

## **REPORT ON AUSTRALIAN NATIONAL CONFERENCE: “SURROGACY-IN WHOSE INTEREST?,” MELBOURNE, FEBRUARY 1991**

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A National Conference on Surrogacy was held in Melbourne in February 1991, bringing together speakers and delegates from across Australia. The Conference was organised by the Mission of St. James and St. John, a community welfare organisation, in association with the Australian Institute of Family Studies, the Australian Council of Social Services, the Victorian Council of Social Services, and the Social Work Department of the Phillip Institute of Technology. The aim of the conference was to examine the ethical, social, legal, and policy issues arising in surrogacy.

The Conference was widely advertised nationally and approximately 200 participants from five states attended. A wide range of professional and community interests was represented, including legal and medical professionals, academics, ethicists, feminists, social psychologists, social workers, policy makers, community workers, social welfare administrators, child welfare practitioners and child rights advocates, FINRRAGE members, politicians, relinquishing mothers in adoption and surrogacy, adoptees, religious and laypersons of various denominations, students and concerned individuals.

With the surrogacy debate ongoing in Australia, and with the attention recently being paid, at national and state level, to determining

legislation (or review of legislation), the Conference was timely and served as a significant barometer of public opinion.

The Conference was timely also, given the release of the controversial Surrogacy Implementation Report by the National Bioethics Consultative Committee (NBCC), which proposed a system of regulation of surrogacy that would permit the practice to occur legally in certain circumstances.

Despite continuing promotion of IVF surrogacy in Australia by industry interests, and despite the encouragement and efforts of Conference organisers to ensure their participation, few members of the Reproductive Technology Industry attended or responded to requests for papers. This was disappointing, in that an opportunity for face-to-face consultation and real dialogue with other professionals and ordinary members of the community was missed. However, the attendance lists indicated the level and variety of concern that exists in relation to surrogacy generally, and, as became apparent, specifically in regard to the NBCC proposals for legitimizing surrogacy.

They also indicated the willingness that exists within the general community and other professional groups to debate and hopefully arrive at some consensus about key issues.

A range of eminent chairpersons and speakers was invited to overview each session of the Conference and to present papers on five major themes: an overview of official Australian Inquiries; examination of children's interests; ethics; women and motherhood; and

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Proceedings of the Conference can be obtained from The Mission of St. James and St. John, St. James Close, 12 Batman Street, West Melbourne 3003, Australia. Tel: 329 6133.

appropriate guidelines for surrogacy

a final session on the law and legislative directions.

The papers presented were of an exceptionally high standard, reflecting both the complexity of issues arising in surrogacy and the breadth and depth of scholarship and deliberation by the speakers on the matters arising.

Group and panel discussions and question times were scheduled to enable Conference delegates to fully articulate their views, and in order to facilitate representation and participation. This structure proved to be particularly appropriate when it was decided, in the course of the Conference, that there should be preparation of a conference statement to reflect the level of consensus reached.

#### OVERVIEW OF PAPERS

The Rev. Howard Dillon, Executive Director of the Mission of St. James and St. John, in welcoming participants to the Conference, stated that, in pursuing its aims of individual and family support and development and change in community and social structures, the Mission sought to promote debate on social issues and community education. He urged participants to remain mindful of the human issues relevant in the debate: issues such as needs, dignity, and feelings.

The Conference was formally opened by the Hon. Brian Howe, Federal Minister for Community Services and Health. In his address, the Minister made reference to the need to consider children's interests and to the important knowledge and experience gained in adoption. He stated that "it is highly improbable that the types of problems that have arisen with adoption practice will somehow be avoided in surrogacy arrangements, merely by denying the similarities between the two. . . ."

In discussing infertility, the Minister stated that "no amount of new technology for fertility problems will . . . solve the social pressures

women feel about fertility, motherhood, and biological parenthood. As a society, we need to do better in acknowledging that women make a valuable contribution in a variety of roles." The Minister went on to say that "as a society, we should not be prepared to legitimize any arrangement which disadvantages one group of people for the benefit of another. . . ."

Justice John Fogarty, Senior Judge of the Family Court in Melbourne, presided over Session One, where Keith Mason QC, Solicitor General for New South Wales, gave an overview of the 10 official Inquiries and major Reports on surrogacy and reproductive technology, completed in Australia to date.

Mr. Mason clarified that all existing Australian legislation "assigns parentage to the surrogate (sic) and her consenting husband to the exclusion of the commissioning (parties)" and that existing laws would need to be amended to permit lawful transfer of parental rights to commissioning parties. Mr. Mason stated that surrogacy arrangements in Australia are almost certainly unenforceable at common law.

It was indicated that the NBCC is the only Australian body that has proposed recognition and facilitation of surrogacy, all other official responses to surrogacy in Australia, have been to discourage the practice whether or not payment is involved for participating parties.

The intent and effect of existing Australian legislation is to prohibit surrogacy. Legislation currently exists in three Australian states, with prohibitive legislation proposed in a fourth state.

In the two remaining Australian states, the recommendations of the relevant Committees of Inquiry also tended to favour prohibition. Mr. Mason, however, considered that there is still an unclear pattern that exists in relation to noncommercial surrogacy and considers that in respect to national uniformity in legislation we still have "a long way to go."

Session Two, looking at the interests of children, was chaired by Prof. Helen Gamble, former Chairperson of the New South Wales Law Reform Commission. Four papers were presented in this session, covering the views of child rights advocates, adoptions experts, adoptees, and a birthmother.

The first paper was presented jointly by Sally Castell-McGregor, Executive Officer, and Joan Thompson, Senior Child Advocate, in the South Australian Children's Interest's Bureau. The paper covered the history of child rights and provided an overview of current philosophy that emphasises the fundamental human rights of children. The speakers discussed the plight of children who, as a class, are not currently accorded full human rights, and highlighted the conflicts that can arise where the approach is to balance child and adult rights.

The view of the Children's Interests Bureau is that "surrogacy impinges on the human dignity of women and children." It was stated that surrogacy arguably "is in conflict with the Convention on the Rights of the Child adopted by the General Assembly of the United Nations" in 1989 and which was ratified by Australia in 1990.

Attention was drawn to Article 3(1) of the Convention which states that: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration."

Further emphasis was given to Articles 7 and 8 of the Convention. Article 8(1) states that "state parties undertake to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognised by law without unlawful interference."

It was stated that "proposals to introduce surrogacy. . . are controlled experiments in human relationships" and that "there are lessons to be learned from adoptions studies of

relinquishment which historically has been a product of financial hardship, social inequity, and stigma."

A differentiation was made, however, between adoption, which seeks to meet the requirement of a child for a family, versus the planned creation of a child, in surrogacy, in order to meet the needs of adults. It was stated that "the commissioned child has no rights in this endeavour . . . (and) both the . . . mother and the child become a means to an end."

It was considered that surrogacy contravenes Article 35 of the Convention, which prohibits trading in children and that the practice also is tantamount to trade in women. The speakers stated that "children will in some instances have a multiplicity of 'parents' including a birthmother who has given away or sold the child."

It was considered that surrogacy "demeans the status of children, re-asserting the idea of children as the property of the adult world, this time created as a remedy to alleviate childlessness . . . a commodity on which there has been placed a monetary value in a consumer-oriented market economy."

Attention was drawn also to the fact that like all commodities, children could be found wanting in an environment where parenthood becomes a "mythologised social construct" with attendant unrealistic expectations, and the child may become "a continuing reminder of what is perceived as a perpetual loss, or a personal failure." It was stated that a child is "not . . . a panacea for infertility."

The speakers stated that surrogacy "further demeans the status of women and children at a time when there is still limited commitment to protect those already disempowered by class, gender, and age."

A second paper was presented in this session by David Hirt, President of Adoption Jigsaw (Victoria), and himself an adopted person. Mr. Hirt spoke with great lucidity about his own personal experience of adoption and of his serious concerns with respect to surrogacy.

He stated that the cost of surrogacy "is too great for a child to bear" and that the practice demeans the mother and child to the status of "guinea pigs" in a "social experiment so that an infertile couple can indulge their desire, sometimes at great public expense, to be social parents."

Mr. Hirt stated that, particularly in IVF surrogacy, "a bewildering set of possibilities are set up . . . (and that) in surrogacy, the child may be faced with several sets of parents." The consequences of genealogical bewilderment, the implications of secrecy, and unintended disclosure in respect to a child's origins were also discussed.

It was stated that "the deceitful idea that a child can be owned and used for the satisfaction of the social parents dreadfully limits their love for the child and the ability of the child to lovingly respond to the social parents."

It was stated that for the child, the consequences of being traded as a "commodity, a powerless pawn at the disposal of . . . parents . . . (results in) low self-esteem, anguish, and outrage . . . (and) a sense of rejection and worthlessness." It was stated that as these feelings exist in adoption, how much more anguish is caused where, in surrogacy, the relinquishment of the child is a premeditated act and carefully planned.

The impact of relinquishment on birthmothers, both in adoption and surrogacy, was discussed, and the double standards highlighted that set women apart either as good or bad mothers, according to their adherence to particular, contradictory societal messages.

The next paper in this session was presented by Linda Kirkman, a relinquishing mother in surrogacy, who gave birth to baby Alice in 1988. The arrangement Linda and her sister Maggie entered into was an IVF surrogacy arrangement, involving donor sperm, an arrangement they consider successful.

Linda described the progress of the children of her existing family and baby Alice, emphasising their adjustment and acceptance of the arrangement. Both women and the three children have ongoing contact with each other as part of an extended family network.

In her presentation, Linda stated that it distresses her that women in other surrogacy arrangements feel they have to part after the child is born. She feels there is no reason why they "couldn't . . . have remained in contact, all loving the child . . . an ongoing relationship is important for all parties."

Linda emphasised the efforts being made, in her case, to be open and honest about the arrangement with the children, fostering an acceptance of the arrangement and attempting to model the capacity of women to be "strong, assertive, and confident."

Linda stated that the use of IVF in the arrangement was critical. "I could not have contemplated giving up a baby that was genetically mine . . . Alice was gestated by her aunt because her mother was unable to do so."

Baby Alice is currently 3 years old.

Margaret Van Keppel, the Co-Ordinator of Counselling Programs at Centre-Care Marriage and Family Services in Perth, presented the next paper, which examined the psychosocial and developmental tasks of children, children's needs in respect to family environment, history, and freedom to become their own person.

Ms. Van Keppel stated that "the idea that a child can be created against the natural order through the technical manipulation of bodies, gametes, relationships, and laws, without due regard for the wider personal and social implications for all involved, is dangerous . . . the children are the losers. The interests of the medical and legal professions are best served; inflated egos and fat wallets are the signs of their successful involvement."

Questions were raised in the paper about the ability of children born of surrogacy arrangements to successfully negotiate the

developmental stages that exist in moving from childhood to adulthood, and the prerequisite conditions necessary for successful completion of those stages.

The necessity for trust, security, and stability were emphasised, as was the importance of parents feeling secure in their parenting roles, a security that does not exist where the psychological issues surrounding infertility are unresolved and where these issues impinge upon the couple's relationship, and therefore upon the child.

The tensions that may exist in families around free choice versus felt obligation were also discussed in the context of intrafamilial surrogacy, as was the uncertainty inherent in any surrogacy arrangement, where relinquishment is uncertain. The legal, social, or familial outcomes and possible aftermath in any particular case are unknown.

The spotlight on a child born of surrogacy was also discussed in the context of the insecurities and anxieties such attention might engender; similarly, the possible overprotectiveness of parents who may be unsure of their ongoing status was discussed. Ms. Van Keppel also discussed the impact upon siblings and the severe difficulties that can be experienced by such children.

Other critical issues raised were that of identity formation in children born, particularly of gamete donation in surrogacy, and the threats to the incremental process of individuation. It was stated that "when a child is created 'to order', the . . . social parents can go to considerable trouble to ensure that the child will have particular characteristics. . . . Such efforts are likely to result in highly specific expectations . . . (that the child) fulfill their parents' dreams."

In conclusion, it was stated that "as a society, we need to accept that there are limits as to how far we can proceed in manipulating the lives of others."

Session Three on the ethics of surrogacy was chaired by the Hon. Marie Tehan, Shadow Minister for Health in Victoria.

The first paper in this session was presented by Nicholas Tonti-Fillippini, a previous Director of the St. Vincent's Bioethics Centre in Melbourne. Mr. Tonti-Fillippini discussed the responsibilities of ethics committees and provided a critique of the National Bioethics Consultative Committee's report on surrogacy.

He stated that the NBCC failed to distinguish between ethics and the law and the crucial question of what constitutes right conduct in respect to surrogacy. Thus, the critical question in consideration of surrogacy, from the point of view of ethics, is not what one should be legally free to do, but what one is morally obliged to do or not do. The NBCC, however, concerned itself with prescribing a system for legal facilitation of surrogacy and thus did not fulfill the requirements of the task set before it.

Mr. Tonti-Fillippini stated that despite the NBCC's use of the principle of personal autonomy to justify surrogacy, it failed to give cognizance to the fact that "parenthood carries with it a host of obligations", and that "the question for any couple is whether seeking to have a child is a morally responsible course."

The "freedom to form a family" was qualified by the correlative obligations to others, particularly children involved. Mr. Tonti-Fillippini stated that "the freedom to procreate has obligations which are distorted and weakened by the fragmentation of surrogacy."

He stated further that "the morality of the choices about parenthood is a matter of community concern . . . (therefore) there are laws to protect children, to achieve security for families, to prohibit bigamy, to determine custody when disputes arise and so on. It was stated that ". . . anything which fragments or risks the relationship between parents and consequently between parents and children is of direct social concern. . . ."

It was also stated that "a woman does not have a moral right to decide to use her body to gestate a child for another woman. To do so

violates her obligations to the child as the child's natural mother." In so doing, it was stated, motherhood is devalued, as are the women themselves.

Arguments which hold that, if we emphasize the best interests of the child, then we are saying it would have been better for the child never to have been born, were considered to miss the point. It was stated that, it is not the child's existence which is wrong, but "the creation of circumstances in which a woman conceives a child with the intention of depriving it of a relationship with its natural mother. . . surrogacy is in that sense an injustice to the child, a denial of his or her birthright."

The fragmentation inherent in surrogacy was seen as a dramatic change in the concept of motherhood, engendering "splits in the notions of primitive or 'bad' motherhood associated with childbearing and positive motherhood associated with the upbringing of the child."

Mr. Tonti-Fillipini stated that "there is a total lack of realism in the belief that the relationship between a woman and the child to whom she has given birth is determined solely by her will . . . we are not two people, one physical and one mental. Mind and body are inseparably interconnected in the one person . . . it is impossible to tear apart the woman's own reality by excluding the meaning of the emotional investment she has in giving so much to a child."

Reference was made to psychiatric studies which postulate that birthmothers in surrogacy may ". . . be in an incomplete state of mourning, unconsciously wishing to master a (past) trauma . . ." and that choice of partner and pregnancy issues may involve "reworking established conflicts around self-evaluation and abandonment." Thus it was considered that medically assisting surrogacy could be likely to "deepen neurosis" and "ultimately further complicate a psychiatric problem."

Mr. Tonti-Fillippini stated "the family of the . . . (birth) mother witness a most horrific event. Imagine the emotional trauma and the risks to his or her own security, caused by a child seeing his or her mother carry a pregnancy and then give the new baby away. What has she done to that child's concept of motherhood? What does her action say of the bonds of motherhood on which the child depends? . . . parenthood and the family become both dispensable and fabricated, one can create or destroy them at a whim. . . ."

To legalize surrogacy in legislation, as proposed by the NBCC, was considered to legitimize the practice and to educate the public to something which is against public policy.

It was the view of the speaker that ". . . surrogacy represents a return to the concept of children as chattels. The right to procreate does not include a right to form contracts about reproduction."

It was considered that medical facilitation of surrogacy should be considered gross misconduct and a "poor medical treatment for the emotional problems a would be volunteer surrogate (sic) is likely to be suffering." Surrogacy was considered "bad medicine" for both the child and the mother who is "subjected to a medical procedure in order to become a surrogate (sic) at great risk to her mental health and social identity."

It was considered that medical facilitation of surrogacy should be prohibited and that national uniformity in legislation is necessary to prevent "border hopping."

The second paper on ethics presented in this session was by Professor Max Charlesworth, formerly of Deakin University, member of the Victorian Standing Review and Advisory Committee on Infertility, and a member of the National Bioethics Consultative Committee.

Professor Charlesworth was of the view that while "emotions and gut feelings are important in ethics, . . . in the last resort it is

the reasons (for) our moral stances that are conclusive.”

He considered ethics to be a rational discipline and that in considering arguments against surrogacy, he found them “remarkably unconvincing.” Professor Charlesworth considered that the principles underlying arguments against surrogacy were inconsistently applied. He stated that if we oppose surrogacy, then we should also prohibit adoption and artificial insemination. Similarly, if feminists apply the pro-choice argument to abortion, then they should apply it to surrogacy.

It was stated that social policy decisions should be based upon scientifically controlled evidence and he pointed to the absence of published research on health outcomes of the practice of surrogacy.

Issues of the morality or immorality of surrogacy were explored and the question of whether surrogacy has such deleterious effects as to warrant prohibition. Analogies were drawn with societal responses to drug, alcohol, and tobacco abuse and the inconsistencies that arise. It was stated that even “if surrogacy were shown to be morally undesirable (one cannot assume that) it should therefore be prohibited by law.”

Professor Charlesworth was of the view that “in a liberal democratic society, people should as far as possible be allowed to make their own moral decisions for themselves and it is not the business of the law to enforce a common code of morality. The law should (only) be brought in . . . when other people are likely to be harmed in some obvious way.” An analogy was made with the decriminalisation of homosexuality.

In examining the question of whether surrogacy is morally wrong, the speaker asked: “If it is noble to put one’s life at risk for a friend, why is it not noble to use one’s womb for a friend?” That surrogacy can involve IVF technology (and was considered therefore not to involve the commission of adultery) “to

help (husband and wife) achieve their . . . purpose as a married couple”, was seen as evidence of the pro-life motivations involved.

It was stated that “recourse to artificial insemination . . . is the expression of an intention of conjugal fidelity” in that both parties rejected the option of the woman’s infidelity for the purpose of bearing a child. It was argued that similarly surrogacy cannot be considered immoral.

In relation to the issue of whether or not it is wrong to use a person as a means to an end, it was stated that it is considered quite moral to employ a person to perform other types of services. The example of employing a bricklayer was used and it was stated that payment in such cases is considered appropriate, without the person being considered a means to an end, similarly, if the task is performed altruistically. Exploitation was only considered to arise if coercion is involved, and it was stated that not all surrogacy arrangements can be considered exploitative.

Professor Charlesworth stated that he found extraordinary, the FINNRAGE argument that women are societally conditioned to see their options limited to motherhood and cited other feminists who find it paternalistic to oppose the woman’s right to enter into a surrogacy arrangement. It was stated that surrogate motherhood “affirms the ‘pro-choice’ principle.”

It was considered that there is “little hard evidence . . . to show that surrogacy does in fact have serious and large malign consequences . . .”, yet at the same time that divorce and marriage breakup have been proved to have deleterious effects, no one considers their prohibition. It was stated that “there is absolutely no evidence to show that the sense of personal identity of children is so severely damaged that such children should not be brought into existence”, yet “women may bring into existence children suffering from grave physical and mental handicaps.”

It was stated that "one . . . needs to show that choosing to form a family by using surrogacy. . . involves antisocial consequences of a large and obvious kind, before one seeks to prohibit it by law", however "the state has . . . the right to regulate the practice."

The next paper was presented by Dr. Robyn Rowland, who discussed the feminist perspective on ethics. Dr. Rowland is a social psychologist and Associate Professor in Women's Studies at Deakin University and served on the Asche Committee on Reproductive Technology.

Dr. Rowland prefaced her talk by articulating her opposition to surrogacy and expanded on a legal response to the practice which would ensure the unenforceability of contracts, while rendering liable, intermediaries such as baby brokers, lawyers, and doctors.

It was stated that "what we are talking about is institutionalizing so called surrogate motherhood, that is the state setting up a system that organises, pays for, approves and thereby encourages the use of women's procreative ability as if it were an object for sale or exchange, and through this, the creation of a new commodity – a child."

That surrogacy has taken place in association with artificial insemination by donor, with IVF, sex selection, and amniocentesis was seen as significant, as was also the promotion of surrogacy at a time that waiting lists for IVF are diminishing rapidly. References were also made to incentives being used, in view of deteriorating business, to entice women onto programmes.

Similarly, the financial vulnerability of women and their exploitation in surrogacy were discussed, as were issues of physical exploitation in a process that denies the health risks for women involved, including the dangers involved in childbirth, the use of drugs, and the invasiveness of IVF.

Women's conditioning to be self-sacrificing and self-denying, women's low self-esteem, and emotional neediness were also discussed

as relevant factors in consideration of the practice.

Dr. Rowland elucidated upon the power dynamics that can operate in families and which can render meaningless and inconsequential considerations of the operation of altruism in surrogacy. The conflicts which can arise where a woman must choose between her child and her family, where she cannot bear to relinquish the child, were also discussed.

It was considered that "institutionalizing technologically assisted surrogacy will make it impossible for many women to say no." The dismissal of women's experiences as anecdotal was criticised in view of the reinforcement for the validity of such experience in adoption and the documentation of the effects of surrogacy upon the women and children involved.

The myth that commissioning couples will necessarily benefit or that they are necessarily infertile was dispelled by citing the American experience. In describing the societal forces that have given rise to the promotion of surrogacy, Dr. Rowland stated that "consumed by the desire to control everything, consumed by the middleclass capitalist ethic of 'money will buy anything', people may well avail themselves of surrogacy even if they do not 'need' it, in the way we are led to believe."

Responding to the challenge to provide the facts in relation to surrogacy, Dr. Rowland referred to the following issues: that not all commissioning parties are infertile; that adult adoptees often suffer considerably because of the fact of their relinquishment, as do similarly their mothers; that birthmothers in surrogacy are fighting in the American courts for custody of their children; that in Australia there is only one highly publicised case (Kirkman's) of a woman happily acting as a surrogate for her sister; that in the United States, in at least three such cases, child custody is being disputed between sisters.

In relation to IVF surrogacy, Dr. Rowland asked: "If women who donate eggs in



'surrogacy' IVF are to be granted motherhood status, will those women who have donated eggs on IVF programs in the past, now become 'mothers' if their egg successfully became a baby for another woman?"

The importance of language in politically constructing our responses was discussed, for example, in relation to the birthmother as surrogate, and to commissioning couple as always infertile.

The disembodiment of women from their *donated wombs*, or their description as *alternative reproductive vehicles* or as *therapeutic modalities* were given as examples of the conceptualization of women in the reproductive technology industry. In relation to Prof. Charlesworth's invocation of women's free choice to use their bodies as they will. Dr. Rowland stated that "interestingly, men rarely discuss their own bodies to be available for 'use' (as objects)."

Rather than viewing the birthmother's relationship with the child as a "basically gestational role", as it was described by the NBCC, Dr. Rowland described the woman's relationship with the child as a complex relationship involving a physical and emotional interaction during pregnancy and labour, rather than an alienation.

The dismissal of women's position on surrogacy as irrational or anecdotal and therefore unworthy of consideration, was seen as evidence of attempts to render women invisible or to portray them as unbalanced.

It was considered that in order to gather the "strictly scientific" evidence required to "prove" the harms of surrogacy, while rejecting the evidence of "living women", society would have to wait until thousands of persons could be proved to have been harmed.

This suggestion was seen as justification of charges that the industry is interested in promoting a social experiment which is unethical and irrational, the issue of prevention of emotional harm never arising in the pro-surrogacy argument.

Dr. Rowland went on to state that "arguments which deal with the issue of rights are problematic because 'rights' itself as a concept ignores the social and political context in which people are actually making real decisions about their lives. The word 'rights' has been tagged on to just about anything some individuals want . . . what people are actually claiming in surrogacy is the fulfillment of their own personal desires . . . not a need . . . a want is a socially constructed preference . . . and its justification must have a moral base . . . once a desire is couched in the language of rights it takes on an aura of obligation; someone is obligated to service these rights."

Dr. Rowland went on to say that "the concept of rights must . . . be tempered with . . . accountability and responsibility to the social group."

Susan Sherwin was quoted as saying that ". . . feminism . . . is committed to developing a spirit of cooperation, fostering healthy human interaction, and ensuring a sense of mutual responsibility among persons. The autonomy feminism embraces is a freedom from dominance, a liberation (from) aggression and not mere isolation and separation."

In response to the charge of feminist perpetration of "paternalism" upon other women, Dr. Rowland stated that: "I am not saying that women are weak and manipulated. I am not denying women integrity and agency . . . rather I am recognizing the way power works and the masculine values which determine the so-called choices available to differing groups of women in our society. The arguments that 'I have a right to' and that 'I am capable of making choices' are very seductive in our current ideological framework. Yet, those statements are made as if we live in some kind of pure environment where there are no power dynamics and no hierarchies of power . . . choices are hedged around by structured constraints depending on

a woman's race, class, age, marital status, sexuality, religion, culture, and able-bodiedness . . . we live in a world . . . with some people deliberately given more advantages than others."

Dr. Rowland stated that "a woman's right to choose" is about exerting some control over her life, rather than selfish individualism. Freedom to use abortion was framed as the alternative to coercive motherhood. It was considered that there is no accompanying right to have a child, particularly when this entails an assumption that one is "owed" a child, that the state is obliged to provide that child for one to "own" (by permitting the exploitation of others).

Feminism was described as promoting a construction of society that promotes personal fulfillment for people as well as social responsibility, emphasising the relationships between people. To ignore women and children in the debate on surrogacy was seen as failing in our ethical obligations.

Session Four on women and motherhood was chaired by the Hon. Kay Setches, Minister for Community Services in Victoria.

The first paper in this session was presented by Marie Meggitt, who is a founding member of the Association of Relinquishing Mothers, a relinquishing mother herself, and a member of the National Council for the Single Mother and Her Child.

Ms. Meggitt described her meeting with Elizabeth Kane during her visit to Australia, and the importance of that meeting in formulating an understanding of the issue of surrogacy, that the issue of relinquishment is central to both surrogacy and adoption.

Whether or not one chooses to relinquish a child was seen as leading inevitably to an experience "of such vast pain and loss that we are never the same people again." The experience leading to denial of self and social isolation arising from being treated as a non-mother while being a mother, the feeling of difference being the common legacy of mothers and the children who are given away.

The notions that a woman can "walk away from the experience once she (has) given birth and be able to dismiss the event as having had no consequences in her life," and that she does not bond with her child, were challenged.

It was stated that in both surrogacy and adoption "her natural link to her child (is) dismissed as being inappropriate to the circumstances of the birth and her right to raise her child (is) actively undermined and dismissed." The child is portrayed as "someone else's child" . . . and "there is no room to grieve or mourn the loss . . . it is an unacceptable grief . . . she is seen to have participated in the decision to give away her child . . . she is apparently in control and as a consequence . . . has no reason to grieve and perhaps not even a right."

The notion of informed consent was similarly challenged in view of the fact that mothers in surrogacy and adoption can have no prior knowledge of their reactions to and the enormity of the implications of relinquishment, until they actually begin to live with the experience. Having previously had children was seen as doing nothing to prepare the woman for the experience of loss of a particular child.

It was stated that at the same time that retaining the child is seen as inappropriate given the circumstances of birth, simultaneously "we are perceived as mothers who have fundamentally dishonoured their motherhood."

In surrogacy, the woman's altruistic act will become the reason for her vilification. Motherhood that transgresses established norms makes motherhood a source of individual and societal conflict and contradictions. Motherhood becomes a "debilitating experience" and challenges "the legitimacy of some women to the title of mother" becoming a "destructive element in our community."

It was stated that as a consequence of the practices, society ultimately "doesn't . . . deal

with the real and fundamental problems of the way motherhood is experienced in our community. It doesn't deal with the isolation and loneliness of many women who are mothers. It doesn't deal with the low status of mothers . . . or improve the status of mother in our community."

Ms. Meggitt pointed to the need to legitimize similarly the condition of childlessness and the need to permit alternatives for childless women, alternatives which do not mean ownership of children.

The challenge was put to women to attempt to enforce change. It was considered that men will not "cry 'hold' in this mad scramble to do anything to create a child. The reason they won't and can't is because they have a huge vested interest."

It was stated that while "surrogacy arrangements give (men) a biological child and whilst it bestows the opportunity for mothering on their wives, it also delivers their wife immense insult . . . she has been passed over, found unacceptable, and another woman has been asked to do something she has been unable to do, rather than being accepted as the woman and person that she is."

Ms. Meggitt then presented the story of Lori-Jean, a birthmother in a sister-sister surrogacy arrangement, who succumbed to pressures to bear a child for her sister at great personal and familial cost, and is currently in dispute with her sister over the custody of the child. Lori-Jean herself requested that Ms. Meggitt relay her story to ensure that others are informed of the realities of surrogacy, to ensure that other women are aware that "some fairy tales have set women up to yearn for and expect outcomes that are truly unachievable."

The second paper in this session was presented by Heather Dietrich, who is a feminist and lecturer in Science and Technology Policy. Ms. Dietrich was a dissenting voice on the National Bioethics Consultative Committee.

Ms. Dietrich considered that the current concern over surrogacy has been a consequence of the innovation in reproductive technology and the moves to extend application of IVF. The promotion of the expectation that infertility can be overcome was also discussed.

It was stated that the practice of surrogacy, from a feminist standpoint, needs to be assessed from the point of view of its impact upon gender inequality, and the need to promote a "progressive, positive change in our social order towards a society based more on equity and social responsibility."

Ms. Dietrich considered that endorsing and embodying surrogacy in law "is a dangerous precedent for human society in terms of how we view ourselves." Surrogacy was not seen as any solution to infertility at the level where "the hurt really impacts."

She stated that "the purpose of public policy is to ask where the maximum duty of care lies . . . this means looking . . . to maximise the good and limit the harm done . . . such an approach does not focus on individual rights in competition, but emphasises the dynamics of social relations . . . it talks of principles of social responsibility and duties of care, not rights."

It was stated that technology is "deeply implicated" in the crossroads faced by advanced industrial societies in "decision-making about our notion of family formation, our social relations and broadly our relationship to the earth, to the economy . . . (to the examination of) our fundamental values in relationship to our sense of self . . . a pivotal step . . . in human consciousness."

Ms. Dietrich was of the opinion that "huge changes can occur around these issues, but best and most enduring change occurs incrementally and from a process that involves synthesis."

She stated the need not to "rush in with short-sighted solutions." Surrogacy was not seen as progressive as the proponents of

surrogacy attest, but rather “risks contributing to an alienation of us from ourselves.” It was stated that the values underlying the arguments favouring surrogacy “emphasise ownership and control of children described in market terms, using the language of commodities, the language of individualism . . . and of rights . . . this is about defending borders, emphasising separation and competition in human relationships.”

The view was put that “we have to move on from this sort of framework and understand ourselves to be part of a system of interconnecting responsibilities. We have to start talking in that way if we want to create new and different ways of organising ourselves socially and morally. I hear . . . an emphasis on the biological rather than the human, personal, social construction of reproduction. Gametes, embryos, not lives. . . . This separation of the biological from the personal and social seems to me a profoundly alienating and dangerous process.”

Ms. Dietrich went on to describe how the feminist vision can assist society towards a healthier social order, an order which emphasises “interactive relationships of people and planet, not oppositional relationships”, that looks at connection rather than individualism.

Women were seen as embodying this “creative power of intimate interconnection and responsibility.” This knowledge “lives collectively in women’s experience, culture, and history. It is a rich source for creating a different, better social practice and institutionalised structure . . . worth defending, expanding and developing . . . the world needs it desperately right now.”

Session Five of the Conference was chaired by Justice Elizabeth Evatt, President of the Australian Law Reform Commission.

The first paper in this session was presented by Robyn Layton, Judge of the South Australian Industrial Court and Chairperson of the NBCC.

In her talk, Ms. Layton discussed the current legislative situation in Australia, challenging notions that surrogacy without payment is impermissible in states other than Queensland, while acknowledging the unenforceability of contracts.

She discussed the means whereby persons have engaged in surrogacy to date by circumventing existing statutes and the implications of unregulated practice.

In addition, the approach of the NBCC to the task of examining surrogacy was described, as was the process of consultation. In explaining the Committee’s arrival at conclusions inconsistent with other Australian bodies, Ms. Layton attributed their conclusions to their different approach, an approach from the point of view of ethics, that is whether “there (is) anything inherently antisocial or immoral in surrogacy.”

It was stated that the committee considered principles of common good, justice and autonomy, the right to procreate, the right of women to make choices, and the role of the law. It was stated that the Committee was united in concluding that there were risks of exploitation and that the practice should not be encouraged and that strict controls should be applied, including discouragement of commercial practice, or application to other than infertile women. It was stated that the Committee was also opposed to forcible relinquishment and considered counselling to be essential.

Ms. Layton stated that the Committee considered that risks existed of a black market in surrogacy and that in view of the liberal democratic nature of Australian society, that a system of regulation was desirable to prohibition.

Thus, the Committee proposed a state licensing body, responsible, among other things, for assessing eligibility, the possibility of financial exploitation, and the dissemination of information. Credence was given to the difficulty in assessing emotional exploitation.

The proposed Board was seen also to have a role in facilitating the process of making the arrangements.

It was also stated that the NBCC proposed that legal parentage should automatically confer upon the commissioning parties one month after the birth of the child.

Ms. Layton was of the view that while the proposed system could not be considered perfect, it would nevertheless alleviate some of the difficulties inherent in unregulated surrogacy.

The next paper, discussing the educative role of the law, was presented by Kevin Andrews, a Barrister at Law and Acting Director of the St. Vincents Bioethics Centre.

The background to the paper was set by the statement that "courts have long held that parents cannot assign their parental rights", that "the concept that children are the property of their parents has often been rejected by Courts which have found the sale and purchase of children to be contrary to public policy. These principles are reflected in various declarations of human rights."

Various cases of surrogacy in a number of countries and Court determinations on disputes were described, along with legislative developments since the cases became public. An overview of Official Inquiries was also given.

Mr. Andrews subsequently examined arguments in favour of surrogacy, arguments against commercial arrangements and countered the proposition that "altruistic" surrogacy should be permitted.

It was stated that "it is questionable whether the interests of the child can be enhanced by an arrangement in which that child is created, carried, and born of one mother only to be handed to another couple . . . the arrangement remains one for the transfer of parental rights and responsibilities . . . even in the absence of monetary consideration. The child is fundamentally a commodity to be obtained or provided within a utilitarian or consumer setting."

It was considered that "a factor to be considered is the effect on the child of the deliberate creation of circumstances of ambiguous parenthood in which the child may have a matrix of parents – social mother, gestational mother, genetic mother, social father, genetic father, and the men who partner the gestational and genetic mothers . . . a committee of parents and a confusion of genealogical inheritance (which) could not be without psychological and emotional significance if not actual harm."

Reference was also made to "the social, emotional, or psychological vulnerability of the altruistic surrogate (sic) . . . emotional pressure is likely to be present more in an altruistic arrangement than in a commercial one."

Concerns were expressed about the impact of surrogacy upon the status of women: "the necessary perception of the gestational mother as a mere incubator, rather than the natural mother of the child. There is a sense in which her role must be depersonalised, her bonding with the child denied or over-ridden and her body used as a mere object or gestational instrument as though separable from her emotional, psychological and spiritual reality. The significance of that dualism is its devaluing of the personhood of the individual woman."

The pressures upon and possible coercion of infertile women whose husbands desire biological parenthood, was also discussed, as was the possibility that surrogacy may in fact reinforce the stigma of childlessness, and promote the view that "the dignity of women is bound to their child bearing ability."

Mr. Andrews went on to discuss the importance of social responsibility and the contradictions in logic in the NBCC Report in using principles of personal autonomy, justice, and common good while supporting the institutionalization of surrogacy. It was stated that John Stuart Mill, in his essay "On Liberty", clarified that the principle of

personal autonomy is not one “of selfish indifference which pretends that human beings have no business with each other’s conduct in life . . . human beings owe to each other help to distinguish the better from the worse. . . .”

The NBCC was shown to contradict its own statement that “the good of the whole community must be considered when we are dealing with such central social realities as parenthood and the family.”

Mr. Andrews then proposed a legal option that prohibits commercial arrangements, renders altruistic arrangements unenforceable, safeguards legal recognition of the birthmother and prohibition of medically assisted surrogacy.

The NBCC proposal for the regulation of surrogacy to permit its application in certain circumstances was seen as legislative sanction for surrogacy and contrary to the intent of discouraging the practice. It was seen that the NBCC proposals would have the effect of educating the public to consider surrogacy a viable option. The role of government in institutionalization and facilitation of surrogacy was similarly questioned.

Dr. Jocelyne Scutt presented the next paper in this session. Dr. Scutt is a former Deputy Chairperson of the Victorian Law Reform Commission, and has also worked with the Australian Law Reform Commission. She is an author, feminist, and currently in private practice at the Bar in Melbourne.

Dr. Scutt began her presentation by discussing the use of language, its power in constructing social reality, and its use to redefine our notions of motherhood in surrogacy, so that the woman who gives birth becomes a surrogate while the status of mother is transferred to another person.

The implication in such redefinition is that “the ‘real’ or ‘good’ mother does not give up a child; she cares for it from day-to-day in person.” This perception of what constitutes a good mother was shown to permeate the law in regard to other matters, so that “a woman who

engages in a career . . . is at a disadvantage when seeking custody following divorce”, while a man who engages in a career is not similarly disadvantaged by social expectation.

Surrogacy was seen as “giving imprimatur to . . . dichotomising of the ‘good’ versus ‘non-good’ mother” and as setting women “in opposition to one another.” It was considered that “no law should support the notion of ‘woman as receptacle’, ‘woman as substitute’ . . . that (the law) ought not . . . create more potential for dissonance in the way we as women regard ourselves.”

Surrogacy was seen as causing a woman to dichotomize herself, requiring her to divide herself, mind from body. If she does not do so in surrogacy, then she must see herself as occupied territory, her very self being used by others for their own ends, with the commissioning parties having “first call . . . upon not only the developing child, but upon the woman herself.”

Dr. Scutt stated that “it must be recognized that to support by legislation so called surrogacy as a legal practice is to ignore already existing laws or to overturn them.”

The suggestion by some that IVF surrogacy may be the answer to women’s bonding with the children they bear was then discussed. In this view, “to bear a child whose origin is not genetically that of the . . . birthmother overcomes the difficulty: not being genetically ‘bound’ to the child, the mother will not desire to keep the child.” The implication being that “ovum is the sum total of pregnancy . . . the totality of a child.”

In relation to this notion, Dr. Scutt stated: “this proposition can be said, with respect, to be little short of ridiculous. An ovum is not a child. To develop into a child, the pregnant woman devotes energy, life, time, emotional effort, psychological (and material) . . . sustenance. To say that because the ovum is not ‘hers’ she will not sorrow at the relinquishment makes as much (or little) sense as arguing that because a child develops as a

consequence of the introduction of a foreign element (sperm) . . . she will be less attached to it than would be so if the child were born of parthenogenesis. Just as the sperm doth not a child wholly make, nor doth ovum."

It was further stated that "the notion that a pregnancy, because it is commissioned by someone, is not intrinsic to me . . . is an attempt to impose upon women a sense of dissociation from ourselves, to distance us from our bodies, ourselves."

Dr. Scutt went on to demonstrate that IVF surrogacy is currently contrary to common law, given that it involves a surgical procedure, which requires consent by the patient and which must be done for the benefit of the patient. Given that the birthmother in surrogacy is fertile and that she is not ill, "her intact health is the . . . basis (for her selection) by the commissioning couple" . . . she therefore does not need treatment.

Thus, it cannot be said that application of IVF is for her benefit, in fact she undergoes the procedure for the benefit of others. As a consequence, the intervention is considered to be "grievous bodily harm or unlawful wounding." In the case of organ donation, that the death of another may be a consequence of not donating, which may cause trauma to the donor (particularly when they are a relative), is used to legally justify the practice. However, infertility can not similarly be considered to be life-threatening.

It was stated that "the woman who submits to IVF to bear a child for another (including IVF surrogacy) places herself at significant risk. At least 18 women have died whilst undergoing IVF." It was recommended that "medical practitioners working in this area should be aware of the legal (and ethical) requirements governing the carrying out of surgery and medical treatment generally."

Dr. Scutt was of the opinion that laws are required to make it clear that IVF surrogacy is illegal and that medical practitioners are acting

in contravention of the law if they facilitate the practice.

It was stated that to argue that a regulated system of surrogacy (such as proposed by the NBCC) is necessary to clarify the legal status of a child born of such arrangements, does not recognize that such children are in no different situation to children born of adultery or other circumstances. To assume the law can assist children born of such circumstances or from informal surrogacy (which does not involve IVF) and to justify the institutionalization of surrogacy for this purpose "is to fly in the face of reason."

Other practical impediments to the regulation of surrogacy (to permit it to occur in certain circumstances) were also discussed, such as the problem of determining the basis for permitting selective participation, establishing standards, and the issue of defining exploitation, if this is to be considered grounds for exclusion.

The "big brother," civil liberties and equal opportunity implications of selective approval by the State for the access of citizens to surrogacy, were discussed. The difficulties associated with attempting to defend a position of selective application of surrogacy and the inconsistency of such a position with official and legal statements, aimed at discouraging and deterring surrogacy, were also raised.

Dr. Scutt also examined the difficulties in differentiating between commercial and so-called altruistic arrangements and highlighted the fact that altruism can be bought for other than direct payment.

The issue of conditioning to altruism was also discussed in the context of general societal expectations of good women to be self-sacrificing. Reference was also made to cases where teenage girls are being urged to consider surrogacy as a valid career choice.

Prohibition was proposed as the only viable legal option given that surrogacy arrangements have been recognized as detrimental, that spurious distinctions exist between

commercial and altruistic arrangements and the fact that surrogacy arrangements are currently unenforceable at law (and that therefore merely reiterating the unenforceability of contracts in legislation does not change the status quo). It was considered that "parliament must make an authoritative statement" which reflects that as a "matter of public policy the view is that surrogacy is damaging."

To make any legislative response effective, it was further considered that medical (and other professional) facilitation of the practice, as occurs in IVF surrogacy, must be prohibited. Given the aim to discourage and deter surrogacy, the recognition of the harm it perpetrates, and given existing legal provisions; to allow medical and other professionals to facilitate access to a harmful practice, and therefore extend the practice, was considered contradictory and unsupportable.

The broader legal implications of surrogacy were also discussed with parallels drawn to 19th- and early 20th-century notions that men had a right of ownership to children that women bore.

It was stated that, "father right, based on ownership of sperm combined with a legal marriage relationship with a woman who 'incubated' the sperm so that it developed into a child, had no legal challenges." Women at that time had no right of custody of their children, unless the child was illegitimate, that is, where no man claimed ownership either of the child or the woman.

Dr. Scutt went on to examine the inconsistent application of notions of autonomy to men and women quoting Andrea Dworkin who stated: ". . . the bitter fact that the only time that equality (and women's autonomy) are considered values in this society is in a situation like this where some extremely degrading transaction is being rationalised. And the only time that freedom (and autonomy) are considered important to

women as such is when we're talking about the freedom (and autonomy) to prostitute oneself in one way or another . . . equal rights to some form of selling the body, selling the self, something which is unconscionable in any circumstance, something for which there usually is no analogy with men, but a specious analogy is being made."

Dr. Scutt concluded with the statement that "it is imperative that we ensure the development of women's rights in a way that enhances rather than diminishes the humanness of ourselves and our ability to relate to other human beings as human, not as vessels carrying the products of sperm and ova."

The final paper in this session was presented by Sr. Regis Mary Dunne, a Sister of Mercy and Director of the Provincial Bioethics Centre for the Queensland Catholic Dioceses. She is also a lecturer in clinical microbiology and genetics and was also a dissenting voice on the NBCC.

In her paper, she discussed the increasing technological control over reproduction, the possibly unforeseen and unintended consequences of this control and the capacity of technology "to change . . . attitudes and ideas which pervasively lead to a change in culture . . . and (alter) the course of history."

It was stated that we should not underestimate the cultural significance of reproductive technologies and associated practices which have "the capacity to manipulate intimate and fundamental human relationships." She stated that the application of IVF to surrogacy has particular significance given its consequence of "conceptual and practical stranding of parenthood."

Sr. Dunne was of the opinion that "to trade with this function, human experience and individual life knowledge is to exploit and commodify both mother and baby. To formally do this in society is to ignore the significance of biological rootage, and to negate the feto-maternal bond established at



the physical and metaphysical level, something that will never be understood in scientific terms but women know by experience and know it to be important to them and to their children.”

The European Parliament was quoted, which considers that “no legislation permits a woman or a couple to make a contract with another couple undertaking to have a child conceived in the normal way and to give it up after birth. In fact, it is a punishable offence in some countries, even if no money changes hands. There is no reason why such action should be permitted if the child is conceived artificially instead of naturally.”

Sr. Dunne stated that “many medical practitioners find (the) practices ethically objectionable. They see the goals and functions of medicine being to relieve symptoms, to restore health, to restore or maintain function, to do no harm to a patient in the course of care, to educate and counsel patients about their condition, to protect public health and to prevent and cure disease. There is some question whether surrogacy does any of these things.

“The commissioning couple negotiate the pregnancy, yet they are not the patients . . . the surrogate and the child are . . . (Some) find a strong medical contraindication (to the practice) as the potential medical risks all accrue to one party and the benefits to another . . . to mistakenly call surrogacy a ‘medical treatment’. . . seems to me to misinterpret the goals of medical treatment.”

Sr. Dunne stated that her dissenting opinion on the NBCC was based on concerns about the exploitative and demeaning impact of surrogacy upon women, the commodification of human life, the impact upon society’s value system and impact for cultural change, and the vulnerability of the poor.

It was stated that “the practice of surrogacy contains the seeds of injustice for women and children. When justice is diminished in a democratic society, so is freedom.

Furthermore, if a legal function is established to support surrogacy, truth is also diminished.”

Sr. Dunne concluded by voicing her reservations about the legal establishment of surrogacy, her doubt that regulation would prevent informal arrangements and her doubt that State licensed agencies could in practice minimize harm.

The Conference Plenary Session was chaired by Ms. Tricia Harper, Director of the Community Services Industry Study in Victoria.

In this session, Ms. Wendy Weeks, Head of the Social Department at Phillip Institute, provided a summary of the Conference, drawing out major themes and providing an overview of the outcomes of discussions.

She commented upon the broader implications of surrogacy that were consistently referred to throughout the conference and itemized the critical issues upon which a high level of consensus was reached. These issues included that the interests of children should be paramount, concern about society’s response to infertility, concerns about the devaluation of motherhood and the exploitation of women, the use of the Health and Welfare dollar, concerns about reproductive technology, and the extent of dissatisfaction with NBCC proposals, which seek to institutionalize the practice.

It was made apparent that prohibition of surrogacy is the preferred option, “disagreement centering only on the extent to which participating mothers and couple should be criminally liable.”

She concluded that it was exciting to see “reclaiming by women and interested men of the debate and discussion about birth and the reproductive process.”

Given the level of consensus reached at the conference, a Conference Statement was prepared (see Appendix), by a process of discussion, and which at the end of the Conference, was passed by participants, without dissent.

APPENDIX  
STATEMENT FROM CONFERENCE

The following statement was passed without dissent by participants at the final Conference plenary session:

- A. That surrogacy, in whatever form, should *not be permitted* because it is contrary to public policy as:
  - o treating children as commodities
  - o it uses women's bodies as a means to an end; and exploits women
  - o it is destructive to the family of the woman who acts as a surrogate.
- B. That the Conference supports the enactment of uniform State and Territory legislation which *discourages surrogacy arrangements*, whether commercial or noncommercial, and which prohibits certain practices involved in surrogacy arrangements (and in so doing acknowledges existing state legislation which seeks to discourage/prohibit surrogacy).
- C. That the Conference rejects the institutionalisation and regulatory system contained in the proposals of the National Bioethics Consultative Committee.

This summary statement was based on a more detailed statement developed and endorsed by all nine workshops of the Conference (arising from two sessions held by each of the nine workshops which were asked to identify:

- (i) the key issues raised by surrogacy; and
- (ii) how the law and public policy should respond to surrogacy).

**Statement from conference workshops**

The following detailed statement was endorsed by all Conference workshops:

- A. That surrogacy be discouraged and prohibited as contrary to public policy because it treats children as commodities; is exploitative of women,

especially those who are vulnerable or disadvantaged; and is destructive of other family members, e.g., siblings of the child.

- B. That the Conference supports current state legislation on surrogacy (Victoria, South Australia, Queensland) which discourages/ prohibits surrogacy; and which should, if necessary, be extended/strengthened to provide that:
  - o surrogacy in any form, commercial or noncommercial, should be discouraged and the following measures apply:
    - (i) surrogacy arrangements should be null, void and illegal-and unenforceable as contrary to public policy;
    - (ii) advertising should be prohibited and a penalty apply;
    - (iii) exchange of money/payment should be prohibited and a penalty apply;
    - (iv) people acting to facilitate/arrange surrogacy agreements (including doctors, lawyers, etc.) should be prohibited and a penalty apply;
    - (v) reproductive technology/IVF programs or procedures should be prohibited from assisting surrogacy and a penalty apply;
    - (vi) Medicare rebates should not be available to those involved in surrogacy;
    - (vii) medical practitioners knowingly involved in or assisting surrogacy should be guilty of professional misconduct;

but that where, despite these provisions, a surrogacy arrangement is entered into:

- (i) a penalty should not be imposed on the woman who agrees to act as a surrogate or on the couple; and
- (ii) the welfare and interests of the child born from the arrangement is the paramount consideration; and

- any dispute which arises should be dealt with in the Family Court under the Family Law Act.
- C. That information and counselling services should be available to infertile couples.
  - D. That community and professional education processes should be funded to enable the community and professionals to be adequately informed about appropriate responses to infertility-and to facilitate a more informed response by the media.
  - E. That the appropriate response of the community to infertility should be to focus on and put resources into (in the following priority):
    - o identifying the causes of infertility;
    - o preventive measures and strategies;
    - o services to counsel infertile couples and to enable them to see themselves as making a valuable contribution to society regardless of their capacity or incapacity to parent a child.
  - F. That the Conference rejects the National Bioethics Consultative Committee Report and recommendations and opposes:
    - o its proposal to institutionalise surrogacy;
    - o the establishing and funding of agencies to “regulate” surrogacy;
    - o legislative changes that permit automatic transfer of parentage 30 days after the birth of child (if not opposed);
- and criticises its failure to address the ethical issues raised by surrogacy.