

The Honourable  
**DEAN WELLS**  
Member for Murrumba



Deception Bay Shopping Centre  
Deception Bay Road  
Deception Bay Qld 4508

PO Box 532

Phone: (07) 3293 1069

Fax: (07) 3293 1257

[murrumba@parliament.qld.gov.au](mailto:murrumba@parliament.qld.gov.au)

Ms L Lavarch MP  
Chairperson  
Investigation into Altruistic Surrogacy Committee  
Parliament House  
George Street  
BRISBANE Q 4000

RECEIVED  
23 MAY 2008

Dear Linda

### **Submission to Investigation into Altruistic Surrogacy**

It is a fundamental principle of a free democracy that the government does not seek to regulate the private lives of its citizens except to protect society from harm. The existing legislative ban on altruistic surrogacy violates this fundamental principle. To bring a child into the world is the very antithesis of harming society: it is providing the means of its perpetuation. Further, a decision to proceed with procreation by way of altruistic surrogacy harms no individual, and is nobody else's business except those who are involved by their own free consent and voluntary participation.

Consider what you would have to believe in order to think that it was appropriate for the government to ban altruistic surrogacy. You would have to believe that it was appropriate for the government, at least in some circumstances, to select whose genes should compose the next generation. To ban altruistic surrogacy involves eliminating from the gene pool people who are capable of being part of it. True they need a little medical help to do so, but so do millions, and we don't even give that fact a second thought. Legislatively eliminating people from the gene pool is, if you think about it, a form of eugenics. Not racial eugenics as practised by the Nazis, but an unconscious, mindless eugenics randomly directed against a miniscule minority of the population who differ from the rest in a respect that has nothing to do

with the genetic traits of their potential offspring. It is eugenics none the less.

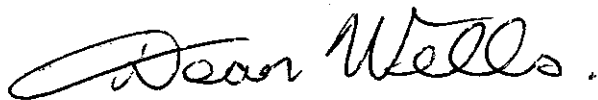
Clearly altruistic surrogacy should be legalised. Whether infertile couples reproduce is absolutely not the government's business. To what extent then should altruistic surrogacy be regulated? Well, for the same reason that the government has no business preventing an infertile couple from reproducing, it has no business regulating the manner in which those two people do it, beyond the extent to which the government regulates fertile couples who are planning to have a child. To do so in a way that limited their legal capacity to reproduce would be discriminatory, and in some circumstances might be a breach of the Anti Discrimination Act. However regulations can be placed on the surrogate. Regulating the surrogate mother does not interfere with her right to reproduce. She has that opportunity without the aid of in vitro technology. It merely regulates her access to somebody else's genetic material, and this is an entirely appropriate function of government.

Therefore it is appropriate for example, for the government to require that all surrogates enter into agreements which are altruistic, not commercial. Commercial surrogacy arrangements are odious, and the arguments against them so many and so obvious that it is presumably unnecessary to list them. Again it is appropriate for the government to place limits on who should become a surrogate – these might include a requirement that she be above a certain age. There is no reason why the age of capacity, of informed consent to such a process, should be the same as for anything else. It is a different sort of decision. The limits might also encompass aptitude, which might include whether she has previously had a baby or otherwise knows what she is in for, and her life habits to date. But once she has commenced gestation her legal rights should be exactly the same as that of every other pregnant woman. To require that she surrender the baby at birth would be to treat her as though she were a breeding machine rather than a citizen. The law of a free democracy cannot coercively hijack nine months of a woman's life. She will almost certainly do as she agreed, but it will require a certain amount of mind over instinct, and there should be no law that coerces the surrender of the baby once it is born. Nor should the new law attempt to regulate her behaviour during gestation. It is entirely appropriate that she should be advised before commencing gestation that it is undesirable to drink, smoke, take drugs and so on. In the rare event that somebody

enough to be an altruistic surrogate proves to have insufficient regard for good advice, her legal situation should be exactly the same as that of every other pregnant woman, whatever that might be. On the same principle she should be recognised as the legal parent at birth, like every other birth mother, with of course a process available to transfer the legal parentage to the genetic parents after the baby is born.

In short, two principles should inform the decisions of the Committee. The first is that the government should not regulate the private lives of its citizens beyond the point necessary to prevent harm to the community. The second principle is that while it is appropriate for the government to regulate who may become a surrogate, once gestation commences the surrogate mother must have all the rights of any other pregnant woman in a free and democratic society.

Yours sincerely

A handwritten signature in black ink, reading "Dean Wells". The signature is fluid and cursive, with a long horizontal stroke at the beginning and a small dot at the end.

DEAN WELLS MP  
**Member for Murrumbidgee**

22 May 2008