

I'd certainly like to see them go ahead because it is totally in harmony with our social justice strategy that people without resources be able to band together to vindicate their legal rights. . . . I've been running the legal aid operations of the federal Government now for three years and I am very concerned to achieve a situation where ordinary people can approach courts and tribunals. I think it's a question of building on the present grouped proceedings arrangements which are provided for in the Federal Court.

Senator Tate also told the *Herald* that he thought one reason why there had been resistance to class actions was because they had been linked, improperly, to product liability proposals.

In October 1989 the federal Government asked the Industry Commission to investigate the economic effects of the recommendations made by the ALRC in its report *Product Liability*. It has since reported to the government that their implementation would reduce rather than enhance economic efficiency in the longer term.

Justice Evatt, President of the ALRC, said in September that it is difficult to understand why the Industry Commission report had not recommended adopting the ALRC recommendations on product liability, particularly as the ALRC regime seems to meet the main criteria the Industry Commission suggested in its report. The ALRC suggested that

- producers be primarily liable for products causing losses
- consumers be liable for misuse of products
- consumers be liable when they voluntarily assume the risk of loss.

A full report on the IC proposal will appear in the next issue of *Reform*.

Senator Tate told the *Herald* that he did not think legislation for either proposal would be introduced until next year.

surrogate motherhood

control of surrogacy. In Australia, three States have enacted legislation which seeks to control surrogacy. These are Queensland, Victoria and South Australia.

In Queensland the Surrogate Parenthood Act 1988 prohibits surrogacy arrangements or contracts in any form, whether for payment of money or not. Criminal sanctions for any participants in surrogacy are included.

In South Australia, the Family Relationships Act Amendment Act, 1988 is intended to deter third parties or agencies from arranging surrogacy contracts and to deter people from making surrogacy arrangements for money. It does not apply to informal surrogacy arrangements.

In Victoria, the Infertility (Medical Procedures) Act, 1984 deters third party involvement in surrogacy for profit and deters people from entering into surrogacy arrangements involving the payment of money. Anyone who makes, gives or receives a payment in relation to a surrogacy arrangement in Victoria is guilty of an offence, as is anyone who advertises or publishes an advertisement which seeks or offers the services of a surrogate mother.

The National Bioethics Consultative Committee has now recommended uniform State and Territory legislation to control surrogacy through licensed agencies.

the first report. In its discussion paper: *Surrogacy 2 — Implementation*, the NBCC proposes a system to enable people considering surrogacy to obtain access to accurate information and counselling about its social, legal, ethical and physical implications. This discussion paper and draft legislation is intended to elicit public discussion of the implementation issues arising from the NBCC's first report on surrogacy. The first report was reviewed in the October 1989 issue of *Reform* (p 206–209).

working group established. Following the completion of the first report, a Working Group was established to prepare a paper to address the implementation of the first report's recommendations. The Working Group comprises: Professor Don Chalmers, Head of the Department of Law, University of Tasmania (Chairperson); Ms Rebecca Albury, lecturer, Department of Sociology, University of Wollongong; Ms Hilda Bastian, Co-ordinator, Maternity Allowance, New South Wales. To assist it, the Working Group commissioned the assistance of three consultants: Ms Veronika Maddock, Department of Justice, Tasmania; Ms Margaret Otłowski, a lecturer in law at the University of Tasmania; and Mr Geoffrey Hackett-Jones, Parliamentary Counsel, South Australia.

regulating surrogacy. The system to regulate surrogacy proposed by the Working Group requires

- the enactment of uniform State and Territory legislation to render unlicensed surrogacy arrangements illegal and void, to introduce sanctions against commercial surrogacy practice, and to control the practice of surrogacy through licensed surrogacy agencies
- the automatic transfer of legal parentage from the surrogate to the commissioning parents following relinquishment of a child born of an approved surrogacy arrangement (in the absence of any objection by the surrogate) and
- the establishment of a licensing authority to approve agencies for the purpose of supervising and approving private, non-contractual surrogacy arrangements.

The discussion paper also contains an interesting appendix on Legal Parentage by Margaret Otłowski.

Copies of the discussion paper are available from the NBCC, GPO Box 9848, Adelaide SA 5001 (telephone (08) 210 9722).

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access to reproductive technology

discussion paper issued. The National Bioethics Consultative Committee has also released a discussion paper on access to reproductive technology. It asks whether all individuals should have access by ethical and legal right, without constraints, to programs of reproductive technology. If there are constraints on access then who decides what these constrictions should be and who decides who makes the decisions? It points out that even the question of who is infertile is a matter of judgment. For example, is a woman whose partner has had a vasectomy infertile? Is a couple who have four children, two each from the previous marriages but who cannot not conceive a child, infertile? Is there inability to conceive another child judged to be the same as that of a woman with no children who has experienced a decade of unsuccessful treatment for blocked tubes? Is a woman for whom pregnancy is a risk to her health, perhaps her life, infertile? Is infertility a disease? Is it a medical disorder? Is infertility a disability?

limitations on access. At present, access to reproductive technology programs is limited. Criteria defining access may be based on legal, medical and social factors. And they may be either explicit or implicit. People seeking access may be excluded by legal provisions in the relevant State Acts, as fertile couples are in most jurisdictions or as unmarried couples are in Victoria. They may also find themselves excluded by criteria developed by the program staff or by the institution which is the auspice for the program. For example, the age of the woman, the duration of a couple's relationship, the existence of other children and the length of time the infertility has been known to be present, are all factors taken into account by some programs at present. Many criteria are in fact contrary to antidiscrimination legislation.