

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON SURROGACY MET IN
COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON 1 JULY 2008**

Mr NICHOLAS JAMES OVERTON, AUSTRALIAN CHRISTIAN LOBBY, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Ms Thorp) - Thank you very much for taking the time to appear before us. I know you have been before committees before or at least you have briefed the Legislative Council.

Mr OVERTON - Briefings, not committees such as this.

CHAIR - This is slightly different in the sense that you need to be sworn and what you tell us does become evidence for the purposes of our report. You are covered by parliamentary privilege but it is advisable not to discuss what you have said here in this committee until the report is out. Have I explained that properly, Mr Secretary?

SECRETARY - Yes, that is fine Madam Chair. I think you have the material there.

CHAIR - We will go through it.

Everything you say today to this committee is protected by parliamentary privilege and this is to allow you to speak freely. However, once you leave the committee room I must advise you not to specifically discuss your written or verbal evidence with anyone until the committee has made its report to the Legislative Council. You are free to speak generally about any issue to anyone but please do not refer specifically to anyone about the evidence you gave to the committee until the report is published.

Mr OVERTON - So in terms of making statements on our position that is fine as long as I do not refer to this or to the submission put here?

CHAIR - That is right.

Our normal practice has been to give witnesses the opportunity to address the committee and then towards the end of the time available ask you some questions.

Mr OVERTON - Okay that is fine. How long do we have, just out of interest?

CHAIR - Half an hour to three-quarters.

Mr OVERTON - That is fine.

CHAIR - We look to be finishing by 12.15 p.m. or 12.20 p.m..

Mr OVERTON - That is great.

Thank you very much for the opportunity to be here. I really do appreciate the invitation. You have a copy of our submission so I guess you are aware of the position of the ACL, the Australian Christian Lobby.

I have a couple of things by way of opening remarks. I want to preface everything that I say today, as we did in the submission, by saying that we absolutely sympathise with the deep pain felt by infertile couples and those wishing to have children who find they may not be able to do that. These are complex issues and people do find themselves in some very painful and challenging circumstances from time to time.

As you would have picked up from our submission, we believe that any discussion of an issue such as surrogacy needs to consider the best interests of the child.

I am aware that sometimes in a debate such as this there is almost an underlying assumption that if a couple desperately want to have children they should be able to do that at all costs. I am not taking away from a couple's desire to want children, however desperately that may be. I have children myself and I can fully appreciate that desire. It is obviously a natural human desire. However, I think sometimes life presents us with challenges and things that are outside our control, even though we may not wish to be in those circumstances. So I guess I just want to throw that comment in there, to say that I think we tend to focus perhaps more on the rights of the parents in a situation like this than on the rights of a child. I just want to encourage us to ensure that we do think about the children and their rights throughout this debate.

Of course, as you would be aware, we do have concerns and would like to see the current laws in Tasmania maintained, from the point of view that we have concerns about the complexities and possible legal and relational challenges and difficulties that can arise from surrogacy. We have listed some of those in our submission. You may have some questions in regard to that.

We often talk too about altruistic surrogacy, which of course is what this is about, as far as I am aware. I understand why we say that and I understand that it can certainly be altruistic in terms of the parents, but is it in fact altruistic for the child?

We have many sad situations in society today where often people do struggle with their origin. There is genetic bewilderment and people coming to terms with their origin and with their identity, particularly in terms of donor conception and so forth. Obviously surrogacy opens up further that whole gamut of options and possibilities, and we would have some concerns about that.

I do not want to go through all that we have already put there in writing. Some more things will come out when questions are put to me, I am sure. I am happy to leave my opening remarks there and take some questions.

CHAIR - You raise the concerns that are raised by people across the whole range of opinions on surrogacy - for example, genetic bewilderment, the child possibly becoming a commodity, what happens if the child is disabled - and all these things are very real. But the evidence we have been hearing is that, as long as the people involved have gone through appropriate counselling and have thought those issues through, then that should be okay. But I take it you do not agree with that position?

Mr OVERTON - I have a couple of different things to say in response to that. There is certainly an argument, as I am sure you have read and possibly heard, that a pregnancy

for a woman is different on every occasion. We would pose the question, is it possible for a lady who is a surrogate to know how she is going to feel, in spite of going through everything and receiving counselling, trying to think through every possible scenario? I think it is perhaps unrealistic to just assume, therefore, that everything should be fine.

You would be aware of the Kirkman case, I am sure, that we have referred to. That is hailed as a successful surrogacy case on the whole. But certainly the two ladies involved there, and I cannot think of their names just now - Linda and Maggie, I think - both said very clearly that in spite of doing everything they possibly could to ensure the best possible outcome, it was still up to Linda at the end of the day to decide whether she was going to hand the child over or not, depending on how she felt at the time. I don't know what evidence you have heard but certainly even people who have had some of the better outcomes in this still say that if a woman is not able to hand over the child she needs to be able to retain it and remain its mother.

That, in itself, provides for all sorts of possible complexities, I think, and relationship breakdowns and so forth. There are examples, one of which I think we referred to in the submission, where it was two years after handing the child over to the commissioning parents that the surrogate mother took them to court to regain custody of that child. I do not know what cases you have heard - you obviously know of one of them - but sometimes we have to give these things a bit of time to actually understand what the possible consequences may be down the track.

CHAIR - Don't you think that the counselling can sort the issues out? I also refer specifically to the possibility of disability being involved or people changing their mind.

Mr OVERTON - Obviously there is a possibility of disability. I assume what you are referring to there is a possible termination of pregnancy or - and there is a case that we have referred to as well where both couples did not want the child - the commissioning couple and the surrogate did not want a child because it was disabled. My question would be what do you do in a situation like that. I don't think counselling can solve that issue because, at the end of the day, in spite of counselling that is where couples get to.

Don't get me wrong, counselling has a place, absolutely, but all of us in all sorts of situations can never fully appreciate how we are going to feel, how we are going to react, how we are going to behave until we actually walk through that circumstance.

The other side, again - I guess that question comes again from a premise of counselling for the parents - the commissioning parents, the surrogate involved and, perhaps, donors and so forth, but I will still come back and say, 'What about the child?'. No amount of counselling of the parents could deal with potential genetic bewilderment and some of those blurred family relationships that the child may grow up experiencing.

Mr WILKINSON - Nick, I know of a couple of circumstances where it is happening now. They are jurisdiction shopping. People go to another State or another Territory and become pregnant, they then come back to Tasmania and go through the process and the doctor delivers the child. That is what is happening now. Should Tasmania be a part of what is happening or should we let these people fly to Sydney, ACT, wherever it might be?

Mr OVERTON - We would like to see it happening as little as possible and so one of the reasons that we do not want to see the law change is to not encourage it and not increase the likelihood of it taking place.

CHAIR - Retain the hurdles, if you like, that currently exist.

Mr OVERTON - If you want to look at them as hurdles. I don't necessarily see them as hurdles because I do not necessarily see it as a positive move in the first place. I actually see it as a protection, more than anything, particularly for the surrogate and particularly for the children that will be the result of that.

Who in fact is the legal parent at the moment in a situation like that in Tasmania? Is it the birth mother or is it the couple - you know, the mother who brings the child back to Tasmania?

Mr WILKINSON - As I understand it, it is the birth mother.

CHAIR - Until that is changed by some other means.

Mr WILKINSON - Like a family court with a parenting order.

Mrs RATTRAY-WAGNER - For example, a parenting order.

CHAIR - Or adoption.

Mr OVERTON - That very issue creates a complex situation, doesn't it? I personally do not feel that that is a good enough reason for us to change our laws here and, certainly, where it has happened - and you have just had Senator Conroy here of course - I wholeheartedly hope that everything works out for the best for those children who are already here in the world as a result of surrogacy, and in Senator Conroy's case I sincerely that their children do not experience some of the things that we are talking about. I hope all of those concerns are minimised but I am not confident of that because of what we believe about the potential consequences.

I guess intentionally creating a situation where we are bringing children into the world under these circumstances is different to dealing with situations where we already have children in very challenging and tragic circumstances at times, which of course we will talk about as well. That is a difficult question, I think, Jim.

Mr WILKINSON - What about the genetic bewilderment? It has concerned me in relation to previous matters that have come before the House that parents are not willing to allow the child to find out who they really are, might not tell a child of their real father or real mother or real parents, and the child struggles with that. I know of a number of instances where they have struggled with it quite deeply during their lifetime. That, you could argue, could be overcome by there being an asterisk or whatever on a birth certificate to show that person that they would be able to look further into an area which was classed as confidential to find out their real roots. That might be a situation where genetic bewilderment could be overcome because a person would be able to find out who their real mother or father was.

Mr OVERTON - I think they should be able to have that opportunity. There were many circumstances from what I understand in days gone by where a father's name was left off the birth certificate and so forth, and that can add to those situations.

We have to appreciate some of the complexities that will be there in surrogacy. Little Alice from the Linda and Maggie Kirkland scenario says in a very childlike way that she has three dads and three mums because, if you think about it, you have a commissioning couple, you have the surrogate mother, you potentially have the donor's sperm, potentially donor eggs, potentially a partner of the surrogate and there are five people who are party to this family relationship, if you want to call it that. I guess there are four there, if you took the partner of the surrogate out of the question. How do you overcome that level of bewilderment? I can certainly understand it in terms of a child who is adopted and wants to find their biological parents and so forth and I know there could be simpler surrogacy cases than those I have just cited but I do think that potential is there.

You know, Jim, as you have just alluded to, for many who are adopted, even though they find their biological parents, there is some real heartache and pain and some real challenges, even in that. I do not believe that you can completely deal with genetic bewilderment because -

CHAIR - My son had enough trouble trying to work out what 'caesarean' meant. He in fact told his classmates he was an amphibian.

Laughter.

Mr WILKINSON - Could be, if he was related to Julius Caesar.

Mr OVERTON - We do not live in a perfect world, I fully understand that, and I am part of the problem as much as anybody else. In an ideal scenario, of course, we would hope that there would be a connection between the biological parents and the relationship side of the parent of the child. I know that is not always the case, however, and to create situations that make that even worse and perhaps even produce more cases of that, I don't think is a positive thing for the child.

When I read about little Alice making those comments - I know she is a young girl now - I cannot help but wonder whether, when she goes through her teenage years she will still be able to say that quite so innocently. I am sure you understand that this is about not wanting to see these children in our communities and societies who are really struggling to come to terms with who they are - 'Where did I come from? Who is my dad? Who is my mum?' I know some of that maybe could be overcome but it is not an ideal situation. I think one of the responsibilities of government is to look at what is best for society, what is in the public interest, what is best for the families and so forth and to be promoting the ideal. As I said, we do not live in an ideal world, we have to deal with situations where things are less than ideal. I recognise all of us here come from very different and various circumstances but I do not think that takes away from a responsibility to be promoting and encouraging the ideal.

There is evidence around now - and I am happy to provide you more of it; I do not have it all with me - where the benefits of marriage in the traditional sense between a man and a woman and raising children in that relationship are now being hailed as so significant

that some of these reports are advising governments to be promoting marriage again because it is so good for society, communities and certainly for children. There is also evidence around that suggests a child has the best chance of living life well by being raised in a home with a father and a mother. I struggle sometimes to understand why we would not be promoting those sorts of things because they are so beneficial for everybody involved.

CHAIR - What about a circumstance, and it has been raised with us, where there are so many children being born these days into less than prime circumstances without necessarily having two parents to raise a child - economic, social, substance-abuse issues - where on the other hand you could have a loving couple who desperately want to have a child and through no fault of their own, through medical issues or whatever, cannot and they are wanting to raise a child in the very environment that you are just describing but without surrogacy they cannot do it?

Mr OVERTON - That is a tough question. My answer to it will probably not be very popular in that regard, and I appreciate that. I just hope you can understand it does come from a heart of compassion for people in those situations. I know a number of couples who are not able to have children and it is a painful thing, absolutely. I was thinking about this driving down in the car this morning. I see that a little bit like saying that therefore they have a right to have a child through surrogacy, but there are some things in life that we have no control over. For example, do I have a right to be born here in Australia in such a fantastic, free and blessed nation when most of the world are being born into absolute poverty? We talk about economic and social breakdown here, but I am talking about a million times worse in other parts of the world. I do not have any more right to be born here than I have to be born in Africa or wherever. That is out of all of our control. I think you would also be aware of circumstances where often a number of couples cannot have children for a while and all of a sudden that turns around and they can. I know a couple personally who adopted a child and then the woman fell pregnant herself.

I know adoption is not like it used to be here in Australia and is not encouraged as much and there are not as many children either to adopt. There are reasons for that, obviously, but I think we should be encouraging couples in that situation to look at adoption of a local child or one from overseas. Because there are such dire circumstances in many parts of the world there are endless options in that regard.

It comes back to the question of is it healthy and is it right to say that all of us have a right to have a child. That is essentially where you are coming from, and I understand where you are coming from. Again, it must be an incredibly painful circumstance. But even though we might seemingly solve that issue by allowing surrogacy, it still comes back to, what about the child? Is it the best thing for the child? Yes, it may be a good thing for the commissioning parents, but is it in the best interests of the child?

Mr WILKINSON - Nick, you could use those same arguments maybe for IVF. So I take it ACL would be contrary to the views that IVF should be a procedure entered into?

Mr OVERTON - Particularly where there is donor egg and donor sperm involved. That is another complex area of course and I think whether the sperm and the eggs of the couple who are undergoing IVF are used. Also we would not want to see a situation where

excess embryos are created and that can be done, even though it is probably not done, generally speaking. I guess under those circumstances we would be happy and it is an option, in that regard. There is an artificial insemination, again where it is the sperm of the biological father with the biological mother in that relationship. Again, Jim, some of the genetic bewilderment and some of the conception issues are exactly the same through IVF. In fact most of what we read about today about genetic bewilderment, what we have in our submission, is cases of IVF and not surrogacy. So the issues are already there before we then move further to the whole area of surrogacy.

There are a couple of examples and I am sure you have probably read them. Tom Frame, who you might know of, has said that he, from memory, was never able to find his biological father. It says, 'In the continuing task of identity awareness, knowing our parents always surpasses knowing our forebears'. This comes back a bit, Jim, to what you were saying before and having information on the certificates. But there is still that relational breakdown and even in finding biological parents, there are all sorts of challenges and things that need to be worked through. In some cases the parents do not want to have anything to do with the children that they gave away for adoption and it can also be true the other way, where a child does not want to face their biological parents either. They are very difficult and complex circumstances.

On the top of page 4, Caroline Overington says, 'I feel angry every day when I think of the rights I am denied. My mother used an anonymous sperm donor'. That comes back to your question, Jim, and perhaps if there was something on the birth certificate. But you can just see that bewilderment is there, which needs to be overcome. I am not going to say that it can never be overcome. But we are putting some people in some very difficult and painful circumstances and then expecting them to overcome those because that is what we are saying really. We are saying, 'Yes, these are real issues. We understand you are going to have to walk through this and we will do what we can to minimise it, but you are still going to have to overcome those'. I come back to saying that there are so many disturbed children and young people in very difficult circumstances in our communities right now, surely we do not need to be increasing that and adding to that when there is a better way.

CHAIR - I note too that the comments in your submission here refer mainly to heterosexual couples but do make specific reference to same-sex couples. From my reading of the submission, those arguments are even more strong in this circumstance because of the argument about one father, one mother. Am I reading you correctly there?

Mr OVERTON - You mean the argument in terms of same sex more strongly?

CHAIR - Yes.

Mr OVERTON - Obviously it comes back to us believing that a child needs to be raised by a father and a mother. Again, I understand that we have people ending up as single mums and in less than desirable circumstances, but no-one sets out to become a single mum. No young lady grows up, gets married and has a child with the intention of becoming a single mother, nobody sets out to do that, because that is not the ideal circumstance. It is not even what somebody desires.

Mr WILKINSON - I am surprised now, Nick, at the number of young girls who say that they want to be a mother.

Mr OVERTON - Without a partner?

Mr WILKINSON - Yes. I have heard a number recently who have said, 'I don't really care, truly, who the partner is, I just want to be a mother'.

CHAIR - Without the complication of having a bloke around.

Laughter.

Mr OVERTON - Men are not that bad, are they?

Laughter.

Mr WILKINSON - It is surprising.

Mr OVERTON - I think you are right. Again, I still do not think that is a desirable situation because the evidence is on the side of saying that a child flourishes best when they are raised with a father and a mother and of course in a same-sex situation you do not have both of those roles. Again I say that placing children in less than desirable circumstances surely is not what should be informing public policy.

Mrs RATTRAY-WAGNER - I want to take you to page 2 of your submission and your views within your Christian constituency. Down the bottom you mention women's rights and opposing surrogacy representing wombs for hire and you indicate that you believe that people believe that it will lead to a slippery slope of commercial surrogacy. Do you see that there would be any opportunity through a properly national system that is fully regulated for those types of things not to happen?

Mr OVERTON - I can see that is possible.

Mrs RATTRAY-WAGNER - Can you see that you could have surrogacy without having this commercial -

Mr OVERTON - Absolutely. I understand that is the intention behind this inquiry and I would imagine that commercial surrogacy will not be part of any recommendations.

Mrs RATTRAY-WAGNER - Is that just a view of some people? You have put it in there.

Mr OVERTON - Yes, obviously it is a view of some people; I am not saying that it is a holistic view.

Mrs RATTRAY-WAGNER - I would not have thought that that was a fairly general view. Knowing a lot of Christian and non-Christian people, I would not have thought that that would have been a very general view, or even a very big view at all; I would have thought that was a minute view.

Mr OVERTON - It may be, it is hard for me to answer that, I do not know whether it is a minute view or not. I think even the wombs for hire is a concern. You could nearly use that term whether there was commercial surrogacy or not in some ways because essentially even if there is no fee involved, essentially that is what is really happening. That is what is happening and essentially a couple is using the womb of another woman for the sake of producing a child.

We have to be realistic and realise that that day will come. Is there commercial surrogacy happening in other parts of the world right now?

CHAIR - Certainly not in Australia.

Mr OVERTON - I know it is not in Australia but in the US I think it may be. We have to understand that if it is happening elsewhere, which I understand it is, then we must not be ignorant of the fact that even though we are not talking about that now, and even though it might be years off, the day will come when we could find ourselves discussing that issue as well.

CHAIR - My understanding is that the States and Territories that are having these discussions have said upfront quite explicitly that no-one wants to go down the path of commercial surrogacy.

Mr OVERTON - That is not to say that it will not happen in the future though, does it?

CHAIR - No.

Mr OVERTON - We have heard that before on a few things. I absolutely understand that; I know we are not dealing with commercial surrogacy now, I am fully clear on that. I guess we are just saying there that we need to be aware that it could actually lead to that at the end of the day. That is not the crux of our concern as all the other things we talked about are the basis of our concern but obviously we will be concerned about that as well.

Mrs RATTRAY-WAGNER - I was interested to understand a little bit more where this view has come from.

Mr OVERTON - Perhaps we should have worded that better than we have.

Mrs RATTRAY-WAGNER - And how you have arrived at that.

Mr OVERTON - There certainly is a concern there of commercial surrogacy of course but there is also the concern more broadly of surrogacy in general which we have obviously outlined there as well.

CHAIR - Are there any points you have not had an opportunity to make?

Mr OVERTON - I was with a friend last night who let me know of a person whom he works with who, in the school holidays, went away and returned with a surrogate child. They went to the mainland and brought it home and within one week the surrogate mother has taken the child back. I was blown away to hear it so close to home. This is in our State and I cannot give you any more information than that. I just say it because I was amazed

to hear it and it was only one week from them returning that the surrogate mother asked for the child back, and that is not the first time that has happened. That gives a real-life example of some of the things that we have been talking about.

I want to thank you again for the opportunity to come and present some of our views and answer questions. I really do appreciate that opportunity. As you know, the Prime Minister has recently just said sorry to a whole generation of indigenous people. Someone has said that they hope that in another 30 to 40 years' time another PM or another member of parliament does not have to say sorry to another generation of children whose rights to be raised in their natural families were taken away from them. I do not want to sound alarmist by saying that but, if you think about it, in reality we could end up with a generation of children and young people who really do feel that their rights have been violated in that sense because of course they have no say in this. They have absolutely no say about who their father or mother is and the circumstances under which they were born. I guess we just need to be thinking forward to where this could take us in the long term.

It is one thing to be dealing with the challenges we face today but it is another thing for us to look back in another generation's time, as we often do, where we have had that time and had the consequences and all sorts of sad cases of genetic bewilderment which can lead to all sorts of potential legal complications as well. I do not say that to be alarmist, I say that because I genuinely believe that we could find ourselves in that situation. I hope we do not but I just thought it was an interesting comment that I heard that I would just pass on.

Mr WILKINSON - That was said in relation to the indigenous children, was it not, about a year ago when people were saying that they are scared now to take children away from a parent. Even though that child may be treated appallingly, people now are afraid to do that, and that comment was made that we do not want a prime minister in years to come to say sorry to those people who were kept in those living conditions.

Mr OVERTON - Yes, around the other way.

Mr WILKINSON - Yes.

Mr OVERTON - That is an interesting comment.

CHAIR - Thank you very much. We are hoping to have a report out soon and naturally we will send you a copy.

Mr OVERTON - I appreciate that very much and will look forward to receiving it.

THE WITNESS WITHDREW.