside, I wonder why the statement was not made in this place on the same day. Nevertheless, I congratulate him for his statement and the recognition of the memorial in the Town of Victoria Park. It is interesting that we would recognise the memorial on the sixth anniversary of the national apology offered by then Prime Minister Julia Gillard on behalf of the Australian government. I understood that it took place on 21 March 2013. If my memory is correct, 21 March this year was the day that the government finally tabled Sonia Allan's report, so it is rather ironic that the government would table the report in this place on the sixth anniversary of that apology, but I suspect the government was unaware of the irony of what it was doing.

I received some communication from FamilyVoice Australia, which made this same point in its communication in September last year. As I recall, it was about a month before this bill appeared before the house. I quote the email from FamilyVoice Australia —

> It was only in 2013 that then Prime Minister Julia Gillard delivered a heartfelt apology to mothers and their children who were forcibly removed for adoption in the 1960s and 70s. We would do well to remember the trauma and depth of feeling this apology elicited in discussions about surrogacy, which is the intentional removal of a child from his or her birth mother. Do we really want to find ourselves in the position forty years hence of having to deliver yet another apology to children who were harmed by surrogacy.

This comment was made in an email I received on 14 September last year from the WA state director, Darryl Budge. I hasten to indicate that he, of course, is not the only person to have mentioned that to me. Be that as it may, when I look at the apology that was delivered just over six years ago, I note that there is a remarkable number of similarities to the matter that is currently before the house as we consider whether to support the second reading of the Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018. On 21 March 2013, then Prime Minister Hon Julia Gillard had this to say towards the very beginning of her remarks —

> Today, this Parliament, on behalf of the Australian people, takes responsibility and apologises for the policies and practices that forced the separation of mothers from their babies, which created a lifelong legacy of pain and suffering.

I pause here to remind members that in surrogacy arrangements, that is what happens: a mother and her baby are separated after the birth of the child. Members may object to the fact that the apology refers to forced adoption, but in this situation it is not forced because there is no capacity to enforce these arrangements with surrogacy contracts; it is not possible to force a mother to give up the child. However, it surely must be the case that if there was trauma as a result of the separation between the mother and the child, whether forced or otherwise, it must follow that some of the trauma must also apply in these circumstances. I will continue to look at what the then Prime Minister Hon Julia Gillard had to say later in her apology. I quote —

> To each of you who were adopted or removed, who were led to believe your mother had rejected you and who were denied the opportunity to grow up with your family and community of origin and to connect with your culture, we say sorry.

I again pause to remind members that whatever they might think about the forced nature or otherwise of an altruistic surrogate mother having to give up her child, consider for a moment: what about the child? Members might argue the case, which would not be unreasonable, that the mother is not forced to give up the child, but the child is certainly forced in this situation. If one person is forced in the arrangement, it is certainly the child. The child has no say whatsoever in this arrangement, yet, because we recognise that the child had no say at one time in a forced adoption, it was so important that a national apology was delivered. What else did the Prime Minister of the day have to say in her speech? She went on to say —

> We acknowledge that many of you still experience a constant struggle with identity, uncertainty and loss, and feel a persistent tension between loyalty to one family and yearning for another.

Much later in the speech, the Prime Minister said —

> This story had its beginnings in a wrongful belief that women could be separated from their babies and it would all be for the best.
>
> Instead these churches and charities, families, medical staff and bureaucrats struck at the most primal and sacred bond there is: the bond between a mother and her baby.

Later in her apology speech, Prime Minister Julia Gillard said —

> … their children grew up denied the bond that was their birth-right.
>
> Instead they lived with self-doubt and an uncertain identity. The feeling, as one child of forced adoption put it, ‘that part of me is missing’.

Towards the conclusion of her apology statement, she stated —

> And to the children of forced adoption, we can say that you deserved so much better.
>
> You deserved the chance to know, and love, your mother and father.
>
> We can promise you all that no generation of Australians will suffer the same pain and trauma that you did.

I agree with the statement made by Hon Julia Gillard at that time. I think there is a lot to be said for the way in which this particular apology was articulated just over six years ago. But let us be clear: at that time, six years ago, people would have been in a rush to associate themselves with those remarks, particularly members of Parliament. They would have been the first to stand in the queue to associate themselves with those remarks. When they were standing in that queue, were they associating themselves with those final remarks, “We can promise you all that no generation of Australians will suffer the same pain and trauma that you did”? If we continue to roll out this

surrogacy scheme in Western Australia, I put to members that we will be doing the precise opposite of what Hon Julia Gillard promised on that day. She made a promise on behalf of the government of Australia, the national government, "We can promise you all". That was a very bold statement of the then Prime Minister, yet it appears to me that this very regime cuts to the heart of that point. There is clearly no consent provided by the child in question. They continue to be forcibly removed from their birth mother. Members may want to dispute whether the mother has been forced and try to draw a distinction between forced adoption and altruistic surrogacy, and so be it. I think there is something to be said for there being a distinction between the two. In fact, I accept that there is a distinction between the two. But I put to the members who might want to argue that that they would be hard-pressed to explain how it is not the same for the child in question.

Interestingly, there appears to be a stark contrast in recent history between social attitudes towards the removal of children from their mother or parents and surrogacy. In particular, I want to draw to the attention of members the remarks made by Renate Klein. This is an individual whose work I have quoted previously in my contribution. I particularly want to look at her seminal piece from 2017 entitled *Surrogacy: A Human Rights Violation*. I want to look at some of the comments she makes on this point on pages 33 and 34 of her document, and also on pages 35 and 36. Now, what is it that she has to say on this particular point of her assessment? There are a number of chapters in her book and we clearly do not have time to unpack all those chapters, but we should at the very least look at chapter 3, in which she deals with the topic of children born from surrogacy. Indeed, this is the very point about the rights of children in these surrogacy arrangements. On page 33 of her book, in chapter 3, she has this to say under the heading, "What of the children born from surrogacy?" —

> Whenever we hear of children being separated from their mother or parents, most people express sorrow and/or anger, depending on the situation. We feel indignant when we hear that Bokum Harum in Nigeria kidnaps girls and forces them into sexual slavery aimed at bearing children to increase their population. Similarly, we are profoundly upset by tales of Daesh fighters kidnapping and raping young Christian, Shiite and Yazidi girls. We are outraged when we hear of recurring scandals such as overseas adoption of so-called orphans that is later revealed as a scam in which babies are bought for a pittance from poor mothers. We are even more outraged when we hear of girls trafficked into prostitution which is widespread in India and Sri Lanka and other poor nations such as Bangladesh where destitute single women are offered a hospital bed to give birth to their babies who are then sold as sex slaves to Saudi Arabia … We condemn in strong words the past practices in Australia of removing Indigenous children from their parents which we know as The Stolen Generations. Or coercing unwed white women to give up their babies during the 20th century up to the 1980s 'for their own good' to a 'proper' family which was to provide for them far better than their birth mother—the 'fallen' single woman—ever could …
>
> But somehow, when the practice of surrogacy is discussed, these social norms appear to fall by the wayside. Again and again we hear that people seeking to obtain a child via surrogacy were 'desperate' to start a family and 'heartbroken' that their desire for a child could not be 'naturally' fulfilled. To put it differently, it seems that many people condone—or indeed encourage—what is, quite simply the scenario of a pay-as-you-go product child which in this world of entitlement is made to order for those who are rich enough to afford it. The newborn babies in this origin story have no say in the matter; they are seen as blank canvasses whose lives start at the moment when they are lifted out of the 'incubator's' womb in a Caesarean section. It is the commissioning couple—gay or straight—who will now guide them through the steps of becoming children and then adults.
>
> It is, unashamedly, an adult- or parent-centred view, with the basic human rights of newborn babies ignored.

Later on in chapter 3 of her seminal piece, *Surrogacy: A Human Rights Violation*, Renate Klein goes on to say —

> But also contrast the facile story of happy-go-lucky surrogacy with thousands of stories from adopted children who felt they never really belonged to their adoptive families in spite of being cared for and loved deeply … And who looked for their birth mother and sperm donor for decades, often to be disappointed when, as adults, they finally receive their birth records only to discover that their mother or father was already dead. Or, even if they did manage to find and meet their birth mother, and it is a good reunion, endure ongoing grief and feelings of regrets over a life that did not include their birth brothers and sisters.
>
> As Penny Mackieson stated …:
>
> > As an adoptee from birth affected by Australia's past coercive adoption practices, it saddens me that pro-surrogacy proponents do not appreciate the lifelong difficulties for the children of not being able to know about and/or have ongoing relationships with the parents who created and gestated them—irrespective of how well loved and parented we have been/are by our social parents. It is obvious to me that the added dimension of having been conceived and born through a commercial contract involving the exchange of money would create even more ongoing challenges for the person's identity, self worth and psychological health throughout their life.

As relinquishing mother Jo Fraser points out in her submission to the Australian surrogacy inquiry in 2016 at page 3 —

> The consequences of being adopted for many are that they feel that they were traded as a powerless commodity, and can result in low self-esteem and a sense of rejection and worthlessness. Imagine how much this is exacerbated if the relinquishment, or trading, of the child is premeditated and carefully planned in fine detail?
>
> …
>
> The bottom line is that, wherever the surrogacy occurs—whether it is here or overseas—and however well or badly it is done, what we are doing is reasserting the idea that children are the property of adults and we are buying babies. Just because we want something desperately does not mean we have the right to have it.

I thought the comments by the author Renate Klein very helpfully encapsulated the concerns about the rights of the child and how often the rights of the child are not the paramount consideration when we are looking at legislation of this sort. We often talk about the rights and best interests of the child being the paramount consideration, but when push comes to shove and we look at matters like this and legislation of this sort, one must question whether members of the Parliament of Western Australia are really fulfilling their duties in ensuring that that principle remains paramount.

I note that principle 6 of the Declaration of the Rights of the Child is most probably, if not definitely, being violated in these circumstances. I draw to members' attention a briefing paper distributed to members of the Parliament of Western Australia on the Surrogacy Bill 2007 by FamilyVoice Australia. There are a number of things I would like to look at during the course of this debate that that submission had to say, but for the present moment, the only thing I would like to look at is principle 6 of the Declaration of the Rights of the Child. Page 4 of the submission from FamilyVoice states —

> The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother.

Later, having earlier quoted principle 6 of the Declaration of the Rights of the Child, the authors of this submission, under the heading "Harms to other children", go on to provide their own commentary by saying —

> Surrogacy also undermines the status of children in general by allowing the very existence and life of the child to be the object of an arrangement between parties. The notion that a child's parentage can be determined by an arrangement or contract, rather than by birth or an adoption in the best interests of the child, is subversive of the child's right to identity and security.

Those remarks made as far back as 2008, some 11 years ago, still hold true today, and I encourage members to give them further consideration as they determine whether to cast their conscience vote in favour of or in opposition to the government's request that the bill be read a second time. It seems to me that there is a case to be made that the children of surrogacy arrangements are deliberately being born motherless or fatherless, and that can be supported by the comments made by Tom Frame in the book I referred to previously, titled *Children on Demand: The Ethics of Defying Nature*. That book is from 2008. There certainly seemed to be quite a bit of academic research, articles, opinion pieces and the like at that time. Be that as it may, in 2008 he had this to say about this issue of whether children are being deliberately born in this fashion. I quote page 166 of his book, which states —

> Throughout this chapter, and indeed this book, my paramount concern is the wellbeing of the child. Put simply: no child *needs* to be born. Surrogacy meets the desire of adults who want to be parents. Our society must first consider the *needs* of the children such adults wish to produce by this means. The issue here is not one of harming a child born through surrogacy but one of potentially adding to the burdens that make living more difficult, especially given the strong maternal instinct that is known to persist within the surrogate long after the child is 'adopted' by the commissioning couple. There are, of course, instances where people other than biological parents raise children and, as I have already conceded, this is unavoidable. Parents sometimes die, are imprisoned or desert. But these children are not deliberately born motherless or fatherless. Children should certainly not be born when and where society is called upon to assist in their conception, gestation and delivery.

There we have the thoughts of Tom Frame on that point when we are considering the rights of the child and their surrogacy arrangements. As the shadow Minister for Child Protection, I, and I would suggest all members of this place, have a responsibility to consider what is in the best interest of children. Indeed, the very legislation —

**The PRESIDENT**: Member, can I just interrupt you there? I have only just started listening to you again and I think you are taking a very broad brush. You are talking about matters that have already been resolved in an earlier piece of legislation. I know you are trying to link it to this, but as I said to you on another occasion, the bill

in front of us is really dealing with five key issues. I have been listening in and out of your discussion tonight, and I think you are taking a very broad brush approach to this. You are talking about matters that were already agreed to in this Parliament some time ago. I ask that you really narrow your focus on those key matters highlighted in this bill in front of us that we are dealing with tonight, if you can.

**Hon NICK GOIRAN**: Thank you, Madam President, for your advice.

I note that it would be open to a member of this chamber to oppose the bill. Of course, there would be two options—to support the bill or to oppose the bill. A member may have a number of reasons that they might seek to oppose the bill. One reason a member may wish to oppose the bill is if they came to the conclusion that our existing system is broken. If our existing system is broken, why would we open up the category of individuals who can access a broken system? Why would we add pain to Western Australians by doing that?

I am one member who says that the existing system is broken. I have previously argued that members, irrespective of their view of the matters before the house, ought to oppose this bill because it is a bad bill. One of a range of reasons members should oppose the bill is that it is not in the best interests of children. As the shadow Minister for Child Protection, I put to members that it is appropriate for all of us to consider what is in the best interests of children. This bill does not just affect the so-called rights and desires of adults. If this bill goes ahead, more Western Australian children will be born as a result of this very regime that we are being asked to pass. That is the question before us. It is entirely appropriate that members give some consideration to the rights of the child. The very problem in these types of debates is that everybody is quite happy to talk about the rights of adults —

**Hon Sue Ellery**: Are you getting cross at the President?

**Hon NICK GOIRAN**: Honestly, Madam President. It really disappoints me when the Leader of the House feels the need to interject in such a manner.

**The PRESIDENT**: If you remember my comments at the start of today, we do not want to go down the path of encouraging any interjections. Back on track, please.

**Hon NICK GOIRAN**: Thank you, Madam President.

As I was saying before I was rudely interrupted by the Leader of the House, there are a number of reasons why members would want to oppose this bill. It is too often the case that the only voices we ever hear in this chamber are the Western Australian citizens who are calling for this legislation to change. What about the children who do not have a voice? What about the children we have previously had to apologise to because they were forcibly removed from their parents? In this instance every single child who will be born as a result of this regime will be forcibly removed from their birth mother. That is the case. That is a problem with the current system. The government is asking us to increase the number of people for whom that will happen. I am saying that that is not good enough. I am encouraging members to give proper and full consideration to the rights of the child.

This is something that has been identified far and wide, as I said earlier in my remarks, by the United Nations. It has identified that surrogacy as a demand system may endanger the rights of children. I have been contacted by a great number of constituents about these particular matters. I will now take the opportunity to refer to some correspondence from constituents who have contacted me with their concerns about this bill. I suspect that other members have also received an immense amount of correspondence from constituents and the like. These Western Australian citizens have the right to have their voices heard in this debate. The first piece of correspondence from a constituent that I would like to refer to is from the Association for Reformed Political Action. Regrettably, I do not have a date for this correspondence, but members can safely assume that I have received this at some point during the course of this bill being before the house. It states —

> I am writing on behalf of the Association for Reformed Political Action (ARPA) to express our deep concern with the *Human Reproductive Technology And Surrogacy Legislation Amendment Bill 2018*, which will shortly be considered by the Legislative Council, and to ask you to vote against it.
>
> ARPA is a non-partisan organisation affiliated with the Free Reformed Churches of Australia, a Christian denomination of approximately 4000 members spread across 16 congregations, 14 of which are in Western Australia. ARPA was involved in the Health Department's review into WA's surrogacy laws and met with the reviewer, Professor Sonia Allan, in April this year.
>
> We would like to share with you a number of serious objections to the *Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018*:
>
> Firstly, this bill makes the natural rights and expectations of children subservient to the wishes of adults. We believe the rights of children should be paramount in this issue and that their perspective should be considered first. The Bible teaches that children are not a right to any person or couple but are a blessing from God, to be raised in a family of one man and one woman who have sworn a marriage oath of lifelong faithfulness to each other. It is true that for a variety of circumstances children do grow up in single-parent or other family arrangements, and these parents often do an incredible job raising their children. However,

> while it is one thing to make the best of an unfortunate situation, it is quite another to deliberately create situations which will knowingly deprive children of one of their biological parents. A child should have the reasonable expectation that he or she will grow up knowing both his or her father and mother. We note that Article 7.1 of the UN Convention on the Rights of the Child states that a child shall have "… as far as possible, the right to know and be cared for by his or her parents."

I pause there to note that this constituent, the Association for Reformed Political Action, seems to share my concern and objection, particularly the concern about the rights of children. It specifically quotes from article 7.1 of the UN Convention on the Rights of the Child. The letter from the association goes on to state —

> Secondly, surrogacy commodifies women, laying the groundwork for their reproductive potential and child-bearing capacity to become available for men to access even if they are not in a relationship with the woman. This legislation is a step in the direction of commercial surrogacy, an abhorrent practice. Furthermore, even if a woman agrees to altruistic surrogacy, it creates confusion in the mind of a child about who his or her mother is. We believe the state of Western Australia should be wary of repeating past mistakes where the separation of children from biological parents had devastating consequences for generations that followed.
>
> Thirdly, this bill should not be justified on the basis that it is acceptable because Australia has recently legalised same-sex marriage. Voting to allow same-sex couples to classify their relationship as marriage is a separate issue from voting to create children for these couples. We draw your attention to research which has shown that children growing up in families with same-sex couples experience higher levels of disadvantage. For instance, a comprehensive research project summarised in the July 2012 edition of the journal *Social Science Research* followed a representative sample of 3000 children from childhood to adulthood and found that children of homosexual couples did worse on 77 out of 80 outcome measures when compared to children in "intact biological families". These measures included being more likely to be on welfare, experiencing poorer educational outcomes, feeling less safe in their family, facing a higher likelihood of suffering depression and having more than six times as many sexual partners later in life when compared to children who grew up in intact biological families.
>
> Instead of expanding the availability of children via surrogacy and donor conception, we would urge the parliament to limit both practices, if not end them altogether. We contend that there is no widespread community demand for this change to the law.
>
> We realise that matters covered in this bill are sensitive and personal because the desire for a partner and children is one of the deepest human desires. However, we urge caution in this matter, particularly so that the reasonable rights and expectation of children over the long term are not overlooked to fulfil the desires of adults in the short term.

That was one of quite a number of letters from constituents that I have at my disposal dealing with this issue. Residents of Western Australia, who vote us into this place, have expressed various concerns about the bill and the current scheme in Western Australia. A number of Western Australians are concerned about the scheme in general and they do not want to see it continue to be increased.

I also received a letter from the organisation Them Before Us, which I now draw members' attention to. Them Before Us wrote to me on 26 January this year. On Australia Day, I received this correspondence from Them Before Us. Katy Faust is the founder and director of that organisation, which has the by-line "Giving children a voice in the debate over family structure." The organisation's correspondence from earlier this year states —

> Dear Honourable Sir,
>
> My name is Katy Faust. I am founder and director of the children's rights organization Them Before Us. I am writing on behalf of the most important party who will be impacted by the 2018 Amendments to the Human Reproductive Technology and Surrogacy Legislation—the children. I urge you to vote against.
>
> Rejecting these amendments means you will be upholding the commitment of Western Australia to stand for fundamental human rights, children's social-emotional stability, and a child's natural right to be known and loved by both biological parents whenever possible. You will be fulfilling the primary principles of the UN Convention on the Rights of the Child, which Australia ratified in 1990.
>
> This bill aims to satisfy the desires of those who want to become parents, yet it achieves that goal by violating children's fundamental rights. Justice is never served when the weak are forced to sacrifice for the strong.
>
> Here are three ways that this bill harms children:
>
> **1. Trauma:** Losing a parent is always traumatic for children, even at birth. Studies show that separation from the birth mother causes "major physiological stressor for the infant." In addition, even brief maternal

deprivation can permanently alter the structure of the infant brain. While there are times when adoption is necessary, adoptees have long referred to a "primal wound" resulting from maternal separation which can hinder attachment, bonding, and psychological health.

Minister R.H. Cook stated in September of 2018, "this bill recognizes that the best interests of children are served when they can grow up in an environment in which they are cared for, loved and supported." Yet if we examine the studies on the social and psychological effect of surrogacy, and listen to the stories of kids, it's clear that these amendments serve adult interests, not children's.

One surrogate-born woman says:

> *"When we have children in this world who already need homes, why are we intentionally creating children to go through adoption traumas? I am one of the lucky ones who were able to heal some of my pain when I found my birth mother. However, I still deal with the other adoption issues of what makes me different in my biological mom's eyes. How can she consider the children that she intended to have her children, and the children she had through surrogacy not equals."*

A young man born of surrogacy writes:

> *"I don't care why my parents or my mother did this. It looks to me like I was bought and sold. You can dress it up with as many pretty words as you want. You can wrap it up in a silk freaking scarf. You can pretend these are not your children. You can say it is a gift or you donated your egg to the [intended mother]. But the fact is that someone has contracted you to make a child, give up your parental rights and hand over your flesh and blood child. I dont care if you think I am not your child, what about what I think! Maybe I know I am your child. When you exchange something for money it is called a commodity. Babies are not commodities. Babies are human beings."*

Here's what one woman unknowingly trafficked in a black market adoption ring at birth, had to say about surrogacy:

> *"The willingness to *entirely* disregard the health and well-being of the child in [surrogacy] transactions is unconscionable. The events of my birth are now 65 years ago, but the effects of being sold are universal, because they derive from breaking the bonds formed during pregnancy between the mother, and her embryo, fetus, and ultimately, child... I'm not suggesting I remain a victim of these circumstances, but I also spent 25 years in therapy to undo the damage. It's been a lifetime's work."*

I pause to mention to members that this correspondence from Them Before Us identifies three ways in which the bill presently before the house harms children. The first is trauma. The letter goes on to discuss the second issue the organisation identified—losing a biological parent. The letter says —

> If these amendments pass, every child born as a result will be intentionally denied a relationship to a parent to whom they have a natural right. One major study found that nearly two-thirds of children conceived from sperm donors believed that "my sperm donor is half of who I am." Despite being "desperately wanted," these children often struggle with genealogical bewilderment.
>
> Ellie writes of how she felt after discovering that she was donor-conceived:
>
> > *"The nose I thought had come from my dad wasn't his. That round nose that I thought connected me to family was suddenly hideous. The shape of my fingers, so similar to my dad's, now looked alien and terrifying. There were several years in my mid twenties when I couldn't look at myself in a mirror without bursting into tears, so I avoided mirrors."*
>
> Elizabeth writes:
>
> > *The peculiar thing about donor conception is that on the one hand it privileges genetics: the fertile partner gets to be a real, biological parent. On the other hand, it says that genetics do not matter for the other half of the gametes, and that as long as a child is "wanted", he will have everything he needs. Unfortunately, that is not true. I do not have a relationship with my [social] father, and not just because of my mother's husband's criminality; I do not have a father because my mother, with the help of the medical establishment (and the law) deliberately deprived me of one.*
>
> Bethany says:
>
> > *But, being "wanted" can sometimes feel like a curse, like I was created to make you happy, my rights be damned. I'd be lying if I said I never felt commodified. My experience as a DCP (donor conceived person) has made me realize that, sometimes, the most ethical thing to do is*

> *to not satisfy a want. When I hear how much you wanted me, I cannot also help but think about how my dad did not want me. He knew the goal of his actions was to create a child he would have nothing to do with. Do you understand how that can hurt? That your want is cancelled out by his lack of it?*

The author, Katy Faust, from the organisation Them Before Us, in concluding this assessment on losing a biological parent, writes —

> Children have been conceived via sperm donation for several decades, so we don't have to speculate about the impact that third-party reproduction has had on their lives. Donor children struggle disproportionately with depression, delinquency, and substance abuse. Eighty percent of children conceived via sperm donation would like to know the identity of their donor. For some, finding their donor becomes a lifelong pursuit. Any process that intentionally severs a child's relationship to one or both parents is an injustice. This brand of injustice sets children up for a lifetime of loss and struggle.

I pause there to indicate to members that this organisation has identified and is articulating three ways that the bill harms children. The first was trauma, the second was losing a biological parent, and the third is titled "Intentional Motherlessness". The letter continues —

> These Amendments move to isolate children from both their genetic mother *and* their birth mother. Not due to tragedy, but because the intended parents believe that mothers are optional. As she grows, the child will likely be told that "gender doesn't matter in parenting" and "all kids need is love." Those sentiments are rebutted by the stories of children with same-sex parents, who longed for the dual-gender love that all children crave.
>
> Brandi is one such child. She shares:
>
> > *"I yearned for the affection that my friends received from their dads. As far as I was concerned, I already had one mother; I did not need another. My dream was that my mother would decide she wanted to be with men again, but obviously that dream did not come true. My grandfathers and uncles did the best they could when it came to spending time with me and doing all the daddy-daughter stuff, but it was not the same as having a full-time father, and I knew it. It always felt secondhand."*
>
> Samantha, raised by her father and his partner, shares about the moment she realized that she didn't have a mother:
>
> > *"At the end of Kindergarten, we had a free day at school. We got to watch a movie in the gym, The Land Before Time. It is a classic movie. But for me it was a traumatic experience. I watched, eyes glued, as Littlefoot lost his Mother. Littlefoot had a "Mother" and she died saving his life. Littlefoot spent the entire movie mourning the loss of his "Mother." It was in that moment, as a five year old girl, that I realized there was such a thing as a mother. It was also in that moment that I realized that I did not have one. I spent the rest of our free day at the gym crying into the arms of a teacher I would never see again for a mother that I never knew I never had."*
>
> Millie Fontana speaks about feeling guilty for wanting her missing father, even though she had two mothers:
>
> > *You would see every other child embracing who they are on Mother and Father's Day. They would be rejoicing and celebrating with their parents and their family members, and there I was sitting back wondering what is wrong with me and why don't I have that connection with my father. Was he such a bad person that that could not be facilitated for me? And that is damaging. And as time went on, and the lies went on, you know, 'You don't have a father'… and 'You have another mother', as though that statement was enough to conceal the emotions inside me and offer me stability. And the reality is it just wasn't enough. I suffered guilt, because who was I to reject this other parent? And, oh my gosh, if she is really what is supposed to fulfill me, how horrible must I be to reject that notion?*
>
> Studies on same-sex headed homes validates these women's struggles. One such study, the National Health Interview Study, reviewed data on 512 same-sex headed homes and found that emotional problems were over twice as prevalent for children with same-sex parents than for children with opposite-sex parents. The National Longitudinal Survey on Child Health revealed that the longer a child has been with same-sex parents, the greater the harm. When comparing unmarried to (self-described) married same-sex parents, the study revealed that child depressive symptoms rose from 50% to 88%; daily fearfulness or crying rose from 5% to 32%; grade point average declined from 3.6 to 3.4; and child sex abuse by parent rose from zero to 38%.

> Endorsing motherless homes normalizes the destruction of the biological parent-child relationship. Intentionally severing the bond with mother or father denies children the two adults who are *statistically* the most likely to be protective of, attached to, and invest in them, as well as the only adults can provide children with biological identity that they crave.
>
> **Adoption supports children's rights. Third-party reproduction violates child rights.**
>
> Should you or your colleagues have questions about how they can wholeheartedly support adoption while rejecting these amendments, you can read more about that here.

I should indicate that at this point there was a link in that letter, and if members are interested in that, I would be happy to provide it to them on another occasion, perhaps behind the Chair —

> In summary:
>
> - Adoption seeks to mend a wound, third-party reproduction/surrogacy creates the wound
> - When adoption is done right, ever child will be placed with loving parents, but not every adult will get a child. Adoption requires adult to submit to intense screening and vetting. Fertility clinics seek to give a child to any adult regardless of mental/physical fitness. As the case of Newton and Truong tragically demonstrates.

I pause there to remind members of the case of Mark Newton and Peter Truong, which I identified in my remarks on another occasion. I also remind members that that case was highlighted by Associate Professor Sonia Allan in the report she provided to government.

The letter from Katy Faust concludes by referring in the summary to a third point —

> - In adoption, the adult seek to support the child's needs and longings. In surrogacy, the children must support the adult's needs and longings.
>
> Because of these critical differences, adopted children fare better when it comes to household stability, substance abuse, emotional problems and identity questions than donor-conceived children.
>
> In summary, a just society cares for orphans, it doesn't create them.
>
> **Addressing exceptions.**
>
> That some children suffer the tragic loss of one or both parents during childhood doesn't justify *intentionally* denying children a relationship with their mother or father at conception. Just because some children are relinquished by their birth mother doesn't justify *intentionally* severing the mother–child bond upon birth. Children have a right to their mother and father. Third-party reproduction and surrogacy, especially when combined with same sex and single father homes, deliberately violate those rights.
>
> This bill aims to broaden "access to altruistic surrogacy", in order to "reduce … travel overseas to create a family". The Legislative Council should note that those overseas surrogate markets being rapidly shut down as government after government witnesses the exploitive impact that surrogacy has on women and children.
>
> This bill claims these "new legal procedures will take into consideration the best interests of the child and the need for clarity and stability in the family relationships", yet it does so by treating children as commodities to be cut and pasted into any household based on adult desires, their rights be damned.
>
> We implore you to stand for those unable to, and vote *against* the 2018 Amendments to the Human Reproductive Technology and Surrogacy Legislation.
>
> As stated best by one donor conceived woman, "This is not a new way of creating families, it's a new way of ripping them apart."
>
> Sincerely,
>
> Katy Faust
> Founder & Director
> Them Before Us
> "Giving children a voice in the debate over family structure."

I wonder if any other member received a similar piece of correspondence. If they would like a copy of this letter, I will be happy to provide it to members. I just indicate that I thought that that was a very well researched piece of correspondence from Them Before Us, providing some reasons to us, as lawmakers in our state, about why we should be opposing the bill. I could not help but notice the emphasis that that organisation had on the rights of

children and the types of individuals, as it described, who do not have a voice in this debate, unlike the adult proponents who have ample opportunity to demonstrate their views on this matter.

There is scientific evidence that maternal separation has an effect on babies. Let us be clear that the bill presently before Parliament is seeking for the arranging parents, the categories of individuals who will be the arranging parents, not to be female; it will be either a single man or two men. That is what this bill is seeking to do, despite scientific evidence that maternal separation has an effect on babies and is a major physiological stressor for the infant. I draw to members' attention one of those documents from Science Daily. This article from 2 October 2011 is entitled "Maternal separation stresses the baby, research finds". I simply do not have time to quote the entirety of this article, but I recommend it to members. I draw to members' attention a couple of extracts in the brief time that I have. The summary indicates that this is new research that provides new evidence that separating infants from their mothers is stressful to the baby. Admittedly, this is from 2011. We can debate amongst ourselves whether research from 2011 is still new research. Regardless of whether one wants to argue whether it is new or not, the point is that research provides evidence that separating infants from their mothers is stressful to the baby, which I add and underscore for members will be the case in each and every one of the surrogacy arrangements that will take place under the extended regime that the government has before us. Members may quite rightly ask: what is this research? The article, entitled "Should Neonates Sleep Alone?" is published in *Biological Psychiatry* and the journal reference is Morgan, Horn and Bergman. The one-paragraph summary on this matter is included in this Science Daily article to which I have referred. It says —

> Researchers measured heart rate variability in 2-day-old sleeping babies for one hour each during skin-to-skin contact with mother and alone in a cot next to mother's bed. Neonatal autonomic activity was 176% higher and quiet sleep 86% lower during maternal separation compared to skin-to-skin contact.

For members who are more interested in this research, I encourage them to look at the article that has been published in *Biological Psychiatry*. I regret that with the volume of material that I still need to get through, I simply do not have the time to go through that in greater detail, but I want members to give serious consideration to the scientific evidence that demonstrates that maternal separation has an effect on babies. Even if the separation or what they refer to as "maternal deprivation" is brief, it can permanently alter the structure of the infant's brain. In this respect, I note that Science Daily had an article from May 2018, entitled, "Even brief maternal deprivation early in life alters adult brain function and cognition: Rat study". It is a summary of a study from 3 May 2018, which is quite recent indeed. This summary document of that scientific research is dated 3 May 2018. The source is the Indiana University–Purdue University Indianapolis School of Science. A couple of useful quotes from this particular summary are —

> When a baby is taken from its mother for even a brief period early in life, —

I pause there to note that that would be the case in every single one of these surrogacy arrangements and that at the very least, they would be taken for a brief period early in life. This article goes on to say —

> this traumatic event significantly alters the future, adult function of the brain, according to a new animal model study from the School of Science at IUPUI. —

That is of course the acronym for the university that I referred to earlier —

> These changes in the brain are similar to disturbances in brain structure and function that are found in people at risk for neuropsychiatric disorders, such as schizophrenia.

The summary of this scientific research later concludes —

> "Children exposed to early-life stress or deprivation are at higher risk for mental illness and addictions later in life, including schizophrenia," said study co-author Brian F. O'Donnell, professor of psychological and brain sciences at IU Bloomington. "We have identified enduring changes in the brain and behavior that result from one type of stress in a rodent. These types of brain changes might mediate the effects of adverse events on children. Thus, policies or interventions that mitigate stress to children could reduce vulnerability to emotional disorders in adulthood."

Those members who want to explore that a little further should look at the journal reference. There are some complicated names here, but Janetsian-Fritz, Timme, McCane, Baucum, O'Donnell and Lapish are the authors of this research entitled "Maternal deprivation induces alterations in cognitive and cortical function in adulthood". That can be located in the *Translational Psychiatry* journal. As members can see, there is a range of concerns for a child who would be the outcome of these surrogacy arrangements. These concerns have occurred and been articulated across the globe.

I also received a letter from Catherine Lynch that I want to draw to members' attention. Dr Catherine Lynch, the president of Adoptee Rights Australia wrote to me on 19 January 2019, and has included quite extensive research on these matters. In particular she wrote to me regarding the bill before the house. I do not know whether other

members received correspondence from Dr Catherine Lynch, but assuming that may not have been the case, I draw to members' attention what Dr Lynch had to say to me. I quote from her letter of 19 January this year —

> I'm writing to you in my in my capacity as President of *Adoptee Rights Australia (ARA Inc.)* on behalf of its members to bring to your attention the issue of neonatal rights and wellbeing that appears to be overlooked in WA surrogacy laws.
>
> This letter is divided into 5 parts:
>
> **1. Why removing babies from their gestational mothers for any reason other than child protection concerns or abandonment is wrong.**
>
> **2. Why removing babies from their gestational mothers for any reason other than child protection concerns or abandonment is cruel.**
>
> **3. Why removing babies from their gestational mothers for any reason other than child protection concerns or abandonment is a violation of the human rights of children under both domestic law principles and international law.**
>
> **4. Conclusion.**
>
> **5. Appendix: *Research proving maternal–neonatal separation is distressing for neonates.***
>
> …
>
> **1. Why removing babies from their gestational mothers for any reason other than child protection concerns or abandonment is wrong.**
>
> *ARA Inc.* members note the Second Reading Speech of Hon Roger Cook MLA, Minister for Health, who states:
>
> > 'This bill recognises that the best interests of children are served when they can grow up in an environment in which they are cared for, loved and supported. A growing body of sociological and psychological research shows that it is a supportive and loving environment, not sexual orientation or whether there are two parents or one, that is important for the development of happy and well-adjusted children.'
>
> With all due respect, the Hon Roger Cook has neglected to mention that the best interests of children are *also best served* when they are placed on their gestational mother after the ordeal of birth, allowed to attach and suckle at her breast, and receive all the warmth, reassurance and security of being with the only person in the world whom they already have a profound and *pre-existing* relationship with and love for: their gestational mother. Removing neonates from gestational mothers is an intrinsic part of all forms of surrogacy—including compensational surrogacy—and, indeed, surro-people are conceived for the purpose and intention of removing them to give to other parents. "Visits" between mother and baby after the baby has been removed to the commissioning parents' home does little to reassure a baby against the loss of their mother and is likely only to re-traumatise the infant who must re-experience this frightening loss—which evolutionary biology indicates is experienced by the baby as "life-threatening"—again and again.
>
> Unlike any other human relationship, the mother/baby relationship in utero is a unique embodied relationship and because of this embodied nature, it cannot be replicated by any other relationship. This unique relationship is also *the first relationship every human being has with a human adult*, bar none. It is a fact that the maternal–neonatal relationship is the foundational relationship of all other human relationships. Anca Gheaus, in her paper, *"The normative importance of pregnancy challenges surrogacy contracts,"* explains that the phenomenology of pregnancy establishes a pre-existing relationship and that this bonding happens "even if the pregnant woman knows she will not be permitted to keep the baby." Bonding during pregnancy provides a very solid reason why allocating babies to different social parents damages or destroys the already existing intimate relationship between mother and child. Gheaus concludes that pregnancy itself fosters this relationship and hence taking babies away from their gestational mother is morally wrong.

I pause there to note that the research referred to by Gheaus is from 2016. I will provide the citation for members in due course. Dr Catherine Lynch, the author of this letter that was written to me on 19 January this year, goes on to say —

> When they are born, babies show little interest in the nurses and other strangers in the room, and although they are usually extremely curious and delighted about the source of their father's voice which they recognise from being in-utero, have only one, biologically determined, dominating desire: to be with, *and remain with*, their mothers. This is obvious if you have ever observed a baby being taken from the arms

of their mother for any significant length of time: the baby will eventually become agitated and begin to cry for her.

Debate adjourned, pursuant to standing orders.