Extract from *Hansard*
[ASSEMBLY - Tuesday, 2 December 2008]
p747b-787a
Mr Peter Abetz; Mr Tom Stephens; Mr Ian Britza; Mr Bill Johnston; Acting Speaker; Mr Vincent Catania; Dr Graham Jacobs; Mr Frank Alban; Mr Andrew Waddell; Mr David Templeman; Mr Paul Papalia; Mr Martin Whitely; Ms Margaret Quirk; Mr Peter Watson; Mrs Liza Harvey; Mr Ben Wyatt; Mrs Carol Martin; Mr Roger Cook; Mr Jim McGinty; Dr Kim Hames; Mr Rob Johnson; Mr Christian Porter; Speaker; Ms Alannah MacTiernan; Mr Joe Francis

SURROGACY BILL 2008

Second Reading

Resumed from an earlier stage of the sitting.

MR P. ABETZ (Southern River) [4.32 pm]: I come to the debate on the Surrogacy Bill 2008 with a deep empathy for those couples who would love to have children but find themselves in the painful situation of being unable to have children for reasons of infertility on the part of either the husband, the wife or both. I know of the heartache experienced by my own daughter and son-in-law, who have been married for eight years and have been trying to have children for the past seven years. She has written about her pains and struggles in the April 2008 edition of *Trowel and Sword*. Members who wish to read it can find it on the web at trowelandsword.org.au. I believe that any means that will help an infertile couple come to know the joy of having a child of their own is certainly worthy of careful exploration.

Knowing that we would be debating this bill, I thought it was important to do some research on what issues might emerge when surrogacy has been practised, particularly regarding the impact surrogacy has on the children who are so conceived and brought into the world, and the effects it has on the birth mother and her family. I believe it is important that in seeking to satisfy the desire of a childless couple, we do not unwittingly inflict lasting emotional or psychological damage on the children or the birth mothers. We need to be very careful with this kind of legislation so that we do not simply transfer the pain from one section of the community to another. There is ample evidence, as I shall point out shortly, that the children produced by some surrogacy arrangements, which this bill would allow, would experience significant emotional pain, anguish and psychological difficulties.

I spoke to a friend who, with his wife, decided to become surrogate parents for the wife's sister-in-law. In their case, the sperm and egg came from the couple whom the bill refers to as the arranged parents, although I would have thought "commissioning parents" would be a better term. Nine years after the birth of the child, he and his wife were able to shed some interesting light on his and his wife's experience of becoming surrogate parents. He told me that when he and his wife see the nine-year-old child, they think, "What a blessing". However, he said that when they focus on what they went through as the surrogate parents, they believe that surrogacy is not for the fainthearted. He said that if his wife was not such a strong, rational, matter-of-fact person, it would have torn her apart emotionally, far more than they ever dreamt was possible.

I have discovered in the literature that many so-called surrogate births end up being the children of the surrogate mother and her husband because the surrogate mother had sexual intercourse during the implanting period. Some articles from the United States estimate that 20 per cent of so-called surrogate children are not surrogate children at all. This would suggest that before a parenting order is made by a court under the terms of this bill, perhaps it would be wise to conduct a paternity test.

From the literature it is clear also that surrogacy causes issues for not only the family for which the mother serves as a surrogate, but also the child who is produced by surrogacy when donor sperm or eggs are involved. My research has led me to the conclusion that surrogacy is fraught with difficulties and has led me to have some serious concerns about aspects of this bill. I will highlight a few of those concerns, beginning with the issue of identity of the surrogate children. Various studies have shown that children conceived through donor sperm and/or eggs have the same identity issues that many adopted children struggle with. They ask themselves, "Who is my mother? Who is my father?" The issue is further complicated by surrogacy arrangements because a child can potentially have eight sets of parents: the surrogate mother and her husband; the donor of the sperm and his wife; the donor of the egg and her husband; and, of course, the arranging parents who bring up the child. This bill allows every set of parents to have visiting rights for the child. Members can imagine the impact it would have on a young child having four sets of parents he or she must try to relate to.

In the case of adoption, a mother chooses to give up her child to a couple to rear out of her concern for the wellbeing of the child to whom she has given birth. A child given up for adoption is usually conceived in less than ideal circumstances and the mother usually makes the child available for adoption at least partly out of the realisation that it is in the best interests of the child to have both a father and a mother, and that the birth mother is not in a position to raise the child that she has conceived. I am sure we would all agree that even in the case of the most successful adoptions, the child and the mother who gave up the child seem to be unable to erase the traces of either conscious or subconscious abandonment from their psyche. Deep longing to know one's origins seems to be an innate desire in human beings. It seems that surrogacy would give effect, by a parenting order, to a system that deliberately sets out to structure a child's life by separating the birth mother from the child's

upbringing. This seems to be contrary to articles seven and eight of the Convention on the Rights of the Child, which specifically state that only in very exceptional circumstances should a child ever be taken from its birth mother.

I believe that a child has the right to know the identity of his or her biological parents. Although the bill makes provision for a child produced by surrogacy to know the identity of his or her genetic and birth parents once the child reaches 18 years of age, the fact is that just as in adoption cases, parents sometimes pass away before the child reaches 18. Therefore, an 18-year-old child might be confronted with many unending questions.

Children born through donated genetic material are saying in increasing numbers that they have powerful feelings of loss of identity through not knowing one or both of their biological parents. I refer members to the website tangledwebs.org.uk/tw/ where children who are now adults write about their struggles of being conceived with donor sperm. They remind us that donor sperm is not fertility treatment, with one person stating, according to my notes —

> I am the child of the man who donated the sperm and he has chosen to abandon me to a complete stranger.

One of the contributors, themselves the product of donor sperm, wrote —

> If you cannot provide your child with its natural father, you have a responsibility not to have a child.

Australian ethicist Margaret Somerville, AO wrote in her paper "Brave New Babies" —

> They wonder: Do I have siblings or cousins? Who are they? What are they like? … What could I learn about myself from them?

In response, the United Kingdom recently passed legislation that gives children born by means of sperm donation the right to know who their father is once they reach 18 years of age. I believe that we have a responsibility to ensure that, as far as is humanly possible, children have the benefit of growing up with both a mother and father—preferably their own biological parents. For me to support this bill, I would want to see it amended so that the arranging parents must themselves provide the genetic material—that is, both the egg and the sperm—so that the child is their own biological child. When children produced through donor surrogacy come to know that they are not genetically connected to mum and dad, the evidence in the literature shows that many, if not most, struggle with the fact that they do not have a genetic connection with the parents who have reared them. They often speak of feeling that they are a commodity that was created for the wishes of the parents. Having worked with people who struggle with not knowing their identity, I believe that this Parliament has an obligation to ensure that we do not bring into being a law that overcomes the emotional pain of a childless couple at the cost of loading the children produced under the provisions of this bill with a great load of emotional pain. How many of us would consider it acceptable to produce a child by in-vitro fertilisation if we knew beforehand that it would be blind or deaf? Most would say that that is not right. Let us be clear that, if we allow donor surrogacy, we will allow children to be produced whom we know beforehand will have a heavy emotional and psychological handicap while facing the challenges of life.

There are also issues for the surrogate or birth mother. According to my notes, one surrogate mother said —

> Being a surrogate mother is one remorse of my life that I would change … Bringing a surrogate child into the world, thinking I would be doing heroic good, brought only untold suffering and unfinished business for many innocent people.

There is ample evidence that the other children of the surrogate mother actually form a bond with a child their mother is carrying. One child in the family of a surrogate mother lived for years with the fear that if she was not a good girl, her mum would give her away too. Perhaps that is not a rational thought to an adult mind, but for a young child it is an easy thought to harbour and to be weighed down with.

Another issue is that of multiple births. What happens if the birth mother is found to be carrying multiple children? I am glad to say that this bill does not allow the children of multiple births to be separated, but the bill is silent about whether the arranging parents can demand or put pressure on the birth mother to have one of the children in her womb aborted or terminated in the interests of having a custom-made family. Under the provisions of the bill, the arranging parents are under no obligation to take twins, or any child for that matter, that is so produced. They can simply walk away because, according to the bill, surrogacy arrangements are unenforceable in a court of law. If the commissioning parents refuse to take the multiple children born to the birth mother, the legislation gives no guidance whatsoever as to who will take responsibility for the now

unwanted children. Presumably the birth mother, having carried the children, will have a sense of identity with the children and will take the children as her own, or put them up for adoption. Surely that is a painful choice to be left with after thinking that one is doing a friend a favour.

Another issue that this legislation does not address is the problem that can arise if the child that is conceived and carried by the birth mother turns out to be suffering from some kind of disability or serious abnormality. Again, the bill says that surrogacy arrangements are unenforceable. Therefore, the arranging parents cannot be forced to take such a child. Indeed, they cannot be forced to take a healthy child either. Again, this leaves the birth mother in a very difficult situation. Out of the goodness of her heart, she has sought to help a couple have a child, but can suddenly find herself having a child that she is stuck with. She will probably feel obligated to care for the child that she chose to carry. Alternatively, she can put it up for adoption. Although the bill makes provision for the arranging parents to recover their funds if the birth mother refuses to give up her child —

The DEPUTY SPEAKER: Member for Southern River, I remind you that you are not supposed to read your speech. You can refer to your notes.

Mr P. ABETZ: We were told at the briefing given by the health department recently that some of those issues would be dealt with in the pre-counselling session. Even if the surrogacy arrangement is entered into and it is all in writing, it is unenforceable. In a sense, it is not worth the paper that it is written on. I suspect that the decision of the Full Bench of the Family Court in a previous surrogacy case is the reason that this bill states that it is an unenforceable issue. When a mother refused to give up her child to the arranging parents, the Family Court ruled that it was in the best interests of the child that it stay with its birth mother. This creates a very difficult situation for commissioning parents, who are so looking forward to their own child—it can even have their own genetic material—if the birth mother, who thought that it would be easy to give up a child after birth, finds that in fact it is too difficult to do so. The commissioning parents are then faced with the anguish of not receiving their child. A lot of issues need to be addressed. I put it to the house that we should never underestimate the strength of the birth mother's bond to her child.

I draw members' attention to the New South Wales Law Reform Commission's report on surrogacy. Its extensive community survey showed that two-thirds of the community did not support any form of surrogacy at all, which surprised me. It made the point —

> The welfare of the child should be the paramount consideration and should prevail over the interests of the adults involved in a surrogate motherhood arrangement.

The commission recommended —

> The practice of surrogate motherhood should be discouraged by all practicable legal and social means.

Among the reasons it gave is that "the body of a woman is put to the service of the commissioning parties". It concluded —

> The practice of surrogate motherhood holds dangers, both for the individuals involved and for the future development of childbearing and childcare arrangements in our society.

Another concern that I have about the bill is that it makes provision for single people to access surrogacy. I certainly share the view publicly stated by our Premier during the election campaign that as much as possible we should ensure that a child has both a father and a mother. One cannot but wonder whether allowing single parents to access surrogacy is somehow a camouflaged way of allowing gay or lesbian couples to access surrogacy. *The West Australian* carried an article on Saturday that referred to Dr Vince Chapple from Fertility North. He believed that most of the demand for surrogacy would come from same-sex couples who obviously cannot carry children. He said that only a very small demand would come from the people for whom this legislation was drafted for.

My time is running out. In conclusion, I have spoken about some of the issues that the Surrogacy Bill 2008 fails to address —

The DEPUTY SPEAKER: The member for Southern River is entitled to an extension if he wants one.

Mr P. ABETZ: I thought we were allowed only 20 minutes. I thought that was only a grace that was allowed in maiden speeches. In that case, I will just cover this other little matter.

[Member's time extended.]

Mr P. ABETZ: Another issue that must be considered is whether the provision of surrogacy can be limited to de facto couples and married couples. Members should keep in mind the in-vitro fertilisation legislation: although this measure sought to limit those who could avail themselves of it and was formulated after much community consultation and was reflective of community values, the legislation was struck down by the High Court on appeal in 2002, resulting in IVF being available to gay and lesbian couples. We need to be very conscious of what this legislation will actually allow in our community. What sort of a picture do we want for family life in the future? What kinds of problems do we want to impose on children?

Mr P.B. Watson: You're saying that gay and lesbians should not be parents; what about heterosexual parents who are bad parents? You're saying that all these people shouldn't have children. You've had children and have grandchildren; you know what it's like. I have had children and I have grandchildren and I know that it is a joy and blessing. What you're saying is that you don't want these other people to have that blessing. That's just something I can't understand.

Mr P. ABETZ: I believe the issue is this: do we believe that having children is a right? I do not believe having children is, in that sense. The paramount concern must be what is best for the child. There are certainly some parents who are not good parents—there is no question about that —

Mr D.A. Templeman: Isn't the issue of the child's best interests being paramount referred to specifically in a clause of the legislation? All legislation relating to children specifically highlights this concept of best interests of the child.

Mr P. ABETZ: It does. One of the difficulties with this legislation is that when one looks at rulings of the Family Court related to surrogacy, such as when a woman, of her own free will, entered into a surrogate relationship with a couple, carried their child and ultimately found it was too difficult emotionally to hand the child over, when the matter went to Family Court, it ruled that it was in the best interests of the child to stay with the birth mother. What is considered to be in the best interests of the child is obviously up to the interpretation of the courts. That creates a whole lot of value judgements, and there is no way of avoiding those —

Mr M.P. Whitely: Member for Southern River, are you suggesting—I am serious when I ask this—that it's your belief that it is in the best interests of the child not to be born? That's the logical consequence of what you're saying. I acknowledge the issues you're raising, but your endpoint is that you're saying these concerns are so great that you believe it's in the best interests of the child not to be conceived and born.

Mr P. ABETZ: I believe that if Parliament makes laws, it ought to make laws that ensure that children are born into the best possible situation, always realising that we live in a fallen world with all sorts of problems, such as abusive parents et cetera. But basically we ought to strive to have children born into as ideal a situation as possible. That would be my position.

Mr M.P. Whitely: Or not born. That's the logical conclusion of where you're going.

Mr P. ABETZ: We can produce any number of children, but in the end we need to make decisions about what is best for the child. I think members would agree that in certain situations, if we know that a particular procedure would result in, say, a child being born blind or deaf, would we want that to proceed? We would say —

Dr K.D. Hames: Why not?

Mr P. ABETZ: If we know that before the child is even conceived, that is not a real wise thing to do.

Dr K.D. Hames: Is that suggesting something would be wrong with people being blind or deaf?

Mr P. ABETZ: No, I am not saying that, but if we are saying that we are deliberately and knowingly creating something that is less than the ideal, we ought to think very seriously about that. Other speakers may perhaps refer to some of those issues.

I have outlined some of the issues this bill fails to address, particularly the fact that surrogacy arrangements are unenforceable, which could cause an awful lot of grief and pain to those involved in surrogacy. All the evidence that I have been able to accumulate leads me to the conclusion that the only kind of surrogacy arrangement that this Parliament should endorse is whereby the surrogate, or birth mother, is either a close relative or very good long-term friend of the arranging parents, so that the birth mother does not experience the deep loss of not being connected with her child. Also, the child will grow up in the extended family, and the birth mother will be able to maintain a relationship with the child. Another requirement should be that the sperm and the egg would be provided by the arranging parents, so that the child is the genetic child of the parents so that there would be no

loss of identity. Also, a child produced through surrogacy should continue to have a meaningful relationship with the birth mother.

Unless this bill is amended to incorporate some of the principles I have mentioned, I will have great difficulty supporting it. I appreciate that there are couples in our community who would love to have children, but who will not be able to meet those criteria that I have set out. I found it interesting that after the piece in the newspaper about me being one of the members of Parliament who had grave concerns about the bill, I received quite a number of emails from different people in the community, and also people have come up to me and spoken to me about the legislation. Every single one of them, bar one, was of the view that surrogacy was defined as the egg and the sperm coming from the arranging parents. When I explained to them that I did not have a problem with that, they said, "Oh, that's okay then." Only one person communicated to me that this person believed that surrogacy should be open to homosexual men, lesbian women and single people, and that anybody should be able to commission somebody else to have a child for them. I do not believe that is the general view in the community.

I suggest that if we assist couples who do not meet the criteria I have suggested for surrogacy, but so they still can have the joy of having a child, we could look at the possibility of encouraging a woman who has an unexpected pregnancy and is contemplating a termination or abortion to allow the mother carrying the child to be supported by a couple who would love to have a child. Those future adoptive parents could say to that mother, "Look, if you're prepared to carry this child full term, we'll cover all your medical expenses. We'll cover your lost wages during the end of your pregnancy and the few weeks afterwards. We would love to have your child." I believe that would be a great way forward to help women who would prefer to not have an abortion when they feel there is no other way out. This may be one way of helping them move forward —

Dr K.D. Hames: Can I ask you a question: what's the difference between that, where there is no genetic connection between the arranging parents, if you like, and the child that's adopted, and the same thing that you said was an extreme difficulty when it's in-vitro fertilisation? They are both pregnant, they both hand over their child; the only difference between the two is the practice of in-vitro fertilisation.

Mr P. ABETZ: I believe the big difference with adoption is that a child who already exists is being taken. The circumstances are less than ideal, but if a child who already exists is taken and looked after, I see it differently, and I think most of the community would see it differently to going out of the way to create a child, knowing that the child will have some issues with its identity. That would be a significant difference.

MR T.G. STEPHENS (Pilbara) [5.00 pm]: My opposition to this bill has grown. During the last debate on it I was a little tentative in my opposition, but it has grown as I have reflected on the history of the legislation I have been involved with in a whole range of areas since being in the Parliament. I was sharing with colleagues the fact that I have seen come into this place a range of bills that have been introduced with the very best of intentions and arguments. I kept thinking about one of the legislative reforms that came into the Parliament during the lead-up to the America's Cup. It related to the liquor licensing laws for Western Australia. We were then in government. The minister responsible for licensing laws came forward with the argument that a change to the statutes of Western Australia was needed to respond to the challenges we would be faced with in Fremantle. The statutes were changed in a way that had profound and devastating impacts on places at the other end of the state. They were the unintended consequences of an effort to rush to respond to the influx of visitors that would occur in the metropolitan area and, in particular, in Fremantle. As a bush member of Parliament, I was trying to articulate my fears about the legislation and finding how hard it was to envisage the way things could be and express that and then suddenly being overwhelmed by that preoccupation to change in order to respond to the Fremantle situation. The consequence was that we lost the restrictions that were in place that gave remote communities and towns some freedoms from alcohol. It has taken a long time for some of those places to win back bits of that freedom.

In 1991 in-vitro fertilisation legislation was introduced by the Labor government and put into this house by the then Minister for Health, Keith Wilson. I had the opportunity of representing that minister in the upper house and supporting the passage of the IVF legislation that became the Human Reproductive Technology Act. I remember giving assurances to the house at that time in response to the fears members had that the IVF legislation would simply become the basis upon which people would continue to press the envelope and push beyond the simple case of infertile couples wanting to explore the technology that was available to meet their needs through IVF legislation. I argued that we would not be opening up a slippery slope. I argued that the legislation as it was delivered to the house would contain protections for the Western Australian community. The Human Reproductive Technology Act was passed with those assurances. As the years have gone by I have watched the

assurances I gave on behalf of the minister and the government of the day count for absolutely nothing as pressure has mounted for cloning legislation and alterations to the Human Reproductive Technology Act. There is now pressure for further changes that will allow, once this bill passes the house, for surrogacy legislation to create opportunities for IVF to be utilised in surrogacy arrangements.

My opposition to this legislation is based on a view about human reproduction. When creating human life, that human life's rights are paramount. The needs and rights of parents should never be made paramount over the rights of that life that is created through human reproduction. I regret that the needs and rights of parents are the thrust of the amendments that come with this legislation. Essentially, it will open up human beings to the enormous range of complexity that comes into human relationships based around reproduction and then the use of surrogacy to achieve that end. We know how challenging that role is for parents and how difficult it can be for life to come into existence and then to be nurtured and supported, without adding opportunities for new life to be dragged away from biological mothers and to be given over to other parties to surrogacy arrangements, for the stripping of young infants away from the biological mother and for adding together all the complexities that come through that experience. We know as young parents how much we are told about the bonding experience, how important it is for mothers to be with the young infant and how important it is for the life prospects of the young child. We know how important are the zero to three years period of an infant's life. We know how likely people who experience trauma in those early years are to end up almost statistically consigned to the awful experience of failure, which is almost predetermined by the trauma or neglect that comes in that early period of life. However, surrogacy legislation builds into the earliest experience of an infant an inevitable trauma, which for some people happens when a parent dies or there is the unfortunate experience of adoption. That can be traumatic enough for some people, but to design, through the use of human reproductive technology, an experience of surrogacy is simply to place the needs or what are described as the rights of people to have children above the rights of a child and to embed them as being rights that are more important than the right of a child to be secure in the relationship with its biological mother and biological father.

My opposition to this legislation is based on my strong objection to children being treated as commodities. I cannot see how this legislation can be improved. The amendments that members in the other place have advanced will not do very much to improve this legislation. It is legislation that is best not advanced by references to the Human Reproductive Technology Act 1991. When that legislation was debated in this Parliament, some members expressed their fear that it would result in the destructiveness of, and experimentation on, human life that comes from cloning—and now we are confronted with these other complexities.

The issues are difficult to raise. As one tries to raise the difficulties that will arise from this legislation he or she must do so in a way that is sensitive to the challenges of the human condition. This legislation raises a very complex situation for the life that is created through surrogacy. If a diagnosis is made during a pregnancy that presents a great challenge to the human life, who is given the opportunity to decide what action to take? If a disability or disabilities are discovered in an unborn child, are the commissioning parents given the right to determine whether that life can be extinguished during the pregnancy? In Western Australia the law allows for a pregnancy to be terminated in those circumstances up to 20 weeks into the pregnancy.

Many problems will arise if surrogacy is legalised. If the biological mother—the carrying mother—changed her mind after the birth of the child who was commissioned through a surrogacy arrangement, why would her decision have no legitimacy? The carrying mother might say during the pregnancy that she cannot surrender the product of her womb; however, the statute regulates that wish out of existence and creates a set of legal rights around the commissioning parents. Why is that considered by the drafters of this legislation to be the right way to go? A better way to avoid the complex situations that would arise is to not pass this legislation.

Opening up the use of IVF specifically for surrogacy would add an extraordinary burden on people who cannot give life to children in any other way. With the passage of this legislation IVF specifically for surrogacy would be legally and technically possible and would put pressure on couples, particularly mothers, simply because if they can go down that path, they will. People would be faced with inhumane challenges through the use of IVF specifically for surrogacy to achieve progeny. It is not ideal to put that sort of pressure on people and it is certainly not a good way to treat human life.

The young children who come into existence through surrogacy would be stripped away from that biological experience and placed into other sets of circumstances that could leave them traumatised from being taken away from their biological parent.

Members who have spoken with mothers who have relinquished their child for adoption would have heard them say that they are still traumatised by their experience, but it was necessary for them to do what they did. My

experience is that the children who have been put up for adoption carry a sense of grief. I have seen adopted people who, later in life, continue to bear the scar of their adoption experience. Adoption is understood to be a useful part of the social and legal fabric that meets the needs of the child. Surrogacy embarks upon responding to what are considered to be the rights of couples, a new category of people. That is not in the best interests of the community.

The prayer that is said at the commencement of each sitting day asks members to be mindful of the good order of society. What provides for the good order of society is the unamended statute, the Human Reproductive Technology Act 1991, because it recognises that too many problems and complex circumstances emerge from surrogacy and that we are better off to restrict IVF to its current use; that is, that it be available to couples to respond to their infertility. The use of IVF should not be expanded to create life through surrogacy implantations. It would not be in the best interests of any of the parties to it.

The most difficult cases and exceptions would not be the only ones covered by this legislation. It is almost as though members who take part in this debate, as they have in previous debates, will say, "All will be right; all will be well; and she'll be apples because there won't be any great problems with this legislation." However, further down the track we might be confronted with some unexpected consequences. The wider community has more sense of the complexities of this issue than do the legislators. As the legislators, we should envisage the full range of complexities and the unintended consequences that could arise from this legislation. This legislation will neither cater well for the hard cases, nor provide an ideal set of circumstances. This legislation will be deployed in ways that will not support the best interests of the community or the good order of our society. It is for those reasons that I oppose this legislation.

I think it is a pity that, as we come to the end of the parliamentary session, yet again we are presented with another bill of this sort. It seems as though almost every Christmas that I can remember in recent times has been blessed with a rush to consider legislation such as this. It puts us under pressure. In this case, a whole new set of members have not had a chance to go back into their communities, but they are being expected to deal with this legislation and treat it as urgent this week and then get it through Parliament because of the preoccupation with a very small section of our community. I oppose the bill.

MR I.M. BRITZA (Morley) [5.20 pm]: First of all, I appreciate the comments that the previous speaker has just shared. I must declare immediately my disappointment and dismay that the new members in the chamber—I do not propose to speak for everybody; I am speaking only for myself as one of the new class—have not been given time to study this bill. Although the bill was introduced in this house before the election, that does not mean that it must be rushed through this place as though nothing has happened. I concur with the previous speaker that we know that precious couples are awaiting our decision. If we do not feel that, we in this place are very hardhearted. Sometimes I feel that the media do not care for these couples; they are just stories to put a wedge between people. The media highlight their stories to try to pressure us to make a decision when we are not really aware of all the possible ramifications. Just 25 minutes ago, members found out that they could not read their speeches, so I am looking at my speech now and thinking "Help me! I have to try to do this without looking at my speech!"

Several members interjected.

Mr I.M. BRITZA: I am aware that there will be leniency, but the point is that we found that out in the house. That may be all right for some members —

Several members interjected.

Mr I.M. BRITZA: Members who have been here for many years have said to me that they could hardly remember anything they learnt in their induction. I stand with those members.

The ACTING SPEAKER (Mr P.B. Watson): I ask the member to speak to the bill, please.

Mr I.M. BRITZA: Yes, Mr Acting Speaker. However, I felt it necessary to register that disappointment, because it has made it difficult for us to read and understand the bill.

The decision to proceed with surrogacy is multifaceted. It incorporates medical matters, legal ramifications, ethical points and social, emotional and psychological issues. All these issues are very important in a surrogacy arrangement. I have received a lot of emails, as have many other members, and some people have said that I do not understand what they have had to deal with. My wife was in her late 30s when she had her first child. She had two miscarriages. On the very day that she had her second miscarriage, we were going to adopt a baby from

a young girl but she was bought out by a wealthier couple. On the same day that the adoption fell through, we lost the baby that my wife was carrying. It was a very traumatic time. My wife's niece said, "I would like you to consider me carrying a baby for you." I had never given that a thought. My wife and I were very grateful that someone would offer her body to carry a child for us, so I am aware of the issue.

I am sure that many members would have received an email from Andrew and Michelle Webber, a couple who desire the legalisation of surrogacy arrangements. I thought I had better go and see them and find out what was in their hearts. It has been claimed in the media that many of us are against everything, and that is not true; we are not against everything. I wanted to find out what was in their hearts and I wanted them to know what was in our hearts. They have a 12-month-old surrogate baby. It is a joy to behold to see that little child, who has their genes. There is no doubt that they would like a second child. I guess some of us would say that they have been blessed with that child. A relative of theirs in Victoria carried the child. They also shared with me the fact that they do not own the child. The child still belongs to the surrogate mother and her husband. Should the surrogate parents die, this little girl would have access to the estate of the surrogate mother and her husband. And this was just a simple situation! They still have to go through adoption to get their own genetic baby. Surrogacy arrangements are fraught with a lot of unanswered questions. After speaking to this couple, I found that they shared my concerns about the bill.

I also took the time to visit, by invitation, the Hollywood Fertility Centre. I realised that I did not know anything about the clinical matters, so I thought I would avail myself of a briefing, look at the clinic and ask some serious questions of the staff. It was an eye-opener. I am really thrilled that Hollywood Private Hospital has expressed its desire for this bill to be dealt with properly. One of the statements in the literature that I was given was that nothing expresses more clearly than Hollywood hospital its commitment to helping people have healthy babies and complete their families. Whether this bill is passed or defeated, these are the people who are at the coalface; they will have to carry out surrogacy procedures should this bill be passed. It is not an easy process. The minister may correct me, but I recall him saying in passing as we left the party room that it is not as though the floodgates will open and 10, 20 or 30 people will want to go through this every year. It is extremely difficult to even get through the in-vitro fertilisation process, and it will be even more difficult to enter into surrogacy arrangements. Prospective parents have to jump through hoops to go through IVF, so what will a surrogate mother and her husband and the donor husband and his wife have to go through? An enormous amount of work will have to be done before these people go through that process. It is emotionally taxing. It is not an easy process.

Even if we pass this bill, a surrogacy arrangement will still be fraught with danger. All those who want to go through it are aware of it, and many feel that it is a price worth paying. Obviously, I am not a woman, but the trauma experienced by women who have had a failed IVF procedure cannot be adequately expressed. The mental pressure on them is extreme. One of the major truths that I learnt from the clinic yesterday was that the fundamental and vital principle in everything the staff undertook for couples was not in any way close to the attention and care that they took to ensure that the embryo to be implanted into the surrogate mother would be protected in every possible way. Their primary focus in an IVF procedure is to ensure the protection of the child. That point has been referred to time and again by people in this house. I have heard it said that the bill does not address the rights of the child; in fact, it is a selfish bill from that perspective. That might be a simple statement. It is a real test to try to be articulate and use words that will not be offensive, but the bill is true. It deals with parents who want a child, rather than with ensuring that the child will be protected. It makes the mind boggle to think of all the scenarios that could arise for a child.

Take away all the legal and ethical jargon and what do we have? It comes down to an argument that we are presenting in this place today that is primarily moral and ethical. Everybody knows all the other arguments. It seems to me that those of us who stand up for any kind of morality or ethics are in the gun sight of the minority, as though our thoughts and our values are nothing, yet the community supports these thoughts and values. We support the majority view. Studies have very clearly shown that the majority of our constituents do not support this bill. However, when we present that view, for some reason we are regarded as uncaring about people who want to afford themselves the opportunity of surrogacy. Nothing could be further from the truth. We do care about people who cannot have children. It is wonderful to have experienced the joy of having a child. We cannot express it. We cannot even articulate it. We cannot even begin to share with somebody what it means to us if that person has been wanting and hoping to have a child but can never have one. I know these people; I have dealt with them. However, it does not take away from the moral obligation that we have to stand up unashamedly for our community without putting down those who have a difference of opinion on this issue.

I do not presume to be an authority on all aspects of the bill, but I have dealt with people all my life on issues as strong as this one. However, I feel that human relationships in this area will be debased and cheapened if we

legislate for a woman to simply give up a child that has grown within her. Not all surrogate mothers have had a wonderful experience of joy and fulfilment. It is because of the children who will be most neglected and not properly protected that I have cause to waver towards dismissing this bill or, at the very least, amending it. The primary purpose of the surrogacy arrangement is directed not towards the welfare of the child but, rather, towards the commissioning adults or couple. Under this bill a child will be fundamentally a commodity to be obtained or provided in a consumer setting. I say it in that way because it sounds so harsh and stark, but then again bills are worded like that. Bills presented in the house are not read with any kind of emotion; they are just black and white presentations. We must try to take the black and white presentation of a bill that we are trying to get our heads around, present it as meat to members of the community and try to explain to them what we have done. For me this is why adoption is different from surrogacy. In adoption a family seeks a child in need of a family; whereas in surrogacy children are created for the needs of adults. I am not saying that those needs are wrong, but they are selfish.

In adoption legislation, the interests of the child are paramount. I do not know whether it is the case in Australia—I have not gone through adoption and therefore do not know the whole issue—but in some countries an adopted child has more rights than a natural child. If those kinds of rights are given to an adopted child, why can we not give them to a surrogate child who has to go through the minefield of this legislation that is being debated in this place today? It is a minefield. For me, we need to practise adoption because there are abandoned children who need good homes. We do not and would not encourage people to generate children deliberately for others to adopt. Adoption comes from poor decisions or circumstances in which perhaps young ones or people have found themselves. I guess parenthood is a deeply cherished hope of many couples wishing to experience the full range of joys and challenges that go along with having a child. Indeed, to found a family is a fundamental human right, which the state has a duty to protect.

The former speaker raised some points that I had not heard before. Perhaps we are frightened or intimidated to say that it does not sound very nice, that it does not sound very politically correct, or that it sounds as though we do not want to hurt anybody. However, do members know what the fundamental truth was about people who could not have children before in-vitro fertilisation came about? They could not have children. There was no condemnation about it. I say very guardedly perhaps that in some ethnic cultures people who did not have a child were looked down upon or as having something wrong with them or whatever. The simple fact is that they could not have children. We are afraid to bring up this argument for fear that we will be condemned for holding an elitist view.

Sometimes when we try to engineer something that is not natural, we pay a price. Every time we do something that does not come naturally, there is a price to be paid. Every time we circumnavigate something that has come through a natural realm, all of a sudden either our generation or a generation after begins to pay the price. I too hold the fear about which Pandora's box we will open. If we do pass this bill, what else will we compromise on? What else in two years, three years or eight years will we compromise on when we take away the foundation from our communities in this area of the family?

I understand it, and I hear it, but I am amazed that people talk about a lack of love when it comes to the gay community, because that is a selfish thing to say. It is in fact wrong to say that. Most six-year-old studies show that the so-called experts believe that mum and dad often have the key to most of the answers before the experts find it out in a survey. The studies show that children at some point between zero and three years of age hover between wanting their father or their mother. Sometimes I find as a father that I am in favour and then all of a sudden I do not get the hugs and kisses; my wife gets them. Then sometimes my wife looks at me because I am the man and, all of a sudden, I am getting everything.

We do not understand that process, but we know that in a child, for whatever reason, it is looking somewhere for father and somewhere for mother at some point. That is why we say that the best and purest form for a child to come into the world is with a mother and a father. That is why this bill is very precious. I realise it is emotional. However, I have no qualms in believing in my electorate, and I have not yet experienced any negativity from any member of my electorate. I may get some now, but I have not had any yet, and I feel very strongly that the views that I am conveying to the house this afternoon are certainly held by my constituents. I have no fear about going back to members of my electorate and worrying about whether I have presented their views properly or that these are not just Ian Britza's personal views.

I therefore present to the house that in my heart I feel that I cannot support the bill. The proposed amendments have been made to get a compromise. I am willing to do that. I am willing to make a compromise for a

heterosexual couple—married or de facto—to put their genes into a surrogate mother who is a relative or a family friend. I can go to that and feel that I have compromised not only my own belief but also that of my electorate. As we go down this path of debate I am looking forward to hearing from members on the other side of the chamber, whether I can hear their hearts and whether I have misunderstood their arguments. I have not yet heard their arguments and I am looking forward to hearing them.

MR W.J. JOHNSTON (Cannington) [5.40 pm]: I support the Surrogacy Bill 2008. I make the point that good men can disagree. I acknowledge the contribution of the member for Pilbara because he raised some very important issues. We should not look at the surrogacy legislation and say that this is what we desire for the community; we should look at the surrogacy legislation and say that this is a response to the circumstances in which the community finds itself. Assisted reproduction technology is relatively new and has been available to the community for just 25 or so years. It is not right to say that because something has not happened, it will not happen. Having legislated for reproductive technology, we must now deal with the consequences of that decision. When the member for Pilbara says that we got it wrong, he might well be right. However, we must also face the situation in which we find ourselves. Therefore, we must all deal with the issues involved in reproductive technology.

I am strongly opposed to any suggestion of paid surrogacy, and this bill outlaws that practice. The bill makes it clear that there is no opportunity for a person in Western Australia to be remunerated for being involved in surrogacy. That is absolutely essential. Paid surrogacy is the exploitation of working people. It is happening in other parts of the world. It is not to be agreed with or supported under any circumstance. Members can read about the instances in India, where women are paid about $US8 000 for a surrogacy pregnancy. That is abhorrent, and this legislation appropriately opposes that practice, and we shall continue to oppose it.

There are various reasons why I do not support the argument that the donating egg and sperm must come from the commissioning parents, because there are circumstances when that is not possible. I will not go into the personal details of others but it has been well reported, and members might know, that I feel very strongly attached to a person who found that she was unable to conceive and therefore accessed surrogacy. It was simply not possible for her to provide an egg to be involved in the commissioning process. In my view—as I said, good people can disagree—we cannot say that the surrogacy legislation should allow only for the commissioning parents to provide the genetic material, because it might not be medically possible. The reason a couple might be seeking to use surrogacy is that they are unable to provide genetic material. Are we to say that a couple who chooses, for whatever reason, to not conceive but to engage in surrogacy is permitted to participate in surrogacy but that a couple who cannot conceive in a conventional manner cannot be involved in surrogacy? That is inappropriate and I will not support amendments that would restrict surrogacy in that way.

The four-year review in the bill is a very important and central component of it. As other members have said, a floodgate of people will not access these provisions. I take on board the member for Pilbara's position that we do not know what this bill will be used for but that we only know what we think it will be used for. It is important to continue to monitor what happens in practice. I would never say that just because I will vote for this legislation, I would not vote against other legislation, or that I would not be concerned about the inappropriate outcomes that might arise from this legislation.

Adoption is not always an option available for childless couples to provide a family connection. The restrictive nature of adoption in most parts of Australia ensures that some people are not able to access adoption for the very reason that they cannot conceive a child. For example, a woman affected by cancer is highly unlikely to be eligible for adoption in any state in Australia. The restrictions on adoptive parents are often a result of the very small number of children available for adoption in any part of the country. Therefore, in reviewing our position on this bill, we must take account of people's appropriate and legitimate desire, for reasons of family connections, to have children.

A question was raised about whether having a child is a right. I would say that it is not a right; it is a privilege. It is a very important privilege that we extend to as many people in the community as possible. As I said in my maiden speech, I am privileged to have three children and I know how much that enriches my life. I do not understand why people who have no other alternative should be restricted from also enjoying the great privilege that I have. This legislation is not a question of a parent's rights; it is clearly a question of what is in the best interests of the child. There are some uncomfortable truths; there is an arrangement between two, three, or perhaps, as one member suggested, even four, sets of adults who are involved in the commissioning and raising of a surrogate child. There is no question that many genuine questions need to be considered when determining a position on this bill. The members who have given reasons why they cannot support the bill, just as I have given

reasons why I am supporting it, are people of goodwill. However, they must think about who can access these arrangements, and about the benefits that surrogacy can provide. The reality is that since we have provided for IVF technology, unregulated surrogacy has taken place. I will not canvass other members' personal issues but people know that the circumstance surrounding many prominent surrogacy debates in this country are actually about unregulated surrogacy. Given that that is occurring anyway—the member for Morley talked about it in his speech—we are probably better off having a regulated environment to ensure that the appropriate constraints are placed on the surrogacy arrangements rather than allowing them to continue in an unregulated arrangement without the proper intervention of the courts. Members have raised the issue of what the courts will decide. That is why we have independent courts that are not subject to the direct control of Parliament. The separation of powers is a very important component to protect ordinary citizens. Through this legislation, we are empowering a process to ensure that the best interests of the child are considered.

There is no question that surrogate children will grapple with issues of identity. From personal experience I know of three sets of parents who were involved in conceiving a surrogate child. It is to the credit of the people involved that they have acknowledged those adults up-front and that the child will start life knowing the circumstances of the child's birth.

I believe that is an appropriate way for other parents to operate. I am not saying that that is what one person or another should decide. Again, the Surrogacy Bill provides the child with the right to access both of the people involved in the creation of his or her life in the future. There is no question that this is an important issue. The member for Southern River was right to raise identity issues for children, because it is an issue. That does not mean that a person of goodwill cannot vote for the legislation. It is worth recognising, however, that those issues are involved.

It is important that we have a conscience vote on this legislation. It is also important that the government understand how unfortunate it was that sometimes people have attempted to turn this legislation into some sort of political battering ram. The government should reflect on its own language and use of this legislation during the election campaign, because I felt that it was very unfortunate that people chose to treat it in that way. This legislation might not be perfect, but it is important. It would be appropriate for this legislation to be passed and for a very small number of people to use it over the next four years. When we come back to review the legislation and the minister at the time provides a report, it will be interesting to see the very small number of people who have used it, the very small number of children who were conceived in this way, and the very small number of people in our community who were given the privilege of becoming parents in this way.

The ACTING SPEAKER (Mr P.B. Watson): I remind members about the use of mobile phones in the chamber. I know that the member for Fremantle is fairly new to the chamber as an ordinary member who now has to answer his own phone, so I will give him the benefit of the doubt.

MR V. CATANIA (North West) [5.52 pm]: Although I have probably made these points in the other place, I wish to get them on the record in this chamber. During the election campaign I was lobbied by a dozen or so people who were concerned about the Surrogacy Bill. I totally understand why some people would like to have this bill passed. It is a wonderful gift to have a child, although sometimes being a parent can test the best of us.

Mr P. Papalia: You've just started.

Mr V. CATANIA: Yes, it has just started for me. My concern is exactly that. Having had a premature child, I know that pregnancies do not go right all the time. Sometimes pregnancy can end abruptly and a premature child is born. Our son was born two months early. One learns a lot about being a parent during that period. We spent three weeks at the special care nursery in King Edward Memorial Hospital for Women. We learnt a lot about premature children and how parents get through that very difficult time. The doctors and nurses encouraged us, particularly my wife, to have that skin-on-skin contact to help the child get through the first week, which was a difficult week. Being in that environment and seeing so many premature children, it was interesting to see how important it was to have parents around their children to help their growth. Friends of ours had a 25-week-old baby. They were at the hospital for 11 or 12 weeks. Every time they picked up their child and had that skin-on-skin contact, the child's oxygen levels would rise. It was really important for the mother to have that bonding period with the child.

My concern with this legislation is that if the pregnancy does not go well for the surrogate mother and the child is born two or three months early, what will happen to that child? That child needs a mother, whether or not it is a surrogate mother, to have that skin-on-skin contact and to be pulled through that very difficult period. When

does that changeover happen? Does it happen straightaway or does it happen when the mother and child are discharged from hospital? I have quite a few concerns, having been through that experience. I have learnt how one really treasures being a parent. A life can quickly be taken away from a parent and a life can suddenly appear in front of us. It is important for parents to develop these emotional attachments to their children. My concern is that if a child is taken away from its parent at that critical time, what emotional scars are left behind for the surrogate mother? What emotional scars are left behind for the child? Will that hinder that child's growth and prevent the child from getting through that difficult time?

It is hard to decide whether to support this bill. I have to err on the side of caution with this bill. I understand how important it is for some couples to have a child. I have many friends who have had many shots at in-vitro fertilisation and have not fallen pregnant. IVF did not work for my cousin, who is 25 years of age, and she had to go through a major operation so that she could fall pregnant, which she managed to do—she is now pregnant. She took a helluva road to become pregnant because the will and the want to be a mother —

Dr K.D. Hames: I bet she thinks it's worth it, though.

Mr V. CATANIA: Absolutely. I know that there are people who really want to become parents. I believe that they want to become the best parents possible and will be good parents.

My reservations relate to a surrogate pregnancy that might not go right. If it does not go right, it has an emotional effect on the surrogate mother and all the parties who are participating in it. Down the track, the emotional state of the child is at stake. The bill raises too many questions for me to support it.

Sometimes there may be issues with a premature child; the child may be disabled in some way. What happens then? Do the parents who wanted to have that child say, "No, this is not what we ordered", or do they take that child and nurture it through the difficult life that it will have? I am sure that parents who want to have children will love them no matter how they are born, but life is not simple. Humanity can change that situation. Relationships change as well. Relationships may start off well. There is a provision in the bill for people who want to participate in a surrogate arrangement to have a three-month check. Things can change.

Sitting suspended from 6.00 to 7.00 pm

Mr V. CATANIA: In conclusion, I would like —

Several members interjected.

Mr V. CATANIA: I am not in the upper house anymore!

I think the Surrogacy Bill 2008 plays with too many emotions—particularly when we consider pregnancies that do not go the right way. Consequently, I urge members to really think about this bill; it is not all plain sailing and there are many issues associated with such an emotive piece of legislation. I believe that this bill has too many emotional traps, for all parties concerned, and that is why I will be opposing it.

DR G.G. JACOBS (Eyre — Minister for Mental Health) [7.01 pm]: I am grateful for this opportunity to speak to the Surrogacy Bill 2008. I will say, at the outset, that I have no problem with the concept of surrogacy. I have no problem with a woman being deputised to gestate a baby—to grow a baby to full term. However, I would like to say that I have some regrets about the Surrogacy Bill in its current form. I suppose the major regret—one that I would suggest we all have in life—is that of lost opportunity. This Surrogacy Bill was an opportunity to legislate a statute that would make life better for deserving infertile couples—in an unencumbered way. By "unencumbered way", I mean all the encumbrances that lead to complexity and difficulty and challenge. If I can be excused the word, a Surrogacy Bill in its "purer" form, without these encumbrances, would have given us an opportunity to legislate to fulfil a need in Western Australia.

As a former medical practitioner—Mr Speaker is probably sick of hearing about that over these past three-and-a-half years—I make no apologies for bringing some of my experiences to bear today. During the 25 years that I was in general practice, there were well-deserving, desperate couples who could not have a baby. In Western Australia there were potentially six to 10 such couples a year—maybe not as many as that in some years; maybe far fewer. Today we have before us a bill that could potentially supply the needs of those six, seven or 10 couples a year in Western Australia.

In clinical terms, these couples cannot have children because they either cannot conceive or they cannot gestate a baby—in medical terms "gestate" means "grow a baby"; they cannot, if members will excuse the expression, incubate a baby to full term. There are couples who can conceive—and the true definition of conception is that the egg and the sperm unite to become the fertilised egg that then will develop into an embryo and, finally, into a

baby—and there are couples who cannot conceive. The latter are covered by the in-vitro fertilisation methods provided for under the Human Reproductive Technology Act 1991. With today's technology we can bring the egg and the sperm together when they cannot get together themselves for some reason—usually a blockage of the fallopian tube. We can allow fertilisation to take place outside the body—that is, in-vitro, or in a jar or a test-tube. The fertilised egg is then implanted in the womb. The egg embeds in the lining of the uterus and grows into a baby. However, that is enough of an anatomy lesson, Mr Speaker. Suffice to say, there are also couples for whom the process of embedding cannot happen naturally or by means of in-vitro fertilisation. Those couples cannot have a baby because for some reason the woman does not have a normal uterus, or implantation cannot occur and the woman has what we call habitual miscarriages. There may be, for some reason, Mr Speaker, a uterine disorder—endometriosis is one such disorder—or the woman may have had a hysterectomy because of a previous disease. There may be many medical reasons why a woman cannot gestate a baby.

It seems more than reasonable to address the needs of those desperate, well deserving couples who either cannot conceive and cannot gestate, or who can conceive but still cannot gestate. I would have no problem if we were to make legislative arrangements to allow those couples to arrange a surrogate birth. I would have no problems with doing that. I think that concept would be an excellent outcome in support of well deserving married couples or couples in long-term de-facto relationships in Western Australia. I would support that type of legislation for men and women in genuine, long-term relationships that ensure the security of the child. I would support that.

What I do not support, and what I have trouble supporting, are some of the encumbrances that I mentioned previously. These possibilities include the ability for an eligible single person to have a surrogate baby. Under the Human Reproductive Technology Act 1991, there is the ability for technology to potentially allow a single woman to have a baby. I know that. What we have is all those possibilities that involve all the permutations and combinations of donor sperm and donor eggs. Those encumbrances are here today through in-vitro fertilisation, which has been with us for some time. Listening to some of the previous speakers, what comes to mind is that—I hate to say it—medical science has become too smart. Medical science, by way of the IVF program, allows a man and a woman who cannot conceive to have a baby. It allows a woman and a man to have a baby if the woman does not have an egg. It allows a woman and a man to have a baby even if the woman does not have an egg and even if the man does not have a sperm. It even allows a woman who has an egg, but has no male partner, to get a donated sperm and have a baby. And it goes on: a woman who does not have an egg can get a donor egg, and if she does not have a man she can get a donor sperm, and she can have a baby. Those scenarios are potentially available already under the Human Reproductive Technology Act. I can hear people saying, "Well, so be it. It's already here. We have it." I would suggest that this Surrogacy Bill takes it that next step further. It provides the potential for no egg, no sperm—both to be donated—but it even goes to the next step, because if the woman does not have the ability to gestate a baby, it brings in a surrogate arrangement on top of all those other steps. That is what I am referring to when I say "encumbrances". It is not that I am against the technology; it is not that I am against giving people who cannot have children the ability under this legislation to have children.

So that the IVF program can accommodate surrogacy—the next step—this bill seeks to amend the Human Reproductive Technology Act. This will be debated in consideration in detail, but in division 5 of part 4 of the bill, "Human Reproductive Technology Act 1991 amended", there is an amendment to section 23, which reads in part —

> (iii) a woman who is unable to give birth to a child due to medical reasons and is a party to a surrogacy arrangement …

And further, to insert at the end of section 23 —

> (2) Subsection (1) does not require that the benefit likely to result from the procedure involve the pregnancy of a member of the couple who are, or the woman who is, likely to benefit.

Some people would say, "We've already got it. It's already here. IVF is here, and all those encumbrances"—my words; other people's words might be all these combinations, permutations, complexities—"are already in place under IVF". However, it is important to recognise that the surrogacy bill is another step, such that the Human Reproductive Technology Act 1991 will have to be amended and is referred to in the bill.

There are some serious encumbrances and complexities in this bill. This is where I believe we have a lost opportunity, about which I have a great regret. If this surrogacy bill had been fashioned without those encumbrances, it would have delivered, for those very deserving couples who cannot have children, the opportunity to have children. This bill provides the potential for that to happen, but because of all the

encumbrances, we are having this debate. There is nothing wrong with a debate, but members from both sides of the house have outlined their misgivings about all the combinations and permutations, and all the complexities and perhaps complications.

The member for South Perth spoke about genetic bewilderment. There may be children who say, "Who am I?" Because of this bill, a situation can arise whereby neither of the adoptive parents will have contributed any genetic material to the child.

There are three areas of missed opportunity, and if they had been addressed, I think the surrogacy bill would have received the wholehearted support of this place, would have passed through Parliament and would have been fulfilling the need of those people that I believe it is designed for.

In short, to make this bill unencumbered and able to do what it should do for those deserving couples in Western Australia, it must ensure that only married or de facto couples of opposite sexes can produce a child through surrogacy; that the birth mother is not the child's genetic parent; and that at least one of the commissioning parents is the child's genetic parent. Speakers have suggested that the genetic material should be from the commissioning father and the mother. I would suggest that the genetic material should be from at least one of the couple.

In closing—I will not request an extension, which must surprise members of the house—I think this bill is a lost opportunity. In its unencumbered form, it could have been much simpler and it still would have delivered for those well deserving, but infertile, couples in Western Australia. If the bill had provided that eligible couples should contribute some genetic material to the surrogate child, and that no egg should be contributed by the surrogate mother, the bill could have actually decreased all the potential complications that we are trying to grapple with in this house.

Those complications include how we should deal with all the issues surrounding the surrogate mother wishing to keep the child; the issue of genetic bewilderment: "Who are my parents?"; and all the confusion about identity. They also include all the issues that lead to the possibility that a child will not be brought up with a mother and a father. That might sound old fashioned, but I suggest to members that that is the way it was meant to be. We were meant to be brought up by a mum and a dad. There may be situations, one could say, in which we are being unfair or discriminatory. I believe, as other members have said today, that it is a privilege to have children. I know; I have had five of them. Fortunately, my wife, who is actually in the gallery, had no trouble when having children. I thank her for allowing us to have five healthy children, four boys and one girl, now between the ages of 19 and 27. I feel very privileged because of that. I suppose people could say, "Well, it's all right for you. You've had your children. You've got children. Now you're not allowing certain people in the community to have a child." I believe that with the Surrogacy Bill in its unencumbered form, we have lost the opportunity that we had to make it deliver. I do not believe that anybody in the community would criticise us for what we are trying to do in this place today. I believe, as other members have said, that the community understands what we are trying to do for well-meaning eligible couples.

MR F. ALBAN (Swan Hills) [7.21 pm]: As a new member, I feel I need to voice my concerns about the Surrogacy Bill 2008. My opinion is based on being a normal person and a parent. I am not a scientist, doctor or theologian, but I have a life experience that I want to share with members. Our youngest daughter, Lara, was a result of in-vitro fertilisation, so even though our situation is not exactly the same as what we are dealing with, I think the experiences learnt from that are a lesson. Some seven years ago, it became obvious, despite Shauna, my wife, wanting another child, that it was not going to happen. Therefore, we went down the path of IVF. We did not think of the religious aspects of it. She was just intent on having a baby. Therefore, when a woman, especially one in her late 30s whose biological clock is running out, says she wants to have a baby, I understand how important it is. I am not for a moment saying that a man does not know or does not want children; he certainly does. However, when people are in the middle of this process—this is the part that I believe is the most critical—and they are in the middle of the emotions, the needs, the wants and so on, they are not thinking straight. They are thinking about what they want at that moment—that is, a baby. That is why it is important to have boundaries and direction. Otherwise, when people come out of all this, it might end up being a nightmare.

I have said already that I am not an expert on this. I understand that there is a place for surrogacy. However, let me tell the house about the IVF process. It took two years, and I have never seen a woman more determined. Shauna went through 10 treatments—whatever they are called—and it was stressful, emotional and quite painful. She went through what I believe are called egg transfers, and she was laid up for at least a week each time. When we were in the middle of that process, it was quite stressful and intense. My concern is that when people are in

the middle of those emotional situations, the legislation must be correct and rounded, so that people do not make irrational decisions and they do not have a baby in a shandy of situations. With us, it was simple. There was a biological father and a biological mother. There were no complications. However, one of my biggest concerns arose as we were having that baby. The doctor took us aside and said, "At both your ages, there is a one in 80 chance that the child will be disabled." What does that do? It brings people straight back to reality, does it not? Of course, we sat down after the shock and horror, because we had not thought of things like that, and made the decision that, irrespective of whether the baby was disabled, we had no choice; it was what we wanted and we would have the baby. We never thought of it again. However, when that issue arises in an unnatural situation—a mechanical situation, I suppose—that is one of the concerns that I cannot get out of my head. What happens when things do not go right?

I was present when my wife gave birth. It was a Caesarean section, and I do not think the situation is any different if it is a natural birth. I know that some people will say, "She is not the biological mother; she is a surrogate mother. It's not really your child." However, when a woman carries a baby for nine months and goes through the birth process, I believe it is her flesh and blood. Either way, it is no fun. Certainly, the Caesarean did not look like it was any fun. I probably passed out before my wife did. I know that we have progressed for thousands of years and that we are clever human beings who have developed biologically. However, having got to the point of delivering a child, I do not understand how that mother, whether or not it is the biological mother, can hand over that child without a single emotion and without a single thought and say, "That's all my part ever was." I understand that sometimes nature does not work and there is a need; otherwise we would not be here debating this legislation.

I am not sure what other members think, but my identity is based on who I am and who my parents were. My parents are not with me; they have been gone for quite some time. However, there is not a day when I do not think, "I wonder what my mother would have thought. What would dad have thought?" I do not understand how a child can be brought into this world without that identity. As I said, it is a shandy of situations: this one was responsible for this bit; that one was responsible for that; the egg came from here and the sperm came from somewhere else. It is very difficult to conceive of.

With surrogacy, we are in uncharted waters. I have already mentioned that I do not understand—I am not even a woman; and, if I were, it would probably be harder—how a woman can hand over something that she has delivered through the process. I do not know whether nature distinguishes between whether it is or is not a woman's genetic child. I imagine—I am not an expert to say otherwise—that there would still be that emotion. I cannot personally understand the detachment.

I believe that this issue requires fairly serious consideration. A number of previous speakers, including our minister, made quite a few points—probably, technically, better points than mine. However, the one issue that is paramount is the best interests of the child, who is not here and is not able to say anything at all. That is what we should be considering. Adults can fend for themselves. A human being will be created, and that human being will be in a totally different situation from the one in which we were brought up. I do not know that we understand that. I hope we do. I remind members that a human being is being created—not a commodity to be time shared between various adults—whose needs may change with the passing of time. I suggest that we tread very cautiously.

MR A.J. WADDELL (Forrestfield) [7.29 pm]: This is a perplexing issue. It is certainly a controversial issue and one that has caused a lot of emotion today. However, it is not an issue on which I have been heavily lobbied. This is not something that is on the minds of the people of Forrestfield. No-one has phoned me about it or has hammered down my door to talk to me about it. The only people who have tried to contact me on this matter are a couple of lobby groups. They have particular points of view and I have sat down and listened to them. Some of them had some good points. However, I do not think that I can agree with anyone who says that the majority of the community does not support this issue. I think that the majority of the community simply does not care about this issue. The majority of the community probably would just like people to get on with their lives.

I have heard a lot of arguments today, particularly about how complicated surrogacy is: how things can go wrong, how it is unnatural, how it is not good for the child and how it would be terrible for a child to have no genetic material in common with its parents. With your indulgence, Mr Speaker, I will reflect for a little on my relationship with my own child, who I am pretty certain is my own genetic child and who was born seven years ago. My daughter had a very complicated birth that went on for some time, and resulted in my wife needing an emergency caesarean section. My wife then contracted a huge infection and was hospitalised for weeks after our daughter's birth. When she had been born, my daughter was rushed off to a humidicrib, where she stayed for

about three days. That was certainly a complicated birth and one that really opened up my eyes to the fragility of life. However, one really good thing came from that experience. It was a horrible thing for my wife to go through, because she was rushed back to hospital and kept on intensive antibiotics, and was forced to be separated from her newborn daughter. She, too, was of the belief that the early days were the most important time in which to bond with her child. She was convinced that her relationship with her daughter would in some way be substandard, but she could not have been any more wrong about that! She has a great, loving relationship with her daughter, who could not imagine being away from her mother for a second. It was not about those early days of bonding; it has been about the lives we have lived since. I got to do the bonding. I was one of those lucky fathers, or unlucky, depending on one's perspective—I felt I was a lucky father—who was forced to come kicking and screaming into 100 per cent, full-blown parenthood, with dirty nappies and all and feeds at two o'clock in the morning. That was really an awakening for me. At the time, I was stressed and horrified. It was a terrible time, but when I reflect on it, it was one of the greatest times of my life because I now have a relationship with my daughter that I could not imagine not having. That relationship was not born out of genetic material; it was born out of shared experience. My daughter is like me not because we share 50 per cent of the same genes but because I raised her. She shares my values because I raised her. She shares my wife's values because she raised her. She is our daughter because we raised her, not because we are genetically related to her.

I will not for a moment buy into the argument that a child will be conflicted because that child is not living with his or her genetic parents, because that claim disenfranchises so many people in our society. Many people in our society do not live with their genetic parents for one reason or another. Many people do not have the opportunity to live with both their genetic parents. Many people are far better off because they do not live with their genetic parents.

Members have talked about an outcry in their electorates about this legislation. This has not been an issue in Forrestfield. The issues that I come across on a daily basis in my electorate are domestic violence, abandoned families, spousal abuse and child abuse. Unfortunately, most of those things occur in perfectly natural situations; that is, male-female relationships under the guise of marriage. Such relationships do not necessarily provide a formula for perfection. This leads to an interesting point: if that sort of relationship is not perfect and can lead to a complicated range of experiences, should we not legislate to not allow for that? Should we not be subjecting everybody to the same sorts of tests as the ones in this bill? I am certain that if everyone were subjected to the tests in this bill before they entered into parenthood, we would have a severe population shortage very quickly. The bill sets a very high benchmark. The people who would be prepared to jump these hurdles and make this effort would be making a commitment that goes far beyond a 3.00 am tryst in front of a nightclub. I cannot see how members can possibly suggest that a child who would be raised by parents who are prepared to go to this trouble would in any way be worse off than somebody who was the result of a genetic lottery.

I have heard some horrible things today. I have heard that sperm donors abandon their children. I always thought that sperm donation was a fairly honourable thing to do, as it gives people the chance to have children when they are unable to have their own, genetic children. I have heard that this bill will lead to babies being ripped away from their true mothers—that is, their birth mothers—which would cause emotional distress and all sorts of problems, and that we should not risk emotional distress. I paused about that for a second. Last night I had a chance to catch up with an old friend who has been the recipient of multiple organ donations. In fact, one of those donations was from his wife. I wondered whether she had paused for reflection before going under the knife. Did she wonder whether she was doing the right thing or whether she was taking a risk? Was there, at any time, an emotional bearing on her decision to donate one of her kidneys to her husband? Of course there would have been. Of course she would have had second thoughts. She would have thought carefully about that decision and have been emotionally conflicted, but at the end of the day she donated an organ for the right reasons. That is an amazing gift to give to somebody. That is a gift that one gives after having thought through the consequences of the decision, such as the potential to damage or shorten one's own life and the sorts of complications that can occur. People such as my friend's wife still donate their organs—they enter into the decision willingly and go forward. A surrogate mother is agreeing to do just that; that is, to take a risk, because the end result is worth it to that person.

This bill makes sure that people are aware of, talk about and consider all the consequences. They must look at the pros and cons and talk about issues such as finances, emotional aspects of the arrangement and the long-term process. Yes, things may go wrong and the arrangements may not be legally enforceable, but the people involved in these arrangements are a damn sight more likely to get there if they have thought through the decision and talked about it in advance. What is the alternative? We could toss out this bill. Unfortunately, that would not stop surrogacy from occurring. What it would stop are the sorts of checks and balances that are in this bill, because

we are not going to stand between a parent and that person's potential children. I must beg the forgiveness of my family for continuing to use them as an example, but this morning my daughter took an accidental overdose of antihistamine and we had to rush her to Princess Margaret Hospital for Children. On the way, my wife, who was clearly getting more and more agitated, told me to get there faster. I dropped my wife and daughter off at emergency and my wife shouted to me to park anywhere as it did not matter whether we got a fine. The law did not matter to her. I could have driven at 1 000 kilometres an hour and she would have been happy. She did not care about the consequences in law of what we were doing because she was there to protect her child. If we do not pass legislation such as this, people will still go forward and push for these sorts of arrangements, but they will do so in an uninformed manner. We will then see the problems that have been spoken about today, but tenfold. I beg the house to support this bill.

MR D.A. TEMPLEMAN (Mandurah) [7.38 pm]: This is one of those rare moments in a member's parliamentary career when one is in a position to consider very important legislation. No matter what our political, moral, Christian, non-Christian or whatever persuasion, this is a very important issue for all members to consider. I certainly respect all members who have spoken so far in this debate.

I respect the decision that members will make in the final deliberation of this bill. Certainly one of the interesting times for members that were elected in the 2001 election was the debate on legislation that came before this place on the recognition of gay and lesbian members of our community. I think before that, those who were in the 1996 cohort, or the previous 1990s cohort, will remember the abortion debate that took place in both chambers.

Dr K.D. Hames: It was 1993.

Mr D.A. TEMPLEMAN: Yes. Certainly there are examples of very important, but very personal bills that are considered by members of Parliament. It probably conjures up that age-old debate that goes on: "Do you come to this place representing the views of your constituency?" How do we garnish that understanding of what our constituents would want us to do in this place as opposed to what we might be influenced by in our personal, moral and/or other beliefs? We are at a very important time in this early part of the thirty-eighth Parliament. I have listened closely to the points of view that have been put and have thought very seriously about the sorts of comments that I would make, what forms my opinion in the way I consider this legislation, and ultimately what my decision will be.

As members may be aware, my son was born in January this year. There is no doubt that when I became a parent, not only did my whole world seem to change, my priorities certainly became very focused on the health and wellbeing of that person that I—in my case and in my partner's case—brought into the world. It focuses my whole view on what I think is important in life. That was probably an important part of my life in terms of influencing my thoughts on this bill.

There have been arguments this afternoon, and in the previous debate when this bill was debated in both houses, about the what-ifs, the what-abouts, and the complexities of life. We live in a complex world. Parliaments now and into the future will be faced with complex moral, social and modern dilemmas that will challenge people's moral and personal views and they will be influenced by their own personal experiences. That is what makes us human. Whilst there are a lot of what-ifs and what-happens-if, what is foremost in my consideration is a point that the member for Forrestfield mentioned, and that is the checks and balances. What checks and balances can we put into this legislation to ensure that, as best as humanly possible, those what-ifs and those what-happens-ifs are negated? If I am confident that those checks and balances are in this bill and allow a clear process to be undertaken in the consideration of this very important moral and emotional issue, then I will vote for this bill.

That is what our job is. Our role is to come to this place, from a variety of backgrounds, with the influences that we have had from our genetic lineage and the environment that we have been raised in. All of us will bring different stories to this place. All of us have been influenced by varying aspects of that environment that we have grown up in and indeed by a range of people and experiences. That does not mean that we should not consider important issues such as the one that we are considering tonight. I will support this bill because I think it contains those important checks and balances that, as far as humanly possible, will address and, hopefully, negate some of those important issues that members have raised in the debate this evening.

I admire all members who have spoken on this bill. This has not been a debate in which we have attacked each other or become personal. We have challenged each other with some of our thoughts, and I think that is good. As I say, this is one of those rare moments when we get that opportunity, no matter what political persuasion we may be, to do that. I know lots of people say it is a pity we do not do that more often, but in this case, it is

important for this bill to have passage through this place. I think those checks and balances are inherent in the clauses in the bill. For a range of other reasons, but particularly for that reason, I am confident that this bill should make its passage through this place.

MR P. PAPALIA (Warnbro) [7.46 pm]: Members can believe me this time when I say my contribution on this occasion will be very brief! I rise to place on the record my view on this bill and the reasons for how I intend to vote. I wish to make an observation at the outset regarding the member for Morley's remarks. It sounded as though he was confronted by the fact that this bill appeared to be coming on very quickly, and he was challenged by the debate being placed in front of him, with evidently little time to deliberate and properly consider the proposed legislation. I have some empathy with the member for Morley's situation because the first legislation that I encountered, after having been elected in the by-election last year, was this very legislation. I was faced with exactly the same situation as the member for Morley—a conscience vote and the necessity to confront what is a very complex, challenging, difficult and imposing process, and yet I had to do it just as the member has to do it.

I echo the sentiments of the member for Mandurah, which were very eloquently put, and particularly those of the member for Forrestfield only a moment ago. It is important that we are faced with this process. The fact that it is confronting us so soon after having entered this place does not in any way diminish the process. That is the responsibility we take on.

I would like to again echo the sentiments of the member for Mandurah when he said that engaging in this debate and not necessarily agreeing with people on the other side of the debate in no way diminishes our arguments, no matter which side of the debate ends up succeeding in garnering the most votes. It is important that we engage in the process. I respect very much all those people who hold a deep spiritual belief that drives their decision during this process. I may not necessarily agree with the stance they are taking, but that respect is not diminished at all. I recognise that it is a very confronting situation. I do intend to support this legislation.

This afternoon I met Michelle Pearce, who represents the Australian Christian Lobby, after she had written to me. I met her and others last year in their lobbying about this legislation. I was asked why I met her today and, in response to that question, I said that out of courtesy I felt obligated to do the same thing again. I felt I should state my reasons for supporting this legislation. It comes down to the fact that I, too, am challenged by the complexity of this process. But, ultimately, I cannot deny the opportunity to those people who desire to have children and see this as the only way possible. I see it as my obligation to support this legislation and enable those people who are willing to undergo, as the member for Forrestfield has identified, a very challenging process involving a series of questions and confronting challenges to have the opportunity to have a child. Many people do not even think before having children. I believe that there will be a very small number of people taking up this opportunity, and that they will be loving parents who will be so fulfilled by that opportunity that I am sure the children we enable them to have through this legislation will be loved and cared for, and will be coming into a good place in the world. As I am sure members have already discovered, there are many children in this state who do not benefit from that sort of environment at all. We are providing the opportunity for children to be reared in a loving, appropriate environment.

As was identified by a number of other members, surrogacy arrangements are already available in other Australian jurisdictions and in other countries. In the event that this legislation is not passed, it will create an impost on people who will pursue surrogacy regardless of whether the legislation is passed in Western Australia. That is why I will support the legislation; I want to place that on record, and I will not delay the passage of the bill any further.

MR M.P. WHITELY (Bassendean) [7.52 pm]: As I did in 2007, I support this legislation, although I echo the thoughts of the member for Cannington: good people can disagree on this bill. I listened to the speech made by the member for Southern River, and I thought some of his arguments were quite compelling. He said that surrogacy is fraught with difficulties, and I accept that. He has also acknowledged some of the identity issues that may come about as a result of surrogacy, particularly when there is no genetic connection between the commissioning parents and child. They are real considerations and real problems that can arise in the process of surrogacy. I also acknowledge the problems identified by the member of the surrogate not wanting to relinquish the child, and of the commissioning parents changing their minds and not wishing to care for the child, although I think the likelihood of that situation is very remote. It is nonetheless possible.

I agree with the member for Southern River that surrogacy is fraught with risks, but so is conventional parenting. I have outlined some of the identity and relinquishment issues that do not exist in situations of conventional

parenting, or certainly are not as common. However, an advantage of surrogacy is that it is always a deliberate act. It is a considered act, and ultimately it is an act of love and an act of creation. The conception of children is not always a deliberate act; there are other strong motives involved in the process. Above all else, the fact that surrogacy is a deliberate act of love compels me to support this legislation. A child brought into the world through the process of surrogacy—regardless of whether there is a genetic connection with the commissioning parents—is wanted, and that is a very good start in life. It is a lot more than many conventionally conceived children have. It is possibly ideal; there is less likelihood of problems if the genetic parents are also the commissioning parents. However, even if there is no genetic connection, the surrogate child will be loved, wanted and valued. I also acknowledge that surrogacy arrangements already exist in other jurisdictions, and if we do not deal with it, we are abrogating our responsibilities. Having made those few comments, I repeat that I respect the views of members who may think differently. Ultimately, it is because surrogacy is a deliberate act—an act of love and an act of creation—that I am happy to support this legislation.

MS M.M. QUIRK (Girrawheen) [7.55 pm]: At the risk of being accused of tilting at windmills, I feel I need to make a few comments about this legislation. I agree with the member for Forrestfield that this is not an issue on which many people have contacted electorate offices. I do not necessarily have an electoral mandate to make the comments I am about to make, but I nevertheless feel I need to raise some issues and reflect on some of the views that have been expressed, as the member for Warnbro said, in a very respectful, mature and open way during this debate. Some of the issues that arise as a result of this legislation create a brave new world, and I have to observe that I am not risk-averse; in many cases, we have been running blind when putting legislation through this chamber. It is not for the want of 100 per cent certainty that I have concerns about this legislation, but for a number of other reasons.

When this bill was previously debated, a number of members made the argument that if we did not pass the legislation, something worse would take its place, or that people would have to go jurisdiction-shopping at great expense. In other words, the argument was that although the legislation was not perfect, it was better than the alternative. We need to be mindful of such moral relativism and guard against it. The argument that it is the lesser of two evils is one I do not consider particularly compelling.

I admire the enormous altruism of someone bearing a child on behalf of someone else; it is an extraordinary gift to make for someone, and I acknowledge that those who are prepared to do it make an enormously generous sacrifice. I do not seek to diminish in any way people who are prepared to do that. My major concerns, surprisingly enough—some people may think they are religiously based—relate to the commodification of children. I think it is enormously unfortunate when people who want to have children cannot do so, even though I speak as a childless spinster who has had a hysterectomy. I know that there is extraordinary heartbreak attendant upon people not being able to have children when they want to do so, and I do not in any way seek to diminish or undervalue the yearning of those people who want to have children. However, the capacity to shop around and effectively involve five people in the creation of a life is way too broad for my inclination. When this issue was first canvassed in this place some years ago and a parliamentary committee report appeared, there were concerns about the breadth of the legislation and the need for some genetic connection. That is something that I feel quite strongly about, and the fact that the surrogacy process can occur without any genetic connection is something that I find somewhat problematic.

In my very first speech in this place, I said that the end does not justify the means. I accept the argument that has been advanced that the fact that parents in this situation go through an enormous effort to create a child means that that child will be loved and cared for enormously. I do not in any way disagree with that. However, given the breadth of this legislation, I have issues with some of the technical provisions, which I will raise during consideration in detail. I do not believe that I can support this legislation in its entirety.

I thank my party for allowing a conscience vote on this issue, and I will raise particular issues during consideration in detail.

MR P.B. WATSON (Albany) [8.00 pm]: I have listened to every speech so far, either in the chamber or in my office. It is good that we are allowed a conscience vote on an issue like this, because most people probably feel strongly one way or the other about it. When I was a bit younger, it probably did not worry me either way. Then my sister gave birth to triplets as a result of in-vitro fertilisation. They are three of the most beautiful children imaginable—Courtney, Callum and Brady. They would not have come into this world without in-vitro fertilisation. My sister loves them to pieces, and I love them to pieces; the whole family does. There is nothing more precious to a parent, or to anyone else, than a child, and now we have the opportunity to allow someone else to feel that love. I have a granddaughter, and I feel so blessed. At 5.45 this morning she came into my

bedroom, landed her Elvis doll on my head, cuddled her little bottom into me and went to sleep and snored for an hour. Things like that are priceless—the opportunity to be a father and a grandfather. I can appreciate other members having different ideas on this matter, for religious or any other reasons. I respect that, and I am glad that we have a conscience vote on this legislation.

We talk about the protection of the child. Many children come into the world now under the so-called natural system who do not get the love and care they would get from somebody who would do anything to have a child. They will jump through all the hoops and do anything necessary just to have that child. I was lucky enough to go to China with the Speaker last year. China has a one-child policy, and when families go out walking, the group can include mum, dad and grandparents from both sides of the family. I can imagine what it would have been like for people who lost children in the terrible earthquake tragedy to lose the only child they will ever have. We have the opportunity now to pass this legislation through the Parliament. Some members have said that too many people will want to take advantage of this legislation, but I do not think there will be very many. In Parliament we look after minorities as well as everyone else.

There are probably some people in my electorate who do not support this legislation. The good thing about a conscience vote is that a member can speak the way he or she feels. I have visited some of the church groups in Albany and I have spoken to people who are thinking about trying to have a child under this legislation. I can feel the depth of their feeling for what they want to do. With a conscience vote, when it gets down to the nitty-gritty, a member has an idea of what to do on certain issues, such as daylight saving. However, this is one of the most important measures a government has introduced in the eight years I have been a member. I sat through the debate on the previous legislation, and heard some members who are no longer here but were very passionate about it. I read in *Hansard* what was said in the upper house. However, on the day, it comes down to what the member feels. If we can give these people an opportunity to have a child, we are giving them the greatest gift possible. I would like to think that we can give these people the joy of having a child and having grandchildren. The way things are going, I could be a member for nine or 12 years, depending on how the opposition goes, and I would like to think that one of the bills that I was responsible for passing, as the member for Albany, will give people the opportunity to have a child. I fully support the bill.

MRS L.M. HARVEY (Scarborough) [8.05 pm]: Like other members who have expressed themselves before me, I feel quite passionate about the emotional satisfaction of having children and grandchildren. Indeed, I am about to be delivered of my first grandchild in about a week's time. It is very important that we do not get carried away with the notion of surrogacy and forget to examine the detail of a bill such as this, which can be very important and have ongoing consequences. I am a supporter of surrogacy. I have four sisters and numerous cousins, and the topic of surrogacy has come up between us many times over the years. We all like to think that as females we could take on a surrogacy arrangement for one of our friends who might not be able to conceive or carry a child for whatever reason.

This is one piece of legislation that we need to be particular about getting right. I say, with respect, to the members who have considered this bill in detail previously—I understand that it has been through both houses already—that I think we can do this a little bit better. I am not one to advocate the example set by the United States of America in many situations at all, but in that country, as we know, surrogacy arrangements have been in place for many years. In the way that the surrogacy clinics in the USA are run now, there is a tendency to lean towards the surrogate mother not being able to be the donor of the ovum, and a recommendation to steer away from family or friends being surrogate mothers in such arrangements. Even though, as I said, I would not normally be keen to follow US examples in many instances, perhaps we can learn something useful from the experience of the surrogacy clinics and the surrogacy arrangements that have existed in the USA for a number of years.

There is no perfect family and there is no perfect arrangement, and indeed, humans being as imperfect as we are, there can never be a perfect law. When I talk to my constituents about surrogacy, they come back with various feelings about it. Some say that it is just plain weird, while others believe that it is wrong, but many people are ambivalent towards it because, as the member for Forrestfield alluded to earlier, it is not something that is in the forefront of their minds as they progress through their lives. It is very important that we have another look at this legislation and seek to include a number of things.

It is very important that the commissioning parents donate the genetic material for the surrogate child. It is very important that the surrogate mother not be the donor of the ovum, for the simple reason that this makes any adverse outcomes of surrogacy problematic and more complicated than they need to be. I also feel very strongly that we may be getting it wrong when we look at making surrogacy unenforceable. I am a firm believer in having

very clearly defined parameters. We need to ensure that at least one of the commissioning parents of a surrogate child has donated genetic material towards the child, and that the arrangement has been clearly defined and is enforceable. We should not be providing an option for the surrogate mother to take responsibility for the child and refuse to surrender the child to the commissioning parents.

I also feel that this legislation does not clearly cover the potential for adverse outcomes. Even though we have parenting arrangements and a process that can be put in place to cover the particular agreement for each child and each couple, we need to enshrine in the legislation some kind of protection for the child in the event of adverse outcomes. The child may be born with a disability. Let us face it: pregnancy and childbirth are not cut and dried; adverse outcomes do occur. Therefore, I believe that the financial responsibility for the child should be clearly defined in the legislation and not be part of a contractual arrangement in an unenforceable agreement.

I do not have anything further to add. The debate on this topic has been going on for around 10 years. The debate has well and truly covered every aspect of surrogacy that needs to be covered. However, I do feel that we can do this better. Perhaps when we go into consideration in detail we will be able to work together and come up with an arrangement that covers some of the issues that have been raised in this chamber previously. In the interests of people who are suffering because they are unable to conceive a child, and who are waiting on the passage of this legislation to make it possible for them to have a child, we need to move through this bill as quickly as we can. However, we also need to be mindful of the need to protect the commissioning parents who enter into a surrogacy arrangement.

MR B.S. WYATT (Victoria Park) [8.11 pm]: I rise to speak on the Surrogacy Bill 2008. I guess it is not many times that members get the opportunity to speak to pretty much identical legislation twice. Therefore, this is an unusual circumstance. It is also an unusual circumstance in that members have been given a conscience vote on this bill. This bill went through the Parliament in the first half of last year, but it fell victim to the prorogation of Parliament. Therefore, we find ourselves here tonight, with a lovely bunch of new members of Parliament, debating this bill yet again. I will be supporting the Surrogacy Bill, as I did the first time. For the sake of consistency, I guess I need to support this bill again, and I put that on the record this evening.

I have looked at the few words that I did speak on 8 May 2007 when this bill was last debated in this house. I note that a number of members tonight have already said that a conscience vote necessarily requires members to consider the issue for themselves, to consult the people in their electorates, and other people they wish to consult, and to come to a position and explain that position to the Parliament. Certainly with a conscience vote I think our constituents expect their members to at least explain their position and why they are either supporting or opposing the legislation. This is only the second conscience vote I have been given in this place. The other vote, although it was called a conscience vote, would more accurately have been called a free vote, because it was on daylight saving. That vote did not really require the exercise of a member's conscience. It was more a matter of coming to a conclusion about whether we liked daylight saving and whether we could handle the harassment from our various constituents who were beating us up on the issue.

It is interesting that not many of my constituents have approached me on this bill. A few constituents approached me when this bill came on for debate in 2007, but this time not many people have approached me at all. I have been left largely to my own devices when it comes to forming my opinion on this bill; and, as I have said, I have come to the same conclusion that I came to in 2007. I note for the record that I did receive a number of letters—as, no doubt, we all did—from the Australian Christian Lobby, which obviously has a very strong interest in this legislation, as well as from the Christian Democratic Party. I have also received a couple of letters from Western Australians—not my constituents—in support of this legislation. Since 2007 the Parliament has had the benefit of a report from the Standing Committee on Legislation on the Surrogacy Bill 2007, which made some recommendations that have been factored into the legislation, which passed the upper house without amendment.

This legislation is not very long. As I said the first time I spoke on this bill, it really divides the process of surrogacy into two halves: pre birth, with the surrogacy arrangement, and post birth, with the parentage order. One point that I noted the first time we debated this bill, and that I note again, is that only the arranged parents will have the right to apply to the court for a parentage order. I cannot recall whether the questions that I asked during consideration in detail in 2007 were addressed, but I will certainly be asking the minister to explain the reason behind that. It is not something that I have a particular objection to. Legislation dealing with surrogacy, IVF and abortion, and to a lesser extent adoption, tends to get caught up in a religious and Christianity debate. I am a Catholic. I am perhaps not the best Catholic in town, but I am a Catholic.

Several members interjected.

Mr B.S. WYATT: I am certainly better than the member for Fremantle! We are all in accord on that!

As I said in 2007, I do not expect to have to deal at a personal level with a surrogate or with surrogacy, which is what is dealt with in the legislation that we are hoping to set in place this evening. However, it is certainly something that my sister is considering. My sister lives in Victoria. Victoria has enacted surrogacy legislation, and that legislation dictates or outlines what she can and cannot do. That has certainly brought the issue of surrogacy closer to me than it was in 2007. I guess that is another personal reason why I will be supporting this legislation. If I can now take a purely intellectual approach, the fact is that five other Australian jurisdictions have enacted legislation to deal with surrogacy. Therefore, whether we like it or not, surrogacy is a reality and has been for some time.

I want to refer those members who have spoken, or will be speaking, on this bill to one of the better speeches that were made on the 2007 bill. That speech was by the former member for Capel, Dr Steve Thomas. I certainly commend that speech to all members of this place, because he did a very good job of outlining the religious background to surrogacy and how surrogacy has been an issue for us all from as far back as the time of Abraham.

With those few words, I note that this bill amends a number of pieces of legislation. It also sets up a coherent and managed process for entering into surrogacy arrangements. As the member for Scarborough has indicated, not everyone will be delighted by that process. No-one likes to get the courts involved in any process. However, as the member for Forrestfield pointed out very strongly, we are dealing with children who have come into this world in circumstances in which people have been desperate to have a child. The children who are born out of a surrogacy arrangement are certainly not children who are not wanted. The parents want those children and are willing and able to take care of those children. However, because of the nature of surrogacy, and the nature of having a child and parenting, when things do go bad, they tend to go bad very badly, for want of a better expression. Therefore, it is necessary that the Surrogacy Bill set out quite a rigorous process by which the rights of the child, the birth parents and the arranged parents are set out reasonably clearly but allowing the court a certain element of discretion as is required to deal with the facts as they come before the court. However, I am pleased that clause 13, which deals with making a parentage order about a child, states in part —

> the court must regard the best interests of the child as the paramount consideration.

That, obviously, entails very, very subjective elements for what is in the best interests of the child, as is always the case with custody disputes in the Family Court; however, the court is clearly directed to take that into consideration. Interestingly enough, in clause 13(2) the burden of proof lies with the birth parents. The clause states in part —

> it is presumed to be in the best interests of the child for the arranged parents to be the parents of the child …

Therefore, the burden of proof certainly goes to the advantage of the arranged parents, which I think is consistent with the rest of the bill. I think the rest of the bill would be somewhat unworkable if we were not able to, at least at the very start, give the arranged parents that element of security and emotional satisfaction about the surrogacy arrangement they have entered into.

As I have said, I will support this legislation. I am not sure how it will proceed through this house—I must admit I have been in and out of the house—but it is something that is very important to a very small percentage of our population. As I have said, religious and personal elements always come into debate on these types of bills. I have brought in as dispassionate a view as I possibly can as a state legislator, but I think it is ultimately a good bill and one worthy of support.

MRS C.A. MARTIN (Kimberley) [8.21 pm]: I rise to support the Surrogacy Bill 2008. I think a number of things need to be stated. We have had the word "religion" put out there quite a bit. A couple of things that are really important to remember are that religion defines what family is and it defines what society perceives within its own groups. I am not saying that it is right; I am not saying that it is wrong. I am an Aboriginal woman; I have 3 000 family members. I know a bit about family. However, a lot of people —

Mr R.F. Johnson: Three thousand?

Mrs C.A. MARTIN: Thousands!

Mr R.F. Johnson: It must be an expensive Christmas for you then!

Mrs C.A. MARTIN: I do not buy Christmas presents; that is the beauty of it.

However, the society that we live in defines what a family is. Family is one of the oldest welfare institutions in the world and it is the one institution that has survived through the ages. However, again, society decides what family is. We are living in the twenty-first century. Family has changed; it is no longer mum, dad and the kids. It is about taking in other children because there are a lot of kids who do not have the same opportunities; if one has space, one takes them in. Believe me, I have done it.

Other things have happened in the past 50 years, especially concerning health issues—infantile diabetes for a start. These children are behind the eight ball before we even move on. It means that a lot of young women will never have the opportunity to have children. I have two such women in my electorate; one of these women is in my family. Who should decide whether this young woman will have the opportunity to nurture a child? If her sister-in-law, my daughter, says that she will assist her to have this child, legislation should be in place to assist her to do that. In my immediate family, I have one girl with three children. I think she likes having babies! However, these children are loved; they are part of this broad family. Yet, other children in my family will not have that opportunity. They can share these children; that is fine. There is no legal process that will stop them from sharing children. What does it come down to? It is the changing nature of our society; it is the fact that children and young people have diseases that will never allow them to bear children without help of some sort. We have the technology.

This is all about consent. What child is more important than the child who is wanted, loved and nurtured? These people should have those opportunities. As I have said to members before, we define what family is. However, do we have the right to decide whether people should or should not have children? That is really what this debate is about—it comes from the heart. As a mother, I know what it is like to have a family. I cannot imagine what it would be like to not have these children, to not have that special feeling I have when I pick up a child. I really feel for people who do not have that opportunity. This legislation is important; it is really about one of the greatest gifts of all—for somebody to consent to have your child, but it is still your child.

We can change a lot of things, we can make lots of decisions for ourselves, but when we come to this place we must reflect what is happening in that community. In the past 50 years it has changed. As I said, health issues attack the very fabric of our society in not allowing these young people to even become parents. I think we need to look at that from our own perspectives. I understand that members will make a conscience vote on this bill but I thought these things needed to be said. As I say, I am part of a huge family system; what would it be without children? What would it be without sharing those children? If surrogacy is another option to allow people to create the family that they need, then so be it. I support the bill.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [8.26 pm]: I begin my contribution to the debate tonight by first of all acknowledging the hard work, debate and consideration that has gone into the detail of the Surrogacy Bill 2008. I had the opportunity to look in *Hansard* at earlier debates in this chamber and the other place, and I am impressed. I think there has been very good consideration of the detail of the bill and there has been a very sensitive and balanced approach to the difficult issues that it raises.

I will make only some brief points in my contribution. I will start by making some observations about the challenges that we as members of Parliament have faced and will face both in recent times and into the future. We live in a complex world that is becoming more and more complex. The medical advancements in our medical and scientific communities will continue to challenge us with a range of complex issues that together will bring a lot of challenges to us in this chamber. Science does not stand still and will not stand still. It will continue to push the boundaries of what is possible and what is probable and it will continue to raise a range of issues that we will need to grapple with. This is not the first difficult issue that this Parliament has had to deal with and it certainly will not be the last.

The advancement of medical technology expands the range of opportunities and possibilities available to us as human beings. It expands the range of diseases that can be addressed and the chronic conditions that can be alleviated. It creates opportunities for people and, in this case, particularly for people who are trying to have families. The advancement of medical technology will continue to challenge our understanding of the world, our world view and how we respond to the difficult ethical, familial, social and scientific issues that it raises.

The Surrogacy Bill seeks to regulate and facilitate a procedure that is technically available and possible. Indeed, as a number of speakers have pointed out, it is already a process that is ongoing but is somewhat legally ambiguous. I understand that this bill will do a range of things: define the circumstances in which surrogacy can take place; codify the process by which people access those opportunities; clarify the legal rights of the parties

involved and provide a process for clarifying them; and regulate the arrangements that the parties have entered into. However, I think this bill does one very important thing; that is, it does not prescribe what might be considered a perfect family or a perfect set of circumstances in which a surrogacy can take place. Essentially, it does not seek to prescribe a family as we might know it.

The DEPUTY SPEAKER: My apologies, member for Kwinana. The member for Girrawheen will please acknowledge the Chair or leave the chamber.

Mr R.H. COOK: I was brought up in the western suburbs, the youngest of seven kids in a large nuclear family, in what was a fairly conservative social setting. I grew up with a world view that, in some sense, the circumstances of my upbringing were the best and only ones in which a young person making his way in the world should grow up.

As I began having my own family, my world view was challenged by circumstances that found me in a divided family. Much of my understanding of the world was challenged and I was most anxious about the environment in which my kids were now to live. Were they going to continue to live in a happy environment and in a happy family, and how would that impact on their lives? I have since learnt that a family is not one model; that there is not one particular way of living. A family does not simply consist of parents and their biological children. A happy family can exist in a range of circumstances and the member for Kimberley's observations are a good reminder of just how those familial bonds can exist in a range of circumstances. A warm and loving environment is important for happiness. It is not for me, and I do not believe it is for this Parliament, to prescribe those circumstances, because the fact of the matter is that families exist in all forms and create all kinds of loving circumstances in which people can grow up.

This bill facilitates the appropriate and legitimate desire to have children. I do not think that we should seek to deny people who find themselves in circumstances in which they are unable to have a child. They should be able to avail themselves of the medical advances that will provide them with the opportunity to have a child.

My youngest daughter has type 1 diabetes. There is not a day goes by that I do not hope and crave that medical science might find a solution to her condition so that she can continue to live in a world in which her health is safeguarded. I do not think it is up to me to deny those people who are appealing to medical science to find a solution to what is a medically defined problem: it is not up to me to deny them the right to find their way through the world and their own happiness. For that reason, I think this bill does a very important thing.

I strongly endorse the observation made by a number of members that we will not find large numbers of people or couples seeking to avail themselves of the provisions of this bill, but rather that a very small number of people will seek to do so.

We have another opportunity in the form of the review clause. I think the review clause is a very important aspect of the Surrogacy Bill because, as we enter into what is in some respects difficult territory—although not wholly uncharted waters—it is important that we avail ourselves of the opportunity to reflect on the bill—the act, if it is passed—in order to examine its impact on people's lives, including the advantages and the benefits of the legislation, and those things that must be done to improve it.

I hope that a review of the Surrogacy Bill is not seen as an opportunity to attack the principles behind the bill: the principles are very sound and we can be very sure of them. However, I do hope that at the time of the review we take the opportunity to address the unintended consequences and, as I have said, to improve upon those aspects of the bill that we think can be tightened while celebrating the positive and very strong aspects of the legislation.

This legislation is very complex—not in size, but in terms of the ethical issues that it deals with—and these are very difficult issues. I understand and appreciate that in some respects not all members believe that the bill is perfect. Looking back upon the speeches that were made not just by the members who are here today but also by those who had the opportunity to look at the bill previously but are not here today, it is true to say that I am comforted by the work done to make this bill the best we can under the circumstances and to avail ourselves of this opportunity to be informed via all the debate that has been brought forward.

In conclusion, I think this is a good piece of legislation. The Surrogacy Bill 2008 is worthy of support and I will be supporting it.

MR J.A. McGINTY (Fremantle) [8.36 pm]: I, too, rise to support the Surrogacy Bill 2008. I think it is very good legislation. It shows a compassion for people who, because of circumstances beyond their control, are unable to realise the dream to have their own family—their own children. Over the course of the past couple of

years, I have come to know a significant number of couples who wish to have a child but, because they are medically incapable of doing so, see this legislation as being their way forward.

I have very good friends who grew tired of waiting for surrogacy legislation. Last year, they entered into a surrogacy arrangement that bore fruit this year. My friends now have the family that they had desired for so long as a result of leaving this jurisdiction and travelling to the United States to acquire that family under surrogacy arrangements. I guess that raises a very important point that if this legislation is defeated we will effectively be saying that only the affluent, who are capable of travelling to countries like the United States and paying a very significant amount of money, can access surrogacy arrangements and that people in less fortunate economic circumstances cannot. I do not think that is correct from a public policy point of view.

Who will this legislation assist? I refer members to clause 19(2) of the Surrogacy Bill and the list of those people to whom this legislation will offer a helping hand. In the case of a couple it means —

> … 2 people of opposite sexes who are married to, or in a de facto relationship with, each other and who, as a couple—
>
> (a) are unable to conceive a child due to medical reasons not excluded by subsection (3); or
>
> (b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease;

In relation to an eligible person, who is, I guess, somebody else who would be the target of this legislation, it means —

> … a woman who —
>
> (a) is unable to conceive a child due to medical reasons …
>
> (b) although able to conceive a child would be likely to conceive a child affected by a genetic abnormality or a disease;
>
> (c) although able to conceive a child, is unable for medical reasons to give birth to a child.

I cannot think of a more worthy thing for this Parliament to do than to say to those people, the eligible couple or the eligible person, "We will change the law to enable you to take advantage of technology which is readily available"—I am thinking here of assisted reproductive technology techniques such as IVF—"and we will utilise the law to enable you to become the legal parent of the child born as the result of that process." As a matter of public policy, we do not support commercial surrogacy of the type that my friend entered into in the United States. That is not something that is part of the Australian culture, if one likes; we do not support those commercial arrangements. It is somewhat similar to organ donation. We do not support, and the law in this country does not allow, the commercial harvesting of or commercial arrangements for organs for transplantation purposes. This legislation is based upon altruistic surrogacy only, and we will provide a framework within which that can occur; in other words, the couple need or the woman in question needs to have a sister or a best friend who is prepared to carry the child for the couple. What a noble thing to do from an altruistic base! I find it hard to comprehend those people who do not support such a good, wholesome proposition to create human life and to bring that human life into a family that is so desperately keen to extend its love to the family that it so desperately wants. I find it very difficult to understand people who would oppose a law that would facilitate that approach. This legislation is designed to assist those people whose medical circumstances cannot realise something that most of us take for granted. I think the legislation should be supported on that basis.

The next point that I want to make in this debate is about a very significant movement around Australia towards the adoption of surrogacy laws that will facilitate the very issue that I have just raised. There are two dimensions to surrogacy. The first is the circumstances in which a child will be conceived by somebody on behalf of somebody else who will carry the child and then give birth to that child. The second dimension is the change in the legal parentage of that child through processes in the Family Court, based upon the best interests of the child, to enable the commissioning parents, or the arranged parents, to then be able to treat the child as their child in the same way as I treat my children and other members of the house treat their children—that is, as parents to enrol them in a school and to be able to arrange for medical treatment when they need it, so that in every sense they are the parents of that child.

I expect that in most cases the genetic material will come from the two commissioning parents. It will be in every sense genetically their child, although not in every case; there will be some cases in which either the sperm or the egg will come from another person because of the medical infertility of a particular arranging parent. That is not new to medical science and not new to the way in which these matters have been handled over the years. Nonetheless, it recognises that some people are unable, for whatever reason, to contribute their own genetic material to the child. There will be exceptional cases in which none of the genetic material comes from the two arranging parents, for the very simple reason that they are incapable of providing either eggs or sperm to make the child. That, I believe, will be a rare case, but the legislation recognises that there will occasionally be a couple in which the woman is incapable of providing the eggs and her partner is incapable of providing the sperm to make the child. They should not be robbed of the opportunity of having children—their own children—even though they would not be their children genetically. This is part of a national move towards better offering assistance to couples in those circumstances.

The case with which we are all familiar, I am sure, of Senator Stephen Conroy received very significant national attention. At the moment, there are only two places in Australia in which elements of surrogacy can be pursued. This will be the first, I believe, comprehensive surrogacy legislation in Australia, subject to the restrictions, some of which I have already spoken about and which are contained in the legislation. New South Wales has no regulation, other than the protocols adopted by the National Health and Medical Research Council for surrogacy. Therefore, Senator Conroy was able to go from his home in Melbourne to New South Wales to utilise the IVF procedure to impregnate the friend who carried the child for him and his wife. However, at the end of that process, because there is no parentage order—in other words, the second part of the equation, apart from the conception and giving birth to the child; the legal dimension of it becoming his child—he had to undergo what I thought was the indignity of having to apply to adopt his own child. I do not think it is right, when the child is genetically that of the husband and the wife, that they have to then apply to adopt the child. Of course, the law in Western Australia is even more perverse than that. There is a provision in the Adoption Act that raises a very significant presumption; that is, if the child that the people are applying to adopt came about as a result of a surrogacy procedure, there is a presumption against allowing adoption in those circumstances. That is an existing provision of the Western Australian Adoption Act that I believe is cruel and unnecessary. This legislation will overcome that provision. Therefore, if Senator Conroy were from Western Australia, he could not have applied successfully to adopt his own child. That is the absurdity of the current restrictions in the law.

New South Wales is unregulated. People can use IVF to get somebody pregnant with their child, but there is no process to be able to follow it through so that they become the legal parents of that child. That exists in a somewhat dated form only in the Australian Capital Territory, where there is provision for application to, I think, the Supreme Court of the Australian Capital Territory for a parentage order. That is under the ACT surrogacy act, but it is far more limited than what we are proposing to whom that applies. I think the ACT legislation was the model of its day, but it has now become somewhat dated. If the Western Australian legislation passes through the Parliament in the form in which it is proposed, it will become the model legislation for other states in Australia. Queensland has the most restrictive legislation. Altruistic surrogacy is an unlawful activity in Queensland—quite bizarre. Commercial surrogacy is an unlawful activity in every state of Australia, but in Queensland even altruistic surrogacy is unlawful.

These all reflect values going back to a bygone era. I think today the overwhelming view of the Australian public is to support this legislation. It has been many years in its construction, and it has benefited enormously from the debate that took place over 18 months, maybe even two years, as it progressed through this Parliament. One of the most significant changes that were made was referred to by my friend the member for Victoria Park. The view around Australia prior to the debate in this Parliament was that a surrogacy agreement should be an unenforceable agreement. A number of people raised issues with that and did not agree with it. They took a view that a contract should be enforceable. Considerable amendment was made to the legislation to say, firstly, that although the birth mother and her agreement with the commissioning parents should be unenforceable in respect of the child, the commercial elements of the agreement, such as the payment of medical expenses and the payment of all out-of-pocket expenses, should be enforceable, and I think that is right.

The second change that was made as a result of the debate in the Parliament was that, for instance, if the birth mother changed her mind about handing the child over to the commissioning parents, it was in the best interests of the child for that matter to be determined by a court. Those cases will be handled by the court that is experienced in dealing with such matters; namely, the Family Court of Western Australia. That court deals with parent applications for custody, which is an old-fashioned term in family law now; the term referred to access and custody arrangements. One of the benefits of the Family Court of Western Australia being a state court is

that we can invest powers on the state jurisdiction to deal with these matters. No other state or territory Parliament in Australia can vest the Family Court of Australia with the power that we will vest in the Family Court of Western Australia, and we can do that only because in Western Australia, uniquely, it is a state court. It might well be that, as a result of the change of federal government 12 months ago and stronger support for nationally uniform surrogacy laws, there might be a change of heart on the part of the federal government and it might agree to amend the Family Law Act to facilitate surrogacy arrangements in the same way that we are doing here in Western Australia. One of the disadvantages of the provision in the Australian Capital Territory legislation is that these matters go to a court that is generally experienced in criminal and civil matters but has no experience whatsoever in dealing with family-related matters. Again, another advantage of our legislation is that the jurisdiction that will deal with parentage orders is a specialist tribunal that is recognised around the country as being the best body for handling such matters.

I believe that the Western Australian legislation will be a model upon which surrogacy legislation in each of the other states will proceed. If this bill passes the Parliament this week, as I expect it will, Western Australia will have model legislation for the rest of the country. The advantages of this model over what exists anywhere else in Australia are the steps that participants must go through in the pre-conception process for a surrogacy arrangement to go ahead; that is, participants must undertake counselling, seek legal advice, provide their consent to the arrangement and undergo psychological and medical assessments. All of these things must precede the entering into of a surrogacy arrangement for a third party to conceive a child. That is unprecedented anywhere in the country. It is very strong legislation that is designed to ensure, as best as we can in these very human matters, that we have a system that will deal adequately with the difficulties that will be thrown up by the variety of human experiences. Of course, having gone through all those steps, the plan that is worked out as a result of those approvals and procedures must be approved by the Western Australian Reproductive Technology Council. Having done all that, the commissioning or arranging parents will then be able to apply for a parentage order once the child is born. At that point, we will have the best surrogacy arrangements in Australia. The ACT is the only other place in Australia in which parentage orders can be obtained, but the Western Australian model offers a more sophisticated and suitable parentage order than the one available under the somewhat dated provisions of the ACT legislation.

I congratulate the Minister for Health and the Premier for giving priority to this matter. There are dozens of Western Australian women and couples who want to take advantage of this legislation, some of whom have seen it struggle to get through the Parliament and who have had their hopes raised, dashed, raised and dashed. I hope that this legislation will quickly pass through this house, courtesy of this matter being given priority by the new government, so that those women and couples can realise their dreams. It will be a tremendously good thing for us to enable them to do exactly that.

DR K.D. HAMES (Dawesville — Minister for Health) [8.54 pm] — in reply: It really is interesting to be back in this chamber to debate this legislation, on which members have a free vote. The interesting thing about it is that it is one of the few times in a member's career that one can enjoy the speeches given by members on the other side of the house. That has largely been the case for me in this instance, because I have agreed with many of the speeches that have been given. I particularly congratulate the member for Forrestfield on his speech, which I thought was excellent for a new member. The sad thing, from my point of view, is that there was a lot more support from members on my side of the house for the previous bill than there is on this occasion for this bill. Members will remember that the bill had strong support from all members when it passed through the house in the previous Parliament. Interestingly, when the bill got to the other house, it was debated at length and referred to a committee, where it underwent detailed assessment. The final version of the bill was strongly supported by the other place. The bill was ready to come back to this house for completion when the election was called, and it lapsed. We have now brought on the legislation again. A good suggestion was made by the other side, and certainly by the shadow Minister for Health, to introduce the bill in the other house so that we would have a chance to get the legislation through the Parliament this year. Once again, there was strong debate in the upper house. Amendments were moved by those who thought that the legislation needed to be changed, but the vast majority of members of that chamber once again supported the bill. Now the bill has come to this house, where the landscape has changed somewhat. Some newer members have alternative views on the legislation. However, I hope that we have the opportunity to pass the legislation this week, particularly for the reasons enunciated by the member for Fremantle.

This issue was first brought to my attention by a constituent in my electorate. I think I have told this story before. My constituent desperately wants to have a child. She has been through the in-vitro fertilisation process but has been unsuccessful in getting pregnant. She tried to adopt a child in Australia and then looked at overseas

opportunities for adoption. The majority of the babies currently coming to Australia for adoption are from China. My constituent paid a reasonable amount of money to get a considerable way through that process before she discovered that the rules in China prohibit adoption by a mother who has vision in only one eye. I have no idea why that is the case, but that is the rule. My constituent is blind in one eye. She sees perfectly well out of her other eye, but that blindness prohibited her from being able to adopt a child from China. She is in no-man's-land. As members know, she was the person I spoke about when we supported the previous bill and for whom I strongly wanted the legislation to get up. She is getting older. She has brothers who have children. She has a sister-in-law who would happily carry a child for her but who has been unable to go through the in-vitro fertilisation process to have that child. My constituent is desperately waiting for this legislation to be passed. She is getting older. The potential surrogate mother is getting older. People get to the point at which they cannot do these things any more.

I have considered the construction of my family, as have quite a few members theirs. My parents split up when I was just 10 years old. I have not lived permanently with my parents since I was 14 years old. I have stepbrothers, stepsisters, half-brothers and half-sisters, and as a family group we get on very well. When we talk about issues of identity for a child and what that means for a surrogate child, we cannot say that a particular way is the way that it has to be.

People assume that surrogacy laws are new, and that in passing this legislation we will suddenly open up the opportunity for people in Western Australia to access surrogacy arrangements. Surrogacy exists now, but not by way of in-vitro fertilisation. A couple who cannot have a child themselves can donate sperm to, or the man can have intercourse with, the woman who is prepared to have the child. There is nothing to stop that from happening. Even non-heterosexual couples have the opportunity to do that. This legislation puts in regulations and rules, and it puts in a system that provides for the proper care of a child and makes sure that that child has the best possible outcome. This includes traditional surrogacy, which is not in-vitro fertilisation.

What bothered me about the concerns of a lot of members who expressed their view that they would oppose this bill was that their concerns were all about what is best for the child; more particularly, their view of what is best for the child. A child created through a surrogacy arrangement has to be created with the genetic material of the two commissioning parents. It has to involve a male and female couple. It is not done through a donated egg and sperm and it is not done through a single woman or alternative versions, as in a gay couple. It has to be all those things to look after the best interests of the child. While I want to look after the best interests of the child—I think this legislation goes very deeply into making sure that that occurs—I would want to have the child. We cannot have the best interests of a child that does not exist. By saying, "If you are this or if you are that, or if you are something else", we would be denying the opportunity for those potential children to exist at all if we vote no to this legislation.

People talk about counselling that they have given to people who have an identity crisis: "Who am I? Who is my parent? I was a donated sperm and I have issues about who my parents are." I bet we would not ask one of them, "Would you rather not be here? Would you rather not have those issues and not have been born in the first place?" I bet if someone answered, "Yes, I would", we would not say, "Oh, well, we should look at ways to stop that occurring." That person has a medical condition of depression and we need to treat the depression. Nobody who is not depressed would say that. A counsellor would do his best to counsel that child to get over those issues so that he or she could get on and enjoy the great things that life has to offer all of us. We cannot enjoy those great things of life—love of a woman, love of children, love of God—unless we exist on this earth in the first place. I support this legislation because it creates an opportunity for surrogate children to be born to parents who desperately want them—parents who have done everything possible to have a child and, through no fault of their own, are unable to do so.

Some members said that people should adopt as an alternative. We are all deeply concerned about the incidence of abortion. Some members said that what we should do instead is encourage those people considering an abortion to retain that child and adopt it out to one of these sad families unable to have children. The conflict in that argument is extreme because that child has no genetic link to the adopting parents; we have a couple who are desperate for a child and who are going to take the responsibility of parenthood of a child that has no genetic link to them. That is no different whatever from the donated egg and sperm coming from another couple, not the commissioning parents; there again is no genetic link. It does not mean that that child should not then have that opportunity to be adopted; it means that we have to make sure that we provide all of the counselling, support and understanding that the child requires to make sure he or she has every opportunity in life.

It was interesting, too, when the member for Warnbro spoke of meeting Michelle Pearce from the Australian Christian Lobby. I was very happy to meet her also a couple of days ago, because I have a lot to do with the Christian Life Centre in Mandurah, which is linked with the Australian Christian Lobby. I go to Vietnam with them, looking after children in Vietnam, and they are a wonderful group of people. We talk about issues like this and sometimes we just agree to disagree.

I was talking to Michelle about God supporting a nuclear family, with a man and a woman, and the question whether people should not then support alternative families. To me an egg is God-created and a sperm is God-created. God gave us the ability to put them together. Mankind does not create life; mankind creates the opportunity for the fertilisation of the egg that creates life—which is something of God, not of mankind. Who are we to judge what is right by God and what is wrong by God? God will judge what is right and what is wrong. We look at the different components of what is happening here and say, "Who is God going to be angry with? Is he going to be angry with the parents, who, for medical reasons, are unable to have a child and desperately want one?" Of course he will not, because God loves parenthood and childhood. Is he going to be angry at the surrogate mother? Of course he is not. It is a wonderful, beautiful thing to be pregnant, to carry a pregnancy to term, but, even more so, for a woman to do it for someone else who is desperately in need, without any thought of financial reward for herself.

Mr J.A. McGinty: I would scarcely be critical given that Jesus was born under a surrogacy arrangement himself!

Dr K.D. HAMES: An interesting comment, but I do not think that helps my argument!

Another component is: is God going to be angry with the child—a child who is loved by its parents, hopefully brought up loving God and with strong moral values; a child that should bear no ill feeling for whatever its parents or others did? "Visit ye not the sins of the father upon the child." So none of those components is God going to be angry with.

There will be people who desperately want a child, who will be angry with us, and rightfully so, if we cannot get this legislation through this Parliament. Some members have talked about amendments they want to move, but we need to understand that those amendments, as members know, are the same amendments moved in the upper house and soundly defeated —

Mr P. Abetz: They are different.

Dr K.D. HAMES: The point I am making is that there is absolutely no guarantee that legislation we amend in this house will not then die because it will not have the support of a majority of members of the upper house. It is certainly the case that this bill would not get back to the upper house until next year. I know new members have no responsibility for that. The Liberal Party made a commitment during the election campaign that it would bring this forward at the earliest opportunity. We believe it is the right thing to do, to give people that opportunity, an opportunity that we missed last time with the "almost passage" of the legislation. I strongly believe that if we support parenthood, if we support childhood and if we support families, we need to support this legislation.

Question put and passed.

Bill read a second time.

Consideration in Detail

Point of Order

Mr T.G. STEPHENS: I understand that someone in the chamber wants to move some amendments, but because the bill has gone through the first and second readings on the same day, no copies of the amendments have been circulated yet. If I could have a copy, I would be appreciative.

The ACTING SPEAKER (Mr P.B. Watson): They are available from the chamber staff, as they are always.

Mr T.G. STEPHENS: I am trying to get one. Before the Acting Speaker begins calling clauses, I wonder whether he would mind me having a copy of the amendments.

Dr K.D. HAMES: This is something that is new to many members of the chamber; in fact, I do not yet have a copy of the amendments. I know that there has been agreement amongst members to get to those clauses, but it

would be good if members knew which clauses the amendments relate to. We could then perhaps deal with some of the earlier clauses while waiting for the later amendments to arrive.

The ACTING SPEAKER: The first amendment we have notice of is to clause 14, but I know that a member has an amendment to clause 3.

Mr R.F. JOHNSON: Some amendments are being circulated. The first amendment is to clause 14, but I have since been informed that the member for Roe —

Dr G.G. Jacobs: Eyre.

Mr R.F. JOHNSON: Sorry; it was Esperance once!

Dr G.G. Jacobs: It was never Esperance!

Mr R.F. JOHNSON: Somewhere down there!

I understand that the member for Eyre will seek to move an amendment to clause 3. I suggest that if no other member has an amendment to move before clause 3, clauses 1 and 2 be put en bloc.

Debate Resumed

Clauses 1 and 2 put and passed.

Clause 3: Terms used in this Act —

Dr G.G. JACOBS: Mr Acting Speaker, there may be some cause for confusion, and I seek your clarification. It was my intention to move an amendment to clause 3 to delete the words "a person or", for the reason that the Surrogacy Bill in its unencumbered form would be better served by reference to surrogate arrangements involving arranged "parents", not "a parent". The advice I received when this bill went through the other place was that there is no necessity to make any amendments in the preliminary part because it is of no consequence to the bill.

The ACTING SPEAKER (Mr P.B. Watson): Is the member going to move the amendment?

Dr G.G. JACOBS: I seek your clarification, Mr Acting Speaker.

The ACTING SPEAKER: That is a decision for the member to make.

Dr G.G. JACOBS: I move —

> Page 2, line 14 — To delete "a person or".

Clause 3 would then read, in part —

> … ***surrogacy arrangement*** means an arrangement for a woman (the ***birth mother***) to seek to become pregnant and give birth to a child and for persons other than the birth mother (the ***arranged parent*** or ***arranged parents***) to raise the child, but the term does not include an arrangement entered into after the birth mother becomes pregnant unless it is in variation of a surrogacy arrangement involving the same parties.

I made the point during the second reading debate that I am not opposed to the concept of surrogacy arrangements. I recognise, as I recognised when I was a medical practitioner, the important need for surrogacy arrangements for deserving couples who cannot have children because of infertility. However, it is important that this clause apply only to couples; that it refers to "persons" and not "a person". A child deserves a mother and a father, and to be brought up by a mother and a father. That is why I have moved the amendment to delete "a person or". This leaves the word "persons", which would be an important intent.

Mr T.G. STEPHENS: I would like to hear from the minister about whether he has any reasons for retaining the words proposed for deletion as they are now in the clause. In the view of the minister, why is it necessary for the singular to be retained in this clause?

Dr K.D. HAMES: There are three reasons for this clause remaining as it is. Firstly, it is as it was in the original bill, which went to the upper house and was considered by a committee there. Secondly, if we make any amendment to this legislation, it would mean that the legislation would not pass this week, and would need to go back to the other place and be reconsidered in committee. I do not support that course of action. I am very strongly committed to this legislation going through this Parliament this week, and I am doing everything I can to ensure that that happens. The third reason is perhaps more important. It revolves around our determination of what is best for the child, the essence of what a family represents and the importance of family. I strongly

support the institution of marriage; I have been married for 31 years. I strongly support marriage as being likely to produce the best possible environment in which a child can be raised. However, as a general practitioner before becoming a member of Parliament, I looked at some of the patients who came into my surgery who were in abusive or dysfunctional relationships; the fathers who abused their children, sometimes sexually. I ask who we are to decide on what is the best family. I look at married couples in some areas, particularly in the remote parts of Western Australia, who physically abuse each other at length, and where children can be seriously abused, and ask whether that is a great family for any child to be brought up in. Is it a great family just because those parents are married? Some Aboriginal families, particularly those the member for Kimberley talks about, have just the grandmother and the mother looking after the children, or the nuclear family of sisters, grandmothers and uncles who collectively support the upbringing of a child. That is a great family for that child. Considering some of the great single mothers I have seen—my daughter is one of them—we should not be discriminating against women who desperately want to have children and cannot do so, just because they are single.

Mr T.G. STEPHENS: I do not understand this. Is the retention of the singular word in clause 3 to ensure that surrogacy arrangements are available to single people?

Dr K.D. HAMES: Yes.

Mr A.P. JACOB: I will speak in support of this amendment, particularly in light of where it relates to clauses later in the bill. Being new to this chamber, I have been particularly interested in listening to the Address-in-Reply speeches from both new and experienced members. One such speech identified the crux of the issue for me in the Surrogacy Bill. In her Address-in-Reply contribution, the member for Armadale identified a strong need for a focus on the zero to three age group of children in our society. She spoke about how the evidence has shown that the development of the neural architecture through these critical years goes on to establish the blueprint for the rest of that person's life, and how the impact of these early years affect that person's ability to integrate into society.

The ACTING SPEAKER (Mr P.B. Watson): Member, when you speak during consideration in detail, you have to speak to the actual clause under consideration, and you are not allowed to read your speech.

Mr A.P. JACOB: Okay; not a problem.

In speaking about the zero to three age group, the member for Armadale went on to explain how that period can impact on the health and wellbeing of that child, even 50 years later. My issue with this is with the provision for a singular if at any point we are considering the wellbeing of a child. We have the opportunity in passing this legislation to say what the starting point of that family will be. Yes, circumstances from the age of zero to three can be beyond our control, but in considering the best interests of the child, we are looking at the starting point. In considering those comments about the zero to three age group, is it not best for the child to start with both a mother and a father? We can run the best developmental programs for children from zero to three, but if they are not starting with both a mother and a father, then a fundamental building block of their lives will be missing. In listening to the discussion in the second reading contributions, I was surprised that very few people were speaking about family make-up. I am a big supporter of family, and my problem with this bill is that provision for single people to access surrogacy arrangements. That is why I support this amendment.

Having said that, I will clarify that I do not speak with any prejudice towards single people. There are some fantastic single parents out there, but they would all agree that they are doing a very tough job, and it is a lot harder for people on their own. Whenever we have before us the opportunity to set that starting point for a family, it is very important that we as a Parliament provide that, at the very beginning point, a child has both a mother and a father. I support this amendment.

Dr K.D. HAMES: To me, this is not the starting point of the family. It is the starting point for someone who has been desperately trying to have a child. That zero to three age group is critical, but it is far better for it to be critical for a child that exists than for one who does not.

Dr G.G. JACOBS: With all due deference to the Minister for Health, whom I count as a respected colleague, I find it rather difficult to come to terms with the fact that he would not countenance the amendment because that was the way the legislation had come to us, that the words were already there, and that the amendment would slow the process down. He talked about what is best for the child. There are lots of bad families, so there is nothing to say that bringing a child into a single-person arrangement would be bad, and in fact it would be better than some of the situations the minister recounted in the Kimberley and the north west. The minister's third point about the best interests of the child is paramount, and that is what this amendment is trying to achieve. It is trying

to give the child the best possible start. There are lots of circumstances that impact on children, and have impacted on our own lives when we were children, and there are many variables. However, we should at least give the child the best possible start at birth by giving it a mother and a father. I am not making any value judgements about that mother and father, but in establishing that start it is important to delete the word "person", as this amendment proposes. I will go on to another amendment, when we will have to talk about an arranged parent versus arranged parents. It is not important that this situation existed already and that the legislation came to this place as it was before. It is not important that amendments such as this may be perceived as slowing the process down. We are in this place to do the best job we can. If it takes us a little longer to do the best job we can, it does not matter. That is not an argument for not considering this amendment to make this law better for children.

Amendment put and a division taken with the following result —

Ayes (23)

Mr P. Abetz	Mr G.M. Castrilli	Dr G.G. Jacobs	Ms M.M. Quirk
Mr F.A. Alban	Mr V.A. Catania	Mr A. Krsticevic	Mrs M.H. Roberts
Mr C.J. Barnett	Mr M.J. Cowper	Mr W.R. Marmion	Mr T.G. Stephens
Mr I.C. Blayney	Mr J.M. Francis	Mr P.T. Miles	Mr M.W. Sutherland
Mr I.M. Britza	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr R.F. Johnson *(Teller)*
Mr T.R. Buswell	Mr A.P. Jacob	Dr M.D. Nahan	

Noes (33)

Ms L.L. Baker	Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.K. Waldron
Mr J.J.M. Bowler	Mr W.J. Johnston	Mr P. Papalia	Mr P.B. Watson
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr C.C. Porter	Mr M.P. Whitely
Dr E. Constable	Mr F.M. Logan	Mr D.T. Redman	Dr J.M. Woollard
Mr R.H. Cook	Mr J.A. McGinty	Mr E.S. Ripper	Mr B.S. Wyatt
Mr J.H.D. Day	Mr M. McGowan	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Mr J.E. McGrath	Mr A.J. Simpson	
Mr B.J. Grylls	Mrs C.A. Martin	Mr C.J. Tallentire	
Dr K.D. Hames	Mr M.P. Murray	Mr A.J. Waddell	

Amendment thus negatived.

Clause put and passed.

Mr R.F. JOHNSON: I seek leave to have clauses 4 to 13 considered en bloc.

The ACTING SPEAKER (Mr P.B. Watson): Is leave granted?

Mr R.F. Johnson: There are no amendments.

Mr T.G. STEPHENS: The fact that there may not be any amendments to those clauses should not prevent a member from being able to speak on them. I would like to speak on clause 13.

Mr R.F. Johnson: Then do not agree to give leave. That is all you need to do.

The ACTING SPEAKER: The question is that clauses 4 to 13 be considered en bloc. Is leave granted?

[Leave denied.]

Dr K.D. HAMES: I seek leave to have clauses 4 to 12 considered en bloc.

[Leave granted.]

Clauses 4 to 12 put and passed.

Clause 13: Child's best interests paramount —

Mr T.G. STEPHENS: I will start my comments on this clause by saying what an important clause this is in the bill. Its heading is very important: "Child's best interests paramount". The clause states —

> (1) In deciding whether to make a particular decision concerning a parentage order or proposed parentage order about a child, the court must regard the best interests of the child as the paramount consideration.
>
> (2) For the purposes of this Act it is presumed to be in the best interests of the child for the arranged parents to be the parents of the child, unless there is evidence to the contrary.

In supporting the clause my only regret is that the rest of the Surrogacy Bill does not reflect the high sentiment that is expressed in this clause. Regrettably, in my view, the passage of the earlier clauses has prevented this particular clause from having the good effect it claims to have for the legislation. That having been said, the only other thing I want to say to the house relates to a point that was made during the second reading debate; namely, new members are especially at a great disadvantage in the handling of this bill. I ask that the house show a bit more respect for that disadvantage than seems to be the intent of some members.

Ms M.M. QUIRK: I am concerned about clause 13(2), which states —

> For the purposes of this Act it is presumed to be in the best interests of the child for the arranged parents to be the parents of the child, unless there is evidence to the contrary.

What kind of evidence would lead to the reversal of that presumption? When would it be possible, for example, for that presumption to be reversed and for it to be believed that it was contrary to the best interests of the child?

Dr K.D. HAMES: This clause caters for the situation whereby something may become inadvertently wrong with those arranged parents. It provides the Family Court with the opportunity to make a decision for people other than the arranged parents to be the parents of the child. Therefore, the presumed requirement is that the arranged parents will be the parents of the child. If there is a challenge to that for various reasons—for example, that one of the arranged parents is convicted for dealing drugs or that the arranged parents have had an acrimonious split up—the Family Court would then be the arbiter of whether it believes that the arranged parents are still in the best interests of the child or perhaps the birth mother or whomever. It would be the Family Court's decision as to what is in the best interests of the child.

Ms M.M. QUIRK: I thank the minister for that explanation and it certainly makes it a bit clearer. For the purposes of this legislation, what sort of standard of evidence would be expected in reversing that presumption?

Dr K.D. HAMES: That will not be determined by this legislation; it will be determined by the Family Court. The member would have heard the member for Fremantle talk at length during his second reading contribution about the value of the Family Court of Western Australia and its experience in dealing with matters of this nature. Therefore, I do not think it is up to members of Parliament without that experience to prescribe exactly what those circumstances will be; it will be left to the Family Court.

Ms M.M. QUIRK: I appreciate what the minister is saying, but we have a piece of legislation in front of us and we are talking about a presumption that will prevail in all circumstances bar when there is evidence to the contrary. I do not think it is unreasonable to ask under what circumstances that presumption would be reversed, and the minister has outlined some of them and it has been helpful. However, would those circumstances entail a conviction, a suspicion, being charged with a crime—at what level would it be before the minister, as the person who put this legislation before this house, would contemplate that maybe the child's best interests would not be paramount?

Dr K.D. HAMES: The member may recall that it was not me who put this legislation together; it was in fact her minister in the upper house. This clause was moved as an amendment in this house during the debate when the legislation was previously before this place. It will not be the decision of this house or this legislation; it will be the decision of the Family Court to decide those matters.

Dr G.G. JACOBS: Clause 13 is entitled "Child's best interests paramount". Although in the rest of the bill reference is made to an "arranged parent", nowhere in this clause is mention made of an arranged parent. In fact, all other parts of the bill talk about arranged parents, and it did not seem to be necessary or did not seem to be in the best interests of the child to mention in clause 13(2) anything about an arranged parent as distinct from arranged parents. Clause 13(2) states —

> For the purposes of this Act it is presumed to be in the best interests of the child for the arranged parents to be the parents of the child, unless there is evidence to the contrary.

Elsewhere in the bill the term "arranged parent" is mentioned quite substantially and quite frequently; however, this part of the bill does not mention an arranged parent, although it is referred to in other parts of the bill.

Dr K.D. HAMES: I am advised that "arranged parents" is defined on page 6 of the bill, and arranged parents in the context of that definition includes an "arranged parent".

Mr W.J. JOHNSTON: I take the minister back to the question asked by the member for Girrawheen, which seems to concern a pretty important issue. What standards are expected to be met for the ordinary presumption to be overturned? This is quite a fundamental issue to the matters that are before the house.

Dr K.D. HAMES: At the time these orders may be challenged, my question was: who would challenge those? The advice I am given is that it might be a number of people—for example, the birth mother—who challenge the right of those arranged parents. Having seen or learnt something about their behaviour, they can challenge those arranged parents or the Department for Child Protection might have evidence. This clause is about protecting the interests of the child; it is about creating an opportunity whereby evidence might arise in the course of that pregnancy, subsequent delivery or the handing over of the child to those parents in which questions may be raised about those arranged parents for the reasons that I have stated. Once again, those are very serious matters but that is what the Family Court is for. An opportunity exists through this legislation to challenge those arranged parents as being the parents of the child, and the Family Court will make that decision.

Mr W.J. JOHNSTON: What level of proof would be required? I suppose that is the fundamental issue. Are we talking about beyond reasonable doubt or the balance of probabilities? What sort of level would be expected before the onus would be reversed? The level of expectation for these matters to be considered is a very important issue in considering this clause.

Dr K.D. HAMES: This legislation does not determine the proof—nor should it. That is what the Family Court is for. There is a Family Court Act whereby that court takes evidence and makes decisions. I am pleased to say that I have never had anything to do with the Family Court and I hope the member has not either. However, I think that we would need a Family Court expert to give advice as to the burden of proof required by the Family Court. In my view, in looking after the best interests of the child, it is important that there be an opportunity to challenge parents about an event that has occurred. It might be challenged by the birth mother because of either a mental illness or a drug conviction. All such challenges are considered by the Family Court when it determines who will be the best parents for the child.

Mr I.M. BRITZA: Minister, I am confused by this particular point, because we have been arguing and presenting our point today about the child knowing who it is and where it is going.

In the case of the couple with the surrogate child, everybody involved knew that they were the child's parents, yet, despite everyone assuring them it will happen, they do not know at what stage they will become the child's parents. Just now the minister said that a court can say, "No, you are not going to be the parents." We have spoken about the high level of preparation required before prospective parents can even enter into a surrogacy arrangement. If I were one of the prospective parents who had donated sperm and an egg, and the fertilised egg had been implanted in a surrogate mum, I would feel dreadful that everyone knew that we were going to be the parents and that we had jumped through all the hoops and been assured that, "It is okay", only to be told when the baby arrived, "Well, hang on, we've got to check on you for a little bit; we've got to watch and see how you go for a little bit, before the baby becomes yours." Last weekend I saw the couple, whose little surrogate child was running around on the floor. I asked them when the child would be theirs. They could not tell me.

I may be off the point and I am prepared to be put in my place, but I feel that this clause does not tell us when the child will finally belong to the parents. I do not believe this clause gives the parents any assurances at all. Members who support this clause spoke about the joy of giving prospective parents a child—which we ultimately agree with—but it now appears that this clause is saying, "Well, that is not really the case yet; there are still a few things that have to be checked out once the baby is here." My question is: at what point do the parents who contributed the sperm and egg know the baby is theirs? I feel it is all up in the air. I have had to deal with the Family Court in the past, and it has not always been the wisest when dealing with family issues, with stories of broken families all over the place.

The Family Court does not always get it right, but I am not saying that it ought to have a perfect record. To say that the Family Court will make the decision is not very comfortable for the parents who have contributed the sperm and the egg. I am uncomfortable. The bill is ambiguous and wide open; it is not very tight. I would like the minister to respond to my concerns.

Dr K.D. HAMES: I will respond in two parts. First, the member continues to talk about a child whose parents are not the proper, designated-in-law parents. This legislation will address exactly that situation. Under this legislation, those parents can apply to become the official parents of the child.

Mr I.M. Britza: When?

Dr K.D. HAMES: We will get to that in due course. If the member for Morley reads the rest of the bill, he will find the appropriate clause.

Second, the member is saying that as a result of this clause the parents will suddenly be up in the air, not knowing what may happen. He cannot possibly be suggesting in all seriousness that we remove the words "unless there is evidence to the contrary". Member, clause 13(2) states —

> For the purposes of this Act it is presumed to be in the best interests of the child for the arranged parents to be the parents of the child, unless there is evidence to the contrary.

Is the member for Morley suggesting that there be no out clause? Does he believe that there should be no prospect or opportunity—no matter what the arranged parents have done; no matter that one of the parents might be convicted of murder, be a drug addict or have committed sexual offences—for the Family Court to decide that continuing the agreement with the arranged parents is not in the best interests of the child? I cannot agree with him.

Mr I.M. BRITZA: I am compelled to respond, because the minister has not given the house a good answer. First, all the argument brought today by the minister and others in support of this bill has been about the strength of the application process—people cannot enter a surrogacy arrangement just because they feel like it. The minister has gone to great lengths to assure us about the strength of the background checks that will apply to a surrogacy application. But the minister is saying that, suddenly, after the baby is born—someone has just reminded me that there is a 28-day period; but the child in question is over 12 months old and I am still no clearer about when the parents can actually apply to make their baby their own—the court will still have the opportunity to determine whether the arranged parents are suitable. Surely those questions would have been dealt with before the surrogacy had progressed that far.

Mr J.A. McGinty: Circumstances can change. I think that is the issue that has been raised.

Mr I.M. BRITZA: It does not change on a natural basis.

Mr C.C. PORTER: I am far and away from being an expert on the Family Court and Family Court proceedings, but it seems to me that the way in which this clause is meant to work is this: 28 days after the birth of the child an application can be made for what will eventually become permanency. As the member for Morley pointed out, there would be a degree of checking before the original surrogacy arrangement was entered into. If it were the case that between the birth of the child and the date of the permanency application, or indeed until the date the application was finalised, other evidence emerged that suggested that the couple or person should not become the parents of the child, then, on the balance of probabilities, that evidence would be assessed by the Family Court. The evidence might have come to light by virtue of the surrogate mother or an amicus curiae—that is, a friend of the court. It might have come to light by virtue of the court's own inquiry. However, as the Minister for Health has pointed out—I certainly do not want to say anything that is incorrect—this is an "escape" or "out" clause. If, notwithstanding the best intentions and investigations at the preliminary stages, other evidence later emerges, either through the court's own inquiry or is offered to the court by someone else, that suggests to the court that the people are no longer suitable, then on the balance of probabilities—50 plus one per cent—the presumption can be rebutted. Leaving aside all the other arguments that people may or may not have with the bill, it seems to me to be a reasonable procedure.

Clause put and passed.

Clause 14: Terms used in this Part —

Dr G.G. JACOBS: I move —

> Page 6, lines 21 to 26 — To delete the lines and substitute —
>
> > ***arranged parents*** of a child means the persons who, according to the definition of ***surrogacy arrangement*** in section 3, are the arranged parents;

Amendment put and a division taken with the following result —

Ayes (23)

Mr P. Abetz	Mr V.A. Catania	Mr A. Krsticevic	Ms M.M. Quirk
Mr F.A. Alban	Mr M.J. Cowper	Ms A.J.G. MacTiernan	Mrs M.H. Roberts
Mr I.C. Blayney	Mr J.M. Francis	Mr W.R. Marmion	Mr T.G. Stephens
Mr I.M. Britza	Mrs L.M. Harvey	Mr P.T. Miles	Mr M.W. Sutherland
Mr T.R. Buswell	Mr A.P. Jacob	Ms A.R. Mitchell	Mr R.F. Johnson *(Teller)*
Mr G.M. Castrilli	Dr G.G. Jacobs	Dr M.D. Nahan	

Noes (34)

Ms L.L. Baker	Dr K.D. Hames	Mr M.P. Murray	Mr A.J. Waddell
Mr C.J. Barnett	Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.K. Waldron
Mr J.J.M. Bowler	Mr W.J. Johnston	Mr P. Papalia	Mr P.B. Watson
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr C.C. Porter	Mr M.P. Whitely
Dr E. Constable	Mr F.M. Logan	Mr D.T. Redman	Dr J.M. Woollard
Mr R.H. Cook	Mr J.A. McGinty	Mr E.S. Ripper	Mr B.S. Wyatt
Mr J.H.D. Day	Mr M. McGowan	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Mr J.E. McGrath	Mr A.J. Simpson	
Mr B.J. Grylls	Mrs C.A. Martin	Mr C.J. Tallentire	

Amendment thus negatived.

Dr G.G. JACOBS: I want to move an amendment in my name on the circulated page of amendments. I move —

Page 7, after line 9 — To insert —

genetic parent of a child means a person from whose egg or sperm the child is conceived;

Dr K.D. HAMES: I am going to oppose the insertion of this amendment—not that there is anything inherently wrong with it. The amendment itself is just a definition. The member obviously has a reason for inserting this definition. I presume it is because he intends to move an amendment at a later stage that relates to that definition. However, even so, amending this legislation means that it will not be passed this week and will have to go back to the other place to then be passed by it again. Therefore, I do not support the amendment of this legislation and do not support the insertion of this definition.

Mr P. ABETZ: That very terminology is borrowed from further on in the bill, but it really ought to be in the definitions area. The reason that it ought to be at the beginning of the bill where the terms are defined is basically for clarity. It also relates to clause 17, which we want to amend to define who can and cannot be the genetic parent of the commissioned child. I do not want to go into that amendment yet. That is another issue, but perhaps I should foreshadow it somewhat. The evidence is very strong from the United States, where surrogacy has been practised for a long time, that many clinics do not permit the surrogate mother to contribute the genetic material for the child, because it becomes so much more difficult for the surrogate mother to give up the child. Because of the negative experience of so many birth mothers who contributed the genetic material refusing to give up their child afterwards, causing all sorts of difficulties, we want to avoid those difficulties by providing in the legislation that the birth mother is not allowed to contribute the genetic material. That is the reason for wanting to bring it forward, so that it is clearly defined in the bill. Therefore, I speak in favour of the amendment.

Dr G.G. JACOBS: I cannot understand why the Minister for Health keeps telling us that the reason we should not look at amendments is that we need to get the legislation through this place. Why should we railroad a democratic process just because the upper house might have to come back for another day next week? I believe the amendment is important. The amendment is not a contentious one, but it is an important definition. It defines "genetic parent". It should be in the list of definitions in clause 14, which includes "child", "parentage order", "court" and "independent legal advice". It is very important to define "genetic parent". The proposed definition reads —

genetic parent of a child means a person from whose egg or sperm the child is conceived;

That might seem obvious to some. It seems obvious enough to me. It might not be obvious to everybody. I believe that to make this good law, it is a definition that should be included.

Dr K.D. HAMES: This amendment was considered in the other place and was defeated. That is not to say that it would not go back to that other place. However, as I have said, I intend to support this legislation. The member spoke about it being a definition. If we turn to page 13, line 12, of the bill, it states —

In subsection (4) —

genetic parent of a child means a person from whose egg or sperm the child is conceived.

Exactly the same definition is contained in the body of the legislation. If it is just there to be a definition, it does not need to be in this alternative place.

Mr J.A. McGINTY: I support the point of view put forward by the Minister for Health. It is abundantly clear exactly what a genetic parent is; it is someone from whom the genetic material came. It does not need to be defined. There is no pressing need for this amendment. As the Minister for Health has said, the term is defined in clause 21 in exactly the same terms as is now proposed, in relation to a court making a parentage order. A more sensible approach for the member for Eyre to take would have been to have followed the approach taken in the bill; that is, for the definition to appear in the clause to which it is relevant. If the member for Eyre and his supporters wish to pursue this amendment, they should do so as part of the subsequent amendment that they have in mind. It was thought appropriate for the definition of "genetic parent" to be placed in the clause to which it is relevant and not in the general definitions clause. If this amendment is carried, the bill will be inconsistent in the way in which it approaches the defining of key terms. This amendment should be defeated. The member for Eyre or another member should move an amendment in which the definition and what they substantively want to achieve is done in the one clause, which would maintain consistency within the bill.

Mr T.G. STEPHENS: Will the minister support the amendment if it is moved in the other part to which the member for Fremantle referred?

Dr K.D. HAMES: I am not exactly sure what the member is referring to. I think he is referring not to the words being elsewhere, because they are already elsewhere —

Mr T.G. Stephens: I am sorry, I missed that. Can the minister tell me where the term is defined?

Dr K.D. HAMES: The term "genetic parent" is defined halfway down page 13 of the bill. It is the same definition as the one moved by the member for Eyre.

Mr P. ABETZ: It has been proposed that we simply leave the definition of "genetic parent" under clause 21. The lawyer who advised us on the amendments said that the definition needed to be inserted in clause 14 because we want to move a further amendment to provide that the birth mother cannot be the child's genetic mother. The lawyer said that for that amendment to be made, this definition needed to be moved before that amendment, otherwise we would be using a term that was undefined in the bill. The definition of "genetic parent" under clause 21 states —

In subsection (4) —

genetic parent of a child means a person from whose egg or sperm the child is conceived.

Accordingly, the term has that meaning only under clause 21(4) and is therefore undefined in the rest of the bill. We need the definition to be in clause 14. Having spoken to some members who support the bill in principle, there seems to be some support for the next amendment, which provides that the birth mother cannot be the genetic mother. For that amendment to have meaning, we need this amendment to be passed. It may be wise or it may save time to move to the next amendment and, if that amendment is not passed, this amendment can then fall away. Because of the way in which the bill is structured, we have been required to move the amendments in this order. I am open to the advice of the Speaker on this matter.

Dr K.D. HAMES: One difficulty we have had is that these amendments arrived before me only tonight.

Mr T.G. Stephens: The bill arrived only today.

Dr K.D. HAMES: Fair suck of the sav! Having said that, the advice I have received is that the legal advice to the member is correct and that that would be the effect of not supporting this amendment. Members who have voted yes so far in this debate will need to continue to vote yes if they wish to further their cause. I would prefer to take the amendments in the correct order because, if this amendment is defeated, it will have an effect on further amendments.

Amendment put and a division taken with the following result —

Ayes (21)

Mr P. Abetz	Mr V.A. Catania	Mr A. Krsticevic	Mr T.G. Stephens
Mr F.A. Alban	Mr M.J. Cowper	Ms A.J.G. MacTiernan	Mr M.W. Sutherland
Mr I.C. Blayney	Mr J.M. Francis	Mr P.T. Miles	Dr G.G. Jacobs *(Teller)*
Mr I.M. Britza	Mrs L.M. Harvey	Dr M.D. Nahan	
Mr T.R. Buswell	Mr A.P. Jacob	Ms M.M. Quirk	
Mr G.M. Castrilli	Mr W.J. Johnston	Mrs M.H. Roberts	

Noes (36)

Ms L.L. Baker	Dr K.D. Hames	Mrs C.A. Martin	Mr A.J. Simpson
Mr C.J. Barnett	Mr J.N. Hyde	Ms A.R. Mitchell	Mr C.J. Tallentire
Mr J.J.M. Bowler	Mr R.F. Johnson	Mr M.P. Murray	Mr A.J. Waddell
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr A.P. O'Gorman	Mr T.K. Waldron
Dr E. Constable	Mr F.M. Logan	Mr P. Papalia	Mr P.B. Watson
Mr R.H. Cook	Mr J.A. McGinty	Mr C.C. Porter	Mr M.P. Whitely
Mr J.H.D. Day	Mr M. McGowan	Mr D.T. Redman	Dr J.M. Woollard
Ms J.M. Freeman	Mr J.E. McGrath	Mr E.S. Ripper	Mr B.S. Wyatt
Mr B.J. Grylls	Mr W.R. Marmion	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*

Amendment thus negatived.

Clause put and passed.

Clauses 15 and 16 put and passed.

Clause 17: Requirements for surrogacy arrangement to be approved —

Mr I.M. BRITZA: I move —

Page 8, line 8 — To insert after "child" —

and

(iii) is not the child's genetic parent;

and

(iv) unless the Council is satisfied that there are exceptional circumstances because of which it should dispense with this requirement, is a relative of one of the arranged parents or has been a close acquaintance of one of the arranged parents for more than five years;

Dr K.D. HAMES: The proposed amendment does not make sense. I will look at the amendment and read what it says. Clause 17 is headed "Requirements for surrogacy arrangement to be approved". This is not when the woman is pregnant; this is prior to her pregnancy. Clause 17 states —

The Council may approve a surrogacy arrangement …

It is talking about approval of a surrogacy arrangement. A surrogacy arrangement can be approved only if —

(a) the birth mother —

(i) has reached 25 years of age; and

(ii) unless the Council is satisfied that there are exceptional circumstances because of which it should dispense with this requirement, has given birth to a live child;

The woman has to have already had a child who is her child, not anyone's else child, and she must have reached 25 years of age. The member is saying that the child is not the child's genetic parent—which child is not the child's genetic parent? She is not even pregnant yet through the surrogacy arrangement. The amendment does not make sense.

Mr T.G. Stephens: The amendment is to page 8, line 8.

Dr K.D. HAMES: Lines 1 to 7 deal with the requirements for surrogacy to be approved. The clause states —

The Council may approve a surrogacy arrangement only if …

That is the precursor to any words that follow. The amendment states that the council may approve a surrogacy arrangement only if the child is not the child's genetic parent. How does that make sense, because the woman is not pregnant yet? Her only child is her own, which is her child. The amendment is just not in the right place.

Mr P. ABETZ: As the minister says, we are dealing with the qualifications, if I can call them that, for the surrogate mother in a surrogacy agreement. The intent here is that the surrogate mother, the to-be birth mother, is not to be the child's genetic mother. The wording that suggests that the child is not to be the child's genetic mother is a typographical error.

Mr C.C. Porter: Shakespearean!

Mr P. ABETZ: Yes.

I move this amendment for the reason that we need to learn from the horrendous experiences in the United States. One can read literature on surrogacy from the United States, where it has been happening for a long time. Most of the clinics will simply no longer allow the birth mother to be the genetic mother of a child who is to be produced through surrogacy because there is such a high incidence of birth mothers refusing to give up the children to whom they have given birth. We would be very foolish to not learn from the experiences of the United States. I do not believe that Australian women are that different from American women in that sense. There is a very strong bond between a birth mother and her child, even if there is no genetic connection. The evidence very clearly points to a much stronger bond when the birth mother is the genetic mother of the child. Members should keep in mind that these arrangements are not enforceable; we are setting up childless couples, who so long to have a child, for a very painful situation in which the birth mother does not want to relinquish the child. Let us make it easier all round by not allowing that particular form of surrogacy. We would be very foolish to do otherwise.

Ms A.J.G. MacTIERNAN: I have a certain sympathy for a number of the arguments that have been made tonight, but it seems to me that a situation in which a sister agrees to conceive and have a child for an infertile sibling, using genetic material from her sister's husband, is a fairly common situation. I do not think that that is an atypical situation. As I understand it—from the surrogacy stories that I have read in women's magazines!—the sibling story seems to be quite a common one. I therefore do not agree with the member on this point, because I think we would in fact lose a lot of very good surrogacies if we were to insist on this amendment. Obviously, when a sibling is involved, there is a genetic relationship in one sense. I agree—I think the member for Scarborough commented on this—that there should be a genetic link with at least one of the arranged parents. I think that is important, and I also agree that because of the challenges surrounding surrogacy, it should be an arrangement that is not available to a single person. However, I will not support a provision that would rule out a surrogate mother contributing her own genetic material. Although I am aware of the sorts of problems the member has outlined, I am also aware that it is not an infrequent situation for sisters to offer to be surrogate mothers, and I certainly would not want to preclude that.

Dr K.D. HAMES: I support the comments made by the member for Armadale for exactly those reasons. It is a quite common situation for people who are genetically related to offer their support, and they are usually the people most likely to become surrogate mothers. Moreover, the member has spoken previously about support for adoption; obviously the birth mother has a genetic link to the child yet chooses, through adoption, to give the child up to other parents. I do not see how that situation is any different, given that in surrogacy cases, the surrogate mothers have been through counselling, they have been through all the procedures necessary and they have jumped through all the necessary hoops to become parents. They have offered their ova as surrogate mothers knowing that through the procedure they will give up the child. To then say that they cannot participate does not seem logical to me.

Dr G.G. JACOBS: I want to comment on the suggestion that the surrogate mother not being the child's genetic mother will somehow prevent one sister carrying the baby for another sister. I do not know which magazines the member for Armadale reads, but I must say that in my experience the egg most commonly comes from the woman who cannot carry the baby because of some uterine abnormality and that the surrogate mother is the sister of the woman.

Ms A.J.G. MacTiernan: Yes, that is one possibility.

Dr G.G. JACOBS: The sister surrogates the baby for the woman who is infertile because she has no uterus to gestate a baby and the infertile woman contributes the egg. I agree with the member for Southern River that experience has shown that if there are not only physiological changes and hormonal effects in pregnancy as gestation takes place and during the birth process, but also genetic material from the surrogate mother, complications could be added to the surrogate mother. The member for Armadale has said that the sister could

change her mind. Nothing has been said in this place today that convinces me that the provision in this amendment would be enforceable on arranged parents.

Ms A.J.G. MacTIERNAN: There are times when a woman may be infertile for reasons other than not being able to carry a baby. For example, an increasing number of women have been diagnosed with breast cancer at a very young age and have had intensive chemotherapy. That may result in their inability to produce a viable egg in the future. The problem might be not only the inability to physically carry a child, but also medical complications that compromise the capacity to produce a healthy and sustainable egg. That is not an unusual situation and is part of a classic case of infertility.

Dr K.D. Hames: Genetic abnormality is another good example; the mother may carry a genetic abnormality.

Ms A.J.G. MacTIERNAN: Yes, an abnormality or, as I say, she may have compromised her eggs by having treatment that she had to undergo to deal with another medical problem. Although there have been cases of a sister agreeing to the implantation of genetic material from another sister, equally there have been other successful cases of surrogacy when the carrying mother also contributed genetic material. That is why I think it is important for there to be within the commissioning or arranging couple at least one genetic link. If the genetic link is not there from the mother, then the genetic link should be there from the father. That would create, I believe, a connection that would be sufficient to sustain this relationship.

Mr W.J. JOHNSTON: Perhaps you can assist me, Mr Speaker. I want to move an amendment to replace the amendment moved by the member for Morley. I believe that my amendment will clarify the intention of the member for Morley. I am not sure of the procedure to do that.

The SPEAKER: You can simply proceed, member for Cannington.

Mr W.J. JOHNSTON: My foreshadowed amendment is to insert at the end of clause 17(a)(ii) —

(iii) unless the Council is satisfied that there are exceptional circumstances, is not the genetic parent; or

(iv) is a relative of one of the arranged parents.

That amendment would provide what I think is the intention of the member for Morley; that is, generally speaking, the gestational mother of the surrogate child would not carry her own child unless the council approved it. The council will approve other matters; therefore, if the council believed that it was right for the gestational mother of the surrogate child to carry her own child, it could approve that. However, generally speaking, the bill will state that that is not the preferred arrangement unless the gestational mother is a relative of the arranging parent, in which case the exceptional circumstance would not have to apply. That may or may not deal with the problem the Minister for Health has with the member for Morley's amendment, but I think it does. I believe it achieves what the member for Morley intended. I am not sure whether the wording of his amendment, which I saw only a few minutes ago, actually achieves that.

The SPEAKER: Before the member for Morley speaks on the foreshadowed amendment, I inform members that the best advice in this position is to deal with the amendment before us. Therefore, members will make a decision on the words to be inserted, which is the member for Morley's amendment. When a decision has been made on that matter, we will get an indication of whether we can proceed with the member for Cannington's amendment. I thank the member for Cannington for his contribution at this stage.

Mr I.M. BRITZA: I am very happy with the member for Cannington's amendment and seek leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Mr W.J. JOHNSTON: I move —

Page 8, after line 9 — To insert —

(iii) unless the Council is satisfied that there are exceptional circumstances, is not the genetic parent; or

(iv) is a relative of one of the arranged parents;

I am in favour of the legislation and I support the bill. I believe that surrogacy makes an important contribution to the circumstances in which the community finds itself. Unless there is a particular reason, it is probably to the advantage of all involved for the gestational mother—if we want to use that term—to not be the genetic mother

of the child unless the council, which already has the right to make decisions in respect of the surrogacy arrangements, thinks that that is appropriate. I am not trying to eliminate an opportunity for the parents. I want Parliament to give a clear indication that it would prefer the arrangements to be done in that way but to indicate also that another set of procedures is allowed and that the approval of the council would not be needed if the surrogate mother was a relative of one of the parents. If the arranging parent—whether the husband, wife or partner—has a relative who will be the gestational mother, it would not require the approval of the council. This amendment tries to give some guidance to the council to show that we prefer it to be done without that genetic connection, so that the genuine issues raised by the member for Morley and the member for Southern River can be dealt with.

Dr K.D. HAMES: For the reasons I have stated before, I want this legislation passed, and I still agree with the arguments I put forward before, as espoused by the member for Armadale, so I remain unmoved.

Ms A.J.G. MacTIERNAN: Does the amendment moved by the member for Cannington address some of this? It specifically allows a related surrogate, and it allows another non-related surrogate, to be considered in appropriate circumstances. My understanding is that it just provides a level of protection. It does not prevent it, but it just says that this is another complication, so it is a matter that needs to be considered. What would be the harm of that? This appears to be quite a well thought-through amendment.

Mr J.A. McGINTY: I disagree with the member for Armadale's assertion that this is a well thought-out amendment. It is in fact a crazy amendment. It requires that the surrogate be a relative.

Ms A.J.G. MacTiernan: No, it doesn't.

Mr J.A. McGINTY: Does it not? The member should read it. I might be wrong, but it seems to me that the way this reads—I am thinking on my feet here, so it may not work out this way—the council may approve a surrogacy arrangement only if the birth mother has reached 25 years of age; has given birth to a live child; and, unless the council is satisfied that there are exceptional circumstances, is not the genetic parent—which certainly modifies, to an extent, the impact of the original amendment moved by the member for Morley. I still find very strange the way in which proposed paragraph (iv) is worded. I think there is a slight problem there as well, and that was my point. To simply state "is a relative of one of the arranged parents" does not really connect proposed paragraphs (iii) and (iv) in the way that was intended.

Ms A.J.G. MacTiernan: I think that what needs to happen is the amalgamation of proposed paragraphs (iii) and (iv).

Mr J.A. McGINTY: That might well be right, but I am just making the point that this is not the appropriate amendment to achieve what has been intended, because I think it could well be constructed or interpreted in a way that requires that one of the conditions to be met is that, to be a surrogate, a woman must be a relative.

Mr C.C. Porter: I don't think there is any other interpretation.

Mr J.A. McGINTY: I think that is right. I thank the Attorney General for that view. I think this amendment should be defeated.

Dr K.D. HAMES: Further to that, clause 17 states —

> The Council may approve a surrogacy arrangement only if —
>
> (a) the birth mother —
>
> (i) has reached 25 years of age; and
>
> (ii) unless the Council is satisfied that there are exceptional circumstances …

That is, not the genetic parent. I do not agree with that. I am quite comfortable with the mother of that child in a surrogacy arrangement being the genetic parent. I do not see what the problem is. In fact, I do. Those for the amendment have elucidated the issue of a mother having to give up her child when she is a genetic parent. That is no different from an adopting mother giving up her child when she is a genetic parent. I do not see a problem with doing that.

Mr W.J. JOHNSTON: That is the point that I am making. I am no lawyer, so if my wording is not tight enough or clear enough, I am happy to have the number of lawyers in this place modify those words to make them say what I mean rather than what I have written. The minister is right; there is no difference between a surrogate mother who gives birth to her own child as part of the surrogacy arrangement and an adoption. I agree with that. I support adoption and I support surrogacy. I am trying to say that it is actually a preferred position that the

mother who carries the child not be carrying her own child, because in my view there is a higher likelihood of the sorts of issues that the member for Southern River, in particular, has raised occurring when a woman carries her own child as part of the surrogacy arrangement. Therefore, in my view it is better that the woman who carries the child should not be the natural mother of the child. I am also saying that should apply in the same way as the provisions that allow the council to provide an exception for a woman who has not had a child previously to be a surrogate mother. Again, we give the council the right to allow a woman to be involved as a gestational mother for a surrogacy when she is the natural mother of the child she carries. That would be an exception, and the Parliament would be indicating that that is not what we would prefer, even though the council has the authority to make those arrangements. If one of the lawyers in this chamber is able to word the amendment to do that, I would welcome that person's assistance.

Ms A.J.G. MacTIERNAN: I wish to look at what we have been trying to achieve here tonight from a different viewpoint. I do not think the member for Cannington or I would want to preclude a non-related surrogate mother from also being the owner of the genetic material. We would want to keep that open as a possibility in certain circumstances but make a differentiation, perhaps raising the issues that have been raised by the member for Southern River, but that in itself creates additional complications. The amendment is not precluding it but it is making a statement that that creates potential difficulties, so we should treat that differently. We should also recognise that that same level of scrutiny might not be required when there is a genetic relationship between the birth mother and one of the arranged parents.

I propose an amendment that catches what the member for Cannington is trying to do. It would insert at the end of subclause 17(a)(ii) the word "and" and then —

> (iii) is not a relative of one of the arranging parents unless the Council is satisfied that there are exceptional circumstances and is not the genetic parent;

That amendment is saying that if there is a genetic relationship between the arranging parents and the birth mother, there will not be a further inquiry into the matter. However, generally, unless the council is satisfied that there are exceptional circumstances, there will be a requirement that the birth mother not be the genetic parent.

Mr J.A. McGINTY: We need to bear in mind that under the Human Reproductive Technology Act, and this bill, the Reproductive Technology Council will be required to approve every surrogacy arrangement that is entered into. The HRT act, and this bill, provide the power for directions to be issued and for rules to be made prescribing matters that are necessary for the proper administration of this bill. My view is—as with the Minister for Health—that we should not prohibit a sister from providing the genetic material and being the surrogate. It would depend upon the circumstances. That is not to say that that is necessarily the most desirable arrangement that can be entered into. However, I make this point. The variety of circumstances that human beings may confront—such as who do they know who is prepared to be a surrogate—may limit their choices in the first place. It may be that there is a strong desire to maintain a family genetic connection in circumstances in which the mother is incapable of providing the genetic material. For those reasons, I do not think it is appropriate to rule out—I know this amendment does not rule it out, but it positively disapproves of it—the use of the genetic material of the surrogate. That might be the most perfect arrangement. Why would we as a Parliament want to say that that is undesirable? It might well be highly undesirable in a range of other circumstances, but not in that particular circumstance.

I come back to the rules and the directions that the Reproductive Technology Council will be given the power to make under this bill. If the evidence, from America, for instance, on the use of genetic material is so overwhelming—I do not believe it is, and I would not support that provision—then the power exists for the Reproductive Technology Council to make those directions and rulings, based on the experience of the experts. It might well be that we would prefer that the donor of the genetic material is not related, but in other circumstances it might well be appropriate. This Parliament should not attempt, in my view, to lay down every possible circumstance that might arise in human experience, because that will invariably mean that we will fail in other areas, or cause an injustice where such an arrangement is the perfect arrangement in that particular case. If this amendment were critical to the effective operation of this act, it would be worth supporting, knowing full well that that might mean that the bill would be deferred, and that the dreams of those people who are hoping that this legislation will be passed this year and they will be able to make arrangements to have a child would be dashed. I do not think an amendment of this nature is an appropriate reason to delay the passage of this legislation. I say that because there already exists a provision to lay down ground rules or guidelines on this matter. In any event, I do not believe we should be saying that something that might be perfect is to be discouraged.

Mr J.M. FRANCIS: I begin by saying that I am a bit of a fan of the Minister for Health. However, I cannot accept that expediting this legislation, knowing that it is not 100 per cent the best legislation that we can pass, warrants our rushing it. I never thought I would ever say that I was on the same wavelength as the member for Armadale or the member for Cannington, but —

Ms A.J.G. MacTiernan: Why is that? Is that because you're a bigot? What a silly thing to say!

Mr J.M. FRANCIS: I guess the gist of what the member for Cannington said is that women who give birth to a surrogate child will either have a little bit or a whole lot of emotional attachment to that child. I do not accept that any woman can carry a surrogate child without some kind of emotional attachment. When part of the genetic material that conceived that child is her own, that emotional attachment will be even stronger. That, I guess, is the crux of the amendment. I urge the house to be wary of that. I am sympathetic to the member for Cannington's argument because the lessons that can be learnt from the experience of the United States of America are that surrogacy creates a whole range of problems. We have the ability to look to another country that has made mistakes, and we should be very wary of making the same ones.

Mr W.J. JOHNSTON: Perhaps if the minister could give an indication: the member for Fremantle has indicated that the council is capable of making directions and rulings in respect of these matters. What power does the Minister for Health have to provide directions to the council on the issuing of those rules and directions; and, what indication is the minister going to give the house, if he has any powers to do that, of what he will do if his amendment does not proceed? It is clearly an important issue for me. I am in favour of the bill and I will vote in favour of the bill regardless of what happens to this amendment, but I am strongly of the view that it is important and I think that we need to know more about what will occur if the amendment gets defeated.

Dr K.D. Hames: I don't have anything to say.

Mr T.G. STEPHENS: The member for Cannington was, minister, asking a question about the operation of this bill, and in particular the operation of the act in reference to the Human Reproductive Technology Act and the power of the minister to give directions and rules to the WA Reproductive Technology Council. I know the minister missed the question, but the member for Cannington was asking for his advice before the clause was dealt with.

Dr K.D. Hames: I did hear those comments, but I do not think personally that that relates to the debate we are having on the amendment that has been moved, so I do not intend to respond.

Mr T.G. STEPHENS: I hear that the minister may not intend to respond, and that is one approach he can adopt. It might eventually, however, be something that he might like to reconsider. There are ways and ways of encouraging ministers to respond to questions.

Dr K.D. Hames: Yes, but the member may recall that this is a conscience vote, and I am a member that just happens to support the legislation. Whilst I have carriage of this bill as a minister—I am not trying to be rude to the member—I do not believe that that relates to the amendment before the house.

Mr T.G. STEPHENS: With all due respect, minister, it relates to the opportunities for the council to be making decisions about the surrogacy arrangements. One of the defences of the bill that the minister put to the house was that the council—in fact I think it was put by the member for Fremantle —

Dr K.D. Hames: Yes, indeed, by the member for Fremantle, I believe.

Mr T.G. STEPHENS: Again, whoever is defending the clause as it is says that the council is left with the opportunity to be able to resolve these issues. I think the gist of the question of the member for Cannington is that if this provision was amended in the way that has been put up for discussion by the member for Armadale and the member for Cannington, and there were any complications, is there the opportunity for the minister to direct the council if for any reason it cannot be resolved? This was to ascertain the power of the minister to direct the council to bring an issue to resolution that might not otherwise have been brought to resolution.

Dr K.D. HAMES: I have been given that information. Yes, I do have the power to issue directions on certain matters, as stated.

Mr C.C. PORTER: I agree with the member for Fremantle. I understand what is trying to be achieved here. If I might explain to the member for Cannington what I think would be the end point of what he is trying to achieve, the way that I read clause 17(a)(i) and (ii) is that the surrogacy arrangement may be approved only if the birth mother has first reached 25 years of age. There is no qualification to that; the birth mother must be over 25 years

of age. Also, the birth mother must have given birth to a live child. As I read it, and perhaps the Minister for Health will confirm this in a moment, the surrogate child must in effect be a second child.

Dr K.D. Hames: Yes.

Mr C.C. PORTER: If the member for Cannington were to amend the clause, and I do not agree that it is a good idea, it seems that it would just mimic the phraseology in clause 17(a)(ii), so it would read to the effect that "unless the Council is satisfied that there are exceptional circumstances because of which it should dispense with this requirement, is not the genetic parent". What that does, as the member for Fremantle has pointed out, is something even further than creating a presumption against a surrogate parent also being a genetic parent. It positively rules that out, unless there are exceptional circumstances. Exceptional circumstances at law are exactly what they sound like; they must be something exceptional. Given what the member for Armadale has said about the conceivable circumstances in which it may be highly desirable to have the surrogate mother as also the genetic mother, exceptional circumstances in which the surrogate mother could also be the genetic mother would have to be shown. The sorts of circumstances in which the member for Armadale has indicated that it might be highly desirable may not necessarily be exceptional. Circumstances in which we would all think it would be highly desirable, and which in broad consensus could be highly desirable, may not reach that very high threshold of exceptional. That would be the way in which it seems to me the drafting would work, but be aware of what that drafting does, because it means basically that only in a very narrow, exceptional, tiny percentage range of circumstances could the surrogate mother also be the genetic mother. As has been pointed out, there might be a larger number than merely exceptional circumstances in which that would be desirable.

Ms A.J.G. MacTIERNAN: I wonder whether I might foreshadow an amendment that is a little broader than what was previously discussed. The amendment that I would be proposing is to insert after paragraph (a)(ii) a new paragraph (b). This would not be replacing the old paragraph (b) but inserting a new paragraph (b) between existing paragraphs (a) and (b).

Mr C.C. Porter: So it would be a new paragraph (b) inserted?

Ms A.J.G. MacTIERNAN: That is right, and I am sure the Clerks have a way of dealing with that. Clause 17 would then read —

> The Council may approve a surrogacy arrangement only if —
>
> …
>
> (b) unless the Council is satisfied that there are exceptional circumstances because of which it should dispense with this requirement that one of the arranged parents is contributing genetic material;

Therefore, it is picking up and using the same structure as that used in clause 17(a)(ii), and is effectively saying that, although the Reproductive Technology Council will consider circumstances in which there is no genetic relationship between the child and the arranged parents, it will require that there be basically some connection between the arranged parents and the child. The reason I think that, in part, it addresses some of this concern is that the arranged father, for example, may have a genetic relationship. The member for Southern River has articulated the problem that arises from time to time that the birth mother, who is also the provider of the genetic material, may feel that there is a desire to back out of the arrangement. That is likely to be less strong and less complicated if the child has been created with the genetic material of at least one of the parties. I guess what we are trying to do is to provide, where possible, a more solid connection between the child and the arranged parents, to use the terminology of the act.

The ACTING SPEAKER (Mr P.B. Watson): The member should be speaking to the amendment that is before us at the moment.

Ms A.J.G. MacTIERNAN: This is a foreshadowed amendment.

Mr R.F. Johnson: Can I suggest that if you let us take the vote on this amendment, I am happy to adjourn the debate. You can then put your new amendment on the notice paper, and we can deal with it tomorrow.

The ACTING SPEAKER: We have an amendment that has to be dealt with first.

Ms A.J.G. MacTIERNAN: Okay; that is fine. I will let that one be dealt with.

Amendment put and negatived.

Debate adjourned, on motion by **Mr R.F. Johnson (Leader of the House)**.

House adjourned at 11.07 pm