Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Thursday, 11 February 2010

SURROGACY BILL; FAMILY (SURROGACY) BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (4.41 pm), in reply: At the outset I would like to thank all honourable members for their contributions to this cognate debate on the Surrogacy Bill and the Family (Surrogacy) Bill 2009. I acknowledge that there are different views on the issues raised in the bill. I want to thank almost all honourable members for giving the bill the serious consideration it deserves. I particularly want to acknowledge the contributions made by the members for Albert and Capalaba. These are members who spoke from their conscience. They spoke with courage and conviction. Nothing could be more exemplary of the role of parliamentarians, particularly in a conscience vote in this parliament.

Mr Schwarten: Which we were prepared to exercise and they were not.

Mr DICK: I take the interjection. It is disappointing that no-one on the opposition benches could find it in their hearts to look through the discrimination that Queensland children face and support the government's position.

I also want to acknowledge the comments made by the member for Toowoomba North in relation to counselling for children who may be born through surrogacy arrangements. That is a matter I will place under consideration, and, for various reasons that I will expand on later, it is not a matter that I do not necessarily think we need to proceed with at this time. As I say, it will be a matter that I will give consideration to.

This bill has taken many members on a journey, and I have gone on my own personal journey in relation to this bill coming before the parliament. I am someone who could not have asked for more love and support from their parents, but I do recognise there are other forms of families in society. I have a mother and father who love me dearly and I love them in return, but I do not believe that Queensland children should be treated differentially because of the circumstances of their birth.

I do want to thank Archbishop John Bathersby as well, who convened a meeting of the heads of churches, a meeting that I attended last week. At that meeting were heads of all the major denominations in Queensland. It was a very cordial, open, honest and friendly discussion. I want to put on record my thanks to him, my thanks to Archbishop Phillip Aspinall, the Anglican Archbishop of Australia, the Primate of Australia, and all other heads of churches who attended that open and frank discussion.

At the outset it is important to outline the comprehensive consultation process that has culminated in this debate today. It has been extraordinary in the debate for individuals to claim, as the opposition has, that somehow this bill has been sneaked into the parliament or rushed through. No piece of legislation could have been subject to greater public examination than the government's Surrogacy Bill.

On 8 October 2008, the Queensland parliamentary Investigation into Altruistic Surrogacy Committee, otherwise known as the 'parliamentary committee', tabled a report titled *Investigation into the decriminalisation and regulation of altruistic surrogacy in Queensland*. This parliamentary all-party committee with members of the government and the opposition and Independents took evidence from the

public. A public inquiry was conducted into this matter and a report tabled in the parliament. On 23 April 2009, the tabled government response to the report committed the government to releasing a legislative model for the decriminalisation of altruistic surrogacy and the transfer of parentage of the child. On 18 August 2009, the Premier and I released for comment the *Queensland government model for the decriminalisation of altruistic surrogacy and the transfer of legal parentage*, otherwise known as the 'Queensland model'. On the same day the Premier and I also released for comment a review on the legal status of children being cared for by same-sex parents. On 28 October 2009, the government tabled an exposure draft of the Surrogacy Bill 2009 for public consultation. On 26 November 2009 the government bill was introduced and has lain on the table of the House until yesterday.

At every step of the consultation process there has been strong public support for the government's approach. There is no more a government can do than put the government's position to the community and ask for a response. There is no more the government can do than that and solicit the views of the Queensland community. Consistently, there has been strong public support for the government's approach.

It is important that we go back to the basic recommendations in the parliamentary committee's report. These recommendations included, primarily, that altruistic surrogacy is to be decriminalised with an appropriate legislative and regulatory framework. The parliamentary committee's report does not place any limits or restrictions on whom the decriminalisation should apply to. There is no recommendation from the committee that places fetters on it. It had the opportunity to so resolve; it did not do so. The government's bill, similarly, does not place any limits on decriminalisation. To do otherwise is discriminatory not only against the adults who may be excluded from the decriminalisation regime but, more significantly and importantly, against their children, who will not receive any of the legal benefits of the regulatory framework. It is for these reasons that the government's bill does not contain any discriminatory exclusions.

It is not enough to just decriminalise altruistic surrogacy. As the parliamentary committee reported, there needs to be a regulatory framework complementing the decriminalisation. This regulatory framework as contained in the government bill allows an application to be made to a Children's Court judge for an order for transfer of parentage. The order for transfer of parentage can only be made upon the satisfaction of strict requirements including counselling, independent legal advice, age requirements, consent, an independent report to the court and, ultimately, that the order is for the child's wellbeing and is in the best interests of the child. The order for transfer of parentage procedure means that the legal status of the child reflects the social reality of the surrogacy, namely, that the intended parents under the arrangement are the child's parents. This also means that these children's legal status in all matters ranging from the day-to-day giving of consent for school excursions to the intricacies of inheritance law entitlements are the same as they are for all other Queensland children.

I also want to refer briefly to the amendments to the parentage presumptions under the Status of Children Act arising from the use of the fertilisation procedures with the consent of the birth mother's female partner.

The government believes it is time to act to ensure that children born in these relationships are no longer disadvantaged in relation to support in the event of separation or in relation to inheritance, superannuation or compensation in the event of injury or death of the non-birth parent. Simply changing the laws relating to these specific areas, for example succession law, would be unsatisfactory and in the end insufficient. It results in a group of children who are treated differently from other children who have lost a parent, where this group of children are forced to prove the circumstances of their birth, possibly many years after the event.

I turn now to the progress of the debate upon these bills and to address the issues raised by members. We have gathered in this House this week to debate an issue of real and substantial importance, a matter that deserves careful and considered discourse. We carry with us the innate trust of the people of our state that in debating these matters we will rise above base political instincts and take in a view that not only travels from one geographic end of the state to the other, but also adopts a view across history, both that which has been made, and forward, to understand that what we do is history in itself. The daily test of entry to this chamber is that we must apply ourselves to problems great and small, fearlessly and honestly with all the intellectual rigour we can muster.

I remind members of this, because there have been comments and arguments raised in the debate, particularly by those members opposite, that seek to distort and misrepresent the very purpose behind the government's bill. At the heart of this debate is the question of whether to decriminalise arrangements that individuals agree between themselves to start a family where no other option is available to them. The government has sought to remove itself from the space of regulating how children are brought into the world and focus instead upon ensuring that those children are protected as they grow up, without passing

judgements on what families should or should not look like to an outsider and without condemning those children to possess a lesser class of rights than other Queensland children. However, many in the opposition remain straitjacketed by their desire to control the family unit, to attempt to deter would-be families from forming through the threat of criminal sanction.

As the member for Southern Downs noted in his opening comments, the opposition's bill is 'almost identical' to the bill proposed by the government. That is true. The area of argument is very limited indeed. The opposition supports altruistic surrogacy. It has no issue with a surrogate mother giving up her child to another person. The bill it supports provides for surrogate arrangements to be legal and that the conditions of such arrangements would be identical to what the government introduced. But why then has the opposition claimed continuously and at great length that it is the guardian of the interests of the child? Given the many similarities, where do the interests of the child lie in this debate? Let me set out the two cases placed before this House.

The opposition claims that the child's best interest is met by criminalising surrogate arrangements that it does not approve of. It claims that that will prevent children having parents who are single or who are of the same sex, or who have been in a de facto relationship for less than two years. The opposition claims that if a child did have parents who were single, or who were of the same sex, or who were in a de facto relationship so described, then the child would be disadvantaged and thus the opposition threatens these parents whom they regard as unworthy with prison.

Where does the government say the child's interest lies? In being treated the same in law as all other Queensland children. In having the same status at law as all other Queensland children. In not criminalising parents who want to love children and in not threatening consenting adult Queenslanders with imprisonment for entering into altruistic surrogacy arrangements.

The Liberal National Party, from the leader to the far reaches of its discontented backbenchers, contends that criminal sanction is the best and most appropriate remedy to prevent single people, or same-sex or de facto couples, from having children through altruistic surrogacy arrangements. This is an inappropriate use of the criminal law in our state. What the LNP does not like, it marginalises, excludes and criminalises. That is the only inescapable conclusion of the opposition's bill before the parliament: one rule for some, jail for the rest. This is a return to the dark days of the stigma of illegitimacy, of branding a child with the invisible mark of Cain that singles them out as 'other'. The core of this debate does indeed rest upon what is in the best interests of children of loving parents. Should they be treated equally or should some children be branded as something less than usual or normal, their rights diminished and inferior to others? The opposition proposes a bill that expressly and inexorably marginalises not only classes of parents that it does not like but, importantly and more significantly in this debate, it will marginalise the children of these families. It deliberately seeks to place the rights of those children a distant second to the rights of other Queensland children.

We must set aside whatever views the LNP harbours towards families that do not fit its formula, whether by accident or by choice, and consider the impact of the opposition's bill upon the children of these families. These children do not disappear if this bill passes. They will not cease to be brought into being, as they have for many years pursuant to surrogacy arrangements. Their parents will not love them less, but they will be labelled as something less than other children—their rights inferior to the rights of other Queensland children. The law, where it grants freedoms, should not grant these freedoms to one class of persons and deny them to others. If altruistic surrogacy is decriminalised, it should be decriminalised for all citizens.

The member for Southern Downs and others who spoke in this debate have fundamentally misunderstood, and I believe in many respects misrepresented, what lies at the heart of the government's Surrogacy Bill. The government's bill is about ensuring that all Queensland children are treated equally. It is not a bill that denies children their rights. It is not a bill that constructs families. It is not a bill that forces surrogacy upon society. This is a bill that removes an outdated and ineffective criminal sanction and does so to ensure that the legal rights and status of Queensland children born through altruistic surrogacy are the same as those of all other Queensland children.

The member for Southern Downs and many on that side of the House who have followed him in this debate have claimed that 'kids do better with a mum and dad', but more than that, they have then gone on to claim that anything other than that situation is somehow inadequate. These members have claimed that children of such other families should be disadvantaged simply by virtue of who their parents are. The member for Southern Downs and others on that side of the House have come to this place to say that families who do not fit their mould are not caring families, that the children will be somehow let down, that the children will be denied their rights. They seek to form families in their own collective image and to punish by criminal sanction those who do not fit that image.

Governments and parliaments should not involve themselves in the picking and choosing of who can have children and who cannot. History shows that political leaders are ill suited to such tasks, as the tragic history of the 20th century well demonstrates. It is not for us, as members of parliament, to arbitrarily draw lines according to our own personal opinions or views to divide the worthy from the unworthy. What role should parliaments have in these matters? What right do parliamentarians have to direct and control the private arrangements of adults and, in doing so, whether honourable members like it or not, marginalise children born from such arrangements? I conclude that they have no such role.

To the contrary, the government believes that children should be raised by parents—any parents—who can best love them and best provide for them and best give to them all the opportunities that life may present. The quality and capacity of a parent should be judged by their actions, not by their name, their gender, their race, their marital status, nor their sexual orientation. The bipartisan committee specifically addressed this issue, noting at page 78—

... the committee believes concerns for the outcomes for children of same-sex parents are not supported by the available research.

The report of the all-party parliamentary committee states further at page 39—

A review of research outcomes for children born of same-sex couples also indicated children were not disadvantaged by their family type. Outcomes were dependent on the quality of family relationships and the quality of nurturing.

But for the LNP, that is no longer good enough. And why? What evidence has the LNP presented? What clear, rational rebuttal to the committee's findings has it formulated? Because single or same-sex parents, according to the member for Condamine, get confused about public toilets. The member for Condamine's contribution—a man who purports to be an alternative minister of the state—speaks for itself.

In his contribution to the debate the member for Southern Downs said that the government's bill is—

... contaminated with elements that are philosophically against what we on this side support.

I thought long and hard. I listened to every speech. It is my great privilege to sit in this House during debates on these great matters of state and listen to every word that is said by every politician in this House—and, Mr Speaker, a privilege that you also have. I thought, 'What is the philosophical foundation for what the members opposite are doing?' In thinking about this, I had cause to remember a speech that was given by Senator George Brandis, a Liberal senator for Queensland—or is it LNP senator for Queensland; I am not sure—late last year.

On 22 October 2009, Senator Brandis gave the 2009 Alfred Deakin Lecture at the University of Melbourne. In that speech Senator Brandis, in a very, very clear and detailed way, set out a very clear and detailed exposition of the history of liberalism broadly and also liberalism in Australia. I am not often wont to quote from Senator Brandis, but it is worth reflecting on what he said about liberalism in his thoughtful and measured speech. This is what Senator Brandis said about Alfred Deakin, the father of Australian liberalism and a former Australian Prime Minister and a former Australian Attorney-General—

... Deakin had no difficulty with the notion that the business of the Liberal Party is the advancement of liberalism, and that the central task of liberalism, from which all else follows and upon which all else depends, is to maximize the freedom of the individual.

The senator went on to state—

I am at pains to make this point—

about why the Liberal Party adopted the name 'Liberal' and why traditional liberal values were so important—

because, over the past twenty years or so, there has been an attempt to dilute the Liberal Party's commitment to liberalism.

We know all about that in Queensland. The senator went on—

And so we come back to the essential flaw of conservatism—

the duality between liberalism and conservatism, and this is what he said—

... its ethical relativism. A conservative, no less than a liberal, is horrified by the thought that human beings might be crushed in the name of an abstraction, yet we often find him indifferent, or even an apologist, when human beings are actually being crushed by an existing political system—

or in this case—

a social order.

The senator goes on to talk about the achievements of liberals: the extension of the suffrage in the great Reform Act in 1832, liberals who championed the emancipation of Roman Catholics in 1834, liberals under the banner of Wilberforce who abolished the slave trade. The senator says—

In every case, they did so in the face of conservative opposition.

He goes on to talk about how liberals in America passed the Civil Rights Act and challenged the apartheid regime in South Africa. In almost all of those challenges the party that I represent, organised Labor, stood for those reforms. The senator goes on—

It was liberals who advanced the rights of women, while conservatives resisted; liberals ... who championed—and who continue to champion—the interests of ethnic minorities, while conservatives resisted; liberals who argued for an end to discrimination against people because of their sexuality, while conservatives resisted. Every one of those reforms extended the bounds of human freedom, gave individual men and women greater autonomy, wider choice, more respect for their dignity. Every one of them was a liberal victory which conservatives opposed at the time, but—at least in most cases—today defend.

The senator went on—

It is for liberals to provide that 'strong barrier of moral conviction'; to stand between the individual and society and to assert the rights of the individual whenever the pressures, demands or prejudices of the social mainstream would diminish them. That is liberalism's historic role, and it is that conviction which has animated every liberal reform which has extended the boundaries of human freedom.

In conclusion, Senator Brandis quoted from Sir Robert Menzies. Many opposite hold up Sir Robert Menzies as their idol. The young fogies, as I call them, the new young members of parliament such as the member for Kawana, idolise Sir Robert Menzies. At the end of his speech Senator Brandis said—

Menzies said it best in five simple words: 'We have stood for freedom.' That is our legacy. That is our purpose as a political movement. That, as Malcolm Turnbull put it, is the golden thread of our history. And that is the path to our future.

What we have seen in this debate is the termination of that path in Queensland. We have seen the death of liberalism in our state when the dead hand of conservatism, the dead hand of the Country Party, has put to rest any sense of traditional liberalism that former members of the Liberal Party once had. It is a sham. It is a false pretence for the opposition to call themselves the Liberal National Party. Do members remember the catchcry at the last election about progressive conservatism? We have seen the death of any progressive approach from the members opposite. Where were the Liberals and the former leaders of the Liberals in this debate? Where was the member for Moggill? Where was the member for Indooroopilly? Where were all of those members who once stood up for liberal values? Cowed and quiet. They do not have the courage of liberal convictions and they have left the running of this debate to the old, dead, withered hand of the Country Party.

As Manning Clark said, there are two groups in Australian society: the straighteners, those who seek to straighten people to put them into a particular class, and the enlargers, those who seek to enlarge and grow the Australian society. I know where the Australian Labor Party stands. As Lawson said, 'the old dead stick and the young tree green'. I know who the old dead stick is in this chamber and I know who stands for liberal values. If those opposite are willing to abandon them, we are willing to stand up for individual liberty, freedom and choice. That should be what those opposite stand for. How is that demonstrated? Through a conscience vote that the Australian Labor Party took seriously and one that we took to heart. It was not a collective conscience such as from the members opposite. How is that demonstrated? The perfect example of that was the email circulated by the member for Cleveland on 9 February and put to this House by the member for Keppel. Did the member for Cleveland deny it? No, he did not. In his email he shows no respect for authority, no respect for the position of Premier and no respect for the political leader of our state. In his grubby email he states—

Bligh will force her bill through today/tomorrow without offering a conscience vote. It is incredible that this is not a conscience vote. Bligh obviously does not trust her own MPs to support her social experiment so will force it upon us today.

In this House on 18 August the Premier said—

This issue in the Labor Party will be the subject of a conscience vote.

Honourable members opposite lecture us about moral standards and how we and others should behave in society. They rely on biblical sayings and terms. I refer the member for Cleveland to Exodus 20:16—thou shalt not bear false witness against thy neighbour.

There was much in this debate about one survey, propagated by the opposition, that 86 per cent of Queenslanders believe that children should be raised by their biological parents. I am yet to see the amendment come in to this House that says children born of in-vitro fertilisation or alternative reproductive therapy should be brought up by their biological parents. We wait for that amendment.

What are some of the other statistics the members opposite do not quote? The Galaxy Research Poll of December 2008 said that there is strong support amongst Queenslanders that children in same-sex families should have both parents recognised by Queensland law, with two in three, 67 per cent, agreeing that both parents should be recognised by law. Conversely, 26 per cent disagree. I know where I stand: with the two-thirds of Queenslanders who support this legislative reform. Furthermore, the Galaxy Research Poll of June 2009 reported that a strong majority, 85 per cent, of Australians support federal laws protecting Australians from discrimination on the grounds of sexual orientation and gender identity. In comparison, just 10 per cent oppose such laws. The members opposite want to stand with the 26 per cent

who oppose recognising same-sex couples and want to stand with the 10 per cent who want to have a discriminatory law in this state.

This has been an enlightening debate in many respects. It has been a debate that, as I said earlier, has taken me on my own personal journey. In conclusion, we need to ensure that the children of surrogacy arrangements, those that have occurred and will continue to occur whether we change the law or not, are protected in Queensland society. We need to ensure that children are treated the same regardless of their birth parents. That is important for this parliament. That is something that this parliament must do. We must not support the discriminatory approach proposed by those opposite.

The bottom line in the cognate debate is that the government's bill raises three fundamental points: firstly, that altruistic surrogacy should be decriminalised; secondly, that children born as a result of an altruistic surrogacy arrangement deserve to be treated at law the same as all other Queensland children and should not be disadvantaged because of who their parents are; and, thirdly, that surrogacy arrangements are matters for adult Queenslanders to determine themselves.

The member for Southern Downs on behalf of the opposition disagrees and argues: firstly, that altruistic surrogacy should remain a crime for some groups in the community; secondly, that the state should determine who can have children through surrogacy arrangements and who cannot and jail people they do not approve of; and, thirdly, that children born as a result of a surrogacy arrangement that the members opposite do not like should be second-class citizens and their parents labelled second-class carers.

The choice in this debate could not be more stark. I said at the outset that there are different views on the issues raised in this bill. At the end of the day, however, this bill is not about those views. This bill is about ensuring the best interests of all Queensland children and enshrining that in law. It is about ensuring that the legal status of all children is the same no matter what the circumstances of their birth or parentage. I commend the government's bill to the House.