

Chapter 2

Social Context

CONTENTS

24 CHANGING FAMILY
STRUCTURES

28 ASSISTED REPRODUCTIVE
TREATMENTS

30 WELFARE OF CHILDREN

38 LAW REFORM

Chapter 2

Social Context



While some people will regard some contemporary family changes and diversity as evidence of family decline, others will see these trends as evidence of the resilience of families as they seek to adapt to a changing world.

In this reference the commission has considered whether eligibility criteria for all forms of assisted reproduction and adoption should be expanded, and if so, whether accompanying changes should be made to related areas of the law. In conducting the review, we were asked to have particular regard to the best interests of children, and to take account of the public interest, the interests of parents, single people and people in same-sex relationships, infertile people and donors of gametes.

The matters under review raise fundamental questions about what constitutes a family and a desirable environment in which to raise children. Submissions to the Consultation Paper and the three Position Papers expressed strong support for the guiding principle that the health and welfare of children should be given priority in decisions about the use of reproductive technology. As would be expected, submissions contained a broad range of views about how the law could best protect the health and welfare of children. Some submissions argued that the interests of children could only be protected by limiting access to assisted reproduction and adoption to married couples. Other submissions argued that eligibility requirements based on marital status are not an effective way of safeguarding the health and welfare of children and are also inconsistent with the principle of non-discrimination.

In considering reforms to the laws governing assisted reproduction, adoption and the status of children, the commission has taken account of the social context in which the legislation operates. The commission is committed to ensuring that our recommendations are based on evidence rather than on ideology or prejudice.

In this chapter we discuss the social context of our reference, including:

- the changes which have occurred in family structures in Australia over the past 30 years and community attitudes to different types of families
- the growth in the use of assisted reproductive technology (ART) which has occurred over the past decade and the increasing numbers of children being born as a result of this treatment
- changing community attitudes to the use of ART, including its use by couples in de facto relationships, same-sex couples and single women
- research about the health and welfare of children born as a result of different forms of ART and/or into diverse family types
- implications of social change for the law.

CHANGING FAMILY STRUCTURES

Over the past three decades there have been substantial changes in the structure of Australian families. Changes include a growth in the proportion of single parent families and blended families, and increases in the number of people living in same-sex relationships. A significant number of children are born to single mothers, or spend part of their childhood living with a single parent (most frequently their mother). If they live with a father and a mother these parents may or may not be married. Many children spend some of their childhood living in a family where they are not genetically related to the person living with or married to their parent. Although only a small percentage of couples report that they are living in gay or lesbian relationships, approximately one in five lesbian couples have children living with them.

While many are concerned about the social effects of these trends, it is important to recognise that families 'come in many shapes and sizes—they always have and always will.'¹ Professor David de Vaus has analysed Australian Bureau of Statistics and census data to track changes in the nature of families which have occurred in Australia since 1976. He has commented that:

While some people will regard some contemporary family changes and diversity as evidence of family decline, others will see these trends as evidence of the resilience of families as they seek to adapt to a changing world... Inevitably as social and economic structures change, so too will families. Although some people may decry this, it is critical that families do change. For were they to remain unresponsive to broad social influences then families would end up playing an increasingly marginal role in people's lives, and in helping them live in an increasingly complex world. ... Rather than simply following an agreed and well-established script for 'doing family', individuals increasingly have to work out how they will form and develop their own family biography.²

SINGLE PARENT FAMILIES

De Vaus' analysis found that although most children under 15 lived with two parents,³ between 1976 and 2001 there was a significant increase in the number of single parent families with dependent children and in the number of couples who do not have children. These changes mean that traditional 'nuclear families' are now a smaller proportion of all families. The growth in single parent families is largely due to an increase in the rate of relationship breakdown. More than a quarter of children born between 1976 and 1983 had spent some time living in a single parent family by the time they were 18.⁴ De Vaus found that 11.6% of children born in 2000 were born to women not living with a partner and a further 1.4% of children were born to women who were widowed, separated or divorced.⁵ Recent figures compiled by the Australian Bureau of Statistics indicate that 17.9% of Victorian children live in one parent families (15.1% with single mothers and 2.8% with single fathers).⁶

Other changes include an increase in the proportion of heterosexual couples who live together before getting married, or who do not marry at all. In 2001, 12.4% of heterosexual couples reported that they were cohabiting, compared with 5.7% of couples in 1986.⁷

BLENDED AND STEP-FAMILIES

Significant numbers of Australian children live in blended or step-families, where one of the parents is not genetically related to them. Blended families comprise a couple, at least one child of the couple and at least one child who is a stepchild of one member of the couple. Step-families comprise a couple and at least one child who is the stepchild of one member of the couple, but do not include a child of the couple. In the past, blended and step-families often came into existence after a married person died and his or her spouse remarried. Today they are more likely to be the result of relationship breakdown.⁸

It has been estimated that step-families and blended families make up 9.9% of all couple-based families with children under 18.⁹ In Victoria 6.9% of children live in blended and step-families.¹⁰

SAME-SEX PARENT FAMILIES

It is more difficult to obtain accurate figures on the proportion of couples living in same-sex relationships. In the 2001 Australian census just under half of one per cent of couples reported they were living in a same-sex relationship: 0.26% were male same-sex couples and 0.21% were lesbian couples.¹¹ In Canada, a similar proportion (0.5%) identified themselves as same-sex couples, and in the USA it is estimated that one per cent of all couples sharing a household were same-sex.¹²

Census data almost certainly underestimate the proportion of couples living in same-sex relationships. People may not report they are living in such relationships, because they fear discrimination or because they do not realise that same-sex relationships are now counted as couples in the census.¹³ The Australian Study of Health and Relationships conducted in 2000–01 asked more direct questions about respondents' living arrangements, and revealed that around 2.2% of all couples living in the same household were same-sex couples.¹⁴ Of these, 1.3% were male couples and 0.9% were female couples.¹⁵ Same-sex couples tend to be concentrated in the younger age groups, when the issue of having children is most likely to arise.¹⁶

Census data show that nearly 17% of lesbian couples and nearly 4% of gay male couples have a child living with them.¹⁷ Similarly, in a survey of 403 women and 240 men conducted by the Victorian Gay and Lesbian Rights Lobby in early 2005, 18.6% of respondents had children.¹⁸ Sixty three per cent of these parents lived full-time with their children.¹⁹

Research shows that there are different ways in which lesbians and gay men form families. The majority of children living with gay and lesbian parents are children born into a previous heterosexual relationship.²⁰ However, recent Victorian research suggests that a significant proportion of lesbians and gay men are planning to have children in the future.²¹ Some lesbian and gay couples are foster carers.²² The commission received a large number of submissions from lesbian and gay couples who have or are planning to have children.

- 1 David de Vaus, *Diversity and Change in Australian Families: Statistical Profiles* (2004) xv. For discussion of historical changes in families see Michael Gilding, 'Changing Families in Australia 1901–2001' (2001) 60 *Family Matters* 6.
- 2 De Vaus (2004), above n 1, xv.
- 3 Ibid 9.
- 4 The statistic is 26.8%: ibid 7.
- 5 Ibid 202.
- 6 Department of Human Services, *The State of Victoria's Children Report 2006* (2006), Table 1.7, 29.
- 7 De Vaus (2004), above n 1, 115.
- 8 Ibid 60.
- 9 Ibid 60.
- 10 Department of Human Services (2006), above n 6, Table 1.7, 29.
- 11 De Vaus (2004), above n 1, 82.
- 12 Ibid.
- 13 Australian Bureau of Statistics, *Marriages and Divorces Australia 2002*, Catalogue No 3310.0.
- 14 De Vaus (2004), above n 1, 83.
- 15 Ibid.
- 16 Ibid Table 7.1.
- 17 Ibid 84, Table 7.2. See also Sarah Wise, *Family Structure, Child Outcomes and Environmental Mediators, An Overview of the Development in Diverse Families Study* (2003), 3. Similar trends apply in both the United States and Canada. Census data in these countries indicate that 22% of lesbian-headed households in the United States and 15% of lesbian couples in Canada have children under 18 living in them. A smaller proportion of gay-headed households (6% of gay-headed households in the United States and 15% of gay couple households in Canada) had a child under 18 living with them: see de Vaus (2004), above 1 X, 84.
- 18 Ruth McNair and Nikos Thomacos, *Not Yet Equal: Report on the VGLRL Same Sex Relationships Survey 2005* (2005), 41–2, Figure 11. In an earlier study of 670 people from the gay and lesbian community, 21% had children: Victorian Gay and Lesbian Rights Lobby, *Everyday Experiments, Report of a Survey into Same-Sex Domestic Partnerships in Victoria* (2001), 13.
- 19 McNair and Thomacos (2005), above n 18, 42–3 and Figure 12. A further 14.3% lived with their children part-time and 11.5% lived with their children only at weekends or during holidays.
- 20 de Vaus (2004), above n 1, 84.
- 21 McNair and Thomacos (2005), above n 18, 41–2. In the 2005 survey, 135 of the 652 respondents (20.9%) were planning to have children. A higher proportion (41%) of respondents in the 2001 survey wanted to have children.
- 22 Ruth McNair et al, 'Lesbian Parenting: Issues, Strengths and Challenges' (2002) 63 *Family Matters* 40.



It is difficult to determine the number of lesbian parents who have children conceived through donor insemination or other forms of ART. Although single women and women in lesbian relationships are eligible for clinic treatment in Victoria only if they are 'clinically infertile', women who are not eligible sometimes use self-insemination to become pregnant or travel interstate where they have access to donor insemination and other forms of treatment. We also spoke to some gay men who have children born as a result of surrogacy arrangements made overseas or were planning to have children in this way in the future.

CHANGING ATTITUDES TO FAMILIES

The Research School of Social Sciences at the Australian National University coordinates the Australian Survey of Social Attitudes²³ which is intended to provide information on 'what ordinary Australians feel about the major social, economic and political issues of the day.'²⁴ One area covered in the survey concerns attitudes to family structures. Respondents are asked to comment on whether they believe particular types of living arrangements constitute families. The results of the survey indicate that social attitudes now reflect acceptance of a broader range of families than was the case in the past. In turn, changes in social attitudes may influence the living arrangements which people make and their willingness to report that they are living in non-traditional family types.

The survey indicates that the presence or absence of children is an important factor in attitudes about whether a particular type of living arrangement creates a family. Seventy nine per cent of respondents (77% of men and 82% of women) said that unmarried couples with children constitute families. Interestingly, marriage was regarded as a less important determinant of a family relationship than the presence of children—63% of respondents said that they thought that a married couple without children was a family.²⁵

A similar pattern applies in the case of single parents and children. Seventy four per cent of respondents (69% of men and 78% of women) agreed that single parents with children are families. Forty two per cent of respondents thought that single parents could bring up a child as well as a couple.²⁶

A lower but still significant proportion of respondents (42%) said that same-sex couples with children are families (50% of women, 34% of men).²⁷

A number of factors influence attitudes to families. This research indicates that women are more likely than men to see living arrangements involving children as families. Attitudes to families are also influenced by the respondent's age, level of education and whether they regularly attend religious services. More than half of the respondents under 49 (65% of people aged 18–34 and 56% of people aged 35–49) think that same-sex couples with children are families. Just over a third of respondents said that the law should recognise same-sex couples, with support higher among younger people (49% of people aged 18–34) and women of all ages (40%).²⁸

The commission received some submissions which opposed changes to eligibility requirements and argued that children with same-sex parents would inevitably experience stigma and discrimination. (We discuss research which suggests that this may be the case below.) However there is also evidence that social attitudes to homosexuality are changing. A survey of 24,718 people over the age of 14 conducted by Roy Morgan Research asked whether respondents believed that 'homosexuality was immoral'. Sixty five per cent of respondents disagreed with this proposition, although there were regional variations in attitudes and differences related to age, gender, level of education and religious affiliation. Overall, 43% of men and 27% of women thought that 'homosexuality was immoral'. People living in Victoria were the least likely to agree with this statement.²⁹

The commission received submissions from a number of Christian church-affiliated organisations that argued that it was wrong for children to be brought up outside a traditional heterosexual family, especially by parents in same-sex relationships.³⁰ Significantly, the Roy Morgan survey suggests that people with religious affiliations do not always share these concerns, although there are differences between the various religious groups. Sixty six per cent of Catholics said that they did not agree that 'homosexuality is immoral', compared with 32% of Baptists and 38% of evangelical Christians.³¹ The survey included a 'non-Christian' category in which 55% of respondents said that they did not agree that homosexuality is immoral. Around 37% of all respondents thought that gay couples should be able to adopt children. The proportion was higher (56%) among those who did not believe homosexuality was immoral.³²

Since 2000 Anglicare Australia, a nationwide network of locally-based Anglican organisations involved in the provision of family support services, has published an annual report on the state of the family. The 2005 report explored the diverse family types discussed above and referred to the following definition of family:

*a family is any combination of two or more people living in a domestic household comprising a minimum of two adults, or one adult and one child. ... Any definition should also include reference to permanency and commitment, especially where the care of children is involved.*³³

Noting the changes in family structures which have occurred in Australia and overseas, the Anglicare report said that:

*While it is clear that we should continue to support notions of 'traditional family' values which uphold the necessity of one or more responsible adults caring for one or more protected children, we are now living in a changing environment where such responsibility and protection is sometimes provided by those not necessarily bound by blood or kin. There are also increasing numbers of households not based on the protection of children which still demonstrate the characteristics of responsibility, nurture and support.*³⁴

23 This survey takes the form of a mailed questionnaire sent out to 10,000 Australians every two years. The 2003 survey was distributed to a stratified sample of 11,380 people aged 18 or over selected from the electoral roll: Shaun Wilson et al (eds), *Australian Social Attitudes: The First Report* (2005) 6.

24 Ibid vii.

25 Ibid 14–15.

26 Ibid 17.

27 Ibid 19.

28 Ibid 14, 18, 19.

29 Michael Flood and Clive Hamilton, *Mapping Homophobia in Australia* (2005), 1–2.

30 Submissions were received from the Australian Christian Lobby (PP1 134), Catholic Women's League (CP 169, PP1 48), Presbyterian Church and Nation Committee (CP 87, PP1 263), Salt Shakers (CP 127), Caroline Chisholm Centre for Health Ethics (CP 145, PP1 222) and Knights of the Southern Cross (CP 318).

31 Flood and Hamilton (2005), above n 29, 13–14.

32 Ibid 5.

33 Sue Leppert (ed), *State of the Family 2005* (2005), 3–4.

34 Ibid.



ASSISTED REPRODUCTIVE TREATMENTS

In this report, we make recommendations for changes in the law in relation to access to ART and adoption, and in relation to surrogacy arrangements. Assisted reproductive technology is playing an increasing role in the way that Australian families are formed. Demand for and use of ART has escalated since the first Australian child conceived through IVF was born in 1980.³⁵ If implemented, the recommendations made in this report are likely to result in more people seeking access to ART in the future.

INCREASING USE

Donor insemination has been occurring in Victoria for at least the last 50 years. Before enactment of the *Infertility (Medical Procedures) Act 1984* there was no legislation which regulated infertility treatment or required records to be kept of donors. The actual numbers of women who were treated and children who were conceived through use of donated sperm will therefore never be known.

The number of people who use IVF or other forms of infertility treatment has steadily increased over the past decade. In 2000 almost 2% of all births in Australia and New Zealand were a result of assisted conception treatments.³⁶ In Australia and New Zealand in 2004 the number of treatment cycles commenced (41,904)³⁷ was more than double the number commenced in 1993 (16,999).³⁸ Over the same period there has been an almost threefold increase in pregnancies and deliveries as a result of assisted conception treatments.³⁹

The success rates of ART vary according to the cause of infertility and the type of treatment received. In 2004, 20.1% of fresh non-donor treatment cycles in Australia and New Zealand resulted in the birth of at least one living baby.⁴⁰ The success rate for cycles in which a non-donor frozen embryo was thawed was 15.6%.⁴¹ The success rate for treatment cycles using fresh or frozen donor oocytes or embryos was 18.9%.⁴² Success rates of donor insemination are measured as a percentage of live deliveries per cycle started. In 2004 there were 3170 procedures using donated semen. Of these, 307 (9.7%) resulted in the delivery of at least one living baby.⁴³

The same patterns of increased use of assisted reproduction treatments recorded Australia-wide are apparent in Victoria. In its first annual report, the Victorian Infertility Treatment Authority (ITA) reported that in 1998, 4,274 couples received

one or more of the following treatments: donor insemination, GIFT, IVF or removal of frozen embryos from storage for the purposes of implantation (thaw cycle). Seven hundred and fifty six babies were born in that year from these forms of treatment.⁴⁴ In the 2004 calendar year 7870 women underwent ART procedures, and 2032 babies were born in that year.⁴⁵

The increasing use of ART is also reflected, in part, in the increase in government expenditure for ART services under Medicare and the Pharmaceutical Benefits Scheme.⁴⁶ In 2005, 27,663 patients accessed services provided under Medicare, compared with 19,678 in 2000.⁴⁷ In 2005 the Federal Government spent \$156.1 million on ART services, an increase from \$66.3 million in 2000,⁴⁸ although there are a number of possible explanations, apart from an increase in the number of patients accessing services, for this increase in expenditure.⁴⁹

DONATED GAMETES AND EMBRYOS

The majority of babies born through ART are not conceived from donated gametes or embryos. In 2004 across Australia and New Zealand 93.6% of ART treatment procedures used patients' own gametes or embryos. Donor sperm, oocytes or embryos were used in the remaining 6.4% of treatment cycles.⁵⁰ In Victoria in 2005, 597 women were treated using donated eggs, embryos or sperm and 84 babies were recorded as born from procedures using donated gametes and embryos, with 110 ongoing pregnancies at the time of reporting.⁵¹

In Victoria since July 1988 the births of children conceived through use of donated gametes or embryos have been recorded in registers kept by the Infertility Treatment Authority.⁵² As at 31 December 2006, 3533 births had been registered on the central registers.⁵³ These figures do not include children who were born as the result of a woman inseminating herself with semen from a donor outside the clinic system.

The use of donated sperm may decrease as technology develops. Intracytoplasmic sperm injection (ICSI) enables heterosexual couples to use the male partner's sperm in situations where conception would previously have only been possible by using donated semen. Use of ICSI has increased almost fourfold since 1994 and is now more common than IVF treatment.⁵⁴ This may reduce the number of children born to women in heterosexual relationships who are not genetically related to the men who is their social fathers.

However, women without male partners who want to have children will continue to need donated sperm. If the government implements our recommendation that restrictions on eligibility of lesbian and single women for clinic treatment be removed, some of these women will be treated in Victorian clinics through use of donated sperm.

COMMUNITY ATTITUDES

The recommendations in this report reflect the deliberations of the commission and are not based simply on public opinion about particular issues. However it is relevant to note that the increase in the number of people seeking infertility treatment has been accompanied by increased community acceptance of the technology. This acceptance is reflected both in the attitudes which people express about using the technology themselves and in their views about its use by others.

In a survey about the use of IVF undertaken by the Australian Institute of Family Studies, 42% of respondents said they would use IVF if they encountered difficulties having children and a further 13–18% of men and women said they might do so. Childless respondents who said they 'definitely' wanted children were even more likely to say they would use IVF; 69% of men in their thirties and 47% of men in their twenties said they would do so, compared with 52% of women in their thirties and 66% of women in their twenties.⁵⁵

Since July 1981 Roy Morgan Research has regularly polled attitudes to IVF and other related issues.⁵⁶ In the most recent survey, conducted in June 2006, 88% of respondents supported use of IVF to assist infertile married couples, compared with 77% who approved use of the technology in 1981.⁵⁷

Attitudes about who should be able to access ART are also changing. In 1993 only 18% of respondents approved of the use of donor sperm to help single women conceive. By the October 2000 survey 38% of respondents approved, 8% were undecided and 54% disapproved. A similar change in attitude is apparent in attitudes to use of donor sperm by lesbian women. Approval for this increased from 7% of respondents in 1993 to 31% in 2000, with 10% undecided and 50% disapproving.⁵⁸ As we noted above, a relatively high proportion of the community now regards same-sex partners and their children as families. In the future this more expansive concept of family is likely to contribute to greater community acceptance of use of assisted reproductive treatment by single people and same-sex couples.

- 35 The first child conceived through IVF in the world was Louise Brown, born in the United Kingdom in 1978. The first Australian-born child conceived through IVF was Candice Reed, born on 23 June 1980. Gab Kovacs, 'Setting the Scene—What We Have and What We Know?' (Paper presented at the The Missing Link: Private Rights and Public Interest in Donor Treatment Procedures, Melbourne, 29 October 2003), 29.
- 36 Jishan Dean and Elizabeth Sullivan, *Assisted Conception Australia and New Zealand 2000 and 2001* (2003), 1.
- 37 Yueping Alex Wang et al, *Assisted Reproduction Technology in Australia and New Zealand 2004* (2006), 41, Table 34.
- 38 Joanne Bryant et al, *Assisted Reproductive Technology in Australia and New Zealand 2002* (2004) 36, Table R1; Anne-Marie Waters et al, *Assisted Reproduction Technology in Australia and New Zealand 2003* (2006), 30, Table R1. Note however that from 2002 the definition of treatment cycles was broadened to include cancelled ART cycles, unsuccessful oocyte pick-ups and embryo thaws and intrauterine insemination using donor sperm: see note to Table R1.
- 39 In 2004 there were 6,792 ART treatment cycles in Australia and New Zealand that resulted in a live delivery, compared to 2,515 in 1995: see Yueping Alex Wang et al (2006), above n 37, 45, Figure 16.
- 40 Ibid 15, Fig 4.
- 41 Ibid 21, Fig 7.
- 42 Ibid 26, Fig 10.
- 43 Ibid 39.
- 44 Infertility Treatment Authority, *Annual Report 1999* (1999), 21, Table 1. There were also 413 ongoing pregnancies. Note that the ITA recommends that caution be exercised when interpreting and comparing data reported in its annual reports due to different reporting dates and treatment policies: Infertility Treatment Authority, *Annual Report 2006* (2006) 18.
- 45 Infertility Treatment Authority (2006), above n 44, 20.
- 46 Assisted Reproductive Technologies Review Committee, *Report of the Independent Review of Assisted Reproductive Technologies* (February 2006), 43–8.
- 47 Ibid Table 5, 47.
- 48 Ibid Table 4, 47.
- 49 The Committee surmised 'much of the increase in expenditure must be due mainly to some combination of an increase in total charges and transfer of out-of-pocket gaps to MBS [Medicare Benefits Schedule] items numbers, as well as lesser factors such as service growth, indexation and the introduction of new technologies': *ibid*, 48.
- 50 Yueping Alex Wang et al (2006), above n 37, 7 Table 1.
- 51 Infertility Treatment Authority (2006), above n 44, 24 Table 4.1.
- 52 Births resulting from donations made between 1 July 1988 and 1 January 1998 are recorded in the 1984 central register. Births from donations made after that date are recorded on the 1995 central register. These are maintained separately because different rules govern access to identifying information on each register. There are also two voluntary registers on which donors, children and families can place information voluntarily. The operation of the registers is explained in Chapter 15.
- 53 Information provided by Infertility Treatment Authority, 20 February 2007.
- 54 Anne-Marie Waters et (2006), above n 38, 6.
- 55 Ruth Weston and Lixia Qu, 'Beliefs About IVF as a Personal Fallback Option' (2005) 71 *Family Matters* 40.
- 56 See Roy Morgan Research, Morgan Polls <www.roymorgan.com/news/polls/polls.cfm> at 28 February 2007.
- 57 Roy Morgan Research, *Large Majority of Australians Approve Extraction of Stem Cells from Human Embryos for Medical Research*, Finding No. 4036 (21 June 2006).
- 58 Gabor Kovacs et al, 'Community Attitudes to Assisted Reproductive Technology: A 20-Year Trend' (2003) 179(10) *Medical Journal of Australia* 536.

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What children need in parents are people who are nurturing, who provide adequate, sustained care. Whether that care is provided by a single person, a woman and a man, two men or two women is irrelevant.

WELFARE OF CHILDREN

In the course of this reference, the commission heard divergent views about how ART affects the welfare of children born. We received a number of submissions which argued that the health and wellbeing of children could best be protected by restricting eligibility for assisted reproductive treatment to married heterosexual couples. For example, Endeavour Forum objected to:

*the deliberate manufacture of children through ART for single and homosexual individuals. Children need both a father and a mother, not two mothers or two fathers.*⁵⁹

Other submissions argued that children could thrive in many different types of families, provided they received adequate love and support, for example:

*My beliefs around parenting and what makes a positive parent are actually about particular skills, virtues and abilities. The gender and sexuality of the parents is not relevant. What children need in parents are people who are nurturing, who provide adequate, sustained care. Whether that care is provided by a single person, a woman and a man, two men or two women is irrelevant.*⁶⁰

In conducting research and considering the matters under review, the commission examined a large body of social science research about how different family structures affect children's health and psychological adjustment.⁶¹

In 2004 the commission published a literature review of studies focusing on outcomes for children born of ART in diverse family formations written by Dr Ruth McNair.⁶² In her analysis, McNair draws upon a framework for measuring child health and wellbeing developed by the Australian Institute of Health and Welfare (AIHW). The AIHW framework relies on three interrelated factors: family structure and function, factors relating to the child, and socio-cultural factors external to the family.⁶³ McNair discusses the research in relation to each of these issues for children born as the result of ART or surrogacy. She examines the health and psychological outcomes experienced by these children, concluding that there is sound evidence that children born into families with non-biological parents or same-sex parents do at least as well as other children.

In addition to drawing on the research identified by McNair, we have also examined a number of other studies, which we discuss below.

HEALTH OUTCOMES

Research indicates there are some differences in health outcomes between children conceived through ART and children who are conceived conventionally. Across Australia and New Zealand a higher proportion of twins and triplets are being born to women who conceive through assisted reproduction than to women who conceive without assistance.⁶⁴ Children conceived by ART are more likely to be stillborn or to die shortly after birth although outcomes vary according to the form of ART used. The higher death rate for ART births is largely attributable to a higher incidence of pre-term delivery and a higher proportion of multiple births,⁶⁵ although a small proportion of deaths are due to severe birth defects.⁶⁶ Multiple embryo transfer also increases the likelihood of multiple births and of perinatal death. The Australian Reproductive Technology Accreditation Committee guidelines now recommend that clinics transfer only one embryo in women under 35 and no more than two in women over 35.⁶⁷

McNair points out that there is still some debate about whether IVF increases the risk of birth defects and, if so, the cause of these defects.⁶⁸ There is also debate about whether the ICSI technique, which is generally used to overcome some forms of male infertility, will result in children inheriting genetic abnormalities relating to their father's infertility and other rare genetic disorders.⁶⁹

The commission has not been asked to address the issue of health risks involved in the use of ART because it does not impact on the question of eligibility for treatment, which is the scope of our review. However, patients should be fully informed about the health risks to the potential child involved in the use of ART, for example the desirability of minimising risks by restricting transfer of multiple embryos.

It is also important to point out that ART can have a range of effects on the health and wellbeing of women undergoing treatment.⁷⁰ Treatment often involves the administration of drugs to stimulate ovulation in order to enhance the prospects of conception. These drugs have been associated with serious side effects and even death.⁷¹ Both IVF and ICSI procedures require women to undergo surgery to collect eggs for fertilisation in a laboratory. During our review we heard from a number of women who described the often invasive and debilitating effects of these treatments, both medically and psychologically.⁷²

PSYCHOLOGICAL AND SOCIAL OUTCOMES

There is an increasingly large body of research on the psychological and social effects of having been born as a result of the use of donated gametes or embryos. Research projects focus on different issues. Some studies examine the effects of donor conception on children born into a range of family types, where the principal research questions generally focus on the impact of late disclosure of the method of the child's conception, the capacity to identify the donor and the quality of the parent-child relationship. Other studies relate specifically to children born to parents in same-sex relationships and seek to determine whether these children are worse off on accepted indices of well-being than children born into families with heterosexual parents. A few similar studies have been conducted in relation to children born to single women by choice, and children born as a result of surrogacy arrangements.

In the following sections of this chapter we discuss some of the key research findings of these studies.⁷³

Parents in Same-sex Relationships

During the course of the reference, the commission has examined numerous social science studies which report on the characteristics of parenting by lesbians and gay people and the effects on children of growing up in families with parents in same-sex relationships. The commission has drawn on this substantial body of research in the course of its investigations and deliberations. A selection of the major studies which investigate the experience of lesbian and gay parents, and their children is summarised in Appendix 1.

The studies reported represent a collection of relatively recent empirical data on gay and lesbian parenting which have been published in academic, peer-reviewed journals. They specifically relate to outcomes for children and families.

Initially, many studies focused on the gender identification and sexual preference of those who had been brought up by lesbians and/or in fatherless families.⁷⁴ This research direction was largely a response to an initial trend within courts in family law matters not to grant custody of children to mothers who identified as lesbian. Some advocates argue that having a lesbian parent may have an impact on the gender identification or sexual preference of the children, such that they would themselves become gay or lesbian as adults. There have also

59 Submission CP 32 (Endeavour Forum Inc).

60 Submission CP 59 (Ian Seal).

61 See Appendix 1 for summaries of research findings on donor conception and families, and children raised by gay and lesbian parents.

62 Ruth McNair, *Outcomes for Children Born of A.R.T. in a Diverse Range of Families* (2004).

63 Sarah Wise, (2003), above n 17.

64 Waters et al (2006), above n 38, 22. See also McNair (2004), above n 62, 34. The increased rate of multiple births after ART can be attributed to the practice of multiple embryo transfer, and also to the use of fertility enhancing drugs that increase the number of eggs released each cycle: McNair (2004), above n 62, 32-3.

65 In 2003 26.6% of babies conceived with the use of ART were pre-term compared with 7.9% of all babies born in Australia in the same year. This may be due to the higher rate of multiple births. The peri-natal death rate (still-births of at least 20 weeks gestation or 400 grams birth weight and deaths of babies within 28 days of birth) was 18.7 deaths per 1000 ART births, compared with 10.1 perinatal deaths per 1000 births reported in Australia. Anne-Marie Waters et al, above n 38, (2006), 27, 29. Note that ART does not include artificial insemination using sperm from either a woman's partner or sperm donor: 46.

66 McNair (2004) above n 62, 31 Note also that some birth defects may be attributable to the fact that women undergoing ART treatments are generally older than women who conceive conventionally.

67 Reproductive Technology Accreditation Committee, *Code of Practice for Assisted Reproductive Technology Units* (2005) 4.6.

68 McNair (2004), above n 62, discusses the various studies. One recent study found that although overall risk of defects is small (less than 3% for assisted conceptions versus 2% for unassisted conception), specific defects are notably higher in ART: 'New study links birth defects with fertility treatments' *BioNews*, 16 February 2007, <www.bionews.org.uk> at 27 February 2007.

69 McNair (2004), above n 68, 36-7. The European Society for Human Embryology recommends that patients be counselled on the current state of knowledge about a higher risk of abnormalities in children conceived using ICSI: JA Land and JH Evers, 'Risks and Complications in Assisted Reproduction Techniques: Report of an ESHRE consensus meeting' (2003) 18(2) *Human Reproduction* 455, 456.

70 See Infertility Treatment Astrorits, *Are there Adverse Outcomes Arising from Infertility Treatment? Information for Consumers* & <www.ita.org.au> at 22 March 2007.

71 Stimulating ovulation can lead to a condition called ovarian hyperstimulation syndrome. The effects of this can range from mild pelvic discomfort to blood clotting which can be life threatening: Monash IVF, 'Fact Sheet: Ovarian Hyperstimulation Syndrome' (November 2006) <www.monashivf.edu.au> at 23 February 2007.

72 For example, submissions CP 38 (Jacqui Tomlins), CP 107 (Kerrie Plant), CP 140 (Anonymous).

73 See Appendix 1, Table 1: Studies of Donor-conception and Families, 1995-2006 and Table 2: Studies of Children Raised by Lesbian and Gay Parents, 1986-2006 for a summary of findings.

74 For example, Susan Golombok et al, 'Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal' (1983) 24(4) *Journal of Child Psychology and Psychiatry* 551; Frederick Bozett (ed), *Gay and Lesbian Parents* (1987); Frederick Bozett, 'Social Control of Identity by Children of Gay Fathers' (1988) 10(5) *Western Journal of Nursing Research* 550.

Chapter 2

Social Context



been a few studies which examine step-families, where one or the other member of a lesbian or gay couple brings children from a previous relationship.⁷⁵

More recent studies are a response to what has been described as a lesbian 'baby boom' and tend to focus on decisions made by lesbian mothers about conception and relationships with donors and fathers,⁷⁶ social acceptance of lesbians as mothers⁷⁷ and the experiences of children with lesbian mothers in schools and social networks.⁷⁸

There are some methodological challenges in undertaking research on outcomes for children born into families with parents in same-sex relationships.⁷⁹ These include the issue that lesbian and gay couples may be reluctant to participate in such studies because of stigma associated with their sexuality, problems of bias which may arise in interviewing volunteer participants, the possibility that parents may focus on positive outcomes for children and not report difficulties, and the fact that there is a comparative lack of studies of children's wellbeing over time.

These studies are often criticised for using small and/or self-selecting samples of participants and for their lack of statistical power.⁸⁰ Social scientists have recognised these difficulties⁸¹ and have developed various techniques to overcome them. For example Susan Golombok and her team recruited lesbian families from a population of 14,000 families in a region of the United Kingdom to overcome problems of selection bias.⁸² Fiona Tasker and Susan Golombok⁸³ used multiple measures (standardised interviews and questionnaires) and multiple respondents (mothers, children and teachers) to overcome the problem that mothers may tend to present themselves and their children in the best possible light because of the social concerns which exist about children with lesbian and gay parents.

Many studies use comparative methodology, with control groups. In the area of research into children with lesbian mothers and/or gay fathers, many studies draw on comparisons with heterosexual single and/or coupled mothers⁸⁴ and/or children conceived by heterosexual mothers with the assistance of donor insemination.⁸⁵ Some studies are longitudinal, documenting family functioning over time and as children grow up.⁸⁶

Although many of these studies involve relatively small numbers of families, their results have been aggregated. Several analyses and literature reviews of gay and lesbian parenting studies have been published over the past two decades. These meta-analyses confirm that there are no significant discrepancies between studies which report favourable outcomes for children brought up by same-sex couples.⁸⁷

This research provides strong evidence that it is the quality of family processes and relationships which determines emotional, social and psychological outcomes for children, rather than the structure of the family into which they are born.⁸⁸ Relevant processes are such things as the quality of parenting, the quality of relationships within the family, including the level of cooperation and harmony between parents, the family's social support and level of connection with others, and the family's access to resources. Family structure, such as the gender of parents and the number of parents, is not shown to be a significant factor in child outcomes.⁸⁹

The research indicates that children with lesbian and gay parents do not differ at all, or significantly, from children with heterosexual parents when assessed according to a range of standard criteria measuring parent-child relationships, socio-emotional development, psychiatric ratings and gender development.

In their longitudinal study of children raised in fatherless families, Fiona MacCallum and Susan Golombok found there were no major differences in child development between families headed by lesbian and single heterosexual mothers compared to coupled heterosexual mothers, and no evidence that the sexual orientation of the mother influences parent-child interaction or the socio-emotional development of the child.⁹⁰

Nanette Gartrell's longitudinal study measured children with lesbian mothers at 10 years old and found their social competence and behaviour was normal, that they did well academically and related well to their peers.⁹¹ More than half of the children reported being open about having a lesbian mother and all were positive in describing what is special about having a lesbian mother.

Some studies have found that being raised in households run by women, and in which no men are present, has particular advantages for children, including strikingly diminished figures for physical and sexual abuse.⁹² In addition, lesbian couples tend to balance work and family more equitably, and each member of the couple tends to be able to give time and attention to children.⁹³

Although outcomes for children are generally favourable there are some studies which indicate that children in gay or lesbian families may experience bullying and discrimination because of their parents' sexuality, and as a result may hide their parents' sexuality from their peers.⁹⁴ Despite, or perhaps because of this experience, these children tend to be more broad-minded, tolerant and empathetic than children born into conventional families.⁹⁵ Nanette Gartrell's longitudinal study was conducted through interviews with the mothers prior to birth and when the children were aged 2, 5 and 10. Gartrell found that by the age of 10 nearly half of the children had experienced homophobia and were affected by these experiences. At the same time, the children 'displayed a sophisticated understanding of diversity and tolerance'⁹⁶ and 'had very thoughtful responses to their peers when they made negative comments about their moms' lesbianism'.⁹⁷

Having conducted a comprehensive review of the studies on outcomes for children growing up in lesbian families compared with children in heterosexual families, McNair summarises her findings as follows:

- no difference in cognitive function;
- no difference in emotional function;
- no difference in psychological and behavioural development;
- gender role behaviour: children tend to play gender-typical games, however, some male and female children of lesbian parents show less traditionally gender-ascribed traits;
- no differences in sexuality identity for adult offspring of lesbian and non-lesbian families, although some adults from lesbian families are more likely to consider the possibility of not being heterosexual, and are more likely to report same-sex experience;
- children show more awareness and understanding of diversity more generally; and
- while some children report reduced self-perceived academic and physical competence, they actually have equal levels of competence when tested by teachers.⁹⁸

75 Jean Lynch, 'Considerations of Family Structure and Gender Composition: The Lesbian and Gay Stepfamily' (2000) 40(2) *Journal of Homosexuality* 81.

76 For example, Kathryn Almack, 'Seeking Sperm: Accounts of Lesbian Couples' Reproductive Decision-Making and Understandings of the Needs of the Child' (2006) 20(1) *International Journal of Law, Policy and the Family* 1.

77 For example, Ruth McNair et al (2002), above n 20.

78 For example, Vivien Ray and Robin Gregory, 'School Experiences of the Children of Lesbian and Gay Parents' (2001) 59 *Family Matters* 28.

79 McNair (2004), above n 62, 52–5.

80 See for example, Robert Lerner and Althea K Nagai, *No Basis: What the Studies Don't Tell Us About Same-Sex Parenting*, Marriage Law Project (January 2001), available at <www.marriagewatch.org/publications/nobasis.pdf> at 6 March 2007; George Rekers and Mark Kilgus, 'Studies of Homosexual Parenting: A Critical Review' (2002) 14 *Regent University Law Review* 343.

81 See for example, Fiona Tasker and Susan Golombok, 'Adults Raised as Children in Lesbian Families' (1995) 65(2) *American Journal of Orthopsychiatry* 203, 213 and the other studies cited in the article; Fiona MacCallum and Susan Golombok, 'Children Raised in Fatherless Families from Infancy: A Follow-Up of Children of Lesbian and Single Heterosexual Mothers at Early Adolescence' (2004) 45(8) *Journal of Child Psychology and Psychiatry* 1407.

82 Susan Golombok et al, 'Children with Lesbian Parents: A Community Study' (2003) 39(1) *Developmental Psychology* 20.

83 Tasker and Golombok (2005), above n 81.

84 For example, Susan Golombok et al, 'Children Raised in Fatherless Families from Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers' (1997) 38(7) *Journal of Child Psychology and Psychiatry* 783.

85 Ibid.

86 For example, Nanette Gartrell et al, 'Interviews with Prospective Mothers' (1996) 66(2) *American Journal of Orthopsychiatry*; Nanette Gartrell et al, 'Interviews with Mothers of Toddlers' (1999) 69(3) *American Journal of Orthopsychiatry*; Nanette Gartrell et al, 'Interviews with Mothers of Five-Year-Olds' (2000) 70(4) *American Journal of Orthopsychiatry*; Nanette Gartrell et al, 'The National Lesbian Family Study: 4. Interviews with the 10-Year-Old Children' (2005) 75(4) *American Journal of Orthopsychiatry* 518; Nanette Gartrell et al, 'The USA National Lesbian Family Study: Interviews with Mothers of 10-Year-Olds US' (2006) 16(2) *Feminism & Psychology* 175.

87 For example, Cheryl A Parks, 'Lesbian Parenthood: A Review of the Literature' (1998) 68(3) *American Journal of Orthopsychiatry* 376; Charlotte J Patterson, 'Family Relationships of Lesbians and Gay Men', (2002) 62(4) *Journal of Marriage & the Family* 1052; Jenni Millbank, *Meet the Parents: A Review of the Research on Lesbian and Gay Families* (2001). Other meta-studies examined by the commission are included in the bibliography.

88 See for example Tasker and Golombok (1995), above n 8, 213 (this study involved interviews with children previously included in a 1976 study of 37 children of lesbian families); MacCallum and Golombok (2004), above n 81; Gartrell et al (2005), above n 86. The National Family Study is 'the largest prospective longitudinal investigation of lesbian families in the United States': 518.

89 Australian Institute of Family Studies, *Introducing the Longitudinal Study of Australian Children LSAC Discussion Paper No 1* (2002); Ann Sanson and Virginia Lewis, 'Children and Their Family Contexts' (2001) 59 *Family Matters* 4; Sarah Wise (2003), above n 17. Raymond Chan et al, 'Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers' (1998) 69(2) *Child Development* 443; Elizabeth Vandewater and Jennifer Lansford, 'Influences of Family Structure and Parental Conflict on Children's Well-Being' (1998) 47(4) *Family Relations* 323.

90 MacCallum and Golombok (2004), above n 81, 1407.

91 Gartrell et al (2005), above n 86.

92 Ibid.

93 Gillian Dunne, 'Opting into Motherhood: Lesbians Blurring the Boundaries and Transforming the Meaning of Parenthood and Kinship' (2000) 14(1) *Gender and Society* 11, 31.

94 Tamar Gershon et al, 'Stigmatization, Self-Esteem, and Coping Among the Adolescent Children of Lesbian Mothers' (1999) 24(6) *Journal of Adolescent Health* 437; Vivien Ray and Robin Gregory, 'School Experiences of the Children of Lesbian and Gay Parents' (2001) 59 *Family Matters* 28.

95 McNair (2004), above n 62, 63; see also Gartrell et al (2005), above n 86.

96 Gartrell et al (2005), above n 86, 523.

97 American Psychological Association, 'A 'crucial time' for LGB research' (2005) 36(4) *Monitor* 84. One study, conducted by Sotirios Sarantakos, has different conclusions to the majority of the research on the experience of children raised in various family formations: see Appendix 1, Table 2 for a summary of the findings.

98 McNair (2004), above n 62, 7–8.

Chapter 2

Social Context



there is no evidence ... that lesbian women or gay men are unfit to be parents or that psychosocial development among children of lesbian women or gay men is compromised relative to that among offspring of heterosexual parents.

Similar findings have been made in relation to children in male homosexual parented families,⁹⁹ although McNair comments that '[t] his area of study has not yet reached the level of sophistication that has been possible in the lesbian families literature'.¹⁰⁰

This body of social research on same-sex parenting has also been considered by organisations with a professional interest in its conclusions. For example, the American Psychological Foundation examined research addressing concerns that children born in families with lesbian or gay parents would show disturbances of gender identity, show problems in personal development or have difficult relationships with peers and other adults. The foundation concluded that:

*there is no evidence... that lesbian women or gay men are unfit to be parents or that psychosocial development among children of lesbian women or gay men is compromised relative to that among offspring of heterosexual parents. Not a single study has found children of lesbian or gay parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth.*¹⁰¹

The commission also examined a number of articles and commentaries about research on same-sex parenting, some of which were cited in or annexed to submissions.¹⁰² Some submissions which opposed removal of the marital status requirement for reproductive technology treatment equated homosexuality with paedophilia and argued that children whose parents were in same-sex relationships were at a higher risk of abuse.¹⁰³ The commission also met with representatives of the Australian Family Association and Endeavour Forum.¹⁰⁴ These organisations claimed there was a higher incidence of violence in homosexual relationships than in heterosexual relationships and that children of same-sex parents were more likely to be sexually abused. These organisations also referred us to studies conducted in the United States indicating that there is a high incidence of sexually-transmitted disease, alcohol abuse, violence, mental health problems and suicide among gay and lesbian people.¹⁰⁵

The commission stresses that the research of primary relevance to the question of whether eligibility for ART and adoption should be expanded relates to outcomes for children—both the research that looks at the factors influencing outcomes in families generally, and the research that examines outcomes for children with parents in same-sex relationships. Moreover, the propositions advanced by the Australian Family Association have been refuted by international research. Gartrell, for example, found that physical and sexual abuse was virtually nonexistent in the lesbian-parented families she studied.¹⁰⁶ This finding has been replicated in British research.¹⁰⁷ It is a well-established research finding that heterosexual men are the most common perpetrators in the sexual abuse of children.¹⁰⁸

It is difficult to obtain reliable figures on the prevalence of violence in intimate relationships, whether they are heterosexual or homosexual.¹⁰⁹ The Women's Safety Australia survey conducted by the Australian Bureau of Statistics reported that 23% of women who have ever been in a relationship had experienced physical violence from a male partner.¹¹⁰ Although research into the prevalence of violence in same-sex relationships is limited, it has been argued that violence occurs at a level comparable to that in heterosexual relationships.¹¹⁰ In Chapter 5 the commission recommends a process for dealing with cases where there is a concern that a child will be at risk of harm, which will apply to all people seeking assisted reproductive treatment, irrespective of their sexuality or relationship status.

Submissions which said that treatment should be limited to heterosexual (usually married) couples also relied on studies relating to the effects on children of being brought up in a family where there is no father present. This research is discussed in more detail below. These studies may have limited relevance to the children born to single women or to lesbian couples, as they are predominantly concerned with children born in heterosexual families who are being brought up by a sole parent following divorce or separation. Sociologist Michael Flood notes that people who rely on this body of research to support arguments against same-sex parenting

*often conflate and misconstrue research on at least three distinct forms of fatherless families: those produced through divorce and separation; those due to unwed, and usually young, single motherhood; and those arising from intentional lesbian parenthood.*¹¹²

Single Mothers by Choice

Some single women choose to have children through donor insemination or other donor treatment procedures. These women are often referred to as 'solo mothers' or 'single mothers by choice'. The commission received a number of submissions from single mothers by choice in Victoria who had conceived their children either as a result of privately arranged self-insemination or, where they were eligible for treatment, through clinic-based donor insemination in Victoria or interstate.¹¹³

There is substantial literature examining the wellbeing of children brought up in single-parent families, as compared with children in two-parent families. Although 'most children in single-parent families do just as well as the average child in a two-parent family',¹¹⁴ research has shown that children raised in single-parent families do less well on educational and psychological measures than children in two-parent families.¹¹⁵

However, it may be misleading to compare studies of children in divorced families with children conceived by single mothers as a result of donor insemination. When children being brought up by single parents show negative effects this can generally be attributed to factors associated with their parents' separation, such as parental hostility and the economic consequences of divorce, rather than fatherlessness itself.¹¹⁶ By contrast, the single mothers by choice who made submissions to our review appeared to be well prepared for single parenthood prior to conception, both emotionally and financially.

Research on outcomes for single mothers and their donor-conceived children is relatively limited and is often performed as part of larger projects studying donor conception. For example, Susan Golombok included single lesbian and heterosexual mothers in her 2003 study of a larger group of families.¹¹⁷ Clare Murray and Susan Golombok have conducted studies focusing directly on a group of single mothers by choice.¹¹⁸

The single women interviewed for the 2003 Golombok study reported more negative relationships with their children than mothers with same-sex or opposite-sex partners. Teachers also reported that these children had more psychological problems than children of heterosexual or same-sex couples.¹¹⁹ McNair suggests that reduced social support is one possible explanation for these differences.¹²⁰

Murray and Golombok compared solo-mother families and families parented by married couples with donor-conceived children.¹²¹ Their studies revealed that the solo-mother families

99 Ibid 64–6. McNair cites Frederick Bozett (ed), *Gay and Lesbian Parents* (1987), who found that children were no different in social activities, problem solving ability or levels of autonomy than children in heterosexual families. She also cites several studies which have shown that the sexual orientation of these children is no different from the sexual orientation of children brought up in heterosexual families.

100 McNair (2004), above n 62, 64.

101 Charlotte J Patterson, 'Lesbian and Gay Parents and their Children: Summary of Research Findings', in American Psychological Foundation, *Lesbian & Gay Parenting* (2005) 15, available at <www.apa.org/pi/lgbcc/publications/lgprconclusion.html>. The survey noted the need for longitudinal studies to follow families with lesbian and gay parents over time.

102 For example, Roslyn Phillips and David Phillips 'Homosexual Parenting: The Effect on Children', *Australian Festival of Light Resource Paper* (May 2001); George Rekers and Mark Kilgus, 'Studies of Homosexual Parenting: A Critical Review' (2002) 14 *Regent University Law Review* 343; Timothy J Dailey, 'Homosexuality and Child Sexual Abuse' (2004) 247 *Family Research Council Insight* <www.frc.org> at 10 May 2006.

103 For example, submissions CP 61 (Neil Ryan), CP 81 (Suryan Chandrasegaran), CP 127 (Salt Shakers).

104 Consultation with David Perrin (Australian Family Association), Charles Francis QC and Babette Francis (Endeavour Forum), and Bill Muehlenberg on 6 June 2006.

105 Endeavour Forum Inc, (November 2005) 120 Newsletter, which includes part of a paper produced by Timothy J Dailey, 'Negative Health Effects of Homosexuality', 232 *The Family Research Council* (27 June 2005), available at <www.frc.org> provided to the commission by Babette Francis on 6 June 2006.

106 Gartrell et al (2005), above n 86.

107 Susan Golombok et al, (2003) above n 82.

108 See, for example, Australian Institute of Criminology, *Child Sexual Abuse: Offender Characteristics and Modus Operandi*, Trends and Issues in Crime and Criminal Justice, No 193 (2001) which found that 94.9% of 182 respondents self-reported as heterosexual.

109 Victorian Law Reform Commission, *Review of Family Violence Laws: Report* (2006) 21, 41–2.

110 Australian Bureau of Statistics, *Women's Safety Australia* Catalogue 4128.0 (1996) 50.

111 Lee Vickers, 'The Second Closet: Domestic Violence in Lesbian and Gay Relationships: A Western Australian Perspective' (1996) 3(4) *E Law—Murdoch University Electronic Journal of Law* [18].

112 Michael Flood, *Fatherhood and Fatherlessness* (2003) 14.

113 For example, submissions CP 114 (Anonymous), CP 144 (Jane), CP 187 (Brenda).

114 Sarah Wise (2003), above n 17, 6.
115 See Michael Flood (2003), above n 112, 13–18.

116 See *ibid* 13–14.

117 Susan Golombok et al (2003) above n 82.

118 Clare Murray and Susan Golombok, 'Going it Alone: Solo Mothers and Their Infants Conceived by Donor Insemination' (2005a) 75(2) *American Journal of Orthopsychiatry* 242; Clare Murray and Susan Golombok, 'Solo Mothers and Their Donor Insemination Infants: follow-up at Age 2 Years' (2005b) 20(6) *Human Reproduction* 1655.

119 Susan Golombok et al (2003) above n 82.

120 McNair (2004), above n 62, 55.

121 Murray and Golombok (2005a), above n 118; Murray and Golombok (2005b), above n 118.



did not differ markedly from the married-couple families, although the solo mothers had a lower level of interaction with and lower responsiveness to their children in the first year of life. The researchers reported that the solo mothers' decision to have a child through donor insemination was not a hasty one, and that '[m]ost women did not initiate treatment until they had good social support networks in place and had carefully considered the financial and other responsibilities of being a sole parent'.¹²² The authors followed up the families when the children were two years old and concluded that solo-mother families were functioning well. They found that the mothers displayed greater joy and less anger towards their children, who indicated fewer emotional and behavioural difficulties than children of the married couples. Some of the explanations advanced for the more positive experiences of the solo mothers were their greater willingness to be open about the method of the child's conception and the absence of stress related to their own or a partner's infertility.¹²³

Murray and Golombok caution that this area of research is in its early stages. We also stress that more research is needed before firm conclusions can be drawn about outcomes for children born to single mothers by choice.

Donor-conceived Children

The commission has also examined local and international studies about donor conception. Studies in this field report on outcomes for children and adults who are donor-conceived, the psychosocial wellbeing of parents and children, and parenting of donor-conceived children. Studies also pay particular attention to attitudes to donor anonymity and the impact of donor anonymity (or disclosure) on people who are donor-conceived. Differences between sperm and egg donation are also canvassed, as are the experiences of both heterosexual and same-sex parented families. The commission has summarised a number of recent studies about these topics in Appendix 1, Table 2.

The studies adopt a range of methodologies to address diverse research questions. Many use control groups, for example, to assess the effects of secrecy about conception in a family, or to compare approaches to anonymity across different groups. Other studies focus solely on the experiences of a particular group of people, such as donors or donor-conceived children. As with the research about same-sex parented families discussed above, there are also methodological limitations associated with

these studies. The sample sizes are relatively small, the participant children are generally quite young, and there may be a tendency for some participants to overstate positive outcomes.

For these reasons it is impossible to make confident generalisations about outcomes for donor-conceived children and adults. However, we have been able to draw the following broad conclusions about the emerging research of the experiences of donor-conceived people and their families from the studies we have examined:

- Donor-conceived children function well and the absence of a genetic link does not appear to have a negative impact on parent-child relationships. The most commonly identified difference in these families is the tendency for parents to display higher levels of emotional involvement in their children's lives, which may be explained by a desire to compensate for a lack of genetic connection.¹²⁴
- Rates of non-disclosure of donor status remain quite high. Many of the studies reveal that a significant proportion of parents have not told and do not intend to tell their children about the involvement of a donor in their conception.¹²⁵ Disclosure of donor-status is more common in families with lesbian parents and single mothers by choice.¹²⁶
- Reasons cited for non-disclosure include a desire to protect the non-biological parent and the child from the stigma associated with infertility and donor conception.¹²⁷ On the other hand, those parents who have disclosed or intend to do so in the future are committed to openness and honesty within their families, and wish to avoid accidental discovery.¹²⁸
- Some recent studies suggest that parents are becoming more inclined to tell their children about their genetic origins, however many feel the need for more professional support to assist them to tell in the way and at the time that is most appropriate for them and their children.¹²⁹
- Where children have always been aware of their donor status, they report being comfortable with the fact. Very few seek out parental-child relationships with their donors, although many are curious about the donor and would like to discover his or her identity with a view to making contact in the future.¹³⁰
- Those people who did not discover their donor origins until late adolescence or

adulthood have reported significant negative effects, including shock, ongoing mistrust in the family, frustration and loss, and a feeling of lack of genetic continuity.¹³¹ In many cases these effects are compounded by the inability to discover the identity of the donor, because no records were kept at the time of conception and/or the donation was made on the condition of anonymity.

The commission has, in the process of considering these findings, been mindful of the different levels of significance people place on genetic connection in parent–child relationships. Dr Maggie Kirkman has examined the ways in which parents, donors and children interpret the interaction between genetic connections and familial relationships and found that responses vary. While many people prioritise the importance of loving and supportive relationships, regardless of genetic connection, Kirkman warns that ‘denial of the significance of genes conflicts with the claims by donor-conceived people that it is their right to know their genetic inheritance’.¹³²

The adverse effects of denying people conceived from donated gametes information about their genetic origins suggests that parents should be informed about the importance of telling the child about the circumstances of their conception from an early age and should receive counselling and other forms of support to do so. In Chapter 15, we explore the experiences of those donor-conceived people who participated in our consultation process and make recommendations about the management and disclosure of donor information.

Surrogacy Arrangements

There is relatively little empirical data on outcomes for children conceived as the result of surrogacy arrangements, although small studies suggest they are ‘psycho-socially well adjusted’.¹³³ Because most of these children are still young, findings are generally based on reports made by parents.¹³⁴ A United Kingdom study showed that there was little conflict between surrogates and commissioning parents, with only one mother and one surrogate mother expressing slight doubts about the arrangement during the handover period. The study also found that parents planned to tell the child about their conception.¹³⁵

In a small Victorian study, which involved interviews with 13 women who had IVF treatment to become a gestational surrogate, none of the women said that they had

- 122 Murray and Golombok (2005a), above n 118, 252.
- 123 Murray and Golombok (2005b), above n 118, 1659.
- 124 Susan Golombok et al, 'Non-Genetic and Non-Gestational Parenthood: Consequences for Parent-Child Relationships and the Psychological Well-Being of Mothers, Fathers and Children at Age 3' (2006) 21(7) *Human Reproduction* 1918.
- 125 Firouz Khamsi et al, 'Some Psychological Aspects of Oocyte Donation from Known Donors on Altruistic Basis' (1997) 68(2) *Fertility and Sterility* 323; Clare Murray and Susan Golombok, 'To Tell or Not to Tell: The Decision-Making Process of Egg-Donation Parents' (2003) 6 *Human Fertility* 89; Clare Murray et al, 'Egg Donation Parents and Their Children: follow-Up at Age 12 Years' (2006) 85(3) *Fertility and Sterility* 610; Emma Lycett et al, 'School-Aged Children of Donor Insemination: A Study of Parents' Disclosure Patterns' (2005) 20(3) *Human Reproduction* 810.
- 126 Katrien Vanfraussen et al, 'An Attempt to Reconstruct Children's Donor Concept: A Comparison Between Children's and Lesbian Parents' Attitudes Towards Donor Anonymity' (2001) 16(9) *Human Reproduction* 2019; J E Scheib et al, 'Choosing Identity-Release Sperm Donors in the Parents' Perspective 13–18 Years Later' (2003) 18(5) *Human Reproduction* 1115; J E Scheib et al, 'Adolescents with Open-Identity Sperm Donors: Reports from 12-17 Year Olds' (2005) 20(1) *Human Reproduction* 239; Murray and Golombok (2005a), above n 118.
- 127 Lycett et al (2005), above n 125; A Brewaeys et al, 'Donor Insemination: Dutch Parents' Opinions About Confidentiality and Donor Anonymity and the Emotional Adjustment of Their Children' (1997) 12(7) *Human Reproduction* 1591.
- 128 Lycett et al (2005), above n 125.
- 129 Dorothy Greenfeld and Susan Causo Klock, 'Disclosure Decisions Among Known and Anonymous Oocyte Donation Recipients' (2004) 81(6) *Fertility and Sterility* 1565; Scheib et al (2003), above n 126; Susan Golombok et al, 'Families Created by Gamete Donation: Follow-Up at Age 2' (2005) 20(1) *Human Reproduction* 286; Infertility Treatment Authority, Victoria, *Telling About Donor Assisted Conception: Interviews with Donor Conceived Adults, Parents and Counsellors* (2006).
- 130 Scheib et al (2005) above n 126; Vanfraussen et al (2001), above n X.
- 131 A J Turner and A Coyle, 'What Does It Mean to be a Donor Offspring? The Identity Experiences of Adults Conceived by Donor Insemination and the Implications for Counselling and Therapy' (2000) 15(9) *Human Reproduction* 2041.
- 132 Maggie Kirkman, 'Genetic Connection and Relationships in Narratives of Donor-Assisted Conception' (2004) 2(1) *Australian Journal of Emerging Technologies and Society* 1, 17.
- 133 McNair (2004) above n 62, 47.
- 134 Fiona MacCallum et al, 'Surrogacy: The Experience of Commissioning Couples' (2003) 18(6) *Human Reproduction* 1334. This was a study of 42 heterosexual couples who used surrogacy, and their children.
- 135 McNair (2004), above n 62, 48.
- 136 Gina Goble, *Carrying Someone Else's Baby: A Qualitative Study of the Psychological and Social Experiences of Women who Undertake Gestational Surrogacy* (Master in Psychology (Counselling Psychology) Thesis, Swinburne University of Technology, 2005). We thank Ms Goble for providing us with a copy of her thesis.



experienced feelings of maternal loss or grief. All except two of these surrogates were related to the commissioning parents.¹³⁶ This study did not examine outcomes for children born as a result of the arrangements, although parents said that they would tell their children about the circumstances of their conception. Further details about outcomes in surrogacy arrangements are provided in Chapter 19.

LAW REFORM

Over the last century the law has gradually been reformed to respond to changes in family structures. Adoption laws were passed early in the twentieth century, at a time when unmarried mothers were stigmatised and neither contraception nor abortion was widely available. At that time it was expected that single women would relinquish their children to be brought up by married couples. When death rates were higher than is the case today and there was little state support available for widows with children, adoption also allowed people caring for orphaned children to be recognised as their legal parents. The effect of adoption was to transfer parental status from the child's parent or parents to the people who would bring up the child.¹³⁷

In the late 1960s and early 1970s Australian states enacted legislation to abolish the status of illegitimacy, which had historically treated children born to unmarried parents as 'children of no-one'.¹³⁸ In the 1980s, states passed laws to permit a fair distribution of property after breakdown of a heterosexual de facto relationship and to recognise de facto relationships for other legal purposes.¹³⁹ During the 1980s state laws also recognised relationships between children conceived through donated gametes and their social parents.¹⁴⁰ In the last ten years states began to extend laws which recognised de facto relationships to couples living in same-sex relationships.¹⁴¹

Courts have also responded to changes in families when interpreting and applying laws. The Family Court of Australia is charged with making decisions on a daily basis about what parenting arrangements are in the best interests of children after their parents have separated. In some cases the court is asked to resolve cases where one of the child's parents is living in a same-sex relationship. The Family Court takes the view that sexual orientation alone provides no basis for making assumptions about a person's capacity to care for children.¹⁴² In 1996, the then Chief Justice Alastair Nicholson commented that 'sexual orientation, in and of itself, has been held to be an irrelevant matter in disputes about children under the Family Law Act unless it somehow impinges upon the best interests of the child'.¹⁴³

The recommendations in this report have been influenced by information about the composition of Australian families and the way that their structure has changed over time. Whether or not Victorian laws regulating eligibility for treatment are changed, the number of children born to same-sex couples, and as a result of surrogacy arrangements is likely to increase in the future. We argue that further law reforms are necessary to meet the needs of children who are living in diverse families and to recognise the parental status of people who care for, love, and financially support children conceived in a diversity of family types, through assisted reproduction.

The commission is also aware that inadequate and outmoded laws can reinforce social attitudes which stigmatise non-nuclear families and may have a negative effect on children born to single women or women in lesbian relationships, even where there is also a high level of support and acceptance of these families. By extension, laws that recognise these families can play an important role in fostering respect for and acceptance and tolerance of diversity.

- 137 *Adoption Act 1928*. The current provisions are in *Adoption Act 1984*: see Chapter 10.
- 138 See for example *Status of Children Act 1974* (Vic). Other states have similar legislation.
- 139 The *De Facto Relationships Act 1984* (NSW) provided a model for similar legislation in all other states. Other aspects of de facto relationships had previously been recognised; see New South Wales Law Reform Commission, *De Facto Relationships Issues Paper* (1981) Section 3. South Australia had recognised de facto relationships for a limited range of purposes in the *Family Relationships Act 1975* (SA).
- 140 See for example *Status of Children (Amendment) Act 1984*, inserting ss10A–10F into the *Status of Children Act 1974*.
- 141 See for example *Statute Law Amendment (Relationships) Act 2001*; *Statute Law Further Amendment (Relationships) Act 2001*.
- 142 *Re K* (1994) 17 Fam LR 537, 556.
- 143 Alastair Nicholson, 'The Changing Concept of Family: The Significance of Recognition and Protection' (1996) 3(3) *E Law—Murdoch University Electronic Journal of Law* [58].