



Speech by

Jann Stuckey

MEMBER FOR CURRUMBIN

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SURROGACY BILL; FAMILY (SURROGACY) BILL

Mrs STUCKEY (Currumbin—LNP) (3.01 pm): I rise to make my contribution to the Surrogacy Bill 2009, introduced into this House by the Attorney-General and Minister for Industrial Relations on 26 November 2009, and the LNP's Family (Surrogacy) Bill 2009, which was introduced into the House two weeks earlier than the government's bill, on 11 November 2009, by the shadow Attorney-General, the honourable member for Southern Downs. Yesterday morning we were informed by the Leader of the House that both of these bills are to be debated together in cognate and that both parties will allow a conscience vote on their respective bills. I ask honourable members to respect this fact. I will be true to my conscience.

Notably, these two bills aim to decriminalise altruistic surrogacy and to provide the legislative framework for the transfer of parentage of a child born under a surrogacy arrangement. It will repeal the Surrogate Parenthood Act 1988, which prohibits all forms of surrogacy and subjects Queensland residents to a maximum of three years imprisonment. Both bills also make amendments to a number of other acts that relate to parenting and the status of children. In addition, the government's bill seeks to amend the Status of Children Act 1978 to extend the parentage presumption to the female de facto partner of a birth mother and to expand the definition of 'fertilisation procedure'.

The similarity ends there, as the LNP's Family (Surrogacy) Bill would allow only married and de facto heterosexual couples access to altruistic surrogacy. The government's bill was introduced in response to the review of Queensland's Surrogate Parenthood Act 1988, which prohibits all forms of surrogacy, subjecting Queensland residents to criminal punishment that can result in the three years imprisonment or 100 penalty units. This act was viewed to be archaic and outdated, as no other Australian state or territory today criminalises altruistic surrogacy. In February 2008, the Bligh government appointed the Investigation into Altruistic Surrogacy Committee to investigate the possibility of decriminalising surrogacy in Queensland. The committee received 130 submissions and heard from 37 witnesses who represented a broad section of society, including individuals from religious and medical fields, ethicists, counsellors and infertile couples. All were able to present their case and/or argument either for or against and relate their personal experiences and beliefs. Their information assisted us greatly in shaping our recommendations to put to the parliament.

The key recommendations of the committee's report, listed in the explanatory notes, were that altruistic surrogacy be decriminalised in Queensland, that there be a mechanism to transfer legal parentage, that altruistic surrogacy arrangements should be unenforceable, that a genetic connection between intended parents and the child should not be a prescribed requirement, and that births are re-registered after the transfer of legal parentage for a child and children have access to their original birth certificate when they turn 18 years of age. Same-sex couples and singles having access to altruistic surrogacy arrangements was not a key committee recommendation.

Other consultation included the Queensland model and same-sex parenting review, which received 640 responses, 622 of them individual submissions and 19 from organisations, and the draft Surrogacy Bill of 2009, which received 19 submissions, 16 of which addressed surrogacy amendments and 12 which addressed same-sex parenting. In speaking to this historic bill, I am well aware of the impact that we in this

53rd Parliament have on people's lives. With that in mind, I can say that it was both a challenge and a privilege to be a part of the altruistic surrogacy committee for six months during 2008. There were many meetings, copious papers and submissions to read, plus a two-day hearing that was recorded in *Hansard*. Our role was to gather evidence and deliberate the issue of the decriminalising of altruistic surrogacy in Queensland, which was then, and is today, a deeply divisive and sensitive topic. I acknowledge the various viewpoints within this chamber and in the wider community.

As I have already mentioned, Queensland is the only state in Australia in which this form of surrogacy is illegal. There can be no certainty as to how many surrogacy arrangements have taken place since the enactment of the Surrogate Parenthood Act 1988, but we can be sure that children have been born as a result of surrogacy arrangements in illegal circumstances. There is currently no legal framework for transferring parentage from the birth mother to the intended parents of the child in a surrogacy arrangement, leaving the rights of children born under these surrogacy arrangements in Queensland subordinate to those of other children. The best interests of the child must be the guiding principle of any legislation concerning surrogacy and the LNP is not convinced that that will be the case, which is why it will not support the government's bill and has introduced its own Family (Surrogacy) Bill. Not all of the committee's 26 recommendations were supported in full by the government.

In fact, the very first recommendation—for annual reporting to parliament by ministers responsible for the implementation of the adopted recommendations—was flatly rejected. With something as sensitive and as divisive as the issue of surrogacy, this Labor government cannot be bothered to monitor the effects closely. Procedure and thoroughness are constantly tossed aside by this government, as is evidenced by its track record of ignorance and incompetence in this great state. The government and the LNP supported the central recommendation of decriminalising altruistic surrogacy in Queensland and the development of a mechanism for the transfer of legal parentage from birth mother to intending parents via altruistic surrogacy arrangements.

I am very disappointed that the Premier tried to skew the truth in here earlier, saying that all members of the committee agreed to decriminalising altruistic surrogacy, and that meant open surrogacy. Yes, we agreed on a platform at a very early stage in our committee, but we had not gone down the path of criteria and, when we did, it is noted quite clearly that not all members of that committee agreed with same-sex or singles being included. To say that the Premier's words were mischievous would be putting it mildly.

One important amendment noted in both bills is that the birth mother and the birth mother's spouse—if applicable in the case of the government's bill—had to be at least 25 years of age when the eligible surrogacy arrangement was made and that each intended parent was at least 25 years of age. Altruistic surrogacy involves a number of people and a degree of maturity is required. I am pleased to see that this age prescription has been included. Generally speaking, though, the government's bill short-changes intending parents by not being prescriptive enough. Without an adequate framework and regulation in place this legislation to decriminalise surrogacy is destined to fail many of those it was originally designed to assist and cause immeasurable and avoidable heartache for others.

I am wondering how financial assessment can be undertaken to check if intending parents or a single parent can manage and not subject the child to poverty. Does this matter? I think so. It is clearly not in the best interests of the child. Love is a many splendoured thing but it does not replace food and shelter. I note that in the explanatory notes there is reference made to only a person's psychological state and the related counselling requirements, not their financial capacity.

The topic of Indigenous adoption was not well served by the committee. Nowhere near enough time was allowed for the women elders to talk with us during the two-day hearing. Why this unique form of traditional adoption was included in this legislation in such a hasty and ad hoc manner seemed a little odd to me. The chair of this committee, the honourable member for Kurwongbah, who left at the end of the 52nd Parliament, is no longer here to witness the outcome. She said in a media release—

We have heard from Queensland couples earnestly seeking law reform. For them altruistic surrogacy represents their only realistic option to have children.

The couples that we heard from who spoke earnestly about law reform in our hearings were all heterosexual. In a media release dated 10 October 2008 the chair wanted to emphasise that the committee's position should not be interpreted as encouraging the practice. She continued—

This is not about promoting surrogacy. We propose a regulatory framework which regards altruistic surrogacy as a last resort.

The committee made it very clear they wanted altruistic surrogacy to be seen as a limited option. This deeply personal topic was presented to the people of Queensland in an almost warm fuzzy manner highlighting the cases of loving men and women who had endured years of agonising disappointment. We heard tragic and poignant stories from heterosexual couples who showed incredible courage in sharing their often humiliating medical incompetencies. As a woman who has borne children, it was impossible not to feel for their plight or their genuine yearning to become parents after years of failed attempts.

Committee members agreed not to disclose another committee member's personal comments that emanated from numerous meetings and I completely respect this decision. Committee deliberations are

confidential, as the Speaker reminded us on Tuesday morning. However, I will say how very uncomfortable I felt even raising the issue of same-sex couples applying for surrogacy. It was a question that had to be asked and I had hoped it would be broached early in our discussions but it was not. That is a great pity. With hindsight I can see it was easier to sweep it into this legislation under the guise of social need once general acceptance had been identified after the public hearing. Right from the start of the public two-day hearing it was obvious what the desired result was. I found the brusque, probing, court-like way that the chair tossed questions to the religious submitters at the hearing quite heavy-handed and embarrassing. Still though no-one had brought up the issue of same-sex parents being eligible as parents so I decided to do so myself.

This issue has caused me many hours of deep contemplation and reflection as to what I should do. I am grateful to our research director, Julie Conway, for encouraging me to say what was on my mind without fear of reprisal. All the public comment the good people of Queensland heard about was these poor men and women who had suffered all manner of tests and had multiple medical problems but really the Labor agenda was to open the morally testing practice of surrogacy to just about anyone, even singles. On the one hand, the Attorney tells us surrogacy is a last resort option to create a family but in reality he is making it available to anyone. This sneaky, deceitful behaviour is an insult to the couples who have been to hell and back with countless fertility tests, not to mention huge financial costs.

Government members interjected.

Mrs STUCKEY: As I said before, it took amazing courage—unlike those members who are interjecting in this House—for people to come into a two-day hearing and pour out their private lives and literally beg politicians to lift the ban on altruistic surrogacy. Speaking of costs, a responsible government should consider the financial aspect of this legislation. Just how much will this cost to implement if it is taken up by a large group of people? Extensive counselling by trained specialists will be required. The federal Labor government is looking at placing a cap on Medicare payments for IVF as, since Medicare safety net fees were put in place in 2003, fees have soared 290 per cent.

No same-sex couples presented at the two-day hearing. By making this point I wish to place on record that I have no negative feelings about people who are engaged in same-sex relationships. Indeed, I have several close friends in them. But I do oppose this legislation allowing people with non-medical reasons access to surrogacy of any sort, altruistic or commercial. We were told by the Premier the issue had largely been promoted by Labor Senator Conroy's own heterosexual situation and it would appear that it was a push from him that moved the debate forward. Unfortunately, the good senator cancelled out of hearings for personal reasons and we did not get to hear from him. In his second reading speech the Attorney said—

There are people in Queensland who are unable to start a family. The current law in Queensland has prevented these people from using surrogacy as a last-resort option to create a family.

He continues—

Labor governments see family life as fundamental to the wellbeing of society, and we do not seek to impose one narrow set of criteria on our description of what constitutes a family in Queensland.

What an absolutely hypocritical statement that is. If that is the Labor view then what does the Attorney have to say about the laws relating to the recent adoption bill that prevented same-sex couples from adopting children? What is the difference? There is no biological material required in either surrogacy or adoption. If that is not being duplicitous then what is? Why are there no timelines of a couple of years to indicate a stable relationship as there are in the Adoption Act? What does the Attorney have to say to government members who are practising Christians? There are quite a few of them on both sides. I see them cross themselves after prayers each morning. Is he saying that their views of a family according to their God as one formed between a man and a woman is wrong? I wonder how these members are feeling about the contents of these bills. For some, their consciences must be screaming at them.

Religion aside, many Queenslanders believe that good legislation must be based on practicality and that the best interests of the child are paramount. The Attorney also says that intended parents must establish to the court there was either a medical or social need for the surrogacy. These are two totally different items. Couples who have waited so long due to medical problems would be insulted at the casual manner this socialist leftist government has bunged them in together. It is insensitive in the extreme.

Countless letters and pleas from groups and individuals have bombarded me, as they have no doubt other members. Like research papers on this topic, the majority were against the notion of same-sex couples gaining access to altruistic surrogacy and favoured a mum and dad scenario as best for the child. But there were a few from gay lobby groups such as PFLAG in support. I want to thank them all for their involvement in this historic legislation.

Numerous potential problems highlight the complexity of surrogate births and put a question mark over the interpretation of the much used ideology—or should I say abused ideology—'the best interests of the child'. I have here in this House on more than one occasion reiterated the views of many respected professionals who specialise in child safety as to what constitutes the best interests of the child. I have to say it varied significantly to the interpretation by the Bligh government. I am very pleased to see this

government's disgraceful One Chance At Childhood policy was eventually abandoned late last year. It is not too late to abandon aspects of this current bill.

In the following case, a South African woman had two fertilised eggs with donor sperm implanted at the one time, one of her own and one of the woman who was to become the mother. Once the baby, a boy, was born he lived with his new parents who migrated to Australia in 2002. They separated a year later and the boy spent time with both until the father sought custody in 2007 which he subsequently won. Now the surrogate mother has sought DNA testing to ascertain if she is the biological mother as no-one knows which egg created the boy.

Granted only one major surrogacy case has supposedly occurred in Queensland's family law history but that will no doubt change with decriminalisation of this practice in this manner. Another example of possible difficulties occurred in Sydney in December last year where a court ruled in favour of a woman with no biological connection to the child despite the mother's appeal against this happening. The woman who conceived the girl was in a relationship with the woman granted access. Both women lived together for 11 months before the child's birth and separated just 10 months afterwards. However, application for the former partner to be recognised as a parent and included on her birth certificate was refused. Difficulty with relinquishment is anticipated in a number of cases. Recommendation 16, which deals with criteria for intending parents and birth mothers, must be addressed soon by the health minister as it suggests additional standards be developed under the Private Health Facilities Act 1999 to include criteria for intending parents and birth mothers seeking assistance from ART.

I want to speak about the third point in this recommendation, which states—

The proposed pregnancy poses no significant health risk to the birth mother and she has experienced a previous successful pregnancy.

I would like to see this point extended to all birth mothers undertaking a surrogacy arrangement. By the time infertile couples choose this path, they have already expended enough hope, anguish and sorrow. Every chance should be given to achieve a successful outcome and avoid risks. I feel that this is important for two main reasons. One is purely medical: there is less risk of a medical abortion caused by an incompetent uterus or other complications if a woman has already delivered a healthy full-term baby. The other is the unknown levels of emotion and bonding the birth mother or surrogate will experience with her first pregnancy. No-one can imagine how they will feel until they carry a child. Nine months is a long time and, while a surrogacy arrangement is not enforceable, there is an increased chance the birth mother will not want to part with the baby, causing more heartache for the commissioning parents. The whole issue is fraught with raw sentiments, no matter how much counselling takes place. After all, we are humans.

Last month Michael Ord, the Queensland spokesperson for the Australian Family Association, said—

No-one has the right to a child and our society has the responsibility to protect children.

I agree with him. Having a child is not a right. It is an 18-year responsibility. It is not a commodity or a political football. Homosexuality is legal in Australia and it is an individual's choice to partner with whomever he or she wishes. However, if a person decides to partner with someone the same sex as themselves, surely they acknowledge there is no physical way they can create a baby biologically. These are not fertility issues; they are life choice issues and should be viewed in that vein. I do not support surrogacy for social infertility or lifestyle reasons. Having a child is not a right; it is a gift. The government's bill is discriminatory to couples who for years have tried to have a child, battling genuine medical infertility and who have fought tooth and nail for this legislation, shed a river of tears, suffered depression and heartache to finally achieve their goals, to have it opened up to all and sundry through this sloppy legislation.

(Time expired)