

ADDITIONAL COMMENTS

SENATOR BRETT MASON, SENATOR FOR QUEENSLAND

AND

SENATOR HELEN COONAN, SENATOR FOR NEW SOUTH WALES

1.1 The stated aim of the Prime Minister and the Attorney-General in drawing up the amendments to which this Bill gives effect is to advance the interests of children by doing everything possible to promote ‘the right of a child within our society to have the reasonable expectation, other things being equal, of the care and affection of both a mother and a father.’

1.2 We agree with this objective and with the philosophy which underpins it.

1.3 We accept that, as critics of the Bill have pointed out, the legislation does no more than ensure that a child has a mother and a father at the time of conception. That is true. That is all that legislation is able to achieve. Recognising this to be the case, we support it.

1.4 Just as the first rule of medicine is “Above all else, do no harm” so it should be with government. The painful history of the last century has shown that governments perform badly as social engineers; no amount of good intentions guarantees desired outcomes. The government is not omniscient and omnipotent so as to ensure that every child conceived in Australia grows up in an ideal environment enjoying love, affection and the support of his or her parents. But government, dispensing as it does taxpayers’ money, is under an obligation not to promote initiatives whose outcomes are in the government’s opinion likely to be less beneficial for the parties directly affected as well as society in general than other initiatives.

1.5 Critics of the Bill have suggested that the Government’s aim of seeing that children enjoy the love and affection of both a mother and a father is misplaced. They argue that family structure is irrelevant to a child’s well being, that ‘love is all that matters.’

1.6 We disagree.

1.7 A great deal of evidence was presented to the Committee on the strengths and weaknesses of different family arrangements and their relative success in protecting and enhancing the rights of children. There was no consensus. The evidence in support of each was counterbalanced by an equal weight of evidence for a contrary view.

1.8 No one is denying that the majority of Australian children are brought up in loving and supportive environments and have the potential to grow up to be happy and well-adjusted adults. No one is arguing that all children brought up in a family arrangement involving a mother and a father receive all the benefits of that upbringing that we might hope for. Conversely, no one is arguing that all children brought up either by single parents or by parents in single-sex relationships suffer negative consequences. It is our judgment, however,

based on the balance of probabilities, the presence of both mother and father provides the best opportunity to achieve an optimal environment for children.

1.9 Hence, while we acknowledge that any type of family may raise children successfully we conclude that it seems preferable, other things being equal, that a child at the very least, have the opportunity of both a mother and father committed to his or her welfare from the time of conception.

1.10 For at least two decades there has been great effort by those concerned with the best interests of children to actively involve fathers in the care of children, to spend time with them and provide a positive role model for them. Indeed, these principles have received legislative recognition in the *Family Law Act 1975* (as amended), which attempts to preserve contact with both parents as a fundamental right of a child. It cannot be consistent with such legislative prescription that men are now said to be relevant in some circumstances to do with nurturing a child but not others. Hence, it is both surprising and ironic to learn from many witnesses who appeared before the Committee that so long as a child is raised in a nurturing environment it is of no concern who does the nurturing. For many it does not seem to matter if a child has no knowledge of, or contact with his or her father, let alone sustained care and affection, so long as somebody provides that care and affection.

1.11 How can we explain this inherent contradiction? Was this attempt of the last two decades to increase the role and importance of the male partner not really about good parenting, providing positive role models and recognising the importance of the special relationship between fathers and their children but merely about more equitable sharing of the burdens of caring for children and household duties? The latter is certainly important but the former is critical to the health and success of our community.

1.12 Whatever the reasons, the parties concerned cannot have it both ways. Either a father's presence and love are important to a child's development or it is not. We think that wherever possible the presence of a father is important and should be recognised as a fundamental right of the child.

1.13 Those who adopt the view that 'love is all that matters' must acknowledge the repercussions of this view. It will change our underlying assumptions about the nature of our society and of the family, as well as having more specific ramifications on, for example, laws governing adoption and surrogacy.

1.14 We are concerned that the Bill could be said to discriminate against an identifiable (if small) group of women. We do not in general share the view of some witnesses that the rights of some groups in our society should take precedence over the rights of others. However, in this specific case one must weigh the fundamental rights that we are proposing to deny to children against the claimed right of a small group of women to conceive in circumstances where failure to conceive is predominantly the result of a lifestyle choice. We do not believe that as a matter of public policy there exists an unfettered right to conceive a child at taxpayers' expense. In these circumstances we contend that the interests of children, who are not in a position to make a choice, should outweigh those capable of choice.

1.15 Legislation is a very blunt instrument for dealing with such a sensitive issue as assisted reproductive technology (ART) procedures, on which opinions are strongly held and deeply divided. It is impossible to arrive at a solution which pleases everybody. Even to try, through legislation, is like threading a needle with gloves on. Despite the clumsy mechanism

at our disposal however, we believe it is important for legislators to act in support of the best possible outcome – despite all the attendant vicissitudes.

1.16 Evidence to the Committee illustrates the diversity of views among interested parties in the community on this and related issues and the intensity with which those views are held. In this case, however, we believe that the views of parliamentarians reflect the values of the wider community.

1.17 For these reasons, we support the Bill.

Senator Brett Mason

Senator for Queensland

Senator Helen Coonan

Senator for New South Wales

