

STATUTES AMENDMENT (SURROGACY) BILL

(Continued from 20 September. Page 661.)

The Hon. A.L. EVANS: Family First welcomes the amendment to refer this bill to the Social Development Committee. Surrogacy is a complicated and emotional issue, and Family First welcomes the thorough scrutiny that the Social Development Committee can bring to bear in respect of several concerns.

This bill will allow fertilisation procedures to achieve pregnancy. The bill envisages that the surrogate mother would be fertilised by artificial insemination, IVF and embryo transfer, or transferring an egg to the surrogate mother so that it can be fertilised. This means that the bill is wide in scope. As the Southern Cross Bioethics Institute has indicated to me, it would be possible under this bill for a child to be genetically related to just the commissioning couple, just to donors, to a donor and one of the commissioning couple, or to the surrogate and a donor, or to the surrogate and the commissioning male.

This bill therefore allows full surrogacy—a woman who is implanted with an embryo usually created from the egg and sperm of the commissioning couple. It also allows partial surrogacy in which the surrogate mother is genetically the mother of the child, with that mother being inseminated with the sperm of the social father, or a sperm donor. Family First acknowledges the difficulties faced by infertile couples. A medical diagnosis that a woman is unable to bear a child must be heart-rending. We also acknowledge the goodwill of those who wish to help a woman who is unable to bear a child to term.

Statistics show that infertility is on the rise. Fertility in women naturally declines as their age passes 24 years. Many couples today are leaving it later to have children, compounding the problem. Factors such as environmental pollution have also been blamed for the striking increases in infertility in recent years. Surrogacy is not as straightforward a solution as it may appear at first glance.

Interstate and overseas experiences show that surrogacy often gives rise to unforeseen difficulties. I will canvass some scenarios which could cause concern, and I invite the committee to consider thoroughly the implications.

Let me raise the first scenario from a real-life incident reported in *The Australian* on 27 January 1983. A commissioning parent and birth mother in Michigan agreed to a surrogacy arrangement. However, when the baby was born he was severely retarded and deformed. The commissioning parents rejected the child on the basis of the handicap. The disabled child became nothing more than an object and was handed over to the state.

I am concerned for a heightened risk of health problems with this bill, as it has a requirement that the surrogate mother be a close relative of the commissioning parents. This leaves open the risk of what is sometimes called gestational incest which can pose a risk of birth defects. Let me raise a second scenario: instead of a single child, a surrogate mother carries twins. Again, this has happened. There was a story on CNN in 2001 which talked about the legal wrangle between a commissioning parent and a surrogate mother when it turned out that she was carrying twins. When the surrogate mother refused demands to abort one of the children, the surrogacy agreement was terminated and the matter was dragged through the courts.

Let me raise a third possibility: a surrogate mother can form a strong emotional attachment to the child she is carrying, which can lead to legal arguments over residency of the child. One particularly bitter Australian case was referred to on *The Law Report* of 15 September 1998. Baby Evelyn, as she was known, was born as the result of an agreement between an Adelaide couple and a Brisbane couple. Knowing that the Brisbane mother could not conceive, the Adelaide mother offered to be a surrogate. For some time the child resided with the Brisbane couple, but the Adelaide couple had a change of heart and applied for recovery of the child through the Family Court, in a bitter case that made it to the doorstep of the High Court.

I have a fourth concern: the bill before us today says that a surrogate mother must already have had at least one other child. If the mother's other child or children are old enough, then they will know that their mother is pregnant. Will these children experience psychological harm when they realise that their mother is giving the baby away? Will they be worried that they may be given away as well? These are all concerns that should be properly canvassed.

I sympathise with Mrs Kerry Faggotter's comments made on ABC Radio on 18 September, and the other submissions that she made to us. She explains that she finds it difficult, for example, to enrol her child (born through a surrogate agreement) for swimming lessons because her name is not on the child's birth certificate. I encourage the committee to consider, in this regard, the submission put by the Australian Families Association, that this concern might be dealt with by allowing changes to the birth certificate, in a similar way to that provided by section 41 of the Adoption Act.

Surrogacy has sometimes been called a Pandora's box. There are a bewildering number of issues that need to be addressed and considered. I note that the issue of surrogacy was debated at length, and perhaps most comprehensively, in a meeting in 1999 of Australian health ministers. After much debate and numerous studies, the ministers agreed unanimously on a position against surrogacy. I would encourage members of the Social Development Committee to consider the debate from that meeting before reaching a conclusion.