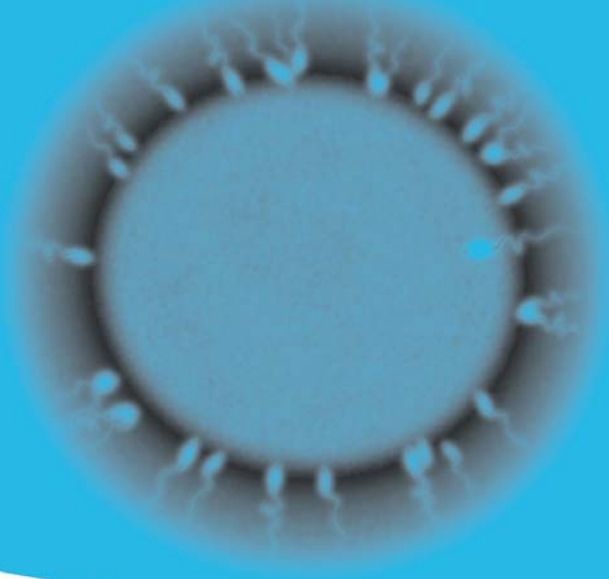




Victorian
Law Reform
Commission



ART & ADOPTION DECEMBER 2004 UPDATE

The Commission is in the process of developing interim recommendations on Assisted Reproductive Technology and Adoption. We are circulating this newsletter to provide you with an update on our process.

OUR PROCESS

The Victorian Law Reform Commission has nine members: the Chairperson Professor Marcia Neave, the Honourable Justice Tim Smith, the Honourable Justice David Harper, the Honourable Vice-President Iain Ross, her Honour Judge Jennifer Coate, Professor Felicity Hampel SC, Professor Sam Ricketson, Ms Judith Peirce and Mr Paris Aristotle. The Commission advises the Attorney-General on areas of law that he refers to us.

The Attorney-General has asked the Commission to consider whether changes should be made to Victorian laws to expand eligibility for assisted reproductive technology (ART) and adoption. Other possible changes covered in the terms of reference include the laws governing the legal parentage of children born as a result of the use of ART, the sections of the *Infertility Treatment Act 1995* that are relevant to altruistic surrogacy, and clarification of the legal status of any child born as a result of a surrogacy arrangement.

We were asked to take account of several key factors, including the best interests of children and the social, legal and ethical issues raised by assisted reproduction. Late last year the Commission published a Consultation Paper, which asked people and organisations to respond to some important questions.

SUBMISSIONS

The Commission received 235 submissions in response to our Consultation Paper. The submissions we received covered a very broad spectrum of views. Some people thought the present legislated eligibility criteria governing access to ART should stay the same, even though these criteria are inconsistent with federal anti-discrimination law. Other people argued that there should be no eligibility criteria for access to ART in Victoria, as has always been the case in New South Wales.

Some of the main views of those who supported changes were that:

- the law should not interfere with a woman's decision to bear a child by ART, particularly as fertile people do not have to satisfy any eligibility requirements before they can bear children;
- access to ART should not be governed by criteria which discriminate between different women because of their sexuality or marital status; the only

requirement should be that the woman is 'unable to become pregnant';

- the best interests of children, rather than the marital status of their parents, should be the main basis for deciding eligibility for ART;
- the law should recognise the female partner of a woman who has a child through ART as the child's parent.

Some of the main views expressed by opponents of change were that:

- ART should be very carefully regulated because it affects the best interests of children;
- the current criteria (which allow treatment of single women and women in lesbian relationships who are clinically infertile) are not satisfactory and should be made more restrictive;
- people should not be able to use donated gametes because it is not in the best interests of children to be conceived in this way, or to be deprived of a relationship with their genetic parents;
- it is in the best interests of children to be born into traditional families, where they have a mother and a father.

Other important issues raised in submissions included the need to ensure that people receiving treatment have adequate counselling, the importance of openness and honesty in families with donor-conceived children, and the right of donor-conceived children to receive information about their parentage before they turn 18.

These submissions, along with the expert roundtable discussions and other consultations we have already held, will be taken into account when the Commission develops its interim recommendations.

OCCASIONAL PAPERS

We have also published three Occasional Papers written by different authors. These are:

- a paper by Adjunct Professor John Seymour and Sonia Magri, which describes how other Australian states,

the United Kingdom, Canada and the United States regulate assisted reproduction and associated parentage issues:

- a paper by John Tobin, which discusses the meaning of the best interests of children in light of the Convention on the Rights of the Child; and
- a paper by Dr Ruth McNair, which reviews a large number of studies on the health and wellbeing of children conceived through assisted reproduction.

The papers reflect the views of their authors and do not contain policy recommendations. Responsibility for the Final Report and recommendations within it remains with the Commission.

AN OPPORTUNITY TO HAVE YOUR SAY

The Commission believes it is important to consult as widely as possible before we make final recommendations to the government on changes to the law. Although many people have already made submissions, we have said that we will give people another opportunity to comment on our proposals before we make final recommendations to the government.

To make it easy to do this, we have decided to publish a series of short Position Papers containing interim recommendations on the specific subjects we are considering.

POSITION PAPERS

We will publish Position Papers on three topics:

- eligibility for ART (including posthumous use of gametes, and gamete donation);
- parentage & adoption (including birth registration and access to information); and
- surrogacy.

Each of the papers will contain interim recommendations and will ask for your response.

FINAL REPORT

The Commission will consider your responses and comments on the Position Papers when deciding what should be included in the Final Report to the government. Our final recommendations will be discussed and voted on by all Commissioners. We are planning to give the Final Report to the government in the second half of 2005. Once the Attorney-General receives the report, he has 14 sitting days to table it in parliament.

RECEIVING POSITION PAPERS

If you have received this update by email, we will also notify you by email when each of the papers has been published, rather than posting them to you.

If you would like a hard copy version, rather than downloading the papers from our website, please contact us and we will put you on our mailing list.

HOW TO MAKE A SUBMISSION

After the release of each paper we will allow one month for submissions. For example a paper released on 20 March will have a submission deadline of 20 April. You can make a submission by telephone, email, post or in person.

Talk to us

Please telephone (03) 8619 8619, toll-free 1300 666 555 or TTY 1300 666 557 and ask to speak to a research officer working on the ART project.

Send us your ideas

You can send your submission or any ideas you have to:

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