

Submission on the proposed changes to the Western Australian Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018.

Hon. Dr Sally Elizabeth Talbot MLC and members of the committee.

I wish to express my appreciation in having this opportunity to write to you in relation to voicing my endorsement of the changes currently being considered with providing single males and same sex male couples, the opportunity of having the option of undertaking the journey to become a parent through surrogacy in Western Australia (WA).

I have been able to follow the progress of this bill from its inception as on the 26 May 2018, I lost my wife, Susanna De Castro to cancer after a nine year battle.

As a couple and prior to her illness in 2009, we tried to conceive naturally. Due to issues, we ventured through IVF but were unsuccessful. The option of surrogacy was not considered at that stage as we were only starting the process of IVF and believed that Susanna would hopefully fall pregnant naturally or through IVF. This quickly changed as prior to attempting another IVF treatment, Susanna was diagnosed with breast cancer and our focus as a united couple was to battle this illness. Susanna had the foresight to retrieve her eggs and my sperm and we created three embryos with the hope of one day returning to the IVF program to start our family.

Susanna was in remission for four and a half years, when we were given the sad news that the cancer had returned. This caused us to refocus on her getting better. We spoke about surrogacy and adoption as this was now our only option, if we wanted to start our family. I was always mindful that my main priority was the health of my wife, Susanna.

Prior to Susanna passing away, we did talk about surrogacy but it was more of a discussion about the pros over adoption. We did not know the restriction facing myself in relation to our current WA laws. With Susanna passing away, I was lost and only found my way when I realise that I could see Susanna through the eyes of our child. This inspired me to commence my journey through surrogacy, until I was educated about our laws.

Being in WA, we are still behind the other states in changing our laws to provide surrogacy for single males and same sex male couples. On reviewing the current bill, it was noted that the current WA laws are in breach of the *Equal Opportunity Act 1984 (WA)* and the *Sex Discrimination Act 1984 (Cth)*. The WA government was given until the 31 July 2017 to amend these changes and to date, there is still strong opposition for change. It is noted that a litigation against the injustice of the current WA surrogacy laws may be held by a court to be valid. On reviewing a submission from the Family Law Practitioners Association of Western Australia (INC) to Associate Professor Sonia Allan (Allan) in relation to surrogacy for single men, paragraph 45 states "Refusal of access to IVF has been considered by the Supreme Court in Victoria and found to be discrimination on the basis of marital status and in contravention with Section 22 of the *Sex Discrimination Act 1984 (Cth)* (McBain v State of Victoria [2000]). I have been

a strong advocate to have these laws amended in WA, so that I am able to undertake this journey and fulfil my dream.

I was saddened that the debate was railroaded in the Legislative Council and a conscious vote was not able to be conducted. The comments of a member of the Legislative Council who stated that they were going to talk for another 10 weeks, as that was the length of time the current government took to disclose the commission report by Associate Professor Allan, was disappointing and showed a childish behaviour. I hope that this behaviour is not systematic. The delay of this bill is affecting lives in our community. There are single males, like myself and same sex male couples waiting for the opportunity to engage in the surrogacy path in WA. If the debate was able to be conducted in a typical way, it would have given both sides the opportunity to voice their individual beliefs. In a way, this committee will now have the opportunity to hear from our community as well.

Furthermore, during the debate in the Legislative Council, hearing that a child should always be with their mother in all circumstances is unrealistic and dangerous. This has been proven by the way the Family Court of WA are now reviewing parenting orders and conducting their investigations. The court is now considering what is in the best interest of the child. There are reports circulating of children being mistreated by their mothers. There are also reports of fathers and grandparents becoming the primary carers, taking the child from their mother, due to several risk factors. Therefore the comments that children should always be with their mother is inappropriate. It should be that the child should be with the best person who will nurture, care, provide and support them. There should be no restrictions to the welfare or well-being of a child.

I have been privileged to hear the debate in relation to this bill and understand the concerns raised. There should be safe guards in place to eliminate the possibility of a child being raised in danger. I am all for that.

I feel that this debate also highlights the belief that all males are not suitable in caring for their child, in any situation. Generalising comments that all males are not suitable is discriminating. This view of discrimination does not provide males with the equal opportunity to demonstrate their individual strengths, beliefs and values in raising a child. I believe I would be a great father given the opportunity.

I would like to also raise that in WA, single males and same sex male couples are able to adopt (*Adoption Act 1994 (WA)*) or foster children (*Children and Community Services Act 2004 (WA)*) but are not able to venture down the path of surrogacy. I know of sex same male couples who due to these current WA surrogacy laws and having the desire to have a family, have taken the adoption and foster process to fulfil their dreams. Having discussed the possibility of changes in our surrogacy laws with them, they indicated that it would have been wonderful to have the opportunity to consider raising a biological child. They have also stated that the children they adopted or fostered were because their biological mother, father or family were deemed not a suitable carer. Again, the comment of a child always staying with their mother should be revised to, "What is in the best interest of a child is paramount." *Children and Community Services Act 2004 (WA), Section 7.*

Further, I have heard that there is no statistics to show the interest that single males or same sex males couples have with proceeding down the path of surrogacy in WA. It is fruitless for the Reproductive Technology Council (RTC) to conduct or gather data for no statistical gain at present. If and when the laws change I believe the data would be gathered to assist with evidence based statistics that society is changing and males are now wanting to be maternal.

Finally, this venture that single males and same sex couples are hoping to have the opportunity to embark on, does not only affect them but any prospective surrogates and her family. At present, I feel that a lot of women willing to be surrogates do not want to form a bond or relationship with a single male or same sex male couple in WA as the laws already prohibit any prospects of both having their dreams fulfilled. The surrogate mother has a resilient desire to fulfil her dreams of carrying a child for someone else. Therefore connecting with a single male or same sex male couple in WA at present is futile. There are surrogates in WA that are currently helping same sex male couples fulfil their dreams in other states of Australia where surrogacy for single males and same sex male couples are legal. I have spoken to other willing surrogate mothers and from my observation, the yearning to create and be a part of this journey, is not a one way street. There is a passion and desire that these ladies have and are longing to fulfil. There is no aspiration for a financial gain. I believe that for them to know that they had a part to play in building a family is indescribable.

I believe that a WA surrogate, currently assisting single males or same sex male couples in other states to fulfil their dreams, would have liked the opportunity to undertake the journey locally, given the chance.

I have been fortunate to connect with a surrogate and her family in WA. We have been able to bond and build a strong relationship from our foundation. Having been fortunate to share each other's lives, has been priceless and rewarding. We are able to verbally communicate with each other on a daily basis. We also live in close proximity to each other which allows us to physically interact by attending birthday celebrations, lunches, dinners and outings. The connection that we have built is strong and we both see a future where both our dreams could come true if our WA laws changed. Either way I know that the relationship I have formed with my surrogate family will be long lasting. I consider them to be an extended branch of my biological family.

I am more than happy to also front the committee to further assist with any questions or queries you may have.

I thank you for this opportunity.

Kind Regards



Ricardo De Castro