SURROGACY BILL 2007

Second Reading

Resumed from an earlier stage of the sitting.

The SPEAKER: I think the member for Peel was halfway through his speech, and we were at a very interesting part of that speech.

Mr P. PAPALIA (Peel) [2.41 pm]: When we last parted company, members may recall that, following in the auspicious footsteps of the member for Capel, I had adopted a bit of a religious tone in my approach to this subject. Initially, I was full of clarity and resolve about how I would approach this matter. However, having listened to fellow members, I began to waiver, and I lost my resolve. I sought guidance from above, and I eventually found my way to one of his representatives in this chamber. Apart from you, Mr Speaker, there is another equally valid representative, the member for Central Kimberley-Pilbara. He gave me this advice, which appeared to be quite sage: when in doubt, vote no. In the state I was in at the time, I thought that sounded like sage advice, and I wondered whether I should adopt it. However, I then recalled my own motto by which I have lived as well as I could throughout my own life; that is, "When in doubt, follow your heart."

Upon consulting my heart, I was reminded of some friends - a couple. He is a very experienced soldier who served in three combat zones, and she is a senior educator and executive in private enterprise. They are a loving couple who have been married for the better part of two decades and who are universally acknowledged by all their friends and colleagues as potentially wonderful parents. However, they had experienced a number of miscarriages, and they had endured the trauma of in-vitro fertilisation for the better part of a decade, but that had failed. My heart told me that ultimately I should approach this matter from this point of view: who am I to deprive this couple, and others like them, of the challenges, pain, anxiety and ultimately sheer bloody joy of parenthood? I have no idea whether they would use this legislation; they might be a little old now. However, I intend to support the legislation. I expect that during the consideration in detail stage there will necessarily be further clarification about contractual obligations and the cautionary screening of applicants. However, I will support the bill.

MR M.P. WHITELY (Bassendean - Parliamentary Secretary) [2.44 pm]: I will begin in a similar vein to the member for Peel. I think that sometimes those with a strong religious conviction, who have a certain faith in the existence of God, and people at the other extreme, who have a complete and utter conviction that there is no such thing as God - the atheists - come to these debates with a stronger sense of clarity. I am going to display in my speech all the conviction of a confirmed agnostic and put on record that I have very mixed feelings about this debate. If I wanted to make reference to another member's speech that reflected my feelings, I could follow the member for Churchlands' speech with the word ditto, because I have similar concerns about, but also a similar attraction to, the bill as that expressed by the member for Churchlands. I will be up-front about my intention at this stage. I intend to support the second reading of the bill. However, I intend to participate in and listen very clearly to the debate during consideration in detail, and I will reserve my position on the third reading.

I have some great concerns about the bill, as have other members, in particular about the question of who will actually become the legal mother. However, I am reassured that the act of surrogacy is such a deliberate act that parents - both the biological parents and the birth parents - would enter into it with such a sense of seriousness and deliberateness that in most cases the experience would be one of overwhelming joy. For that reason, at this stage I intend to support the bill.

There is a natural, strong desire among a majority of people - not all, and that is legitimate - to be a parent. It has certainly been my most rewarding and fulfilling experience. I would have been devastated if I had been in a position in which I was unable to have children.

Having said all that, there is enormous potential for problems in this bill. The problems that concern me the most are the potential conflicts and confusion about who is the mother. Is it the birth mother or is it the biological mother? I am naturally attracted to the proposition that the biological parents should be regarded legally as the parents. They are the providers of the genetic information, and their children will look like them and inherit their personalities and all their genetic characteristics. However, having listened to some other speeches and other contributions, I do not think it is as clear cut as that. The Minister for Health outlined a worrying situation. Do we want the law to enforce the removal by police of a baby from a woman who has just given birth to that baby in a maternity ward? I think that is a very legitimate concern. There are some real issues that in my mind are as yet unresolved. There are some real what ifs. I do not intend to go through them all now because other members have done so in their second reading contributions, but I will deal with just a couple of them. What if the surrogate mother - the birth mother - changes her mind and seeks to have a termination? What if the biological parents decide that they do not want to continue with the pregnancy and want to have a

termination? There is a whole host of other what ifs. We have talked about the scenario in which the biological parents are not the parents who are seeking to raise the child. What if there are third and fourth people involved - those who donate sperm, and those who donate eggs? These are real questions which present difficulties for me and which need to be considered in great detail. Frankly, I need to firm up my position. However, I guess I am persuaded to support the bill at this stage because of that overwhelming desire parents have to raise children in a loving environment. I am persuaded also because surrogacy will involve such a deliberate action that it is likely that, in the vast majority of cases, those issues will be resolved. I am not saying that complications will not arise or that, from time to time, things will not go wrong, as they do with normal births. However, on balance, I believe that more good than harm will come from the passage of this legislation. As I have said, I will participate in the consideration in detail stage and reserve my position until the third reading.

The contributions of members in this debate have been of an extraordinary quality, as they always are on these types of issues. However, I am concerned that not all members participate in these types of debates. I am concerned that sometimes members - I will not name them - come into these debates late. I am not sure whether they listen in their rooms - perhaps they do - but I suspect a number of members come in from time to time and see who is voting on a particular side and decide that they generally agree with either the social progressives or the social conservatives. They then base their vote more on who is voting in a particular division than on the merits of a particular element. I encourage members to take the time, and accept the responsibility that comes with a conscience vote, to become informed enough to follow their own consciences.

I have listened to the opposing arguments. The member for Central Kimberley-Pilbara gave some arguments the other day, and I have had a chat with him about it. I do not accept the argument that this bill should not be a priority for this government. I do not accept that we cannot deal with issues such as this and still deal with other issues that affect greater numbers of people. This government, particularly this minister, has the ability to deal with many complex issues at the same time. I do not believe that for this Parliament to focus on a debate about which a small number of people will be affected will distract us from other considerations. However, I want to pick up on a theme suggested by the member for Central Kimberley-Pilbara. It is an issue that concerns me, which I want to flag rather than provide any particular resolution for. Members spoke about the commodification of human life, or of children. That is something we need to be conscious of. I do not have in my own mind a resolution for these issues. I guess we must judge them on their merits. At all times, we should be conscious of the best interests of the child. We often build clauses like that into legislation. However, on occasions, they are somewhat tokenistic inclusions.

I am supporting this legislation at this stage because I think that the vast majority of children born under the process of surrogacy will be born into loving, caring environments. As I said, more good than harm will come of it and most children will enjoy a happy future with their parents. For that reason, I will support the second reading of the bill and reserve my judgement throughout the rest of the process.

MS S.E. WALKER (Nedlands) [2.53 pm]: I have made only a relatively cursory attempt to analyse the Surrogacy Bill because of other commitments I have had this week. I know that we all have commitments. However, I have committed some time to it, and I will reserve my judgement until the third reading. I would like to see what develops during consideration in detail. I say at the outset that I could not possibly support this bill in its present form because I do not agree with a process in which a woman who acts as the incubator of a donated egg and sperm from a couple can be virtually deemed to be the birth parent. That is totally wrong. I do not feel that because I am an Anglican; it has nothing to do with that. It is based on how I feel as a person and how I would feel if I could not have children or had to have a child that way. I think this bill is a recipe for total emotional disaster for a couple who have implanted in a woman that couple's egg and sperm. Why we are seeking to pass this legislation to allow such a disaster I have no idea.

I was going to stand here and say that, in that regard, I think this is one of the worst pieces of legislation to have come before this Parliament. I do not agree with the member for Bassendean that the Minister for Health is able to deal with complex matters.

Mr J.A. McGinty: Be kind.

Ms S.E. WALKER: I am not after the minister for a ministerial position! The Minister for Health should have thought it through, but he has not. I have seen him introduce legislation when he has absolutely no idea what it is about, and he knows that is true. An example of that is the Public Trustee and Trustee Companies Legislation Amendment Bill. Even the Public Trustee did not know everything about that bill because of the legal matters involved. The Minister for Health did not know; how could he possibly have known?

We should put ourselves in a mother's position. I hope the Minister for Health is listening to me. This is an important bill.

Mr J.A. McGinty: I can do two things at once!

Ms S.E. WALKER: The member for Rockingham has sought to take the minister's attention away from the debate. That is a very poor reflection on him as the member representing the electorate of Rockingham. I would like the Minister for Health to change aspects of the bill.

Mr J.A. McGinty: I am happy to change the one you are raising at the moment.

Ms S.E. WALKER: I know that. I am giving my views because the legislation has not been properly thought out. Can members imagine a husband and wife or de facto couple not being able to have a child and making a surrogacy arrangement? It is no longer an agreement or an oral contract; this bill specifically does not provide for there to be any enforceable type of contract. The parties will enter into an arrangement whereby they think that in nine months they will be presented with a baby, but when they arrive to take the baby, the woman who has been carrying the child may say, "I'm sorry; I'm keeping it." Can members imagine the unbelievable heartache of that couple? We are setting up that scenario in this Parliament. I will be looking to see who votes for the bill if it is passed in that form. This legislation is a reflection on the way in which the Minister for Health has been bringing in legislation for quite some time. He is spitting out legislation like chips and hoping that if we do not look at it, it will be passed. This bill is an example of an assembly-line production system with no thought about its effect on the participants. I refer to the minister's second reading speech. In the limited time available to me I have tried to consider the circumstances in which the scenario I have described might happen. I have here a copy of the report by the Select Committee on the Human Reproductive Technology Act 1991. The Artificial Conception Act 1985 makes very clear who is the mother and who is the father. I would have thought that when situations are likely to evoke emotional uncertainty, it is important that the Parliament ensures that the legislation is clear. The bill before the house even allows the Family Court to tick off on giving the child a name. I wonder where we are heading with this. The Artificial Conception Act makes the arrangements that can be entered into very clear. This type of legislation must make very clear from the beginning who is the birth mother. Having said that, the woman who acts as the incubator donates the egg. We are providing certainty that she will be the birth mother. Even then, I do not know that that is right. A woman enters into a contract, but it will not be a contract because of clause 7, which states "A surrogacy arrangement is not enforceable." Why not?

I have not had the time or opportunity yet to read the report by the Select Committee on the Human Reproductive Technology Act 1991. However, I ask the Minister for Health to give me some statistics that I can understand. Have there been occasions in Western Australia, Australia or the world in which there have been surrogacy arrangements - member for Rockingham, stop being puerile so that I can speak to the Minister for Health -

Mr J.A. McGinty: What's your question?

Ms S.E. WALKER: Is there any statistical analysis that the minister can give this side of the house to show how many people have entered into altruistic surrogacy arrangements in which the woman who is the incubator has donated the egg and has then decided to keep the baby? Is that why in this legislation the woman who gives birth will have the right of first call on the child? Does the minister see what I am saying?

Mr J.A. McGinty: I do. I am aware of some studies in other parts of Australia that have studied birth mothers and surrogacy arrangements. Those studies have indicated that there has not been a case of when the birth mother has wanted to keep the baby. I am sure it has happened, but I'm not aware of it.

Ms S.E. WALKER: Usually the birth mother - I mean the woman who gives birth - in an altruistic arrangement gives the baby to the father.

Mr J.A. McGinty: In almost every circumstance. I am not aware of a circumstance where that hasn't happened.

Ms S.E. WALKER: In that case, why draft the legislation in this way? This legislation turns everything pear-shaped. If, on the statistics, an altruistic surrogacy arrangement results 98 per cent of the time in the woman who gives birth giving the child to the couple - same-sex or otherwise; I presume there will be same-sex arrangements; I will come to that - why are we then making it difficult? I am not sure whether the minister is trying to discourage surrogacy. If he is, I do not think this is the way to go about it, because it is creating emotional nightmares for people.

Mr J.A. McGinty: The reason it is done in this way is because it is the practice in every jurisdiction in Australia. Even in jurisdictions in which there is no surrogacy legislation and it is open slather, the baby belongs to the birth mother. Where there is surrogacy legislation, it says the same. Our legislation reflects that view. However, I have been persuaded during the course of the debate, and in my address in response to what has been raised I will indicate an amendment that I think will deal with that issue.

Ms S.E. WALKER: I do not care what they do in other states.

Mr J.A. McGinty: You asked me why we have done it, and I answered.

Ms S.E. WALKER: Yes, I know, and I am responding to the minister's response. The response is because they do it in other states. If the minister thinks it through, we can do better on the statistics. I do not need the member for Rockingham to sit over there and make stupid remarks when I am trying to have a conversation with the Minister for Health that is important for people. I do not have anything against surrogacy arrangements. I have a great deal of sympathy for people who cannot have children. However, this is going to turn everything pear-shaped. I definitely think that the minister has to change the situation in which the agreement is not enforceable when parents give genetic material to the birth mother. If the minister could just listen; I am really trying to persuade him.

Mr J.A. McGinty: I make this point, member for Nedlands. We have already said that we are going to bring forward an amendment to deal with this matter, but the member keeps going on about it.

Ms S.E. WALKER: I know that the minister is not going to bring in an amendment to deal with this issue. I know that the minister is going to bring in an amendment to deal with the situation in which a couple donate an egg and sperm. Is the minister now saying that he is going to make all surrogacy arrangements enforceable?

Mr J.A. McGinty: No.

Ms S.E. WALKER: That is why I am talking about it; the minister is not with me.

Mr J.A. McGinty: Make your point.

Ms S.E. WALKER: The minister is trying to do a little game there with the member for Rockingham, who has a silly little look on his face. I am trying to persuade the minister. Will he listen to me?

Mr J.A. McGinty: I have already said to you five times that I am listening to you.

Ms S.E. WALKER: The minister is just playing a silly game with that silly man next to him. All right, I will speak to the Acting Speaker (Mrs J. Hughes). This is an important issue. The Minister for Health stood in this place and raised the names of two people, Mr and Mrs Case. Is that right?

Mr J.A. McGinty: That is right.

Ms S.E. WALKER: The minister did not tell the house what their arrangements were. When I think about it, nor should he. He said that the couple could not have a child because of medical conditions. I am trying to be totally respectful of Mr and Mrs Case, but it is an example of how the minister has betrayed them. The minister is not listening to me on this issue, so I will talk to Mr and Mrs Case. I will say the following to Mr and Mrs Case: if they want to have a child, they will need a woman who is an incubator. However, if the Minister for Health does not change this legislation, they may never get that child. That is the point I am making. I hope that the minister is listening now. Under this legislation, if Mr and Mrs Case are not the sperm and egg donors, they are in deep trouble. When it gets to the birth of the child, under this legislation, the woman who gives birth gets to keep the child. That is right. The minister has come into this Parliament and held up that couple as an example. He said that he is doing this for that couple. That is where the minister is being hypocritical. The minister is setting up these people for a terrible emotional disaster. I listened to the member for Peel, who talked about a couple who have gone through IVF and tried for a baby. He spoke of the despair they feel. Can the minister imagine the despair of people when they read this legislation and realise that, even when the sperm of the husband has been implanted in the woman who is to be the incubator, because the mother cannot produce an egg, they will never know - even from the moment of conception - whether they will ever get that child? This is the ridiculousness of the legislation - unless I have read it wrongly. The minister is bringing legislation into this place and spitting it out like chips on a production line and hoping that it gets through. He is assaulting the opposition with crappy legislation.

Dr J.M. Woollard interjected.

Ms S.E. WALKER: No, he just told me. The member for Alfred Cove is talking about the enforceability clause. The minister specifically told me; I asked whether he would remove it. The Western Australian public needs to understand what this legislation is about.

I will go to the Artificial Conception Act 1985. Section 5 states -

> (1) Where a woman undergoes an artificial fertilisation procedure in consequence of which she becomes pregnant and the ovum used for the purposes of the procedure was taken from some other woman, then for the purposes of the law of the State, the pregnant woman is the mother of any child born as a result of the pregnancy.

That is for single women. Section 6 of act then refers to married women -

> (2) In every case in which it is necessary to determine for the purposes of this section whether a husband consented to his wife undergoing an artificial fertilisation procedure, that consent shall be presumed, but the presumption is rebuttable.

Under this act, when a married woman has sperm donated, the husband, even though he may not be the biological father, is deemed to be the father. That provides certainty, so that the person who donates sperm can never have first claim on the child, although I would imagine that that person might have a claim if both parents died, for instance. Section 6A of the Artificial Conception Act deals with same-sex couples. Section 6A(1) states -

> Where a woman who is in a de facto relationship with another woman undergoes, with the consent of her de facto partner, an artificial fertilisation procedure in consequence of which she becomes pregnant, then for the purposes of the law of the State, the de facto partner of the pregnant woman -
>
> (a) shall be conclusively presumed to be a parent of the unborn child;

The de facto partner of the pregnant woman is assumed to be the parent of the unborn child.

Dr G.G. Jacobs: Even though she is a woman?

Ms S.E. WALKER: Yes, because I am returning to the scenario created by the bill before the house. Section 6A(2) states -

> In every case in which it is necessary to determine for the purposes of this section whether a de facto partner consented to her de facto partner undergoing an artificial fertilisation procedure, that consent shall be presumed . . .

Section 7 of the act deals quite categorically with the donor of genetic material. In a surrogacy arrangement, the woman who is the incubator and agrees to donate her egg is a donor. She is an incubator, but she is also a donor. Section 7(1) of the Artificial Conception Act states -

> Where -
>
> (a) a woman becomes pregnant in consequence of an artificial fertilisation procedure; and
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> (b) the ovum used for the purposes of the procedure was taken from some other woman,
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> then for the purposes of the law of the State, the woman from whom the ovum was taken is not the mother of any child born as a result of the pregnancy.

I know that the minister has not thought this through, and that is why I have asked this question. Why is the minister making it certain that women who are incubators and donate an egg have first claim on the child? He says that that is what the other states do. He will keep on looking around at what other states do with legislation, spit it out like a chip and bring it into the Assembly. That is what is happening. We must think these things through. The only rationale I can come up with is that it is because a woman who acts as an incubator and is the donor of the egg is growing half her child in her womb, whereas, under the Artificial Conception Act, the woman who is the incubator of the donor egg is growing another woman's egg in her womb. The only rationale I can find is the emotional attachment, and I can understand that, as long as Western Australians understand it. When a close friend or relative agrees to bear a child for a woman and her husband, then reaches the full term of the pregnancy and decides she wants to keep the child, can anyone imagine the lifelong trauma for the father who donated the sperm? Someone entering into this kind of contract needs to keep up his or her end of the deal. I am not sure that this legislation is the right way to go.

I agree with the member for Avon, who has said that there will be all sorts of unintended consequences of this legislation. There were all sorts of unintended consequences of in-vitro fertilisation procedures. I never really agreed with that, in view of the interests of the child. I have seen articles saying that now that the children have grown up they do not even know who their fathers or their mothers are. They do not know whether their parents had medical conditions that they need to know about. Some families may have had a history of cancer or heart disease, or any number of other things. I understand the need for in-vitro fertilisation and I am sympathetic to that need, but I also look at it from the viewpoint of the child. That is why I had difficulty with the adoption legislation; I looked at it from the viewpoint of the child. We had some interesting comments in this house. I do not want to name members, but one member who was adopted and whose parents were old constantly copped it in the playground about having old parents.

I have reserved my decision on this bill, but it is clear that several scenarios can arise from having adults who will be contributors of sperm and eggs to the donor incubator. One of the questions is: can two men or two women ask another woman to be an incubator for the purposes of this legislation? Under this legislation, if two men are in a de facto relationship and one of them impregnates a woman and they come to an arrangement with her about the child, she can later decide to keep the child. If, in the case of a married or de facto heterosexual

couple, the man's sperm is used as part of an arrangement, and the incubator woman is the donor, she can later decide to keep the child. I understand that under this legislation it is not possible for a man, a woman or a same-sex couple to ask for an IVF procedure**.**

Dr G.G. Jacobs: We hope not.

Ms S.E. WALKER: We hope not. All sorts of arrangements are possible under this legislation. Two women who cannot conceive could arrange for a man to impregnate a friend or a donor woman. Is that outlawed? I do not know. Essentially, this legislation does not provide certainty for anyone but the woman who has undertaken to act as an incubator in circumstances in which she, as the donor of the egg, has the first claim on the child; that is, if the minister introduces legislation to change the situation to cover a woman who, having undertaken to act as an incubator, is implanted with the egg and sperm of the donor couple. This latter situation, in my view, would be totally morally wrong. I do not want to stand on the moral high ground here, but I think that it is totally wrong. If the government wants to discourage surrogacy, I do not know whether this is the right way to go about it. The key to the disaster in this legislation is clause 7, because everything flows from that clause.

Those are my views on this legislation. I have not considered it as fully as I usually consider bills, because of other matters I have had to deal with this week, but I think the minister has rushed this legislation, and it needs to be better thought through. The minister needs to answer some hard questions. I will be looking during consideration in detail for him to tell me, in relation to Mr and Mrs Case, who has the first right of call on that child, because it is very important. If the minister is to come in here and give case examples - that is not a pun on the surname - I would like to know for certain that when we have a real case in front of us we can say to that couple that they will have a child at the end of the process. The minister needs to tell me that, and he needs to tell it to Mr and Mrs Case and other people who enter into these sorts of arrangements.

MR J.A. McGINTY (Fremantle - Minister for Health) [3.19 pm]: I thank members for their various contributions to this debate, including my good friend the member for Central Kimberley-Pilbara, and others who have obviously thought long and hard about this issue. The member for Churchlands made the point that this is the most challenging legislation that she believes she has dealt with in her time in the Parliament. A number of the concepts are difficult, and the balancing of respective interests is difficult. However, that is often the case when it comes to children, particularly families giving birth to children and the subsequent issues that arise out of a medical incapacity to have a child. These issues are not easy, but I am pleased to be able to say that we have given it our best thinking and looked at international and interstate experience. I think we have come up with a bill, subject to consideration in detail, that will enable women who are medically incapable of having children, but who want to have a child, to have a child using a procedure that is commonplace in both history and current practice around the world. I will deal now with the issues raised by the member for Dawesville in his opening speech on this bill. A number of the issues that he raised were raised subsequently by other members. No Australian jurisdiction provides for a surrogacy arrangement to be enforceable. That is alien to both our law and our practice. The United Kingdom and New Zealand also provide that surrogacy arrangements are not enforceable. The situation in America is less clear, because each state deals with the matter differently. The situation in California to which the member for Dawesville referred is not quite as he outlined it. In California, there is no legislation regulating surrogacy. A number of court cases have established the possibility that arranging parents may apply to the court before the birth of the child for orders about who should be registered as the parents of the child at birth, and contracts are enforceable. Once the child is born, any decision about where and with whom the child should live should be based on an assessment about the best interests of the child, rather than on the enforcement of a contractual obligation. That goes very much to the heart of the debate in this house about whether the birth mother should be given the right to retain the child. I would not like to look upon it as a situation in which, if people contract - in this case without consideration - for their genetic material to be incubated in a woman who then gives birth, that is regarded as legally enforceable. If an arrangement is not enforceable, a court could still decide that care of the child should be given to the arranging parents. However, this decision would be based upon the best interests of the child, rather than upon enforcing a contractual agreement between the parties. I believe that, fundamentally, we are all trying to end up with a situation in which a woman who gives birth under a surrogacy arrangement has no right of veto over the return of the child to the arranging, or commissioning, parents.

If a surrogacy arrangement is made enforceable, it may have other unacceptable consequences. For example, the agreement may provide that the birth mother will terminate the pregnancy in the event that genetic testing reveals an abnormality or disease. This should not be enforceable in the event that the birth mother decides that she does not want to terminate the pregnancy. That is an example of how, if we regard a surrogacy arrangement as a contract that is enforceable, it is enforceable in all its aspects. I believe there is scope for the balance of the interests of both the birth mother and the arranging parents to be modified from the position that is outlined in the bill in respect of an application for a parentage order that would transfer the legal parentage of the child to

the arranging parents. Giving the court the capacity to dispense with the consent of the birth parents in circumstances in which there are particular genetic links would remove the effective veto right of the birth parents to a parentage order being made. The court would retain the capacity to refuse to make a parentage order if that were not in the best interests of the child. An amendment to achieve this is being prepared.

Dr J.M. Woollard: Are you saying that if the surrogate mother has in her womb both the egg and the sperm from the arranging couple, the couple can go to court and argue that the child is their child?

Mr J.A. McGINTY: Arguably it would then be in the best interests of the child that the child was registered as their child and brought up as their child, yes.

Dr J.M. Woollard: Is the minister saying that if the couple who have entered into the arrangement with the surrogate mother have provided the genetic material, the surrogacy arrangement is binding, but if the couple who have entered into the arrangement with the surrogate mother have not provided the genetic material, the surrogacy arrangement is not binding?

Mr J.A. McGINTY: Surrogacy arrangements may arise in a variety of circumstances. It may be the case - although I do not know that this is desirable - that the eggs, or egg, have come from the birth mother herself, in which case the birth mother will have a genetic link to the child. How do we balance that against the sperm being provided by the commissioning, or the arranging, father? A lot of variations may arise.

Dr J.M. Woollard: Perhaps that is something this Parliament needs to consider, because that will make it very difficult. Perhaps if the egg and the sperm had to come from external donors, that would take away the level of emotional conflict between the genetic parents and the birth mother.

Mr J.A. McGINTY: Perhaps the solution to this problem, in all its manifestations, could be found by giving the Family Court the power to determine, according to the best interests of the child, who the child should be with. The Family Court makes those types of decisions all day, every day. Under the amendment that we are proposing, if the genetic material has come from the couple - the man and the woman - and the surrogate mother who has given birth to that baby then changes her mind and says she wants to keep it, I would have thought the commissioning parents could go to court, and in those circumstances, if there was nothing more to it, the court would say it is in the best interests of the child that the child be with the genetic parents. I think that would be the end result.

Dr J.M. Woollard: So will you be leaving clause 7 - surrogacy arrangement not binding - in the bill?

Mr J.A. McGINTY: No.

Dr J.M. Woollard: So there will be a new clause that will basically say that if there is a conflict about a surrogacy arrangement, the matter will go to the Family Court to be determined?

Mr J.A. McGINTY: Yes, if there is a genetic link. It becomes more complicated if there is no genetic link. It would be unusual if neither the sperm nor the egg came from the commissioning parents. However, if the man was infertile, and the woman had received treatment for cancer, or had had a hysterectomy, or whatever, so that neither the man nor the woman was able to provide the genetic material -the sperm or the egg - the issue would become somewhat more complicated. The bill currently provides that the birth mother will be given the right to retain the child. We do not think that will occur very often, if at all. However, the amendment that we are proposing will address that issue. It will also be a first in Australia. The amendment proposes that the court will determine what is in the best interests of the child, rather than, as the bill currently provides, that the mother will be given a right of veto. I believe that amendment, which has arisen out of this debate, particularly from members opposite, but also from you, Madam Acting Speaker (Mrs J. Hughes**)**, will clarify that situation and produce an end result that people will be far happier with.

I will now make some comments on the issues raised by the member for Roe. It is always difficult to put ourselves in the position of a woman who is willing to carry a child for another person. Because of concerns that a woman who has not previously had a child would not be able to anticipate the feelings that she might experience during a pregnancy and birth, it will be a requirement in the directions under the Human Reproductive Technology Act 1991 that the birth mother must have given birth to a child. In one United Kingdom study of 34 birth mothers, there were no cases in which the woman refused to relinquish the child. The same study concluded that the surrogate mothers do not appear to experience psychological problems as a result of a surrogacy arrangement. In many cases, the arranging parents will be able to provide either egg or sperm, or both. However, in some cases, donor material will need to be used. There is the same potential for complicated relationships in connection with surrogacy as there is for IVF using donor eggs, sperm or embryos, for adoption, and for other forms of family formation following the separation or death of parents. However, it is not

necessarily the case that a child will be bewildered about the circumstances if information is provided to the child in an age-appropriate way early in his or her life.

The member for Hillarys raised a number of issues I would like to address. The birth register of a child who has been the subject of a parentage order will include details of both the birth parents and the arranging parents. The bill sets outs the rights of the parties to have access to either the full register or to a certificate that contains only the arranging parents' details. This process also applies to adopted children. It ensures that the register is complete; however, it allows the child to have a birth certificate that, on the face of it, does not distinguish the circumstances of that child's birth from the birth of any other child.

During the period before a parentage order is made, the arranging parents could go to the Family Court to seek an order that the child live with them. The court would need to consider the case in accordance with the laws that apply to all situations where there is a dispute about the arrangements for a child. There are a number of sources of information about the circumstances of birth for children born following a surrogacy arrangement. Firstly, registers maintained under the Human Reproductive Technology Act contain information about all participants, including any donors of genetic material, in each assisted reproductive technology treatment. The child has a right to access this information at age 16 years or earlier if all parties consent. Counselling in connection with the surrogacy arrangement would encourage the provision of age-appropriate information to the child. The bill provides for access to court records in connection with a parentage order and to the register of birth.

The member for Alfred Cove raised some important issues. A surrogacy arrangement must be agreed between the parties and approved under directions issued through the Human Reproductive Technology Act before the birth mother becomes pregnant. The directions require a very detailed preparation and assessment process before approval can be given. This includes medical and physiological assessment of the parties, independent legal advice and comprehensive implications counselling. The bill requires additional counselling and legal advice at the time that a parentage order is being considered.

It is not appropriate for the bill to set out what should happen in the rare event of the death of one of the parties prior to the child's birth, just as there is no legislation stipulating what should happen if the parent of a naturally conceived child dies at, before or after the child's birth. The circumstances of each case will be different and a decision should be based upon the best interests of the child in those circumstances. It will depend upon who is available and willing to take over the care of the child if that arrangement is suitable.

Similarly, decisions about arrangements in the event of divorce or separation, or for a disabled child, will be decided on the same principles for children born following surrogacy as for other children. The Family Court has jurisdiction to make decisions about those arrangements in the event that a satisfactory agreement cannot be reached between the adults concerned. Although most parents will care for a disabled child, in some cases the parents may decide not to look after that child and the child is cared for by foster parents or adopted. At least with a surrogacy arrangement there are greater opportunities for the child to be cared for by a person who has had a close involvement in its birth. There are many circumstances in which unanticipated events occur in the conception, birth and life of a child who is naturally conceived. The risk of conflict will be less for parties in a surrogacy arrangement who have undergone a thorough preparation process and who must consider many of these possibilities before deciding to enter into the arrangement. This is not always the case for people who conceive naturally.

The member for Ballajura spoke about the use of assisted reproductive technology. That is regulated through the Human Reproductive Technology Act 1991. That act will also apply to any assisted technology procedure used in connection with a surrogacy arrangement. The Human Reproductive Technology Act currently provides that the only embryos that can be used for reproduction are embryos created by the fertilisation of a human egg by a human sperm. This will continue to be the case under the Human Reproductive Technology Amendment Bill 2007. I appreciate the point made by the member for Ballajura, who said that with the advance of science we do not know what the future will hold. That is the law as it stands today and as it is currently proposed to be amended. It is important to note that this bill provides that, in the case of multiple births, all children should have the same legal parentage. A parentage order cannot be made if it results in splitting the parentage of multiple birth siblings.

The Leader of the Opposition referred to reasonable expenses. That term is used in other legislation, including the Human Reproductive Technology Act, which prohibits the payment of valuable consideration for human genetic material. The issue of reasonable expenses will depend on the particular circumstances of each case. The intention is that the birth mother should not be out of pocket because of her involvement in the surrogacy. Sometimes a birth mother will be unable to work because of the pregnancy and birth. It is not unreasonable for her to be recompensed for lost earnings. Any payment of reasonable expenses must be agreed between the

parties. The birth mother may decide that she does not want to be reimbursed, but that is a matter for the parties. The Western Australian Reproductive Technology Council has oversight of legislation regulating reproductive technology, and this will include surrogacy arrangements using assisted reproductive technology procedures. The council has been developing the directions that will apply to all providers of ART services in connection with surrogacy. The development of those directions has taken into account the need for parties to consider a broad range of issues that have been alluded to by many members during the second reading debate. There is a distinction between timing for the child being given to the arranging parents and the application for a parentage order. There is nothing in the bill that prevents the arranging parents from taking the child home immediately after the birth or remaining in the hospital with the child and the birth mother during the first few days. The common expectation is that the birth mother would hand the child over shortly after giving birth. The bill provides that an application for a parentage order cannot be made until one month after the birth; however, the child can be in the care of the arranging parents prior to the order being made.

Clause 9 provides that it is an offence to be paid to introduce parties to a surrogacy. It is not an offence to introduce parties if no payment is involved with that introduction. It would not be an offence for a person such as a doctor or counsellor to receive normal payment for providing professional services in connection with a surrogacy.

Finally, when the member for Carine contributed to the debate she spoke about the recommendations made by the 1999 select committee after it inquired into the Human Reproductive Technology Act. The directions made under that act provide for counselling and other preparation of the parties. It also provides that surrogacy should be used only for medical reasons and only when all other avenues of having a child have been exhausted. The select committee recommended that the method of clarifying the legal status of children should be through the Adoption Act, but it was decided to have separate legislation based on the principles of adoption. That is what we have followed in this bill.

It is true to say that there are some minor deviations from what was recommended by the select committee of this house in 1999. However, the bill contains the broad thrust of what was recommended. The member for Carine went through the select committee's recommendations. It is clear that this legislation is substantially based on that committee's findings.

Dr J.M. Woollard: I believe, from the comments you have made, that you believe you have an answer to the concerns that have been raised. However, you haven't tabled those amendments. I am sure that you feel very confident that those amendments will do what you say they will do. However, sometimes amendments don't always do what we want them to do. Members would like to see those amendments before voting on the bill. The only thing we have heard about them is hearsay.

Mr J.A. McGINTY: It is not hearsay.

Dr J.M. Woollard: Maybe not, but it is on your word. We haven't seen the amendments in black and white.

Mr J.A. McGINTY: I think my word is a bit better than hearsay.

Dr J.M. Woollard: It is your word, but sometimes you get it wrong, too. We all make mistakes. A lot of people feel unhappy about having not seen the amendments before the consideration in detail stage. We will be voting on this documentation - that is, the bill we have in front of us.

Mr J.A. McGINTY: Members will vote on whether the bill will get a second reading. This is a free vote. Everyone on both sides of the house has the ability to vote yes or no to every individual clause. I have outlined to the member the nature of the amendment I will bring forward and support. It will abolish the right of the birth mother to change her mind and say, "I'm going to keep the child." At the moment, that right is absolute. The government proposes that there should be no right of veto for the birth mother if there is a genetic link back to the commissioning parents. Instead, there will be the ability to go to court, which is not possible under the legislation as it stands. Under the current legislation, if the women giving birth says that she wants to keep the child, that is the end of the matter; she keeps the child. A number of members, particularly on the member for Alfred Cove's side but also on the government side, have said that they do not support that, particularly in cases in which the genetic material comes from the commissioning parents rather than the birth mother. In those circumstances, the government will remove the birth mother's right to finally decide the issue and replace that right with the ability for the court to determine the best interests of the child, without giving absolute priority to the views of a birth mother who wants to keep the child. This issue arose in debate on Tuesday evening. Parliamentary counsel have been working on an amendment to that effect. However, that is a matter that can be debated. If the member is broadly supportive of the thrust of surrogacy, I think she should vote yes to the second reading so that we can then proceed to consider in detail that amendment and any other issues of concern. If she is opposed to the principle, she should vote no. I think that is the issue before the house today. It has not been possible to have the amendment prepared in the short time since the issue was raised in the house. However, I

am responsive to the debate that has occurred and I appreciate the merit of the argument that has been advanced, initially by the member for Dawesville and also by other members.

Dr J.M. Woollard: In that case I think I could possibly support it now, but I will reserve my right to not support the amendment when I see it in black and white.

Mr J.A. McGINTY: A very wise approach, if I may say. With those few words, Mr Speaker, I commend this bill to the house.

Question put and a division taken with the following result -

Ayes (35)

Mr P.W. Andrews	Mr J.C. Kobelke	Mr P. Papalia	Mr M.W. Trenorden
Mr C.J. Barnett	Mr R.C. Kucera	Mr J.R. Quigley	Mr T.K. Waldron
Mr A.J. Carpenter	Mr J.A. McGinty	Ms M.M. Quirk	Mr P.B. Watson
Dr E. Constable	Mr M. McGowan	Ms J.A. Radisich	Mr M.P. Whitely
Mr J.H.D. Day	Ms S.M. McHale	Mr D.T. Redman	Mr G.A. Woodhams
Mr B.J. Grylls	Mr A.D. McRae	Mr E.S. Ripper	Dr J.M. Woollard
Mrs D.J. Guise	Mrs C.A. Martin	Mr A.J. Simpson	Mr B.S. Wyatt
Mrs J. Hughes	Mr M.P. Murray	Mr T.R. Sprigg	Mr S.R. Hill *(Teller)*
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr D.A. Templeman	

Noes (12)

Mr D.F. Barron-Sullivan	Mr M.J. Cowper	Dr G.G. Jacobs	Mr T.G. Stephens
Mr M.J. Birney	Mr J.B. D'Orazio	Mr J.E. McGrath	Ms S.E. Walker
Mr T.R. Buswell	Ms K. Hodson-Thomas	Mr P.D. Omodei	Mr R.F. Johnson *(Teller)*

Question thus passed.

Bill read a second time.

Consideration in Detail

Clause 1: Short title -

Mr T.G. STEPHENS: I want to set the record straight about the coverage of comments that I made in the second reading debate. I want to make sure that the house knows that I am of the view that we have an outstanding minister in the Minister for Health.

Several members interjected.

Mr T.G. STEPHENS: No, there is no change of view.

Ms S.E. Walker interjected.

Mr T.G. STEPHENS: No-one. I am volunteering my comments. He is a minister who, as I have previously said, has -

Ms S.E. Walker interjected.

Mr T.G. STEPHENS: No. The member should just sit back and relax for a minute. He has contributed significantly to public administration. In his previous role as housing minister, I considered him to be the most successful housing minister - that is, despite my having been one - because he secured more funding from the budgets with which he was involved than I was ever able to do, and I was always very envious of his successes. I have expressed the view that he has the opportunity to be a great and outstanding health minister also, particularly if he secures from governments at both state and federal level the resources necessary to tackle some of the issues that would create the opportunity to focus on regional and Aboriginal health issues. I am of the view that there are vast needs, and focusing on those issues should, in my view, be the top priority, and I do not resile from that. *The West Australian* is wrong to have purportedly summarised my views by suggesting that I blame the health minister for the mounting challenges that confront the health portfolio. Most importantly, *The West Australian* is wrong to suggest that I see the removal of discriminatory laws against gays as being a fringe issue or a distraction. My view is that removing unfair discrimination is a core human responsibility.

Point of Order

Ms S.E. WALKER: This has nothing to do with the short title.

The ACTING SPEAKER (Mrs J. Hughes): I ask the member for Central Kimberley-Pilbara to bring his comments back to the short title.

Debate Resumed

Mr T.G. STEPHENS: I will be very quick now, Madam Acting Speaker.

Point of Order

Ms S.E. WALKER: We are talking about the short title. The member is talking about the Attorney General. This is not the Attorney General bill; it is the Surrogacy Bill. The member cannot keep blabbering about something that is not related to the short title in any way.

The ACTING SPEAKER: Member for Nedlands, I have spoken to the member for Central Kimberley-Pilbara. If he would address the short title, that would be good.

Debate Resumed

Mr T.G. STEPHENS: In the process of considering the short title, it is an opportunity, as the member for Nedlands should know, to deal with perhaps the architecture of the bill. This bill, as it now stands before the house in consideration in detail, is a bill that has been delivered to this place by a minister who -

Point of Order

Ms S.E. WALKER: We are talking about the architecture of the bill, not the architect - not that he is the architect. We are debating the short title; that is, the Surrogacy Act. The comments that are coming from the member's mouth have nothing to do with the short title.

The ACTING SPEAKER: I draw to the attention of the member for Central Kimberley-Pilbara that it is not about the architecture of the bill. It is primarily about only the short title and whether it should be the Surrogacy Act. Therefore, if the member would confine his comments to that, it would be appreciated.

Mr T.G. STEPHENS: I ask you to repeat that, please, Madam Acting Speaker.

The ACTING SPEAKER: It is not about the architecture of the bill. It is purely about whether this should be the short title.

Debate Resumed

Mr T.G. STEPHENS: On the question of whether this should be the short title, I think members will find that Erskine May's *Parliamentary Practice* creates the opportunity to have a brief discussion about the architecture of the bill. I will be very fast in dealing with it.

Point of Order

Ms S.E. WALKER: Erskine May does not say that a member can deal with anything he likes when talking about the short title. We have had rulings on this. The member for Central Kimberley-Pilbara has been in this house for only a short time. In the other place he could waffle on all he liked, but in this place he must be focused. He has to focus his mind on what is before the Assembly. It is not the ministerial portfolio of the Attorney General; it is the short title of the bill.

The ACTING SPEAKER: I bring to the attention of the member for Central Kimberley-Pilbara that this is not an opportunity for another debate on the second reading.

Mr T.G. STEPHENS: Absolutely.

The ACTING SPEAKER: Can the member please address the short title and bring his comments to a close.

Debate Resumed

Mr T.G. STEPHENS: Yes. I will conclude with this quick remark: I have always considered the removal of unfair discrimination as being a core human responsibility. In the view of some, once the short title is passed, it gives us the opportunity of considering legislation that some would consider removes another form of human discrimination; that is, discrimination against those people who want to be parents.

Point of Order

Ms S.E. WALKER: The member referred to talking about discrimination once we get past the short title. Madam Acting Speaker, you have now put this to the member six times. No member on this side of the chamber would get such latitude.

The ACTING SPEAKER: It is important that we move on with this bill. Will the member conclude his remarks?

Debate Resumed

Mr T.G. STEPHENS: I will be five seconds. Against that backdrop, I believe that anyone who works towards the removal of unfair discrimination is worthy of applause. Having said that, I still oppose this legislation. I see it as not in the best interests of the children who will be created through this process of surrogacy. In particular, I object to the parts that allow for the use of in-vitro fertilisation in this way.

Referral to Education and Health Standing Committee

Dr G.G. JACOBS: I have asked for the call on a couple of occasions. I would have liked to do this in a more timely spot. However, since I have now been given the call, and understanding the licence that was given to the previous speaker, I move -

That the house refers the Surrogacy Bill 2007 to the Education and Health Standing Committee.

Comments have been voiced on both sides of this house recently. The minister said that the legislation has been referred to a select committee. However, I point out that that select committee was in 1999. I have heard today that many people on both sides of this house are undecided about the bill. I believe they are undecided because we have not done enough work on this legislation. As the minister is prone to do, he has brought, if members will excuse the expression, ill-conceived legislation to this house, and we have to deal with major complexities in this very important bill. As the member for Churchlands said previously, this is the most challenging or the most difficult legislation - I think those were her words - that she has been presented with in her time in this Parliament. That says an incredible lot to me, because she has been a member of this place for many terms and has considered all sorts of legislation during that time.

We have heard today and yesterday about the issues surrounding the right of a surrogate mother to keep a baby, even though she may have no genetic material in that baby. Given all the permutations and combinations I talked about yesterday, it is all very confusing. We have heard from both sides about this confusion, which will lead to a crisis of identity and identity bewilderment, if we like, in a child: "Who is my mother; who is my father?" We will leave children with a non-identifiable, real biological parent. These issues are almost too difficult for us. However, we must deal with them, so I suggest to the house that we need time to do that. The minister indicated that, if we can be broadly supportive of this bill and deal with these issues in consideration in detail, at the end of all that, all the problems with it will be solved. I suggest we have a problem now and we will have a dilemma all the way through the bill.

The minister referred to enforceability issues, and about taking away the ability of the birth mother to keep the baby. Although the call on the baby will not be from the genetic parents, the matter can be taken to the Family Court of Western Australia and the court will decide, because the bill will not mandate that the arranging parents who have the genetic material have an enforceable right to the child. This bill is a legal and ethical minefield. As a practising doctor for 25 years, I have to say that this is the most difficult issue that I would have been presented with, both in practice and in legislation.

Many members do not even know that this debate is on. One member asked me what it was about.

Ms S.E. Walker: That is their fault.

Dr G.G. JACOBS: They do not know what it is about; they do not know it is on for debate and they do not know the implications. Many members are undecided about it and have said time and again that they will reserve their decision until the consideration in detail stage. We need to do much more work. The bill should be referred to a committee that can consider all its implications. That would allow the committee to hear recent, not pre-1999, submissions and considerations of all the people who can be put together to make this bill a useful bill that will supply the need for a limited number - admittedly nonetheless a needy number - of partners who have an egg and a sperm to contribute towards making a human embryo but do not have the ability to grow that human embryo to a baby.

The other extensions of permutations and combinations are a minefield. I believe that they will produce a significant dilemma and bewilderment in not only parents but also children and the community. This motion for referral to a committee is not a stunt. This is a sincere reading of the feeling among the members of this place. By the minister's own admission, there are some significant problems with infertile couples; for example, a female might not have a uterus in which to grow a baby nor might she have an egg; and the male might not have a sperm to contribute. In those circumstances, they will need the donation of an egg and sperm to create by in-vitro fertilisation an embryo to be implanted in a birthing mother, a separate person. Whose baby will it be? As I said during the second reading debate, adoption processes require consideration for what is best for the child. Adoption involves a biological mother and a biological father whose circumstances, unfortunately, prevent them from giving the child a start in life, a good education and a good upbringing. A couple who are desperate to have a child and who are exceedingly loving, nurturing and caring might then come along. I cannot help wondering that this bill is not principally about the child but about the parents. We should be thinking about the

child and what environment this legislation will provide by creating in the child an identity crisis and identity bewilderment. It will open up a Pandora's box. We have not thought this through. This bill has hit the table in Parliament and raised many questions. I suggest that it actually poses more questions than it answers. We need a forum in which to review the bill. I understand the member for Carine was on the 1999 Select Committee on the Human Reproductive Technology Act 1991, but that is almost eight years ago. This is a significant bill for the people of Western Australia and I think it deserves much more homework. Given that many members are undecided and have a lot of questions about it, the bill, which is quite ill-prepared, needs to be reviewed. The minister himself foresees the conundrum, the dilemmas and the confusion that will be caused by this bill. As a member from the other side said, "It is so bewildering and challenging, that I find it very difficult to get my head around, and to understand all those permutations and combinations; I have difficulty coming to terms with all the possible consequences. None of what is in the bill has been reassuring." As I say, it creates more dilemma and confusion. I do not oppose the whole bill. In medical practice over the years, I have seen couples who are genuinely infertile, who have an egg and a sperm in their loving-couple relationship and who genuinely want to have children. For some reason, the woman has had a hysterectomy because of a medical condition - a common one is endometriosis, a disorder of the lining of the womb - and genuinely wants to have children. I am not one who would deny that couple a child. However, let us get the surrogacy arrangements right. We could not even get the basic bit right in the scenario of a genuine couple in which the female could contribute the egg and the male could produce the sperm so that an embryo could be created and implanted in a birth mother and the baby grown to full term, thereby ensuring that the baby would be the child of the genetic couple. We could not even get that right. We now have the situation in which the birth mother must keep the child for a minimum of 28 days.

Mr J.A. McGinty: That's not right and you know it.

Dr G.G. JACOBS: I suggest that, in the 28 days, there will be a bonding situation.

Mr J.A. McGinty: You are misleading people.

Dr G.G. JACOBS: How many days?

Mr J.A. McGinty: Zero.

Dr G.G. JACOBS: The minister said that people could not go straight to the King Edward Memorial Hospital and take the baby because it was not fair; we cannot do that. It is not as though people are standing outside the labour ward and, as soon as the woman has had the baby, it is grabbed.

Mr J.A. McGinty: You are not being honest.

Dr G.G. JACOBS: I am not blatantly being honest -

Mr J.A. McGinty: You got that right.

Dr G.G. JACOBS: I am not blatantly being dishonest. The minister can correct me. This does not change the overall situation. We cannot get the basic bits right about genuine couples with a genuine surrogacy need and issues about enforcement. If a birthing mother wants to keep the baby, she can, even though she has contributed no genetic material. That is a major concern. The minister could not even get that bit right, despite all the other issues and dilemmas about different combinations and permutations. For that reason I think we need to go back a step and do the homework and bring this bill back to the Parliament. I know the minister is not happy about that. The issue is that we need to get it right. It needs a lot more homework on it. If it came back in a form that serviced the genuine needs of infertile couples and we dealt with the issue of enforceable arrangements between a surrogate mother and the genetic parents about whose baby it was, I would be the first to support it. I know from medical practice over the years that there are genuine couples who could be serviced by this bill. I would move that the house step back from this bill, refer it to the Education and Health Standing Committee and that the committee come back with a bill which is informed and which has received input so that people can overcome all the confusion and difficulties that they have at this time.

Mr J.A. McGINTY: There are three reasons we should not support the motion. The first is the report of a committee of this Parliament on the question of surrogacy. It is of relatively recent origin - 1999. If members want to put an argument that circumstances have changed dramatically in the past eight years, I have not heard that argument advanced so far.

Dr G.G. Jacobs: What is it called?

Mr J.A. McGINTY: It is the report of the Select Committee on the Human Reproductive Technology Act 1991.

Dr G.G. Jacobs interjected.

Mr J.A. McGINTY: The committee looked extensively at the issue and recommended legislation like the legislation now before the house. The member for Carine was a member of that committee. The recommendation was that legislation be drafted to provide for surrogacy arrangements. That was eight years ago in 1999. It was when the Liberal Party was in power. A committee of this house looked at a host of matters to do with human reproductive technology; in particular, surrogacy. It was a joint committee of this house. It came forward with recommendations for the content of the legislation. Substantially, this bill reflects the recommendations of that select committee, which met over a long period. We have substantially carried forward the recommendations of that committee. There is only one - the member for Carine may be able to correct me - about which there has been some departure. I will quickly go through the recommendations. They were: the best interests of a child are to be paramount in surrogacy arrangements - we have done that; access to identifying information - we have done that; counselling to be mandatory - we have done that; surrogacy be allowed only for medical reasons - we have done that. Only when a woman is infertile or incapable of carrying will surrogacy be allowed, and not in other circumstances. I continue: selection criteria for surrogate mothers - that is contained in the bill; surrogacy is to be non-commercial and altruism must be the only basis for surrogacy arrangements - we have done that; reasonable expenses only to be paid - we have done that, there is to be no commercial surrogacy; there is a recommendation concerning IVF procedures to be covered by Medicare - it will be a consequence of the passage of this bill that we will raise that matter; and finally the report states -

> That legislation be drafted to provide for surrogacy arrangements as outlined in Chapter Eighteen and to clarify the legal status of surrogate children and their commissioning parents as a matter of urgency.

The only part where we have differed is in relation to the Adoption Act, which was recommended as the framework to apply to surrogacy arrangements. We have picked up the adoption-type approach but done it under a different guise. Exactly the same principles apply. The committee report is available; it is here.

Dr G.G. Jacobs: Where has it been?

Mr J.A. McGINTY: It was thoroughly investigated over a very long period when the opposition was last in government. This is a recommendation that came from a committee then.

Dr G.G. Jacobs: I wasn't here.

Mr J.A. McGINTY: I do not care whether the member was here or not.

Dr G.G. Jacobs: I do not know; I wasn't even in this place.

Mr P.D. Omodei: He is entitled to his point of view.

Mr J.A. McGINTY: Of course he is, and he has put that point of view. I am putting the counter point of view to say that we have had a committee.

Mr P.D. Omodei interjected.

Mr J.A. McGINTY: He was, in what he was saying.

Mr P.D. Omodei: You are not right.

Mr J.A. McGINTY: I am. The member was not here when it was being debated.

I make the point that the committee met over a very long period and it dealt with some very difficult issues. It has come up with recommendations that we are now seeking to implement. In that context why do we want these matters referred yet again to a committee no doubt for exactly the same recommendations to come forward again? What is the reason for that? It would be different if we had had a big development in technology during this period when suddenly the whole approach to IVF was different or because there had been a significant development elsewhere in the world. What we are doing with this legislation is substantially bringing Western Australia up to date with that which has been applicable in other states either because of legislation or because of the absence of legislation. That is what we are doing here; there is nothing particularly radical about this legislation. It follows from recommendations of the select committee that this house itself set up back in the late 1990s. I believe that those recommendations are still sound. That is why we have sought to implement them. That is just my first point.

Ms S.E. Walker: I bet you haven't even read them.

Mr J.A. McGINTY: Thank you, member for Nedlands, for that contribution. We have the recommendation; it has been to a committee. I can only conclude - I am sorry to come to this conclusion, member for Roe - that this is simply a delaying tactic by those who oppose the bill.

Dr G.G. Jacobs interjected.

Mr J.A. McGINTY: Why does the member want to send it back to a committee? He has not raised an issue that the committee needs to look at.

The second point I make is that this is an unusual debate because it is a free vote. In the past few years we have had several free votes.

Dr E. Constable interjected.

Mr J.A. McGINTY: It might well be for the benefit of Independent members. As the member in particular knows, votes are normally along party lines. The benefit of sending something to a committee is that it sharpens thinking, a recommendation can come back, and each party can then adopt its position, which will determine outcomes. I make this point: the best committee to deal with this is a committee of the entire house because it is a free vote and everybody has to make up his own mind. That is the only way we will ever get to deal with this legislation. How many members are on the Education and Health Standing Committee?

Mr T.G. Stephens: I'm on it.

Mr J.A. McGINTY: I am delighted to hear that! The conspiracy is revealed!

Mr C.J. Barnett: Send them on an extensive inquiry!

Mr J.A. McGINTY: I now have a fourth reason to oppose this motion! When there is a free vote, as a matter of conscience or whatever reason, the only committee that can ever deal with it adequately is the committee of the entire house. Every member who wishes to have input may then do so. The government will set aside the time, as was done recently with the living wills legislation, which was also subject to a free vote. The only way in which these matters can be resolved is by everyone who wants to do so participating in the debate, raising the issues, having the matters resolved and then voting on each clause.

Ms K. Hodson-Thomas: Will you give an undertaking that you will not leave it until Thursday afternoon, when many members will have left the Parliament and will be unable to participate in consideration in detail? Members believed they would have the opportunity to review every clause of the legislation because of all of those variables.

Mr J.A. McGINTY: I will make two points on that. This is obviously something that will take a considerable period. I hoped that we would have made some progress this afternoon on clauses that are uncontroversial, and that when we came to a clause that went to the heart of the bill or that could be seen by some members to be controversial, we would have adjourned the debate and resumed some time next month. It was never my intention to press ahead beyond that point today. I thought that a clause like the short title might have proved less controversial than it has.

Dr E. Constable: It is often the one that takes the longest time.

Mr J.A. McGINTY: I have seen that often enough.

Ms K. Hodson-Thomas: Will you give an undertaking that if there is an issue with a particular clause and members feel they need further briefings by your advisers, not in consideration in detail, we can adjourn the debate and get further briefings? Do you give that undertaking?

Mr J.A. McGINTY: Totally, because I think that is the only way in which this legislation can proceed. The Department of Health reproductive technology counselling staff are professional experts in this area and should be made available to every member of this house.

Dr G.G. Jacobs: So you recognise that it is not easy?

Mr J.A. McGINTY: Nobody ever said it was. I think that we have the balance right in this legislation. That is not to say that it cannot be amended to be improved, as was the living wills legislation as it progressed. The real problem with this motion, apart from the fact that this bill has already been to a committee, is that it is not amenable to the resolution of the issues. It does not matter what the committee recommends, although it will be instructive, because each individual will then take his or her own individual position on this legislation. That is the difficulty with sending a matter like this to a committee. I am sure that the members for Nedlands, Churchlands and Alfred Cove will still have the views that they now hold and the issues they wish to pursue regardless of the committee report. That is the essential problem with this motion, because this is an unusual debate, coming back to each individual member. The committee system relies substantially on the party structure that underpins the normal debates in this house. That is the problem as I see it. There is no intention to push this through late at night or on a Thursday afternoon; in fact, it would be impossible for me to do so. Incidentally, member for Carine, members should be present when Parliament is sitting in any event, but I will put that to one side because they are often not.

I urge members to set aside the time. We will not be returning to this bill for a month. There is plenty of time to have briefings by the experts and to consult other experts in this matter, such as people from a religious or philosophical background, medical experts or a whole host of people who have experience in this matter. If anyone wants a briefing during that time, I offer to make available the expert staff to go through the issues. I undertake next week to put on the notice paper the amendment on the right of the birth mother to retain the child.

Dr J.M. Woollard: I will be supporting this motion because the amendment that will be placed on the notice paper next week impacts on the Family Court Act. We have already moved into the short title - the Surrogacy Act 2007- but that short title is based on the various acts that will be amended. In view of the fact that you have said that you intend to make changes to this bill, I believe it is totally inappropriate that we have any debate on this until we actually see what is in the amendment.

Mr J.A. McGINTY: There is one amendment; I have explained the content of it. It will be on the notice paper next week. I am not proposing to deal with that this afternoon. In fact, the motion before the house will effectively stop debate on this bill for many months. That is the intention.

Dr J.M. Woollard: You are saying at the moment that you want to get through some parts that are really not controversial. I'm sorry, but because those acts are involved -

Mr J.A. McGINTY: What is controversial about that?

Dr J.M. Woollard: The Family Court Act - what changes will be made, and how the Family Court Act will be affected by this bill, and also the surrogacy arrangements. These depend on how you word the amendment. Some of us are not happy with the definition you have here of "surrogacy arrangement". This bill should be put on the table now. Debate should be adjourned now. If debate is not adjourned now, and you intend to move through some of these clauses, I will support a referral to a committee because I think that is wrong.

Mr J.A. McGINTY: Not for the reasons advanced by the member for Alfred Cove, but because of the lateness of the hour, once the motion moved by the member for Roe - the matter of the reference to the committee - is resolved, it is my intention to adjourn the debate because of the lateness of the hour. This is not because of the arguments advanced by the member for Alfred Cove, because, frankly, we are not dealing with a reference to the Family Court Act in what we are doing. Putting that to one side, it is the intention to adjourn the debate once this resolution has been made. It is a fairly straightforward proposition. First, the bill has already been to a committee; second, the committee is not the appropriate means to resolve a conscience issue. That is the real problem, as I see it, with what has been proposed by the member for Roe. The matter will come back from the committee, and then we will all exercise our own consciences in voting on this issue, and we will all want to get into the detail of it.

Dr J.M. Woollard: If it goes to a select committee, and I am on that committee, I would be happy for it to go to a committee.

Mr J.A. McGINTY: The problem with a referral to a committee is that it excludes everyone else from consideration in detail. That is the reason I urge members not to support this motion. I probably cannot usefully add anything more, but I would simply urge members not to support this resolution on the basis that the intention is that once this motion is put, if it is defeated, we will not proceed any further with consideration of the bill.

Ms S.E. WALKER: I support this motion, although I am not sure whether the proposed committee is the appropriate vehicle. We are being railroaded here, and that is the reason I support the motion. If, as the Attorney General says, we adjourn after this motion, that will give some members the opportunity to look at the previous report. However, the report is eight years old. Megan Anwyl, the former member for Kalgoorlie, is no longer a member. The then member for Joondalup, Chris Baker, did not agree at all with the recommendations of the report, but the Attorney General did not tell us that. Members must look at the report themselves. There are some disturbing things in it in relation to this bill.

Mr M.P. Whitely: If you set up a committee on this issue, you're never going to get a unanimous report.

Ms S.E. WALKER: This is an important issue. I take the Attorney General's point, that members of Parliament should be in Parliament when it is sitting. Some people may not be here because of medical reasons or other commitments, but generally members should be present and taking part in debate. I want to read a couple of the recommendations of the report. I asked about statistics. The Attorney General held up a great big thick report, but only a small part of it relates to surrogacy. On page 250, the report states -

> As found by the UK Review team, it is difficult to obtain "hard evidence about the incidence, nature and outcomes of surrogacy arrangements". The actual incidence of surrogacy arrangements in Australia is unknown.

It is unknown, and yet the Attorney General wants us to vote on it. We say we are concerned because we do not know what is going on. Legislation is often introduced in this chamber and the Attorney General does not have the answers during consideration in detail. The report continues -

> Extrapolating from United States data, it was estimated that over the decade up to 1987, about 40 surrogate births would have occurred in Australia if surrogacy had been legally tolerated.

It would have been 40, if they had been tolerated. I read that the then member for Joondalup had not supported the recommendations on surrogacy at all, but that was not brought before the Parliament.

The report states also that all members of the select committee "wish to prohibit insemination of a surrogate mother with donor semen". What does that mean? Perhaps the member for Carine can tell me.

Mr P.D. Omodei: It means they are not in favour of this bill.

Ms S.E. WALKER: That is found at page 271 of the report. That means that if the egg has been produced by the surrogate mother, it should be unlawful for that egg to be fertilised by donor semen.

That is another reason that we need to go through this bill in more detail. I deal with many of the bills that come into this place. Many things get through this place that should not get through this place. That is because the Opposition does not have the resources to scrutinise bills properly, and everyone is under pressure. We have an obligation to scrutinise this bill. Surrogacy is a very emotionally charged issue. Members should look at this eight-year-old committee report that the Attorney General is waving around. I have not read all the report, but it is very comprehensive. I raise those points, because this bill does not look anything like the recommendations in the report of the Select Committee on the Human Reproductive Technology Act.

Mr M.J. COWPER: I reserved my decision to speak during the second reading debate, because I intended to raise my concerns during consideration in detail. However, now that my colleague the member for Roe has moved this motion, I need to add my comments in support of the motion.

I have received some correspondence from a good friend of mine, John Case. He is the father of Steve Case, who was mentioned by the minister in the second reading speech on this bill. Steve and his wife, Desiree, desperately want to have a child. I knew Steve when he was a lad, running around at Dampier. His father, John, was working at Hamersley Iron at the time. He was also involved with the sea rescue group in Dampier. Any child who came into that family would find itself in a very warm and loving environment. It pains me to oppose this legislation, knowing that my friend is waiting in great angst for this legislation to become law so that he and his wife can achieve what they are looking for. However, I would hate to think for one moment that we were rushing this bill through this house -

Mr J.A. McGinty: I do not intend to rush it through. I will be adjourning the debate fairly soon, and that will give members another month to consider the bill.

Mr M.J. COWPER: We need to give this bill careful consideration.

Mr J.A. McGinty: I agree.

Mr M.J. COWPER: I am pretty sure that those members who sat on this side during the last division would like the Case family to have a child.

Mr J.A. McGinty: You voted against allowing them to do that!

Mr R.C. Kucera: Are you suggesting that a committee could give the matter greater consideration than all the members of this house put together?

Mr M.J. COWPER: I am saying that we need to be very careful in our consideration of this bill.

The ACTING SPEAKER (Mr A.P. O'Gorman): Order, members! The member for Murray has the call. It is not appropriate for two other members to have a discussion across the chamber. I would like to hear the comments of the member in silence, without other members interjecting across the chamber.

Mr M.J. COWPER: Thank you, Mr Acting Speaker.

I would like to see my friend's son and his wife fulfil their desire to have a child so that my friend can become a grandfather. However, that does not mean we should rush headfirst into enacting legislation that may have serious impacts not only today, but also tomorrow. Given the technological advances that are occurring almost on a daily basis, if we set precedents today, it may have serious impacts further down the line. Therefore, we should proceed cautiously and conservatively on this bill, rather than rush in headfirst.

I believe committees take a bipartisan approach when they are formulating their views. It has now been discovered that the report that has been referred to did not delve into all the issues surrounding surrogacy. I will

take the opportunity during the break to make myself familiar with that report and to see whether all the issues that have been raised in this debate have been covered in the report.

Mr J.A. McGinty: I think they have.

Mr M.J. COWPER: As I have said, I will take the opportunity to look at that further. We all have a responsibility to ensure that we produce a bill that will serve the people of Western Australia at the optimum level. I do not believe that rushing ahead with this bill now in its current format will achieve that.

Mr P.D. OMODEI: I support the motion moved by the member for Roe, for a number of reasons. I preface my comments by saying that I have great sympathy for people who are unable to have a child, for whatever reason. The Minister for Health has been caught out on this issue. The minister said that this matter was dealt with by a parliamentary select committee inquiry nine years ago. Fortunately, the member for Nedlands, being a lawyer and a diligent member of Parliament, has checked that out and has found that is not the case.

Mr J.A. McGinty: Yes, it is.

Mr P.D. OMODEI: It is not the case that the report of the committee agrees with what the minister is saying. A committee of this house would be able to gather together all the research people, and provide information to me, as the member for Warren-Blackwood - given that members will be given a free vote on this bill - about issues such as reasonable expenses, and about whether a woman can act as a surrogate if the sperm and the egg have been donated by persons other than the persons who have entered into the surrogacy arrangement. Another concern is that section 23(1) of the Human Reproductive Technology Act outlines clearly the persons who are eligible to undertake in-vitro fertilisation procedures. That will apply also to this bill. This bill does not deal with the issue of whether the equal opportunity legislation may have an impact down the track on who those eligible persons may be. I believe we will create a monster if we allow same-sex couples - male or female - to find donors and create a child. During the second reading debate I said that this bill should not necessarily be about the two people who want to have a child. I prefaced my remarks by saying that I have sympathy for a married couple who, despite being able to produce eggs and sperm, cannot have children. However, there is no way that I will agree to people finding a donor - whether it be a sperm or egg donor - to create a child. In the end, the child is the most important part of this process. Children should not be viewed as a tradeable commodity. Somewhere down the track the Equal Opportunity Act may allow same-sex couples to use this legislation; the minister cannot guarantee that that will not happen. To me, that would be an anathema. That is one of the reasons that I oppose this legislation, even though I have sympathy for married couples who cannot have children. If the minister had introduced legislation that allowed a married couple to have children via a surrogate arrangement -

Mr J.A. McGinty: What about a heterosexual de facto couple - would you support them?

Mr P.D. OMODEI: I am sorry, but no. In my view, a heterosexual couple should be married before they are allowed to enter into a surrogacy arrangement. They are the principles by which I live my life. The Minister for Health does not have to agree with them; indeed, I do not expect him to. However, to suggest that the member for Roe is dishonest in talking about the eligibility of a child in relation to when a parenting order can be signed -

Mr J.A. McGinty: He said the child couldn't be taken home for a month.

Mr P.D. OMODEI: The explanatory memorandum states that an application for a parenting order cannot be made until the child is at least 28 days old. With whom will that child reside until it is 28 days old?

Mr J.A. McGinty: With the commissioning parents.

Mr P.D. OMODEI: I do not read the explanatory memorandum that way at all. The minister's explanatory memorandum states that that provision gives the birth parents time to consider the decision of consenting to the making of the order following the birth of the child. The Education and Health Standing Committee could examine that issue and the legalities of what are reasonable expenses and whether somebody is receiving payment for a child. Again, reasonable expenses in one district or one part of the city could be totally different from reasonable expenses elsewhere. When do reasonable expenses become a payment? Nobody can explain that to me. The bill fails to define "reasonable expenses". The bill is not prescriptive enough to give me confidence that the legislation will be properly adhered to. On that basis, the member for Roe's idea is a good idea. It was obviously suggested in all sincerity. The Legislative Assembly has only two weeks left in this sitting block and then it has another two weeks, followed by a seven-week recess. That brings us to the middle of August. Given a bit of flexibility, I would think that the Education and Health Standing Committee could report between now and Christmas. It seems to me that the minister is proceeding with haste. I am sure that the Minister for Health will go down in history as the greatest social engineer who has ever set foot in this Parliament. If that is what he wants, good on him! I have not agreed with many of the bills that he has introduced into Parliament, and this is one of them. I support the member for Roe's suggestion.

Mr M.P. WHITELY: I will be brief. Members have been given a conscience vote. Every member of this Parliament has a duty to participate actively in this vote and to vote according to his or her conscience. The idea of sending this bill to a committee smacks of delegating one's conscience. That is inappropriate. Each member is responsible for examining his or her conscience and for participating fully in the consideration in detail stage. I will not support the motion moved by the member for Roe.

Dr J.M. WOOLLARD: I accept that the Minister for Health has said that he will adjourn this debate after the member for Roe's motion has been debated. During the debate on this bill yesterday and today, the member for Roe introduced some concepts that I had not been aware of. I am concerned that this bill is following on from a 1999 report and that it is basically a result of that report's recommendations. I have asked the parliamentary staff to bring me a copy of that report. I was quite alarmed when the member for Nedlands read from that report. That the bill is following the select committee's recommendations was confirmed by the member for Carine. I accept that certain decisions will be made by the Family Court. However, if we allow a surrogate mother to provide an egg for a surrogate arrangement, the Family Court will have to consider the rights of both parties. The bill does not give any assurances that a couple who enter a surrogacy arrangement will be allowed to raise the child after it is born. If the Family Court bases its decision on genetics, it will be a matter of the surrogate mother versus the couple, one of whom - it may be both - is infertile. Without having seen how the amendment reads, I believe that if a surrogate mother contributes an egg in a surrogacy arrangement, the husband's sperm will not count because the surrogate mother will be able to lay claim to the child. This legislation must be clear. The minister said that this legislation would assist couples who are unable to conceive a child. Given the drafting of the bill, and the minister's comments, I am not sure how this matter will evolve. I am not sure that I agree that the bill should be sent to the Education and Health Standing Committee. The member for Churchlands, who is not in the chamber at the moment, suggested that the bill be sent to a select committee. The member for Churchlands has been a member of the Education and Health Standing Committee. I would be happy if this bill were sent to a select committee. I have told the minister that I would like to be involved in that committee. At the very least, I would want to read the report of the select committee or the Education and Health Standing Committee very carefully before debate on the bill continued in this house. Most members support the concept of surrogacy; however, we are very concerned that it is unclear how that concept will be actualised. That being the case, I will support the member for Roe's recommendation that this bill be sent to the Education and Health Standing Committee. It is important that we look very carefully at this issue.

I was also very alarmed when the member for Roe said that people outside the Parliament were unaware that this bill is on the table. All members certainly need to look at this legislation, and when they come into this house, they should not vote according to factional divisions.

I support the concept of assisting couples when one of them is infertile for some reason. However, we need to see the amendments that the Attorney General will make to this bill and have time to consider them. Also, I need to look at that 1999 report. The Minister for Health has said in this house that this legislation is based on recommendations of a committee. The member for Nedlands has said that it is not based on recommendations of a committee. That being the case, I believe it is important that we send the legislation to a committee that will report to us and perhaps show us what was put forward in 1999 and how that will impact on the various acts. If the member for Roe's motion is passed, I hope that the legislation will be referred to a committee after the minister has put forward the amendments that he intends to make to this bill, so that that committee will have before it the changes that the minister has said the parliamentary draftsmen are currently putting into effect. I would have been happy for the debate to be adjourned. However, as we are to take a vote on this issue before the house is adjourned, I indicate that I will support the member for Roe's motion.

Mr J.E. McGRATH: I have listened to what has been said. I voted against the second reading of the bill, and I did it for one reason. I had some concerns. I went to the briefing. All members on this side had an opportunity to go to the briefing. I think there might have been only a handful there. However, I have some concerns about what would happen if the surrogacy mother decided she wanted to keep the child. I have listened to what the minister has said, and I am prepared to look at amendments that the minister will put forward. I also agree with the minister that sending this back to a committee will do nothing. It will not change the minds of the people on this side who have certain views. We should be our own committee. Members of this Legislative Assembly can go through the consideration in detail stage and keep this bill going for as long as we want to, until we are satisfied with it. In the meantime, each of us could be a committee of one and do the research that we need to do. We can go away and ask questions and have briefings by the department. I believe that we should come back and go through this legislation clause by clause. If there are clauses that we have concerns with, we should thrash that out. If the legislation goes to a committee, it will just come back to us and we will all have various opinions and still have some concerns. Therefore, I believe it would be a total waste of time for this legislation to go to a committee, and I cannot support the motion.

Debate adjourned, on motion by **Mr J.A. McGinty (Minister for Health)**.

House adjourned at 4.54 pm