



Speech by

## Andrew Powell

MEMBER FOR GLASS HOUSE

Hansard Wednesday, 10 February 2010

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### SURROGACY BILL; FAMILY (SURROGACY) BILL

**Mr POWELL** (Glass House—LNP) (8.35 pm): I rise to speak on the government's Surrogacy Bill and the LNP's Family (Surrogacy) Bill. I will acknowledge upfront that I suspect some in this House and some in the electorate of Glass House will find cause for offence within my speech. I wish I could say it was unintentional. I have certainly considered very carefully everything I am about to say. But I suspect offence is unavoidable—unavoidable because the bill presented by the government has polarised Queenslanders in a way I have not seen with any other piece of legislation to date. So whilst I will try to reflect both polarised views, ultimately my decision and my vote will disappoint some.

I will also acknowledge that if elements of this speech are read or referred to in isolation such elements may appear contradictory or inconsistent. Again, I wish I could say it was unintentional, but I again suspect it is unavoidable. It demonstrates the challenge subjects such as that we are debating tonight present to each of us as individual members of parliament but more so the wider community as a whole. These challenges cut to the quick—to our most basic beliefs, morals and ethics. These challenges require careful consideration, full and respectful debate and significant sensitivity. It is my hope that the remainder of this speech does justice to those principles.

These challenges are compounded by the fact that, whilst we are debating two separate physical bills, I suggest we are actually making decisions on three separate but interrelated issues. Each one could be the focus of legislation in its own right. To me, those three issues are: decriminalising altruistic surrogacy for heterosexual couples; decriminalising altruistic surrogacy for singles and same-sex couples; and amending parentage presumption legislation, including extending the parentage presumption to the female de facto partner of a birth mother when the birth mother has undergone a fertilisation procedure to conceive the child with the consent of her female de facto partner.

The government's Surrogacy Bill 2009 combines all three issues into one piece of legislation. As a result, I am compelled to vote against the bill for reasons I will outline shortly. The LNP has separated one of these matters into a distinct bill, allowing me a conscience vote. One of the most succinct summaries of what surrogacy is says that surrogacy involves an arrangement made before the conception of a child in which a woman who intends to carry a child during pregnancy agrees that she will hand over the child after his or her birth to be raised by the person or persons who commission her to carry the child. 'Altruistic' simply means that the woman who intends to carry the child does so without commercial profit, advertising or brokerage fees. If I put aside the question of whether surrogacy should be decriminalised for same-sex couples and singles, on its own altruistic surrogacy for heterosexual couples raises significant moral and ethical questions—questions I need to be convinced are answered fully and favourably before I can agree to it.

Altruistic surrogacy is one of these new scientific techniques that presents an incredible opportunity for infertile couples, but in so doing confronts us morally. As a result, I must weigh up whose rights are paramount: the adult's or the child's. There is no question that altruistic surrogacy is a benefit to couples who are unable to conceive or give birth to a child naturally or with existing reproductive techniques. On the day before the Attorney-General flagged his intent to prepare this legislation, I was contacted by one

such couple. I simply cannot begin to appreciate the emotional journey that this couple had been on as they discovered that their only possible path to starting a family was through surrogacy. So strong was their determination that they were contemplating moving interstate to achieve their dream of having children. I know that these bills have given them hope that their dream is achievable and that it is achievable here in Queensland.

On the other hand, we are discovering, as the first cohort of children born as a result of new reproductive and genetic techniques reach adulthood, that we must also consider the rights of such children. Here I am going to rely on more learned research than my own experiences. I will refer to the work of Margaret Somerville from the Centre for Medicine, Ethics and Law at McGill University in Canada. Interestingly, Margaret was born in Australia—in Adelaide—and received both her pharmacy and law degrees in Australia before heading to Canada. I refer to a paper titled *Brave new babies: children's human rights with respect to their biological origins and family structure*. It states—

Issues of children's rights with respect to their genetic identity, their biological families and the nature of their genetic origins arise, in one way or another, in the contexts of adoption, the use of new reproductive technologies, and same-sex marriage. The connection among these contexts is that they all unlink child-parent biological bonds. Each context raises one or more of three important issues: children's right to know the identity of their biological parents; children's right to both a mother and a father, preferably their own biological parents; and children's right to come into being with genetic origins that have not been tampered with.

Margaret Somerville then goes to break down each of those issues. She states—

Children's Rights to Know the Identity of their Biological Parents...

It is one matter for children not to know their genetic identity as a result of unintended circumstances. It is quite another matter to deliberately destroy children's links to their biological parents, and especially for society to be complicit in this destruction. It is now being widely recognized that adopted children have the right to know who their biological parents are whenever possible, and legislation establishing that right has become the norm. The same right is increasingly being accorded to children born through gamete (sperm or ovum) donation. For instance, the United Kingdom has recently passed laws giving children this right at eighteen years of age.

For that reason, this parliament amended the Queensland Adoption Act last year to ensure that adopted children can access information on their biological parents. Whilst I struggle with the retrospective application of this principle, I believe the principle to be sound.

The second issue raised by Margaret Somerville is a child's right to both a mother and a father. She continues—

Giving same-sex couples the right to found a family unlinks parenthood from biology. In doing so, it unavoidably takes away all children's right—not just those brought into same-sex marriages—to both a mother and a father and their right to know and be reared within their own biological family. It does so because marriage can no longer establish as the norm the natural, inherently procreative relationship between a man and a woman, and the rights of children that flow from that norm, in particular, the rights of children to both a mother and a father, who are their own biological parents unless an exception is justified as in the 'best interests' of a particular child, as in adoption.

...

The same issue of children's rights to both a mother and a father is raised by society's involvement in intentionally creating single-parent households, for example, by funding single women's access to artificial insemination.

Interestingly, the author goes on to propose a solution—and I admit that this is in a Canadian context. She states—

The debate on legalizing same-sex marriage in Canada focused almost entirely on adults and their right not to be discriminated against on the basis of their sexual orientation. The conflicting claims, rights, and needs of children were barely mentioned. It's worth noting that legally recognizing civil unions, unlike the recognition of same-sex marriage, does not negate children's right to both a mother and a father, because it does not include the right to found a family. For that reason, it represents the most ethical compromise between respect for the rights of homosexual people not to be discriminated against and the rights of children with respect to their biological families.

Finally, the author addresses the issue of a child's right to be born from natural biological origins. Margaret Somerville states—

A child's right to be conceived with a natural biological heritage is the most fundamental human right and should be recognized in law.

Children have a right to be conceived from untampered-with biological origins, a right to be conceived from a natural sperm from one identified, living, adult man and a natural ovum from one identified, living, adult woman. Society should not be complicit in—that is, should not approve or fund—any procedure for the creation of a child, unless the procedure is consistent with the child's right to a natural biological heritage.

I will make one final reference to Ms Somerville's paper and that is her conclusions. She states—

All these rights of children are of the same basic ethical nature—obligations of non-maleficence, that is, obligations to *first do no harm*. Consequently, as a society, we have obligations to ensure respect for these rights of children. It is one matter, ethically, not to interfere with people's rights of privacy and self-determination, especially in an area as intimate and personal as reproduction. It is quite another matter for society to become complicit in intentionally depriving children of their right to know and have contact with their biological parents and wider family, or their right to be born from natural biological origins.

I have read widely to inform my decisions in this debate. I have received a considerable number of responses from constituents in the Glass House electorate and this paper most succinctly summarised both my concerns and those of the vast majority of my constituents regarding altruistic surrogacy. Science

has certainly given us opportunities, but it has also created moral and ethical uncertainty. Personally, there is simply too much uncertainty for me to vote in favour of either the government's bill or the Deputy Leader of the Opposition's private member's bill. I will be voting no.

Before I conclude, can I spend a moment addressing the final issue of legal parentage for children raised in same-sex relationships. Regardless of my personal views on same-sex parenting, I am very conscious, through existing legislation and scientific techniques, that children are being born into same-sex families. In the lead-up to this debate I met with a number of same-sex couples from my electorate and neighbouring electorates regarding their desire for the legal parentage aspect to be resolved. They passionately shared stories of how the current situation places their children at risk—of how, if the biological parent and the child are injured in a motor vehicle accident, the non-biological parent is unable to make legal decisions about the medical treatment of the child. They also shared how issues arise in signing something as simple as a school permission slip.

At the end of the day, these issues again direct us to ask: what is in the best interests of the child? When asked in this context, the answer is quite different. I believe that a legislative response needs to be put in place to overcome this particular problem. I am not entirely certain that this is the right legislative amendment, but it will achieve the desired outcome. In conclusion, I thank members for the respect with which they have listened to my contribution in what is such a sensitive, personal and confronting matter.