Response from the Anglican Diocese of Melbourne to the
Victorian Law Reform Commission's Report on
Assisted Reproductive Technology and Adoption

Section 1: History of Anglican involvement in IVF and ART at both national and Melbourne diocesan level:

- First IVF child, Candice Reed, born in Australia
- Victoria's Infertility Treatment Act passed, regulating IVF clinics and practice. This was supported by the Anglican national Social Responsibilities Commission,\(^1\) on the basis that this leading edge of technology needed regulation and public monitoring. The SRC initially opposed use of donor gametes and use of super-ovulation to increase egg harvesting, but later changed its mind on both.
- The Church supported starting a register of donors and IVF children, on the basis of the child's right to know its origins and identity.
- Alan Nichols appointed to the Victorian Standing Review and Advisory Committee on Infertility. Later Dr John Morgan became a member of the Australian Health Ethics Committee of the National Health & Medical Research Council, which promulgated national guidelines for ART.
- An amended Victorian Infertility Treatment Act abolished 12 months waiting, establishing a new licensing and regulating body, endorsed guiding principle of the paramountcy of the best interests of the child.
- Anglican Church supported extending IVF to de facto couples, on the basis that the Marriage Act recognised de facto couples for property, child support, etc.
- The Church supported the Infertility Treatment Authority opening a register for donors and IVF children to contact each other, on the basis of an IVF child needing to clarify its identity and origins.
- The Lockhart Committee reviewed the Commonwealth laws prohibiting human cloning and limiting human embryo research. Several Anglicans made submissions and appeared at public consultations. These supported extending permission for

\(^1\) The main contributors to Anglican positions on infertility legislation in the 1980s were the Rev. Dr John Morgan (Brisbane), Rt Rev Peter Hollingworth (then Commission chairman), the Rev. Alan Nichols (Melbourne), Justice Kemerio Murray (Adelaide), Fr John Fleming. In the 1990s the main contributors in Melbourne were the Rev. Ray Cleary, Dr Denise Cooper-Clark, the Rev. Gordon Preece and the Rev. Alan Nichols.
embryo research but opposed therapeutic cloning, on the basis of drawing a oral
threshold which the Australian community could support
• The Commonwealth passed amended Acts after Lockhart recommendations on a
conscience vote, which approved of both extending embryo research and also
licensing therapeutic cloning.
• States considered complementary legislation.

Summary: There has been a long involvement of Anglican spokespersons and committees
in the various aspects of infertility legislation. The Victorian Law Reform Commission Report
also touches on parentage, surrogacy and adoption - all of which the Church has an interest
in because of providing over decades services for family support, child protection,
counseling and adoption.

Section 2: The main recommendations of the Law Reform Commission:
• A flexible regulatory regime should be introduced, based on guiding principles
(such as the best interests of the child), clinical ethics committees in each clinic,
and a decision-making ethics committee for the Infertility Treatment Authority.
• Best interests of children is to remain the paramount principle. Anyone with a
criminal or violent past would have to satisfy an independent review panel before
proceeding to ART treatment or any surrogacy arrangement.
• A more inclusive approach would open ART to lesbian couples or singles. Women
who have self-inseminated can then come within the ART process.
• Recognising parents: This would permit non-birth mothers in a domestic
relationship with the birth mother to be on the birth certificate by way of 'automatic
statutory presumption.' Likewise with surrogacy - the social parents will be on the
birth certificate, provided the surrogate mother consents to the arrangement and it
is in the best interests of the child.
• Counselling and education is to be provided to ensure IVF children know they can
exercise their right to information about their origins. More can be done to
encourage parents to tell their children about their genetic origins.
• The Adoption Act 1984 should be amended to allow the Country Court to make
adoption orders in favour of same-sex couples.
• Donors (of sperm or eggs) should not be able to apply for identifying information
about children conceived using their gametes. This would change the present law.
• The Attorney General to work with other States and the Commonwealth to ensure
that non-birth mothers are recognized as parents for the Family Law Act and the
Child Support (Assessment) Act 1989. But this is a Commonwealth matter, and the
present Government will not agree.
• When people die, a surviving partner may wish to use eggs of sperm for a later IVF process. This can only happen after a person dies if they have left written consent.

• Sex selection: The ban on choosing a child's sex when using IVF should remain. The only time it should be possible for embryos of a particular sex to be selected is when it is necessary to avoid passing a genetic condition on to a child.

Section 3: Commentary on how the Law Reform Commission came to some of its conclusions:

The Victorian Law Reform Commission may be considered by some to be more subject to the pressure group of lesbian parents than committed to the best interests of children. That is, they have arguably put the human rights claims of adults ahead of parents' responsibilities for care of children.

The Commission has, between their consultation paper and the final report, dropped a proposed legal framework of 'deemed adoption' which had built-in protections for children. They did this, they have admitted (p. 129), because lesbian lobby groups felt this was less than a legal recognition of their relationships. The lobby groups really want Victorian law to make their relationship equal to marriage, but Commonwealth law prevents this.

The 'deemed adoption' proposal had the advantage for children that both social parents would be put through counselling and scrutiny for suitability as parents, in the same way as infertile heterosexual couples applying for adoption. One Anglican submission to the inquiry suggested the following criteria for exclusion:
- any record of child abuse
- an intervention order in the current or any previous relationship
- evidence of severance of all other family relationships
- a criminal record.

But the Law Reform Commission replaced its concept of 'deemed adoption' with a 'presumption of parentage' which it admits (p. 130, 135, 137) is challengeable by the Victorian Supreme Court, depending on its interpretation of a clause in the Commonwealth Marriage Act.

Victorian law on Assisted Reproductive Technology has been in legal limbo since a Federal Court judgement that it was breaching Federal anti-discrimination laws by denying lesbians

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2 From the Centre for Applied Christian Ethics, Ridley College, Melbourne
3 These exclusion criteria, except for 'evidence of severance of all other family relationships' are in fact accepted by the Commission as consideration for adoption and surrogacy, Sec. 102, and page 62.
access to IVF. The Law Reform Commission is making recommendations to overcome this, but will the proposed 'presumption of parentage' accomplish this? We could remain in a legal minefield. The great difficulty continues to be: what are the best interests of the child born deliberately without a social father?

Also, the Victorian Law Reform Commission now recommends deleting from existing Victorian legislation any right the donor of sperm might have had to initiate contact with any child born from their sperm donation.

Curiously the whole four year Law Reform Commission inquiry, with its 663 submissions and 55 public consultations, is all about the legal identity of no more than 40 children a year born through In Vitro Fertilisation processes to lesbian couples. Or is it really about the gay and lesbian lobby trying by one means or another to achieve legal recognition of their relationships as marriage?

**Section 4: A position for the Anglican Diocese of Melbourne to adopt on the Commission’s recommendations:**

1. **Agree in principle to changes to the Infertility Treatment Act to promote a responsive and flexible regime to handle continuing technological changes.**
   
   Reason: Legislation is cumbersome to change, and the technology is changing fast (as for example with stem cell research). Support creation of clinical ethics committees in each clinic, and appointment of an ethics committee for the Infertility Treatment Authority with decision-making powers on responses to future technological changes.

2. **Accept that independent research shows that children in lesbian and gay households do not suffer psychologically or socially compared to children in heterosexual households.**

3. **Agree that adoption should be opened up to lesbian and gay couples, as it has been for singles, but on the same basis of suitability as parents.**

4. **Agree that Artificial Reproductive Technology should be opened up in a nondiscriminatory way to gay and lesbian couples - that is, that medically infertile no longer be the key criteria. 'The best interests of the child' born through IVF remain the paramount consideration.**

5. **The Church has no objection to birth certificates carrying the names of two 'social parents', only one of which may be the biological mother. Reason: The**
affirmation of the parenting roles strengthens the family unit and the sense of stability the child may have. The Church would have preferred the Commission’s first choice of 'deemed adoption' as a way of achieving this, rather than 'presumed parentage' which is very likely to be subject to court challenges.

The Church however continues to affirm a heterosexual couple in a long term relationship to be the basic unit of Australian society, and therefore to be protected under Australian law. This makes absolutely clear the responsibilities of child support, property sharing and parental responsibilities. The future of any society continues to depend on the vast majority of its citizens pursuing a heterosexual partnerships, producing children for the next generation. This does not exclude the minorities of gays, lesbians, celibates and others, who should not in a liberal democracy suffer discrimination. Laws for the majority should not be compromised to cater for the demands of particular minority lobby groups, and so the common good should not be jeopardised for the interests of minority groups.

Alan Nichols 20 June 2007