

Without this applicants will be forced to continue to resort to the far more costly judicial review process.

- *committee decision*: The making of the decision by a committee rather than a single immigration officer is an important protection against arbitrary and capricious decision making. Retaining the integrity of this first level of decision making is essential. The Hong Kong experience demonstrates the dangers of leaving such an important decision in the hands of a single immigration officer.
- *interpreters, taping and read back*: Access to trained and qualified interpreters must be ensured in all cases. The taping of interviews and the read-back of the transcript to the applicant are essential for the integrity of the system.

Hopefully the review will result in reforms of the procedures whereby they become both more efficient and most just. ■

surrogate motherhood

Farewell to the dear days of Genesis.
We do these things now all by synthesis.
And who would not rather.
Have a test-tube for father.
Than a *homo in loco parentis*?

Conrad Aiken, *A seizure of Limericks*

Surrogacy is neither inherently immoral nor antisocial, and should not be prohibited in Australia says a report released in July by the National Bioethics Consultative Committee (NBCC). However, because of the risk of exploitation of women and children, surrogacy should be strictly controlled.

The report recommends uniform legislation preventing the enforceability of contracts and protecting the interests of all parties to

surrogacy arrangements.

background. In March 1988, the Australian Health Ministers' Conference (AHMC) established the National Bioethics Consultative Committee (NBCC) to provide advice on the social, legal and ethical issues arising from:

- reproductive technology
- biomedical and health related research
- the application of scientific and medical technology, and
- the provision and delivery of health services.

An article on the NBCC appeared in October 1989 *Reform*, p 206.

The NBCC has now produced the first of two reports planned on surrogacy. This report examines principles, options and recommendations for consideration by Health and Social Welfare Ministers. The second report, due to be completed later this year, will focus on the implementation of the first report's recommendations.

state positions on surrogacy. Queensland is the only Australian state to have prohibited all forms of surrogacy. The Queensland Surrogate Parenthood Act (1988) prohibits any formal or informal surrogacy arrangements whether or not they involve payment, and applies criminal sanctions against any parties involved in surrogacy.

In South Australia and Victoria, commercial surrogacy arrangements and any advertisements relating to surrogacy are prohibited. In Western Australia, legislation covering surrogacy is currently under consideration, and in New South Wales the recommendations of the NSW Law Reform Commission's Report on Surrogate Motherhood (1989) are also currently being considered.

No specific surrogacy legislation applies in Tasmania, Northern Territory or the Australian Capital Territory.

other reports. Information about other reports on surrogacy is contained in recent issues of *Reform* (April '90 p 93; January '90 p 41; October '89 p 206; April '89 p 104; October '88 p 187.) Overseas and Australian reports and enquiries have generally considered surrogacy to be undesirable, particularly where private entrepreneurs making surrogacy arrangements for a profit are involved, and have recommended action ranging from discouragement of surrogacy arrangements to the introduction of criminal sanctions against those either assisting or involved in such arrangements.

In these reports surrogacy has been variously considered to be contrary to the welfare and interests of the child, and contrary to public policy. Several reports recommended that the birth mother always be considered to be the legal mother of any child born, and some have recommended the prohibition of any advertising in relation to surrogacy.

Several reports distinguished between surrogacy for profit, or those arrangements involving the exchange of money and surrogacy for 'altruistic' reasons. Most considered the former to be undesirable and some went as far as recommending criminal sanctions. The latter 'altruistic' situation was generally considered to be less fraught with problems; some however also recommended criminal sanctions in this situation, whereas other reports adopted a more liberal acceptance of such private arrangements.

The exception is the report of the Ontario Law Reform Commission which recommended that surrogacy arrangements be legislatively regulated by the courts:

- because it was considered that such arrangements were not immoral nor against public policy; and
- to prevent the dangers of clandestine private arrangements likely if surrogacy is totally prohibited.

the NBCC report. The Committee addressed the social, legal and policy implications of surrogacy and aimed to provide advice to Ministers from a national perspective.

The NBCC considered the following principles to be relevant to the examination of surrogacy:

- It considered the principle of personal autonomy or self-determination ie that a couple should, as far as possible, be free to make their own procreative arrangements to form a family as long as this does not involve harm to others. Also, that a woman should be free to make decisions about the use of her own body to gestate a child for another as long as this does not cause demonstrable harm to others.
- The principle of justice requires that all of those involved in surrogacy arrangements should be treated justly and fairly. This means that the best interests of the surrogate mother and any child born as the result of a surrogacy arrangement should, in particular, be safeguarded. The committee recognised that the interests of the child become paramount if dispute exists over custody, but this situation is not peculiar to surrogacy.
- It also considered the principle of the common good, ie that society has a stake in ensuring, as far as possible that parent-child relationships are established in an orderly way.

The NBCC identified four main options regarding surrogacy:

- that it be totally prohibited;
- that it be freely allowed;
- that it be considered as neither inherently immoral nor antisocial but, because of the public policy issues it raises, that it be allowed but controlled; and

- that it be considered to be socially undesirable in that there is a risk of harm to those involved, but because of the impossibility of preventing it, that it should be strictly controlled and discouraged.

The NBCC released a draft report on surrogacy in late 1989. Over 140 written submissions were received from a wide range of individuals and organisations including religious groups, government departments and agencies, medical and allied professionals, social welfare groups, bioethics organisations, women's groups and people who have participated in surrogacy arrangements.

In its consideration of surrogacy, the NBCC said its views are representative of the spectrum of opinion expressed by the community. Members subscribed to different philosophical viewpoints, namely those represented by options three and four above. However, the practical ramifications of these positions, ie the need for uniform legislation to govern the practice of surrogacy, was the same. Two members dissented from the consensus position and expressed support for option one. Their positions on surrogacy are presented in an Appendix to the Committee's report.

The NBCC recommends that surrogacy arrangements should be permitted, but under strict controls. More specifically that:

- surrogacy should not be totally prohibited
- surrogacy should not be freely allowed
- surrogacy practice should be strictly controlled by uniform legislation and
- uniform legislation should render all surrogacy arrangements unenforceable, and include controlling mechanisms for agencies and advertising controls.

implementation of the recommendations. The NBCC's report has been presented to the Australian Health Ministers' Conference and to the Council of Social Welfare Ministers. Responsibility for Surrogacy rests with either

the health or welfare portfolios in State and Territory Governments.

Further information can be obtained from Ms Lesley Dredge, Executive Director, NBCC, GPO Box 9848, Adelaide, SA 5001, telephone (08) 210 9565. ■

new adoption law: the response to social change

the need for reform. Adoption is a good example of an area where rapid social change has made legislation obsolete. In the past, the major concern of the law was to regulate the incorporation of healthy new born infants into substitute families. Adoption was the means by which married couples who could not have their own children acquired a family. Improved availability of contraception, financial support for single parents and increasing social acceptance of children born outside of marriage has reduced to a trickle the number of babies available for adoption. The policies and rationale behind adoption legislation thus became increasingly irrelevant as adoption by relatives (and in particular step-parents) and adoptions of overseas born children took over as the major forms of adoption. In line with international trends, and the development of the UN Convention on the Rights of the Child, policy developers have become more conscious of the need to ensure that the welfare of the child is the paramount consideration. Recognition by governments and welfare authorities of the disastrous effects of ignoring issues of cultural identity and race in the placement of children has added impetus to the push for reform.

Most States and Territories have conducted reviews of adoption legislation in the last six years. Western Australian Adoption Legislative Review Committee released in March this year its draft report *A New Approach to Adoption*.