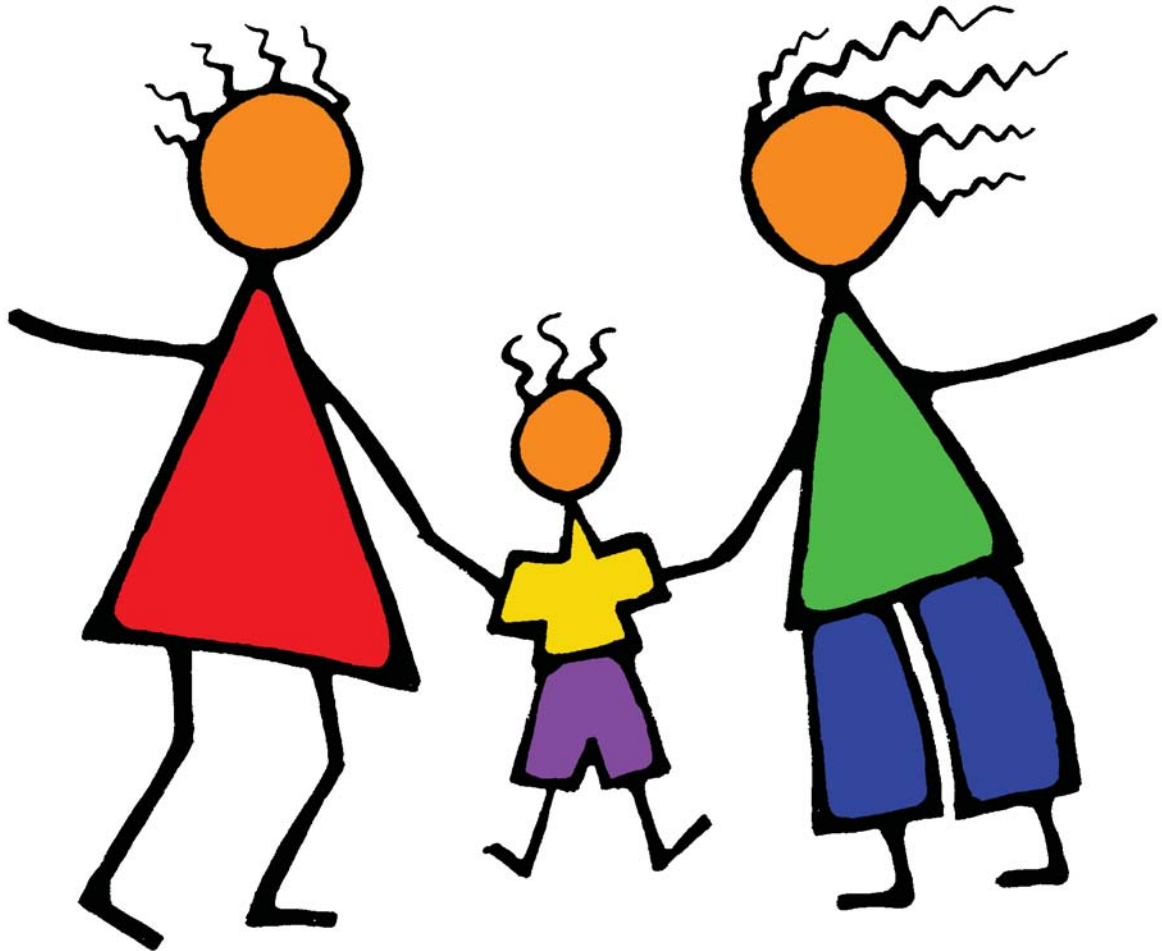


PROSPECTIVE LESBIAN PARENTS

Submission to the Victorian Law Reform Commission Enquiry
'Assisted Reproductive Technology and Adoption
– should the Current Eligibility Criteria in Victoria be Changed?'



Love makes a family

30 JUNE 2004



GLBTI families were cheered all the way along the route of Pride March 2004. Photo Felicity Martin.

DEDICATION

This submission is dedicated to the current and future children of lesbian and gay families everywhere, and to those within the GLBTI and broader community who have made the creation of our families possible – you know who you are.

Special thanks also to participants from Prospective Lesbian Parents meetings who have shared their dreams, fears, hopes and stories, to the wonderful women of the Fertility Access Rights Lobby and to the guest speakers we have had over the past ten years who have given so generously of their time.

ENDORSEMENT

This submission by the Prospective Lesbian Parents (PLP) group to the Victorian Law Reform Commission Enquiry has been endorsed by the Fertility Access Rights (FAR) Lobby (a Working Group of the Victorian Gay and Lesbian Rights Lobby). The PLP submission should be read in conjunction with both the FAR and Victorian Gay and Lesbian Rights Lobby submissions.

This submission was prepared in June 2004 by the current co-convenors of the Prospective Lesbian Parents group, Sarah Lowe and Felicity Martin. Illustrations by Sarah Lowe. Special thanks to the many PLP participants who proofed drafts and made suggestions throughout the process.

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CONTENTS

About this submission	5
Definition of terms	7
PLP recommendations	8
Introduction	12
Part 1: Planning our families	14
Our dreams and hopes	
Making 'choices' when faced with limited options	
Part 2: The best interests of children	17
A child's right to be raised by their parents	
Children's right to information about their genetic heritage	
Increased risks in known-donor arrangements	
The right to equality before the law	
Questions from the Consultation Paper: 11, 12, 14, 45	20
Summary of PLP recommendations	21
Part 3: The impact of current laws on our lives	23
Part 3A: Using interstate clinics	25
Stress and other emotional and health impacts	
Financial stress	
Impacts on employment	
Managing different health providers	
A note on the issue of 'medical' versus 'social' infertility	
Questions from the Consultation Paper: 2, 3, 4, 14, 16, 18, 19, 20, 21	29
Summary of PLP recommendations	30
Part 3B: Using a known donor	31
The diversity of our families	
Issues with self-insemination and having a known donor	
'Choosing a known donor due to a lack of options	
Uncertain legal status of the donor	
Health risks to mother and foetus	
The legal status of self-insemination	
Access to counselling and other supports	
Looking for a donor	
Arrangements with known donors	
Questions from the Consultation Paper: 6, 7, 29, 30, 31, 32, 33, 39, 40, 46	38
Summary of PLP recommendations	40

Part 3C: Accessing services in Victoria	41
Lack of clarity around status of clinic donor	
No recognition of non-birth mother	
'Lifestyle declaration'	
Institutionalised homophobia/sexism in clinic practices	
Exclusion from adoption	
Questions from the Consultation Paper: 9, 10, 22, 25, 26, 27, 28, 37, 41, 42, 43, 44	44
Summary of PLP recommendations	46
Part 4: Legal recognition of our families	47
Intersections with federal law including marriage	
Issues around legal recognition of our families	
Non-recognition of the non-birth mother	
Being barred from second-parent adoption	
Birth certificates	
Parenting Orders	
Questions from the Consultation Paper: 34, 35, 36, 38	53
Summary of PLP recommendations	54
Part 5: The link between legal reform and social attitudes	55
GLBTI parents as the new 'Tampa'	
The law as a reflection of, or catalyst for, social change	
CASE STUDIES	58
Case study 1: Jacqui and Sarah	59
Interstate and overseas ART with unknown donors and IVF with an identity release donor.	
Case study 2: PLP Couple B	61
Interstate ART with a known donor and the risk of unscreened self-insemination.	
Case study 3: Tracey and Samantha	63
Interstate ART with an identity release donor to self-insemination with a known donor.	
Case study 4: Sarah and Felicity	66
Search for a known donor, ART in Victoria with a known donor.	
Case study 5: Lisa and Amanda	68
Self-insemination with a known donor, sex with a known donor, self-insemination with unscreened sperm and IVF with an 'identity release' donor.	
Case study 6: Cristi and Sabdha	70
Exploring the options for conception, finding and negotiating with a known donor.	
Case study 7: Asphyxia and Paula	72
Self-insemination using a known donor (partner's brother) and parenting orders.	
Bibliography	74

ABOUT THIS SUBMISSION



IT'S ABOUT TIME THE LAW CAUGHT UP WITH THE CHANGING REALITY OF CHILDREN'S LIVES.

Prospective Lesbian Parents (Victoria) presents the following submission to the Victorian Law Reform Commission Enquiry 'Assisted Reproductive Technology and Adoption – should the Current Eligibility Criteria in Victoria be Changed?'

The Prospective Lesbian Parents (PLP) response to the Consultation Paper is made up of the voices of prospective and actual lesbian mothers.

Due to the nature and focus of PLP, this submission will focus almost exclusively on the impact of these areas of law on lesbian women who are intending or actual parents. Many of the children of the families included are infants, so cannot yet speak for themselves; their mothers reflect on their concerns about how these laws affect their children's lives. It will touch to a very limited extent on some of the impacts on donors and/or fathers involved (to varying degrees) in some of our families, many of whom may be gay.

Prospective Lesbian Parents

The submission is based on contributions made by members of the Prospective Lesbian Parents group (PLP). Established almost 10 years ago, PLP is a volunteer-run, self-help, support and information community group open to women – single or in couples – who are planning, trying to conceive and having children or who are interested in parenting. PLP meets monthly between February and December each year on the third Thursday of the month, at the Victorian AIDS Council in South Yarra. Topics discussed at PLP meetings include lesbian health, options for conception, fertility, alternative therapies, birth options, legal issues and personal stories shared by women.

Submission writing process

The stories and quotes used in this submission have been obtained through a written questionnaire produced by the volunteer co-convenors of PLP and distributed to members. In three of the five case studies, the information obtained through the questionnaire was augmented by interviews and extracts from personal writings.

Confidentiality and anonymity of contributors

Due to the high level of homophobia, hatred and bigotry often expressed in debate around issues related to same-sex headed families, those who have contributed to this submission vary in their willingness to be identified by name. Some wish to be fully identified, while others use only their first name, a nickname, or prefer to be identified as a PLP participant only. This is generally out of a concern to protect not only themselves, but particularly their children from negative social attitudes. A number of respondents express the view that law reform in this area is not only important in itself, in terms of giving lesbian families protection and the tools to fight for our rights, but also in helping change social attitudes. Like any loving parents, lesbian mothers do not want our children subjected to either discrimination in law or bigotry from our peers or the wider community.

The impact of the current laws on other groups

We acknowledge that these laws also impact to a very great extent on single non-lesbian women, on gay men and transgender/transsexual people who intend to parent or who are parents, and on children of all such families, whatever their age. Their issues must also be explored in detail, debated and laws enacted to remove discrimination and provide equal protection for these parents/intending parents and their children. Our hope is that many other submissions to this enquiry will focus on these issues.

What women say about the Prospective Lesbian Parents group:

'Once the decision was made to try and become parents, the enormity of the issues, laws and knowledge was overwhelming. Support through Prospective Lesbian Parents has played a considerable role and was a safe place to explore the issues and barriers, and know how to achieve trying to become parents. This has certainly been a journey with many ups and downs, as you initially set goals and have ideas about what you want and how to do it, but the law often makes it difficult, and we have needed to reassess and adjust our plans.' – Tracey and Samantha

'Thanks for your work towards ending discrimination against us. It's great to have found such a warm, supportive, encouraging and informed, organised group of dykes! We live in the bush and I felt nervous about venturing into the city, let alone feeling vulnerable among other women. Thanks for helping to make it a good experience!' – Ali

DEFINITION OF TERMS

The language used to describe the roles and identities of people within lesbian and gay families is as diverse as the families themselves. Many quotes that appear in the submission use different terms to describe who people are in relation to each other, their children and families. Below is a list of terms used in the Consultation Paper and equivalent terms used by PLP participants, as well as definitions for various other terms used.

Consultation Paper	Prospective Lesbian Parents submission preferred terms
Birth mother	Mother, parent, bio-mum, biological mother, birth mother, biological mother of child born in a same sex-relationship, biological parent, parent.
Birth mother's female partner	Mother, parent non-biological mother, non-birth mum/mother, co-mother, non-biological parent, parent.
Known donor	May be known to the birth mother and/or non-birth mother (if there is one) and/or known to the child/ren born as a result of the donation. Terms used to describe their role and relationships within families vary, and do not necessarily imply a legal definition: dad, donor, sperm donor, 'favourite uncle', father, co-parent (often these terms can, and do, change over time).

PLP term	Broad definition most applicable to use within this submission
Anonymous donor	Generally a donor accessed through a interstate clinic, where there is no prospect of children born from the donation having access to identifying information or being able to contact the donor. Historically some women have self-inseminated using 'anonymous' donors arranged through third parties.
Identity release sperm/donor	Donor or sperm accessed through a clinic where the law requires that the child born of such a donation has the right to contact the donor after they turn 18.
Second parent adoption	Adoption of a child by that child's non-birth/non-biological parent e.g. adoption by the non-birth mother, without the birth mother losing her legal status
Co-parent	Not generally used in this submission to indicate non-birth mother. Generally used to indicate a donor (and perhaps his partner) involved in the child's care, sometimes called a father.
DI/donor insemination	Used in relation to donor insemination procedures in a licensed fertility clinic, whether with known or clinic sperm
Known donor sperm	Sperm provided by a known donor, used for self-insemination or ART through a licensed clinic
Clinic sperm	Sperm provided by a clinic, either identity release or anonymous
Self-insemination	Used in relation to the act of insemination outside a clinic, whether by the women being inseminated, or with the assistance of her partner or another person. (also referred to as 'assisted insemination')
GLBTI	Gay, Lesbian, Bisexual, Transgender and Intersex: an inclusive acronym for the broad and diverse community of non-heterosexually-identified people. GLBTI families refers to families headed by one or more parents who identify other than as heterosexual. Many women who are in lesbian relationships (ie sexual/partner relationships involving two women) may not identify with the identity 'lesbian', however lesbian is generally used alongside GLBTI throughout this submission to cover any such individuals, couples and families.

PLP RECOMMENDATIONS

Following is a complete list of all recommendations made within this submission. Where some recommendations wholly duplicate each other they have been edited, but there remains some overlap in the recommendations made in different parts of the submission, due to overlap in issues discussed and those raised by questions from the Consultation Paper.

The best interests of children

- That lesbian-headed families and their children receive equal treatment under the law to heterosexual-headed families.
- That a child's right to be raised by their parents be protected. That all relevant legislation be amended to provide legal protection to the relationship between a child and her/his non-biological parent/s, for example their non-birth mother in a lesbian couple-headed family.
- That a child's right to legal protection for their family be ensured. That all relevant legislation be amended to provide clarity about the legal definition and status of 'donor', 'father', 'mother', 'parent' etc. The definition of such terms in legislation such as the *Infertility Treatment Act* should be expanded to accommodate the diversity of families in the Victorian community. Such legislation should not prescribe or limit such definitions based on any particular (e.g. nuclear) family structure.

That this and other legislation be amended to provide legal means (such as adoption, presumptive parental status etc) for families to define for themselves the makeup of their family, and to ensure that their family relationships are recognised and protected in law. That regulations around Birth Certificates be amended to allow for the diversity of family structures (parent 1 and parent 2 for example, rather than mother and father).

- That a child's right to equality before the law and freedom from discrimination be protected. That all relevant legislation should be amended to provide protection against discrimination on the basis of sexual orientation, family formation and the sexual orientation of a person's parents.
- That a child's right to life and development should be protected. That eligibility for ART should be broadened to include all people who require ART in order to conceive and bear a child. That services such as freezing and screening of known donor sperm be provided. These measures will protect children against the risk of infection by unscreened donor sperm.
- That a child's right to information about their biological heritage be protected. That the laws and regulations in this area be broadened to facilitate contact between donor and child/ren produced through his donation earlier than age 18 if this is desired by all parties.
- That the *Infertility Treatment Act* is not an appropriate place to define criteria for who should and should not be a parent. We do not believe that this is an appropriate task for legislators. Eligibility for ART should be based on the need for such services in order to conceive and bear a child, with the same requirements for consent and counselling that are currently required.

The impact of current laws on our lives

Changing the criteria for ART in Victoria

- That the definition of 'unlikely to become pregnant' be broadened to include anyone who has need of ART to conceive and bear a child. This may be for medical reasons, such as unknown or known infertility, or for any other reasons. This would be a matter of self-definition.
- That criteria for eligibility include broad principles of non-discrimination on the basis of marital status, sexual orientation etc in the provision of service.

Decriminalisation and support for self-insemination

- That self-insemination should not be treated as a criminal offence, whether done by the woman herself or with the assistance of her partner, a friend or anyone else.
- That health service providers be encouraged to support women who are self-inseminating with appropriate testing, and referral for services including counselling, donor insemination, investigation of possible fertility issues, instruction on correct techniques for self-insemination, storage and screening of donor sperm.
- That ART services offered be broadened to include providing women with screened donor sperm (from their own known donor or from the clinic) for self-insemination, counselling and instructions for correct techniques for self-insemination.
- That access to ART, including self-insemination with clinic-screened sperm, be under terms similar to the current system for those who are now eligible, including consent requirements and supportive counselling be undertaken prior to having access to ART. Such counselling would be with all parties involved: the prospective birth mother, her partner if she has one, their known donor (if they have one) and his partner – if this is appropriate and desired by the parties.
- That counselling be given by counsellors trained in and sensitive to all the issues relevant to our diverse families, and would be aimed at establishing that all parties had explored the issues involved not only with the outcome (i.e. the child and their roles in her/his life) but also the likely process.

Agreements and adoption

- That GLBTI families be granted equality under the law, including the legal means to protect the self-defined relationships within our families – and thus, some legal underpinning for the agreements made between lesbian women and our donors.
- That there be no discrimination on the basis of sexual orientation or marital status in the regulation of any form of adoption including known child, placement and overseas adoptions.
- That 'second parent' adoption be available to gay and lesbian couples i.e. that non-birth mothers be able to fully adopt their child without any change in the birth mother's legal status. NB there should also be the option of 'presumptive parenting' status i.e. that provided she consents to it, a woman is presumed to be the parent of a child borne by her female partner.
- There there be no restriction on the number or gender of adults able to adopt a child, to allow adoption, for example, by a child's non-birth mother, donor and donor's partner with no change in the legal status of the child's birth mother.

Other aspects of ART in Victoria

- That information about the identity of known donors to children conceived via self-insemination – whether with clinic sperm or known donor sperm, with or without clinic support – be recorded with the Infertility Treatment Authority, as is the case for recipients of ART in Victoria.
- That relevant legislation be amended to clarify that the donor for a child conceived via gamete donation – whether through a clinic or through self-insemination with or without clinic support – is not that child's parent, father or mother, and has no rights or responsibilities as such.
- That lesbian couples who are recipients of ART in Victoria be given equal treatment as that given to heterosexual couples, and thus the potential birth mother's female partner be treated equally in terms of counselling, consents and recognition as the parent of a child born as a result of treatment.
- That people who are donating gametes to unknown recipients NOT be able to stipulate qualities or characteristics of the recipient.
- That anyone who wishes to be able to donate gametes for reproduction, provided that this does not subject either the recipient/s of such donations or any children produced as a result to any potential health risk e.g. infections or serious genetic disorders.

- That the 'lifestyle declaration' be removed, and screening limited to very specific questions aimed to identify activities which are high risk for blood-borne and sexually transmissible infections. In the case of directed donations, the option of the recipient/s signing a waiver as currently available for the 'lifestyle declaration' should be continued.
- That the requirement for a six-month quarantine be able to be waived for women who have been self-inseminating with a known donor, ensuring equality of treatment with heterosexual couples, provided that relevant medical tests were obtained prior to attempting to conceive.
- That gamete donors be able to consent to the use of their donation after their death, and that this consent be able to be reversed should the donor change their mind prior to their death.
- That importing and exporting of gametes be allowed, but regulated to some extent. That where practicable, the same regulations applicable to Victorian gametes should be adhered to. However if practices in other clinics whether interstate or overseas make this impractical, that there be flexibility in the regulations to allow for this.

Legal recognition of our families

- That the female partner of a birth mother (i.e. the non-birth mother) be able to consent to be automatically recognised as the parent of a child born into their relationship: presumptive parental status.
- That presumptive parental status be applied retrospectively to all families whose children were born into such situations e.g. that the non-birth mother be deemed a parent equal to the birth mother of children borne by her female partner.
- That the non-birth mother can register as a parent in the Register of Births, Death and Marriages.
- That the criteria for presumptive parental status not be based on consent to treatment, as the relationship between the two women may have begun after treatment was undergone, and not be based on living arrangements, as some women may choose to live apart while in a relationship.
- That 'second parent adoption' be available to allow a non-birth mother (partner of the birth mother, whether or not they were partners at the child's birth) to adopt a child with the birth mother retaining her legal status.
- That the definition of family and parents under the relevant legislation be broadened to allow one, two, three or more people to adopt a child, according to their agreed family structure.
- That Birth Certificates be amended to allow for a diversity of parent and family combinations to be recorded officially and legally on the Birth Certificate itself.
- That there be the option for donors to be recorded on the birth certificate as 'father' alongside the birth and non-birth mother, without any legal ramifications in terms of rights and responsibilities, ie that families be allowed to define for themselves what different roles mean within their families. This is what people do unofficially, it should be reflected in official forms.
- That all relevant legislation be amended to allow various legal options for the great diversity of families to have legal recognition and protection of the chosen roles of all involved in the creation of their families, including automatic recognition of the non-birth mother, second-parent adoption, Parenting Orders and so on.

When asked about their priorities for legal reform, PLP members said:

'I believe the priority for law reform in Victoria in relation to these matters lies in access to donor sperm for all women, similar to the situation that exists in New South Wales together with a range of other reforms which include greater recognition of same sex parenting.' – Trudy Brunton

'Access to sperm, non-bio mum on the birth certificate and adoption by the non-bio mum.'

– Jacqui Tomlins

'My wish list would include: take-away/clinical use of sperm for any woman according to her wishes; legal recognition of non-birth mothers, either automatically or without too much hassle; access to adoption by any fit person; and possibility of partner-insemination for lesbians [i.e. for a woman's female partner to perform the actual act of insemination, which is currently illegal under Victorian law] – why is that illegal?' – Ali

'Access to testing and counselling services at clinics and use of clinics to freeze donations for home insemination, immediate presumptive parenting rights for non-birth mother, rid of any discriminatory language i.e. include parent 1 and parent 2 on birth certificates. Let us make real choices about how we want to create our families.' – Felicity and Sarah

'To make it legal in Victoria for lesbians to access sperm banks; for the non-biological mother to be acknowledged as a parent on the birth certificate; to be able to 'get married' and be recognised in this sense – across the nation for this one would be good.' – PLP couple A

'Lesbians/single women being able to access donor sperm in Victoria other than via IVF (i.e. DI) and non-biological parents being able to adopt children (ie. two Mums legally).' – PLP couple C

'The ability to access donor insemination in Victoria without the prerequisite of being 'medically infertile' as is possible in most other states of Australia; Non-birth mothers automatic acknowledgement as an equal parent on the birth certificate and legally in regard to areas such as medical, estates and superannuation.' – 'Kate'

'...single women and lesbians should be able to access fertility services (assisted reproduction) and we should be able to have sperm stored for self-insemination. Birth certificates should have provision for second parent. Second parent adoption should be legalised. Gay men and Lesbians should be able to adopt. Adoption eligibility should be based upon the ability of people to love, nurture and support a child, not their sexual preference.' – PLP Couple B

INTRODUCTION

'Most women have the natural, innate desire to have children at some stage in their life. For many women it is NOT a choice but a deep longing to have children. Lesbians are women. There is no difference in their desire to have children. We are lesbians. We love each other very much and we want to start a family. We want what most couples want. We will travel interstate in an attempt to start a family. We are all a part of the wider community. We work, pay taxes and contribute in many ways to society. We deserve the same rights. Change these outdated laws.'
– 'Frankie' and 'Lara'

'One of the fundamental misconceptions which plagues me is the failure to understand that heterosexual family life in no way gains stature, security and respect by the denigration or refusal to acknowledge same-sex families. The sum social good is in fact reduced, because when a community refuses to recognise and protect the genuine commitment made by its members, the state acts against everybody's interests.' (Justice Alastair Nicholson 1997)

There have always been lesbian parents. While historically lesbian parents have often been women who conceived their children in previous heterosexual relationships, lesbians have also been creating families for decades. In recent years, the numbers of lesbians and gay men choosing to create families – as sole parents, in couples and in unique and diverse constellations of co-parents – has been rapidly rising. The Gayby Boom is here.

In Victoria, we are creating families despite a range of laws that discriminate against us, both as prospective parents and once our children are born. Evidence obtained from various polls conducted in gay and lesbian communities and clinical encounters shows that around 20 percent of Australian lesbians, gay men and bisexuals have children, and that the number of lesbian-headed families is increasing (McNair et al 2002; Millbank 2002). According to the 2001 Census, children were present in 11% of same-sex de facto married households compared with 42% of opposite-sex de facto married and 59% of registered married.

We believe that Victorian law must catch up with the reality of the diverse families who are now part of our community. There are families of one parent, two parents, three, four and perhaps more, who may be partners, ex-partners, donors, co-parents, grandparents, siblings and others. This is the case for heterosexual-headed families, as much as for lesbian/gay-headed families. Australian families, whether or not they involve any gay or lesbian parents, come in an enormous variety of shapes and sizes. A family is a group of people (who may or may not live together) who call themselves a family. Parents are one or more people who love and care for a child.

Lesbians, both as single women and in couples, are creating families in an overwhelming diversity of ways: through donor insemination or IVF at fertility clinics, through self-insemination with an anonymous donor (facilitated by a third party), through self-insemination with a known donor who is relatively uninvolved in the child's life, through to co-parenting with donor/fathers – often gay men – and so on.

The rising numbers of lesbian-headed families in Australia and around the world have given rise to a number of studies into the wellbeing of children in those families. As stated by McNair et al (2002):

'The international research that compares children in lesbian-headed families with children in heterosexual families shows consistent evidence of good adjustment among children raised by lesbians, with no notable differences in the development of the children's sexual identities (Patterson 1992, 2000). Further, no differences have been found between lesbian and heterosexual mothers on measures of self-concept, happiness, overall adjustment or psychiatric status, nor in terms of parenting style and general ability to parent effectively.' (McNair, Dempsey, Wise and Perlesz, 2002, 40)

Moreover, recent Australian research has shown that lesbian-headed families have some characteristic strengths. Participants in the Gay and Lesbian Families Project – a Victorian research project involving 136 prospective and current lesbian parents – identified some of the strengths of their families, describing them as:

'thoughtfully planned; tolerant and accepting of diversity; having flexible gender-roles; and having interesting, supportive extended kinship networks that included a wide range of positive role models for children.' (McNair, Dempsey, Wise and Perlesz, 2002, 47)

The current law in Victoria cannot and does not stop lesbians and gay men from creating our families. However it does create enormous stresses for us in doing so, and leaves our families – especially the children and non-biological parents – without legal protection in a variety of areas.

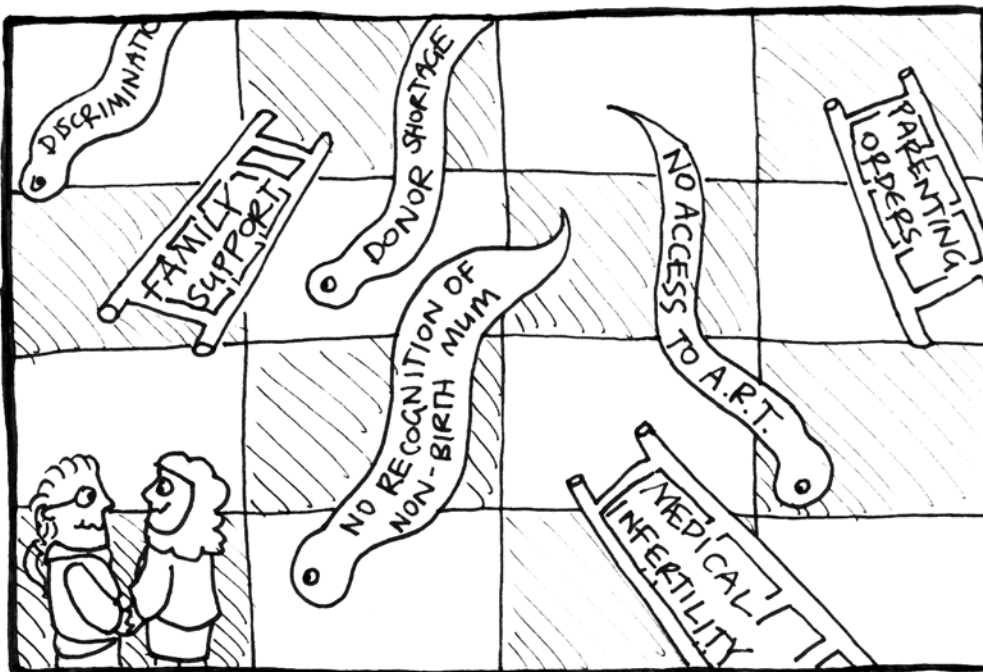
In recent years, Western Australia and the ACT have comprehensively surpassed Victoria and many other states in recognising same-sex headed families and giving us equal (or near-equal) protection under the law as heterosexual-headed families.

The *Victorian Relationships Amendment Act 2001* recognised the equal rights of same-sex couples in a range of areas of state law, most importantly defining our relationships as 'domestic partnerships' on a legal par in most areas with heterosexual de facto partnerships. Yet the entire complex area of the rights and recognition of same-sex headed families was excluded from this important piece of legislation.

If the recent Play School fiasco has taught us anything, it is that families like Brenna Harding and her mothers Jackie and Vicki are out there: watching children's television, reading (and writing) children's books, going to the fair and generally getting on with their lives. It is well beyond time that Victorian law caught up with the reality of families' lives. It is no longer the 1950s, however much conservative politicians may wish that it was. Australian families come in all shapes and sizes, and have the right to equal treatment and protection under the law.

'We have a lot of love to give, and should not, and will not, be prevented by laws in Victoria from living the experience of parenthood. If other states can be inclusive and limit discrimination in law, and be encouraging of diversity in families, then Victoria can do the same, if not better.'
– Tracey and Samantha

PART 1: PLANNING OUR FAMILIES



THE JOURNEY TO MOTHERHOOD IS RARELY STRAIGHT FORWARD FOR LESBIAN WOMEN.

'We are just like other people only we are attracted to people of the same sex or just happen to be in love with someone of the same sex. This doesn't make us bad, just different. This doesn't change our ability to parent and to provide loving, caring, nurturing homes. The amount of planning and thought that goes into creating our families ensures that the children we create will be loved to the best of our ability.' – PLP Couple B.

'We often laugh about how wanted and deliberate our eventual family is going to be.'
– Caitlin and Caz

'I spent my 20's avoiding getting pregnant as, despite a longing to have children, I had not met the right man with whom to share what I believe is one of the most significant steps a human can make to become a parent. When I finally met that person she was female. Our future children could not be more preconceived of, more considered, more wanted. As a paediatrician I know how few children are given this start in life. How lucky most are to have one caring, available parent (let alone two), regardless of gender. To have the law even suggest that we may be unfit parents is, at best, ridiculous, erroneous and incongruous with the reality of families in Australia and, at worst, an insult to our rights as (fellow) human beings.' – Zoe

The children of lesbian parents are amongst the most wanted and planned for children in our community. For many women, the initial talking and planning process can take years, before even beginning to attempt conception. As for any parents, the best interests of our child/ren are the primary considerations for lesbian women in planning our families. Discussion may centre around questions such as:

- Is it best for children to have a known donor?
- Who might that be, and what kind of role should they have in the child's life or family?
- What role would the known donor of one of our children have to subsequent children born into our family? Would we, or are we able to, use the same known donor?

- Is it better to conceive through a clinic, either to simplify the issues or to avoid possible future conflict with a known donor?
- If conceiving through a clinic, is it better to use sperm that is 'identity release' – that is, where the child has the right to make contact with their donor at the age of 18?
- If we use a clinic, can we request sperm from one donor to be kept aside for both of us to use, so that our children have the same biological donor?
- Which state or territory will provide us with the most affordable and accessible option?
- What are the risks or benefits of the different options giving the changing state of relevant laws and the current political environment?

Every woman or couple will have their own answers to these questions, and the answers may change over time, as women's options expand or contract with changes in the law, regulations of clinics and their own health or life circumstances.

'My partner and I have explored many other options, which for one reason or another did not eventuate. We looked at the possibility of buying sperm from an international source, in an attempt to increase the chance of genetic diversity and have the same donor for two children. Although this is extremely costly, this option is not open to us, as clinics in Australia will no longer accept international donor sperm.' – 'Frankie' and 'Lara'

'Family and friends are of utmost importance for both of us. Many of our friends have recently had or are planning to have children, and Sabdha's cousin has just had the first of probably many children! We would love to bring up our family surrounded by the support, love and friendship of these people and their children. We believe that we will be good parents. Our children will be very well cared for, joyfully played with, and loved unconditionally.'
– Cristi and Sabdha

OUR DREAMS AND HOPES

'I spent years believing that because I had fallen in love with a woman that I could never have children. Since I was a small child the one thing I always knew, my one dream that remained consistent, was to have a child/ren. I tried to end my relationship several times in the first few years because I didn't know it was possible to be with another woman and to have a child.'

'After we had been together for about five years I started to think maybe I could have a child. My partner and I then began to look into the possibilities of having a child and we began to explore ways in which we could achieve this dream.' – PLP couple B

Many lesbian women have spent years believing that because they have created relationships, lives and homes with other women, having children was an option that was closed to them. This belief was a product of a homophobic society that promulgated the myth that people in same-sex relationships could not – or should not – raise happy, healthy children. Yet as more lesbian and gay people choose to create families, and as those families are beginning to be represented positively and realistically in the media, increasing numbers of lesbian women are dreaming, hoping and planning for parenthood.

'I didn't ever think seriously about parenting until only recently. I've never before experienced such a happy, healthy and stable home life. Now I want to share this experience with my own child.' – Ali

MAKING 'CHOICES' WHEN FACED WITH LIMITED OPTIONS

'It's bewildering and exasperating, but also destructive and debilitating, that the law – and a whole lot of people we don't know – can have more power over our family than we have.'
– AB

'The choices we can make about the way that we create our family are deeply affected by the current laws. We have decided to use a known donor, an old friend of Sabdha's who has very generously agreed to help us out. While we are very happy with this, we went through months of agonising about whether we should use a known donor, or try to access ART. Neither of us know very many men who we could ask to donate, and using a known donor brings with it a range of issues around who the parents of the child are, health issues, the legal rights of the non-birth mother, and the relationship of the children to the donor's family.' – Cristi and Sabdha

The PLP support group has been around for ten years. In that time, many hundreds of women have come along to access one of the few sources of support and information about what options are open to lesbian women who want to create their own families. When women first come along to the group, many are shocked at the state of the law and how limited their choices are by law that discriminate against them, simply on the basis of their marital status (given that marriage remains banned to lesbian women) and sexual orientation.

Groups like PLP – and the mixed gay and lesbian group Maybe Baby – exist because GLBTI (gay, lesbian, bisexual, transgender and intersex) people see the need in their communities and get organised to meet that need. Lesbians, like many marginalised groups, have become experts at finding creative solutions to the barriers that society puts in our way.

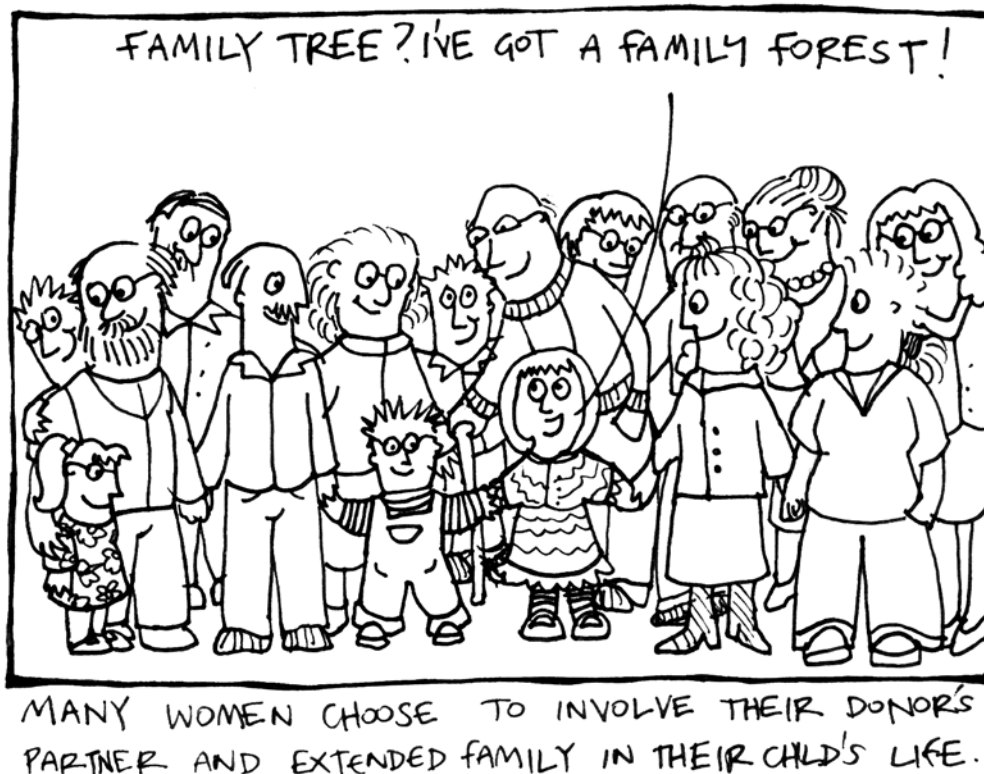
These laws have stopped some lesbian women from achieving their dream of parenthood – some of these women we have seen in PLP. Yet most refuse to be stopped, and will draw on all their resources – financial, personal and community – and travel interstate or overseas, or come up with personal arrangements that are unprotected by law – whatever they have to do in order to create their families.

'I would just like to say that the financial strain has been huge but nowhere near as bad as the emotional pressure. It took us two years to figure out how to go about having a child and to decide if it was the right thing to do by a child and by us. I believe that this would have been easier had the laws been in favour of our freedom of choice.' – PLP couple B

'The range of choices for us is so large for us, in a way, because we don't have the 'ordinary means' of getting pregnant, so have to think creatively. But paradoxically, the options are so limited because of the discrimination we face. So, working with these tensions, we have to be creative, brave, compromising, thoughtful and deliberate about our choices. Some of the options, eg. adoption, may have been considered by us if they were legally possible, though others, eg. IVF we would never choose, even if it was legal. Others that are supposedly illegal, eg. donor insemination through a clinic and insemination at home, we canvassed as possibilities because they are so unenforceable so as to make the illegality of them obsolete. So, in the majority of the areas outlined above, the law made little difference to our actual decisions. Much more important were our own ethics and preferences.

'That's not to say that it wasn't distressing having that weighty burden of discrimination hanging over our decisions. It was difficult knowing that the State was interfering with our individual and family dreams and plans. Especially knowing that we are two totally competent, mature, intelligent people who have as solid a relationship as our heterosexual peers. 'We were 'married' (as best we could, since the State attempts to disallow this too) two years ago. We have the same surname (ironically, this was the one legal act we could do that may help our child/ren be recognised as ours) and we lead active lives in the general and gay and lesbian community. I'm wary of being painted as trying to fit 'normality' because this debate may be hijacked by some wishing to say us queers want to be just like heterosexuals, whereas, all we want is our opportunities for thoughtful decisions and actions to be expanded to include what people are doing anyway, and to allow us to make our own choices from a full and healthy range of options, as equal citizens.' – Caitlin and Caz

PART 2: THE BEST INTERESTS OF CHILDREN



'We are committed to creating a loving, safe and secure environment for our child and we can do this more easily and effectively when our choices are acknowledged and supported within a legal context. Inventing our roles, rights and responsibilities is an extremely difficult and challenging issue on a personal level, so having the law not recognise or support us – in fact actively undermine our efforts to do it in the best interests of our child/ren – is another area of discrimination that makes our whole journey as a family much harder than it needs to be.' – Caitlin and Caz

The 'best interests of the child' is a heavily-contested concept, frequently cited by opponents of legal reform on the basis of homophobic beliefs – often based in conservative religious teachings – that whatever the evidence to the contrary, the best interests of children cannot possibly be served by being raised by GLBTI parents.

However, Australian and international research has demonstrated and continues to show that the children of GLBTI families are not disadvantaged by the genders of their parents (Millbank 2003, McNair, Dempsey, Wise and Perlesz 2002; Hunfeld, Fauser and Passchier 2002, Parks 1998, Patterson 1995). This research is summarized in the submission to this enquiry made by the Fertility Access Rights group.

Prospective Lesbian Parents believes that the best interests of children must be central to all legislation pertaining to fertility services, children and families. We believe that the best interests of children are compromised by the current restrictions within the *Infertility Treatment Act* and the *Adoption Act*, as well as in a range of areas of family law and anti-discrimination legislation.

'What I keep coming back to as I contemplate these issues is that the ramifications of the current laws will be felt right through our beautiful children's lives. The consequences will be felt by them, really in fact more than they'll be felt by us as parents – and beyond when they turn 18. When they apply for a passport, get a driver's licence, open a bank account, get married ... at all these significant moments of their lives, and many times in between, their Birth Certificates will remind them that they are not OK, that their family situation was and still is not OK.'

It is devastating to me that our children's self-esteem may very easily be damaged right through their lives, and long after we are gone, as a result of this legal situation.' – AB

A CHILD'S RIGHT TO BE RAISED BY THEIR PARENTS

There is currently no legal recognition or protection in Victorian law of the relationship between a child and her/his non-birth mother. The only provision that provides any protection whatsoever to that relationship in Commonwealth law is the option of applying for Parenting Orders through the Family Court, which can direct that the non-birth mother – as a person with an interest in the welfare of the child – is recognised as being responsible for the child's care, having residence of the child, and being able to consent to things like emergency surgery, school excursions etc.

However, Parenting Orders are an expensive procedure not designed for our families, and are no substitute for full recognition of the relationship as that of parent and child. This is direct discrimination on the basis of sexual orientation, as Victorian law automatically recognises the male partner of a woman who gives birth to a child as the father of that child, even if he is biologically unrelated, provided he consents to this. Victorian Adoption law also allows the male partner of a woman to adopt her child without any change in her legal status – another option not available to lesbians.

Potential consequences for the child of this aspect of the law include:

- If the relationship between the parents breaks down, the child may be prevented from having contact with their non-birth parent, with no legal recourse for either. This completely contravenes a child's right to be cared for by both parents as provided for in the Convention for the Rights of the Child.
- Similarly if the birth-parent were to die, the law would be far less certain to support the non-birth parent continuing as primary carer than if, for example, she were able to adopt the child via 'second parent' adoption. Under the current law, the family of origin of the birth mother, or even the donor, may have more claim to residence of the child/ren than a woman who was involved in their planning, conception and parenting from birth.
- The lack of a legal parent/child relationship means that, for example, children do not have the claim on the estate, insurance or superannuation of their non-birth parent that they would if the relationship were properly recognised.
- The very different legal status of the birth and non-birth mother can itself be a source of friction and potential conflict within lesbian-headed families, with potential impacts on the emotional wellbeing of the child/ren.

CHILDREN'S RIGHT TO INFORMATION ABOUT THEIR GENETIC HERITAGE

'Identity-release sperm was available within Victoria but only anonymous sperm was available at the interstate clinics we went to. As we were unable to access conception assistance in Victoria, our children will never have access to their paternal heritage and the associated medical/genetic information' – 'Kate'

Another consequence of being forced to travel interstate to access clinics is that many women have been unable to access 'identity-release' donor sperm. In Victoria, if a child is created as the result of sperm donation, the law protects that child's right to have identifying information about their genetic heritage, and to make contact with their donor at the age of 18. PLP supports this and believes that the law should be strengthened to facilitate earlier contact if this is desired by the child, their parent/s and the donor.

Many lesbian women would prefer to be able to access so-called 'identity-release' sperm to create their families, believing that children should have the right to information about their paternal genetic heritage. However at the time of writing, the law in many states including New South Wales and Queensland does not support this right. Donor sperm at these clinics is 'anonymous', meaning that any child created using that sperm may never be able to have identifying information about their donor.

Some interstate clinics have been asking donors if they would be willing to go on a register in future, anticipating that the laws in their state may change. However there is no guarantee that if a donor says he would be willing to go on such a register, he will in fact do so should the laws change. This has meant that some women have conceived children using anonymous sperm when their first preference would have been identity-release.

[We have] limited options of accessing sperm that is donor release, so in the best interest of the child so they can access information about their father, their history, heritage etc. Some interstate clinics have different laws about this to Victoria.’ – Tracey and Samantha

INCREASED RISKS IN KNOWN-DONOR ARRANGEMENTS

‘One of our donors was found to have cytomegalovirus [CMV]. When the female has no antibodies to this, it can cause foetal abnormalities. However, none of the doctors we saw advised us to have the donor tested for this (he did have however the standard tests for Sexually Transmitted Infections). The CMV was only detected when we had him donate sperm to the Royal Women’s Hospital. Had we had access to properly screened donor sperm via a clinic, we would have avoided putting a future child at risk of disability or other abnormality.’ – Amanda

As has been previously mentioned, women who are unable to access ART in Victoria and unable to access interstate services may find themselves entering known-donor arrangements that are less than ideal. Many women very successfully create their families using a known donor, however for others this is a poor second choice, and one that holds much potential risk for them, and potential negative consequences for their child/ren.

Impacts on the child/ren could include:

- Self-insemination with unscreened sperm from a donor who has not had access to counselling can increase the risk of transmissible infections to both the mother and foetus.
- The lack of counselling support for both mother/s and donor, the lack of legal recognition for the non-birth mother, and the uncertain legal status of the donor can both increase the likelihood of conflict arising between donor and mother/s, and the seriousness of consequences arising from such conflict for all parties, not least the children. To date very few such cases have ended in the Family Court, however with increasing numbers of people entering such arrangements legal reform is urgent to give clarity and legal protection to the people’s choices in creating their families.

Even where women choose to create their families with a known donor, the lack of recognition for the non-birth mother and the uncertain status of the donor can weigh heavily on the family:

‘We have made a conscious decision to have the donor involved to a certain degree and the three of us have spent over a year talking through how this will work. Obviously this is a crucial and necessary process that we would have spent much thought on anyway. However, without a legal starting point, we have had to make it up as we went along and work out ways to ‘get around’ the current law. We also have to live with the uncertainty of every party’s legal involvement. There is the frightening ‘bottom line’ that, although we’ve tried to plan for every contingency, the courts could make decisions that don’t take into account our efforts, agreements and intentions but instead ruin all our lives by following the ‘best interests of the child’ from their potentially heterosexist model of family. This child is so planned and our family so intentionally formed (even prior to having had kids!) that to have the law not take any of this seriously is a psychological trauma which threatens the stability we seek to create for our child/ren. We feel the law is working against us being a stable, peaceful family, rather than being supportive of us as a family and extended family. It will be an added burden to live with.’
– Caitlin and Caz

THE RIGHT TO EQUALITY BEFORE THE LAW

Children have the right to be treated equally under the law, regardless of family structure, sexuality, race, ethnicity, number of parents or their parents' marital status. Yet our children are not protected under Victorian law from discrimination on the basis of their parents' sexual orientation or their family formation – indeed, discrimination is actually enshrined in Victorian law, as described above. The current law enshrines inequality on the basis of homophobic and sexist beliefs that lesbians and single women are somehow less able to be loving and successful parents. As discussed above, Australian and international research shows that this is not so.

Children should not be subject to discrimination or stigma on the basis of their family formation or their parents' sexual orientation. As discussed in greater detail in part 5, legal reform would not only provide legal recourse in the case of discrimination, but also a strong message to the community that the family of a child of lesbians is as legitimate and deserving of support and protection as any other. The flow-on effect into social attitudes are as important to lesbians as the legal reform itself, particularly in terms of the acceptance (or otherwise) our children and future children will experience in the broader community.

'I strongly believe that these changes will send a message to the community that our relationships and our families are legitimated. I believe this is crucial for all children to feel accepted by the community. I believe that with law reform, our children may feel different but accepted by the community. There is no doubt in my mind that this will have a huge impact on acceptance and social attitudes.' – 'Frankie' and 'Lara'

'We strongly feel that the more laws that come into play, that give our relationships recognition and the same rights as heterosexual couples, the more society will be exposed to kids of different families, which in turn leads to greater acceptance. This would be of great benefit to our children, and will teach and educate others that we are not something to be scared of, and that our love is the same!' – Tracey and Samantha

QUESTIONS FROM THE CONSULTATION PAPER

11. To what extent should the *Infertility Treatment Act 1995* refer to the above rights and interests? (this question refers to the rights and interests of the child as stipulated in laws and international treaties and covenants, for example to protection against discrimination, to proper parenting, to life and development, to be cared for by her/his parents, to preservation of her/his identity, to information about biological heritage, to best available health care).

The rights and best interests of the child should remain central to the *Infertility Treatment Act*. This is a central concern for Prospective Lesbian Parents. Indeed, the rights and interests of children in lesbian, gay and single-parent families as listed in the *Convention for the Rights of the Child* (CROC) are compromised when their family relationships are not recognised, and they are not protected from discrimination based on their family structure. We believe that the best interests of children are compromised by the current restrictions within the *ITA* and the *Adoption Act* as they have a range of negative consequences for the families affected, for example in not being able to be adopted by their non-birth mother. These issues are discussed in detail above and in Part 4 of this submission.

The child's rights to life and development would be better protected in laws requiring proper screening of donated gametes for STIs and serious genetic disorders. Such screening would occur if lesbians and single women were given access to ART, as discussed in detail in Part 3 of this submission.

In regards to the child's right to be cared for by 'both' her/his parents, the *Infertility Treatment Act* is one piece of legislation which requires expanding and clarifying of the legal definition of 'parent', to cover the breadth and diversity of lesbian/gay-headed families in the community and to give legal protection to such families. This issue will be discussed in greater detail below. In brief, however, legislation should provide legal clarity regarding the role of the donor – as distinct from the role of a father, whether he is a donor through a clinic, or a known donor who assists a conception done via self-insemination – and to the role of the birth mother's partner as the legal parent of a child born into their partnership.

Some lesbian mothers choose to have no contact with their child/ren's donor/s, some have complex co-parenting arrangements with men who may be known as the 'father/s', many choose something in between. All the relationships within these diverse families should be recognised and protected by law. These issues are discussed in greater detail in Part 4 of this submission.

12. Are there other broad principles that would better protect the best interests of the child yet-to-be-born?

Children have the right to be treated equally under the law, regardless of family structure, sexuality, race, ethnicity, number of parents or their parents' marital status. Children have the right to be protected from discrimination as proscribed by CROC. Children's rights are protected when the law recognises and supports the structure of their family. Children have the right to have their family recognised on official documentation such as birth certificates (discussed in Part 4 of this submission) which should be amended to allow recognition of all parents – however they define themselves – and siblings, whether or not they are borne by the same birth mother.

The law should protect a child's right to make contact with their donor at adulthood, and facilitate earlier contact if this is desired. However it should not stipulate who has the right to be a parent or discriminate against any family formation, and should protect the relationships between children and those who are their parents i.e. those who love them and are responsible for their welfare. For example, the current law does not recognise any relationship between a lesbian non-birth mother. This can, and does, result in children being denied any contact with their non-birth mother if their parents' relationship breaks down. This completely contravenes a child's right to be cared for by both parents.

14. Should the Infertility Treatment Act 1995 express broad principles regarding the best interests of the child, or identify specific criteria that are likely to produce better outcomes for children? For example, should specific criteria relating to parenting be included in legislation regulating eligibility for assisted reproduction?

NO, we do not believe that it is appropriate to legislate around who should or should not be a parent. The only criteria for eligibility for ART should be that a person requires that assistance to conceive and bear a child, along with consent and counselling requirements as currently apply to ART recipients. This is discussed in greater detail in Part 3 of this submission.

45. Should there be a legal obligation imposed on parents to inform children that they were conceived through use of donated gametes?

This is a much greater issue for heterosexual couples using ART than for lesbian women, as it is fairly clear to all that some assistance was required for lesbian women to conceive their children. We believe that the more openness there is around the different ways that children are planned, conceived and raised, the more likely it is that parents will feel able to be honest with their children their conception through ART. We do not see how a legal obligation to inform could possibly be enforced.

Summary of PLP recommendations made in this section

- That lesbian-headed families and their children receive equal treatment under the law to heterosexual-headed families.
- That a child's right to be raised by their parents be protected. That all relevant legislation be amended to provide legal protection to the relationship between a child and her/his non-biological parent/s, for example their non-birth mother in a lesbian couple-headed family.
- That a child's right to legal protection for their family be ensured. That all relevant legislation should be amended to provide clarity about the legal definition and status of 'donor', 'father', 'mother', 'parent' etc. The definition of such terms in legislation such as the *Infertility Treatment Act* should be

expanded to accommodate the diversity of families in the Victorian community. Such legislation should not prescribe or limit such definitions based on any particular (e.g. nuclear) family structure.

That this and other legislation should be amended to provide legal means (such as adoption, presumptive parental status etc) that allow families to define for themselves the makeup of their family, and to ensure that their family relationships are recognised and protected in law. The regulations around Birth Certificates should also be amended to allow for the diversity of family structures (parent 1 and parent 2 for example, rather than mother and father).

- That a child's right to equality before the law and freedom from discrimination be protected. That all relevant legislation should be amended to provide protection against discrimination on the basis of sexual orientation, family formation and the sexual orientation of a person's parents.
- That a child's right to life and development should be protected. That eligibility for ART should be broadened to include all people who require ART in order to conceive and bear a child. That services such as freezing and screening of known donor sperm be provided. These measures will protect children against the risk of infection by unscreened donor sperm.
- That a child's right to information about their biological heritage be protected. That the laws and regulations in this area be broadened to facilitate contact between donor and child/ren produced through his donation earlier than age 18 if this is desired by all parties.
- That the *Infertility Treatment Act* is not an appropriate place to define criteria for who should and should not be a parent. We do not believe that this is an appropriate task for legislators. Eligibility for ART should be based on the need for such services in order to conceive and bear a child, with the same requirements for consent and counselling that are currently required. See Part 3A of this submission for more detailed discussion.

PART 3: THE IMPACT OF CURRENT LAWS ON OUR LIVES



LACK OF LEGAL SUPPORT CAN MAKE THE MOST IMPORTANT DECISIONS OF OUR LIVES FEEL LIKE A LEAP INTO THE UNKNOWN.

'We are in a loving committed relationship and the laws do not and will not prevent us from starting our family ... These laws are outdated and must be changed. Women risk health issues with self insemination (and it is against the law). Travel interstate is costly and stressful. The laws do not stop lesbians creating families, it just makes it more stressful and financially more draining.' – 'Frankie' and 'Lara'

'As a parent of a young lesbian woman who is in a happy stable relationship seeking motherhood, I witness her trauma in Victoria trying to find the assistance and help needed to have their child. A trip to Canberra was necessary, where they were judged, outrageously charged, and felt discriminated against by the so-called professional medical operators. Luckily Tasmania came to the rescue with their new enlightened laws which treat the gay community with respect.' – Pam, Samantha's mother

The current restrictions have a multitude of effects on lesbian women, not least the stress and emotional impact of knowing that the law enshrines discrimination against us, excluding us from receiving a service on the basis of our sexual orientation and narrowing our options for creating our families. A very specific impact is the exclusion of the majority of lesbian women from receiving ART in Victoria, including exclusion from counselling, screening and other support services available to those receiving ART. As a result, lesbian women are forced to seek other options for creating our families, including travelling interstate or overseas to access other clinics, or using self-insemination, generally with a known donor.

In an attempt to cover the most significant of the multitude of impacts the current laws have on single and lesbian women who live in Victoria and who wish to create families, the questions will be answered under a series of headings:

Part 3A: Using interstate clinics

Part 3B: Using a known donor

Part 3C: Accessing services in Victoria

Following are some quotes from PLP participants showing the general negative impacts of the current laws on lesbian women who are trying to become parents:

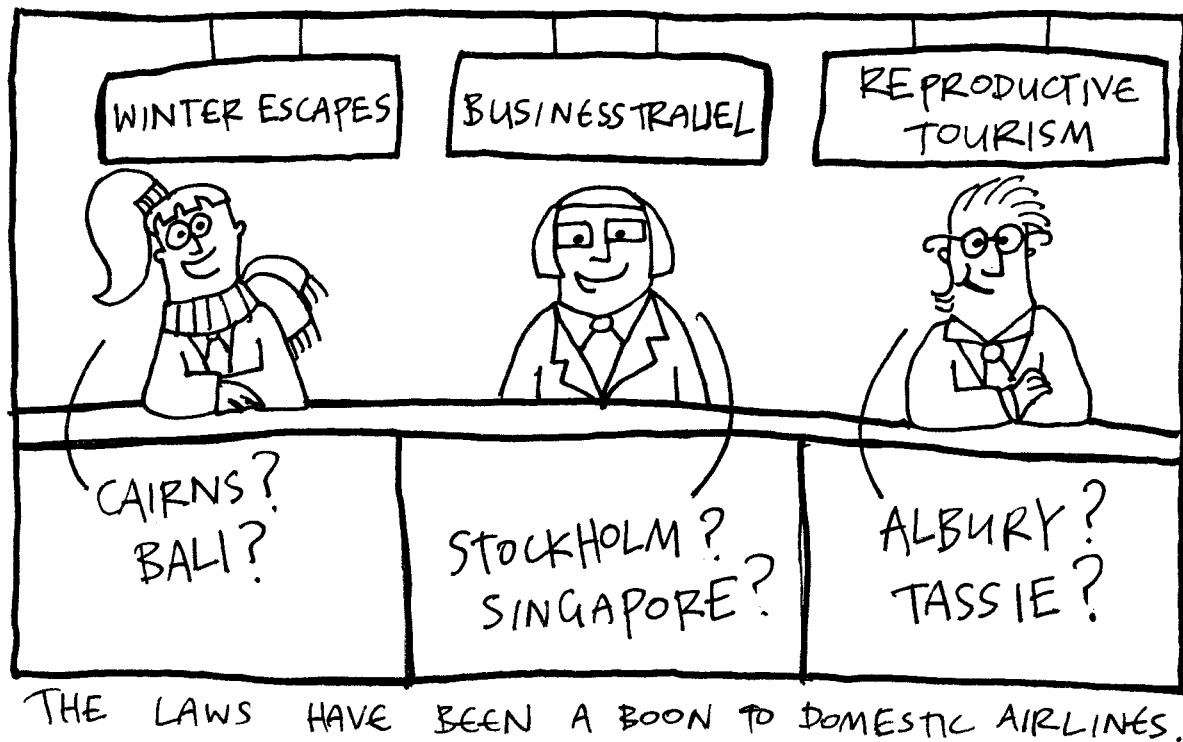
'I've suffered from depression and anxiety in the past and have learned skills around dealing with stress. I guess I wish that the process of forming a family didn't involve so many hurdles, and I'm just going to have to tackle them as they come. The law's an ass, that's all I can say right now! ... My stomach has been in knots since starting the process of investigating my options. There's so much to think about, organise and decide on. These laws turn what should be a joyful and beautiful journey into an extended study circle. It seems like a legal minefield so far.' – Ali

'Emotionally this has had a negative impact on my self-esteem and on my confidence to pursue something that is incredibly important to me – parenthood. These laws, with their antiquated restrictions, have placed significant pressure on my relationship with my partner as we try to figure out how to get what we want while resenting the many restrictions placed on us. The impact of these laws is effectively the outlawing of homosexuality – something I thought ended in Victoria many years ago!!' – AB

'I believe these laws and the choices they have offered me as a prospective parent have significantly lengthened the time it has taken to achieve my current pregnancy. It took me seven years to become pregnant and I have experienced significant financial, health and emotional impacts throughout this time.'

'I suffer from a condition commonly associated with female infertility called polycystic ovarian syndrome and have watched others both in the heterosexual community in Australia and in both the heterosexual community and same-sex community overseas continue to have a much wider range of choices at almost every point than myself. I conceived early in 2003 on my second IVF cycle during what I saw as a window of opportunity available to me under the law. The extra stress even at this point as part of my perception as a legal window of opportunity was significant.' – Trudy Brunton

PART 3A: USING INTERSTATE CLINICS



Currently, both lesbians and heterosexual single women who are not deemed 'clinically' or 'medically infertile' under Victorian legislation are barred from accessing any form of assisted reproductive technologies including both donor insemination (DI) and IVF. Until recently clinics in NSW were the most sought after option, but the extreme and ongoing shortage of sperm donors at several clinics, particularly the closest in Albury, is a major issue for many women.

The lesbian community is fairly close-knit, and the idea of having children that may be related to those of friends or acquaintances is disturbing for many, raising a number of issues, not least that of limited gene pools. This small pool of donors is in part the result of clinic practices which allow donors to specify whom they will and will not allow their sperm to be used by, which is discussed further below.

For other women, the particular services offered at interstate clinics did not meet their wishes for the child, for example, the ability to choose from 'identity release' donors so the child can have access to information about their genetic heritage and the option of contacting their donor at age 18. This is discussed further under section 2. For some women, this has the effect of precluding the option of interstate clinics, leaving them with finding a known donor as their last resort. Recent legal changes supporting GLBTI families and prospective parents, and the rights of children to information about their donor in both WA and the ACT has opened up the possibilities for women wishing to access ART in those states.

Deciding to travel interstate to access ART services is not an easy nor realistic option for many lesbian women. Being forced to travel interstate to try and conceive their children – a process that has come to be called 'reproductive tourism' – has a range of impacts on women. The financial and emotional concerns, and time-consuming nature of the process, the difficulty of securing access to ongoing health care with the same person, make it a difficult 'choice' for many women. Yet reproductive tourism has always been, and continues to be, a growth industry.

'The impact has been absolutely huge. I did six cycles of DI interstate (Sydney) – an enormously stressful experience and logistically very difficult. Then did three IVF cycles in Sydney that were a complete nightmare. Then another two cycles in Albury. Change in the law [at this point] made a huge difference as I could then access IVF in Victoria, and that's that I wanted to do. This situation was much better for me, but prior to that, trying to conceive was absolute hell.'
– Jacqui Tomlins

Being forced to travel interstate to receive ART services raises issues including:

- greatly heightened stress, with probable impacts on the likelihood of conception
- extreme financial stress (the cost excludes many women)
- having to take days off work at short notice, with likely consequences of having to 'out' ourselves to potentially unsupportive managers or other impacts on our income/employment
- difficulty having to manage treatment by different care providers in different states.

Another impact of the current restrictions, given the changing nature of the laws in various states, is that of having the same donor for successive children in a family. In some couples both women wish to bear children, and are very concerned that their children have the same donor (and thus some genetic link). The current law might allow one woman – if she is 'medically infertile' – to receive ART in Victoria, but not her partner, if she has no known medical infertility. The current law prohibits transfer of donated sperm in or out of Victoria, forcing both women to travel interstate if they are to have a chance of conceiving biologically related children.

At the time of writing, women are reporting that Hobart IVF is concerned about the influx of women from Victoria and South Australia and are moving to restrict access to some donors. Similar restrictions now occur in Canberra where lesbian women are forced to have a laparoscopy *before* having treatment. PLP has also heard reports that some women who have attended doctor appointments as couples are being asked to pay consultation costs for both women – a clear case of discrimination by a medical service. Women accessing Albury report that only two donors are currently available to lesbian and single women and that women may only be offered *one* opportunity to use the less invasive, and far less expensive, option of DI (four to six unsuccessful cycled of DI would generally be required to indicate infertility and thus eligibility for IVF or other forms of ART) before being placed on the IVF program.

STRESS AND OTHER EMOTIONAL AND HEALTH IMPACTS

Managing the process of trying to conceive through means other than heterosexual intercourse is tricky at the best of times. Amongst other things, it involves mastering the very inexact science of predicting ovulation, as well as managing the need to take time off work with almost no notice, at times entirely beyond one's control. Having to travel interstate – perhaps for days at a time – at the drop of a hat compounds the stress of this process to an enormous degree. Some women who begin by trying to conceive through interstate visits to clinics find themselves unable to continue, and may either give up, or seek other, less preferred options such as using a known donor.

'Living in Victoria means travelling to Tasmania for all procedures in relationship to becoming pregnant, at financial expense. Some women can manage it alone or with family assistance, some I am sure cannot find the money required, resulting in women trying non-safe methods of trying to become pregnant, feeling alone and totally discriminated against, questioning their being and feeling angry and depressed.' – Pam, Samantha's mother

'The process of how was hard and eventually we found a friend/donor who lives in the UK so we all met in Canberra and he donated for us. This process was costly and stressful but very exciting. Each time we wanted to try to conceive it was highly stressful. Canberra insists that you have blood tests and vaginal ultrasounds to determine ovulation and the only method of insemination is intra-uterine insemination, which the first time was quite painful and created great anxiety in me. I was too scared to go back for a while and ended up having to have hypnotherapy to alleviate my anxiety.' – PLP Participants B

'These laws have been impacting on our choice in becoming parents by the amount of time and effort spent researching our limited choices in Victoria/interstate; financially expensive due to travel interstate, cost of medical intervention/hotels/flights etc. Emotionally draining and disappointing. [And we've] been judged by medical specialists due to bias regarding sexuality.' – Tracey and Samantha

FINANCIAL STRESS

Travelling to interstate clinics adds enormously to the cost of attempting to conceive. Added to the cost of the clinic services (which have escalating in recent years, particularly since political pressure has resulted in some services no longer being covered by Medicare) are costs of accommodation and transport. These are difficult to minimise, particularly when the actual date one needs to travel is difficult to predict.

'The cost of conceiving our first child was in the order of \$20,000 as we were required to travel to interstate clinics for donor insemination. This means \$20,000 less that we can spend on the raising of our children and is a cost prohibitive to many others who instead may attempt illegal and perhaps medically and emotionally unsafe practices to achieve conception.' – 'Kate'

'We spent around \$10,000 trying for 6 cycles, which took over 2 years. We have now taken a break from trying for a year as the stress and anxiety was just too much. I was only 29 when we first started, with no known fertility issues. If it was legal for self-insemination and clinics could store known sperm for you to use at home I believe the chances of me getting pregnant would have been much higher. As it is the stress is so great on the week that we try that it is not surprising that I can't get pregnant.' – PLP Participants B.

IMPACTS ON EMPLOYMENT

Having to spend anywhere from a few months to years managing this enormously disruptive process can have unplanned consequences for many women. Many lesbians and gay men are 'out' about their sexuality to different degrees in different parts of their lives. Many remain 'closeted', at least to some degree, in their workplaces, for fear of discrimination. Any woman lucky enough to have the initial capacity to take the necessary time off work is likely to eventually have to explain why, if the process stretches to several months. The amount of time off work may have impacts on employers, on the women's prospects for advancement in a workplace, or on income, particularly for self-employed women.

'The cost of travelling interstate once a month for nearly a year was not only financially difficult. The logistics were horrendous, having to reschedule clients' appointments and work with as little as several hours notice. This often resulted in blanking out a whole week to avoid the high stress of last minute changes. In addition, my partner was forced to explain the situation to her manager to avoid her work attitude/performance being viewed poorly. Luckily her manager was sympathetic, but this forced 'outing' may not be available in some work environments. We often wonder if conception would have been achieved faster without the stress of co-ordinating interstate travel.' – 'Kate'

'This has placed undue stress on us as we have to make sudden plans to take time off work and travel interstate. The process of trying to become pregnant is full of much stress and anticipation and the added complication of travel organisation adds to an already emotional and stressful process. It is also a huge strain on us financially.' – 'Frankie' and 'Lara'

'It got to the point that I would end up with serious health complaints after finding out a negative result. I managed to get pregnant once (they do blood tests at day 8 and 10 and if + again at 12) only to be told two days later that I was no longer pregnant. Through the trauma of this I ended up so sick I had to take two weeks off work.' – B

'As a woman in a long-term relationship with another woman (over 15 years), my private life was always that – private. Few work colleagues ever knew my personal situation and I made a point of identifying my position on a need to know basis only, even to friends.' – 'Kate'

MANAGING DIFFERENT HEALTH PROVIDERS

'Physical impacts include compromised health care, as I battle to find an accessible GP who understands these laws and who is sympathetic to my situation, as well as someone I actually relate to and trust AND who I don't have to travel miles to visit!' – AB

Even those women going to clinics who give excellent service and support are still often receiving compromised health care, simply because that care is spread across several health providers, who may be more or less sympathetic and sensitive to the issues. A woman attempting to conceive will be managing her fertility and an often complex health care regime, generally in a relatively high state of stress.

Despite all the stress of travelling interstate to visit fertility clinics, the fortnight-to-fortnight emotional roller coaster of waiting, disappointment and waiting again, and sometimes the grief of miscarriage or infertility, many women have eventually successfully conceived children in this way, and have found staff at some clinics helpful and supportive.

'We weren't able to use donor sperm from a clinic in Victoria, and so travelled to Albury. After seven inseminations (and two miscarriages) we finally conceived our son, now aged 16 months. This was time-consuming (driving), much time off work etc. It also seemed a little silly, with all of the scans (pre-pregnancy) being done here in Melbourne, as well as doctor visits and conception advice, then only The Act of Insemination happening in Albury, with our Melbourne doctor faxing Albury regularly! The service/staff in Albury were fantastic though, particularly with the miscarriages.' – PLP couple A

A NOTE ON THE ISSUE OF 'MEDICAL' VERSUS 'SOCIAL' INFERTILITY

In 2001, Melbourne IVF specialist John McBain successfully challenged the law barring access to IVF for lesbians and single women in the Victorian Supreme Court. Justice Sundberg ruled that the law contravened the Federal Sex Discrimination Act. The subsequent furore exposed a deep vein of homophobia, misogyny and hatred in the community, and prompted an unsuccessful High Court challenge by the Council of Australian Bishops, backed by the Howard government. The impacts of these attitudes within government and the wider community are explored later in this submission.

The case opened a window of opportunity for some lesbians and single women (who had often already been through months of trying to conceive interstate) to have access to IVF in Victoria. However in the wake of the case, the Infertility Treatment Authority (no doubt under political pressure, judging from comments from both Victorian and federal politicians at the time) decided on a narrow interpretation of the phrase 'unlikely to become pregnant' in the eligibility criteria for ART within the *Infertility Treatment Act*, restricting eligibility to 'medically infertile' women, as opposed to the great majority of single women and lesbians who were certainly 'unlikely to become pregnant' without assistance, but who have no known medical infertility. These women were deemed 'socially infertile' – in a term coined by then Federal Health Minister Dr Michael Wooldridge – and thus unworthy of access to treatment.

Unpacking the term 'socially infertile' – and the decision to restrict interpretation of the phrase 'unlikely to become pregnant' to women with a proven medical infertility – reveals both misogyny and homophobia on the part of decision-makers. It implies that most lesbian (and single heterosexual) women wanting to access ART could easily choose to be more 'likely to become pregnant' by having sex with a man.

This is homophobic on many levels, first in that it displays no understanding that sexual orientation is a fundamental part of every person's identity and self-concept; and second that it implies a contempt for lesbian relationships, that lesbians should somehow be expected to have intercourse with someone other

than their chosen partner in order to conceive their children (whom they have planned for and will raise with that partner).

This may be a choice made by some women in some circumstances (faced with very limited options), yet to expect it of lesbians by denying them options available to heterosexual women in the same circumstance is highly discriminatory. One cannot imagine any circumstances in which the same would be expected of a heterosexual woman – ie if she cannot conceive through intercourse with her husband, she should simply try to conceive by having sex with another man.

QUESTIONS FROM THE CONSULTATION PAPER

2. What are the effects on people of the current restrictions to access of ART treatment?

The effects on lesbian and single women of the current restrictions include: the emotional impact of discrimination against us being enshrined in law; being excluded from receiving counselling or other support services available to those receiving ART; being forced to seek other options for creating our families, including travelling interstate or overseas to access other clinics, or using self-insemination, generally with a known donor. There are many consequent effects of having to seek alternative options, which are discussed in detail throughout this section.

3. Do the restrictions affect the physiological or psychological health of people who are excluded? Are there financial or other material effects? Are there other effects?

YES. The restrictions affect both the physiological and psychological health of lesbian and single women. Some women may be forced to access clinics interstate or overseas, greatly increasing the emotional and financial stress of attempting to conceive, as discussed in detail above. Those women who cannot access interstate clinics or do not wish to do so may turn to the option of self-insemination. Without screening procedures this may put them at risk of HIV/AIDS and other STIs. They may also become involved in donor arrangements that are less than ideal. This and other issues around self-insemination with a known donor are discussed below.

4. Are there principles or circumstances that would justify any adverse effects of restrictions to access to donor or treatment programs?

NO. There are no principles or circumstances that would justify the impacts of the current restrictions.

14. Do the principles in the Infertility Treatment Act 1995 express the values and priorities that should apply to assisted reproduction treatment? Do they provide an adequate framework for assessing eligibility for assisted reproduction?

NO, the Act has been interpreted and used to exclude single women and lesbians from treatment on the basis of prejudiced beliefs about our ability to parent.

16. What is the best way to regulate access to ART in Victoria?

There should be a broad principle of non-discrimination in regulation of access to ART to confirm with the principles of the Sex Discrimination Act and other anti-discrimination legislation. The definition of the criteria of 'unlikely to become pregnant' be broadened to include anyone who has need of ART in order to conceive, for whatever reason. The current requirement for undergoing counselling before having access to treatment should be retained.

18. If so, what criteria should be applied in assessing eligibility? Should anyone be excluded from treatment?

No criteria based on medical infertility or parenting ability should be used to assess eligibility to ART in Victoria. Eligibility to access ART services should be based on a broad definition of being 'unlikely to become pregnant' which is inclusive of single and lesbian women. Infertility, heterosexuality and marital status should not be a requirement. As stated the current requirement for undergoing counselling before having access to treatment should be retained.

19. Should infertility be a requirement for eligibility for assisted reproduction, and if so, how should it be defined? If not, how should the phrase 'unlikely to become pregnant' be interpreted?

NO, infertility should not be a requirement for eligibility. 'Unlikely to become pregnant' should be interpreted as broadly as possible; that is, it is not a medical definition, but rather a matter of self-referral. A woman or couple should be able to receive treatment if they are 'unlikely to become pregnant' without it, whether the reason is medical or simply the result of being a single woman or lesbian couple.

20. Alternatively, should the legislation simply express broad principles of eligibility and provide for non-binding guidelines to be made to assist decision-makers?

YES, eligibility should be as discussed above, with consent and counselling requirements appropriate to the family situation and consistent with those current required for access to ART.

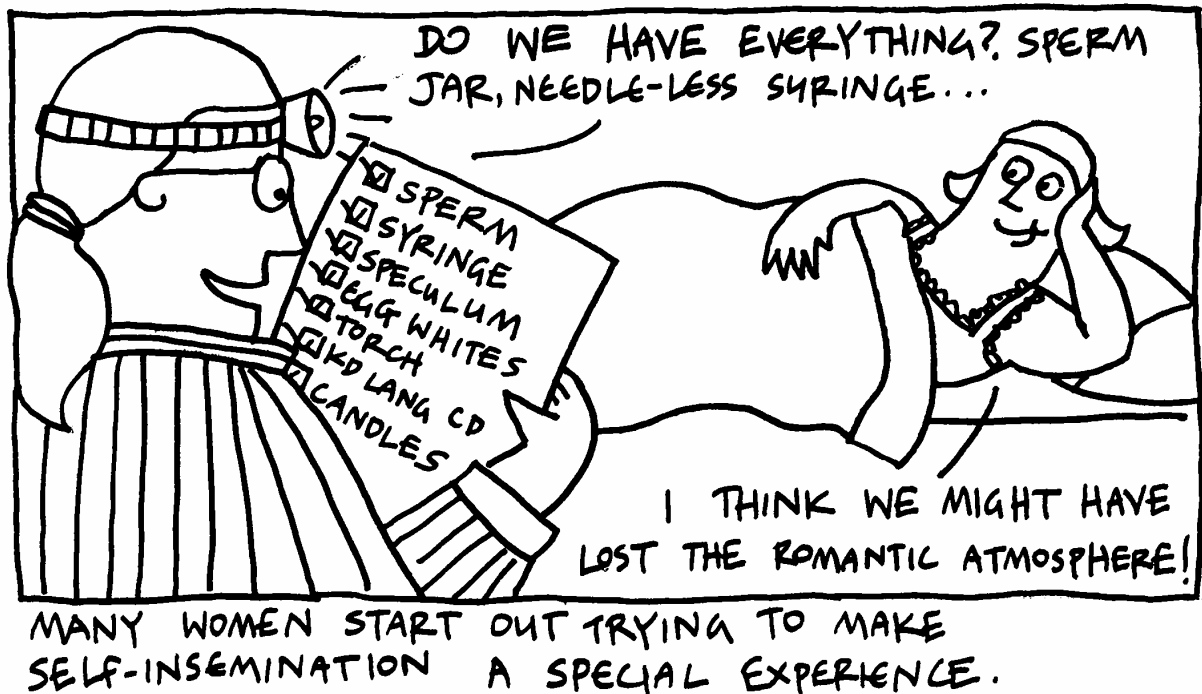
21. Would it be preferable to simply leave eligibility for treatment to be determined by individual doctors?

NO, the broad guidelines for eligibility and requirement of non-discrimination as discussed above should be stated. Even the most supportive clinics currently have practices which PLP believes to be homophobic, for example allowing donors to choose who their gametes will go to based on their own personal 'preferences'/prejudices. Until homophobia no longer exists in the broader society, criteria and principles of non-discrimination are required in such legislation.

Summary of PLP recommendations made in this section

- That the definition of 'unlikely to become pregnant' be broadened to include anyone who has need of ART in order to conceive and bear a child. This may be for medical reasons, such as unknown or known infertility, or any other reasons that ART is required to produce a child. This would be a matter of self-definition.
- That criteria for eligibility include broad principles of non-discrimination on the basis of marital status, sexual orientation etc in the provision of service.

PART 3B: USING A KNOWN DONOR



'After much debate and dissatisfaction at the status of identity release donors in interstate clinics, we decided that we wanted our child to be aware of their biological heritage, and to have some sense of having a 'father'. To do this we needed to find a known donor. The decision to involve Cameron, old friend we have both known for a long time, is the best solution possible. We feel very happy and fortunate to have found him.' – Felicity and Sarah

'STIs are also a risk for [lesbian] women if they are prevented from accessing appropriate insemination services and lack medical support to assist in screening known sperm donors.' (AMA Position Statement, Sexual Diversity and Gender Identity, 2002)

'Paula has always been close to her brother Mark, and I too felt a deepened bond with him over time. We asked him if he would be the donor for our baby, partly because we felt we could trust him with the enormity of this project, and partly because we loved the idea of the baby being genetically related to Paula as well as to me. Mark said he would consider it and so we embarked on two years of meetings, during which we outlined the details of the relationships we would each have with the baby. We decided Mark would have no responsibility, financial or emotional, to the baby, and would basically be considered an uncle. All parenting would be the responsibility of Paula and myself.'

THE DIVERSITY OF OUR FAMILIES

The families of GLBTI people are – as in the broader population – extremely diverse. For a variety of reasons, many women may choose to involve a known donor in the creation of their families. Many women make a positive choice to have a known donor, and create loving families that involve their child/ren's known donors to a greater or lesser extent. The reasons to do so are manifold and there is no one typical reason for using a known donor.

There is no typical arrangement made between lesbians and their donors. For the majority of families, the known donor's role is very different from that of a father in any traditional sense. Some arrangements

may include the lesbian mother/s bearing all the costs associated with conception, including any travel costs or medical tests their donor requires, with the known donor making no financial contribution to the child's upbringing. Sometimes a donor will be referred to as a 'father' by the child and other family members, but his role in the child's life is more like that of an uncle or family friend, with the lesbian parent/s understood by all to be the child's primary care-giver/s. Yet other families may involve co-parenting by the lesbian mother/s and donor/father, including sometimes by his male or female partner.

ISSUES WITH SELF-INSEMINATION AND HAVING A KNOWN DONOR

While many women prefer to use a known donor and attempt conception via self-insemination, some women feel forced into these methods of conception by their lack of options. As discussed above, some women may opt for attempting conception at an interstate clinic because they do not know anyone they trust enough or felt was suitable to ask to be a donor. Women who cannot afford to travel to access ART may end up putting their health at risk or entering into less-than-ideal arrangements with known donors, with whom they do not feel entirely comfortable.

Major issues of trust, honesty, openness and ability to talk through difficult issues are raised constantly throughout the process of negotiating and attempting conception with a known donor.

Issues of concern include, but are not limited to:

- Women being forced to choose a known donor because of a lack of other options.
- Legal ambiguity around the legal status of the donor and the non-birth mother, which can create great stress and potential for conflict during the conception process and throughout the child/ren's life.
- Women putting themselves and the foetus at risk of infection through self-insemination with unscreened sperm.
- Legal ambiguity around the act of self-insemination, which means that many women are doing so in relative secrecy and are unwilling to seek medical or legal advice or support.
- No access to counselling or other supports available to those who can use ART.

Other issues with attempting conception with a known donor include the difficulty of finding a donor, and of negotiating arrangements. The lack of institutional supports for the process of negotiation – for example the kind of counselling available to people using ART – make the process all the more difficult. More importantly, the lack of legal protection for the agreements lesbian women and their donors make around creating families make the process extremely fraught.

'Trying to conceive with a known donor is such a leap of faith, especially in the current political environment – I just can't imagine doing it with anyone I did not know extremely well and trust implicitly. In fact trust to be involved in the most important decision of our lives.' – Sarah

'CHOOSING' A KNOWN DONOR DUE TO A LACK OF OPTIONS

'Historically this issue has created great stress for me as I tried to conceive for 6 years using a known donor. However, this issue is not a practical one I will be dealing with on the birth of my child as I conceived using an unknown donor through a clinic [after the law changed to allow 'medically infertile' women access to ART].' – Trudy Brunton

As discussed earlier in section 2, women who are unable to access ART in Victoria and unable to afford to travel to access interstate services may find themselves entering known-donor arrangements that are less than ideal. Many women make a positive choice to create their families using a known donor, however for others this is a poor second choice.

Intimately involving a third person, and sometimes a fourth person (if the donor has a partner), in the creation of a family can be both rewarding and stressful. The process requires a very high degree of trust, openness and communication, especially in view of the legal situation. Women for whom this is not their preferred way of creating their families may find themselves – through lack of other options – entering arrangements with donors they do not have such a level of trust or communication, further raising the risk of conflict and emotional stress during the conception process (which can take months or years), pregnancy and throughout the child/ren's life.

UNCERTAIN LEGAL STATUS OF THE DONOR

'My first choice would be a known donor, but the legal implications are too uncertain. For the sake of simplicity I'll opt for donor insemination in a clinic.' – Ali

'We toyed with the idea of using a known donor and employing the 'turkey baster' method at home, but worried about the various emotional and legal implications of involving a third person. And, besides, there wasn't really anyone we knew who we trusted enough to ask.'
– Jacqui Tomlins

'I was quite worried about the chances of the father trying to take custody which is why we chose someone who we love and trust very much but I don't know how it would be if we did not know him. My partner and I considered changing our surnames to be the same just to ease this burden on the child and enable my partner to have equal rights to obtain legal assistance etc. for our child should we have one.' – PLP couple B

This is one of the most urgent areas for reform, and probably the area that has the most impact on the decisions that women are making around whether or not to choose a known donor or attempt conception through an interstate clinic. Under current Victorian law, the legal status of a donor – including whether he is, or is not, a 'father' or a 'parent' – is very unclear, with judges in at least two of the cases that have come to court involving parents and donors making findings with conflicting implications. The situation is exacerbated by the lack of legal recognition of the non-birth mother.

Giving women access to donor insemination via fertility clinics would clear up this problem to some extent. When a donor donates to a clinic – whether to a specific couple or to the general sperm bank – he no longer has any 'rights and obligations' as a parent, according to the law in all states including Victoria. In fact, some women actually choose to have their known donor donate to an interstate clinic, which they then travel to in order to attempt conception. If women are deemed 'medically infertile' they may have their known donor donate to them in Victoria (although there are other problems with this, as is discussed further below). However the donor's status even if donating through a clinic is not even 100 percent clear under Victorian law, as the Act does not definitively state that the donor in this case is not the father. This area of the law needs to be clarified.

'We were happy to have our donor donate his sperm to the fertility centre. In so doing he had to sign over his rights so at least that means that even if he is listed on the birth certificate for the child's knowledge, he would actually have no legal status or obligations. It is however a big problem that my partner can't be listed on the certificate as she will be the other parent not him. It is not fair that he should be listed as a part of our child's life but my partner should not when she will be providing and caring for our child.' – PLP couple B

Many lesbian women feel – and PLP believes – that the current environment of moral conservatism is very unsupportive of lesbian families, and that the sexist and homophobic belief that children need 'both a mother and a father' has great currency. We see this as critical in determining the outcome even of cases where the donor has been found to not actually be a parent, as in the *Re Patrick* case, where the donor was granted Parenting Orders more consonant with being a father in a separating heterosexual married couple than might be expected, given their original level of involvement in the family.

As cases like *Re Patrick* show, the uncertain legal status of the donor can both increase the likelihood of conflict arising between donor and mother/s, and the seriousness of consequences arising from such conflict for all concerned. It must be emphasised that the overwhelming majority of families involving a known donor negotiate the process of making an agreement, conception and family life very successfully,

however they do so despite the law. Instead, the law should support and protect the diverse choices people are making around creating families, in the best interests of all – most importantly the children.

‘The uncertainty and ambiguity of current laws in this area has certainly had a negative impact financially (it’s impossible to plan for a child when it is not clear moment-to-moment who will be the source of \$\$ to support them. Is it Centrelink? The known donor? My partner and I????)’ – AB

HEALTH RISKS TO MOTHER AND FOETUS

‘We nearly tried a fresh insemination and after drilling our donor found out that he had just had an unsafe experience. If the laws were different in Victoria our health would be protected. We could have a donor go under the appropriate testing and have their sperm stored for us for use by us as required. This would reduce risk to us and our future children, reduce stress both emotional and financial – but most importantly emotional which in turn would increase the likelihood of us creating families.’ – PLP couple B

‘While our donor was generally cooperative it was stressful negotiating blood tests and sperm tests. Our donor felt that just saying the tests were fine was all we needed to know. It strained the relationship when I asked if he could tell us exactly the blood tests he had had. Even though we had given him a list of tests to have, it turned out there was one important test he hadn’t had. The frustrating thing for me in considering the risks I might be taking was knowing that I was relying on ‘Brett’ to fully inform his GP of the situation and relying on his GP to understand the health issues involved. We were also relying on ‘Brett’ who we had known for four months at this stage to practice safe sex.’ – ‘Lisa’

‘For 18 months we self-inseminated - it was a loving act not a criminal act. Until recently it was the only choice we had but over the past three months we have been accepted into the I.V.F program having had our donor sperm frozen and quarantined for 6 months. I would prefer the accuracy, safety checks and supervision of a hospital to support us in our hope of becoming pregnant but until recently it wasn’t an option.’ – Cathy

Sperm accessed at a clinic is screened and quarantined to ensure there is no risk of infection of HIV, Hepatitis B or C, or other STIs. Women attempting conception via self-insemination (or via unprotected sex with donors as is the case for some some women) are putting both themselves and the foetus at risk of infection. Conception can take anywhere from months to years. It is a difficult and stressful exercise for many women to ask their donor to abstain from unsafe sex or intravenous drug use for the period of trying, and to trust that they will do so.

THE LEGAL STATUS OF SELF-INSEMINATION

‘Self insemination is a criminal offence – how can a just society even suggest such an idea?’ – Zoe

‘I don’t understand why it is not allowed! What is the issue? As lesbians it is a method through which we can facilitate the process of conception. As the partner I prefer to inseminate but with travel interstate to where our donor lives that has not always been possible.’ – Cathy

‘I think the very idea that insemination of any consenting kind be illegal is very discriminatory against any person who doesn’t want to have unprotected heterosexual sex. Surely what consenting adults do with their bodies should not be under the control of legislation - wasn’t that the point of decriminalising homosexuality? This law is anachronistic and not enforceable, and certainly doesn’t stop all kinds people from inseminating in a variety of ways (it certainly won’t stop us!) Insemination should be legal between any consenting parties, straight, lesbian, single, married, de facto, friend, doctor and so on.’ – Sabdha

‘Consenting “self insemination” should not be classed as a criminal offence and should therefore not attract a prison sentence. I cannot comprehend the thinking behind calling it a criminal act. A planned pregnancy, a wanted child – what a beautiful thing.’ – Louise

Under current Victorian law, insemination is an illegal act for anyone other than a licensed clinic. One effect of this is that no fertility or other medical service is able to offer assistance with self-insemination. Until very recently there was no information produced by any Victorian medical organization about how to self-inseminate effectively and safely.

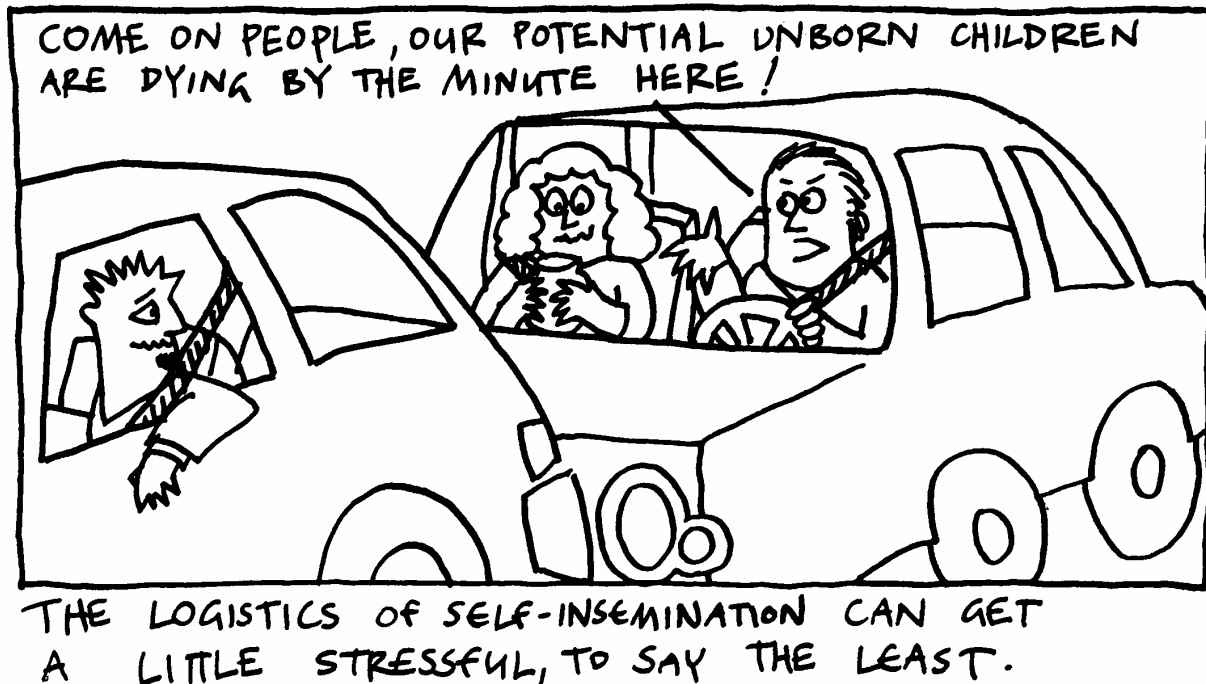


LACK OF INFORMATION ABOUT SELF-INSEMINATION HAS LED TO SOME WOMEN TRYING WITHOUT PROPER EQUIPMENT.

The legal ambiguity of self-insemination in Victoria mean that many women put their health, and the health of their future children, at risk because they are too scared to ask for medical assistance, fearful that they are committing a criminal offence. It has also resulted in many health providers rejecting women's requests for assistance, even in terms of information and testing. Thus many women self-inseminate in relative secrecy, without access to information about what STIs or other conditions they should have their donor tested for, or knowing exactly how they should self-inseminate. The former can result in unnecessary health risks to both mother and foetus, while the latter can result in self-insemination being done incorrectly, leading to much unnecessary emotional stress when no pregnancy is achieved.

'While we had researched the best way to do self-insemination, we found a lot of information lacking - we had to learn as we went. Also we discovered after our last try with Brett that he wasn't getting all the sperm into the cup. The first part of the ejaculate is the most concentrated with sperm. His embarrassment about this, meant that this considerably lowered our chances of getting pregnant.'

'... Recently we got an appointment with another Melbourne IVF specialist (we had been on the wait list for six months). He performed a cervical mucus analysis that showed the result of our home inseminations was that the sperm was not being placed close enough to the cervix. Apparently this is a common problem, not only with self-insemination but also occasionally for couples doing intercourse. Unfortunately it has taken us more than two years to be informed of this vital information.' - 'Lisa'



Decriminalisation of self-insemination would enable support to be offered by fertility and other medical services, encouraging the many women who have a known donor to find a supportive GP or fertility clinic to give them advice about self-insemination, and perform or refer for all the necessary STI and other tests, and refer to the appropriate services for counselling or other support services.

Fertility clinics should also be able to offer insemination of frozen sperm from a known donor, greatly decreasing the amount of involvement a donor has to have in the conception process month by month, and thus reducing the stress for all parties. Many women will continue to choose self-insemination as a method of conception. Clinics should also be able to offer services including storage, screening and release of known donor sperm for self-insemination, and counselling to donors and prospective parents entering into these arrangements.

ACCESS TO COUNSELLING AND OTHER SUPPORTS

Counselling and other supports are available to those who can currently access ART, to ensure that all parties involved understand their rights and responsibilities and have talked through the potential issues involved in creating a family via donation. Without access to these supports, donors and prospective parents may not adequately talk through the issues, leading to possible conflict during the conception process and later. Fertility clinics should be able to offer such supports to women accessing ART in the clinics, and to women using self-insemination.

LOOKING FOR A DONOR

For some women the process of finding a donor is relatively straightforward. They may already have a man in their lives whom they know well and trust to the necessary degree. For many other women, there is no one in their lives with whom they have such a relationship, or who would be willing to donate. Looking for a donor is not easy, especially given the legal and other risks involved. Some women look for – and find – donors via internet sites set up for this purpose. Others find people in support groups, or via their networks of friends or family.

'We wanted to find someone who we felt had the same values and beliefs as we did. We also wanted someone who would be involved in our future children's lives in a meaningful way.'

Looking around our friends and families, we initially couldn't find anyone in a position to play such a role. So we decided to register on the Australian Sperm Donor Registry site and advertise for a donor on PinkBoard (Australian GLBTI news and classified site). It was just like Internet dating – full of trepidation and horrible sleazy men who wanted to do it the 'natural' way with a lesbian. It felt pretty unsafe, and a surreal way to try and find the future father of our children, but what options did we have?' – Felicity and Sarah

ARRANGEMENTS WITH KNOWN DONORS

'We developed a parenting agreement that we modified from one we found on the internet. The agreement was developed over a series of meetings with the donor father in the period of 6 months. It covers a range of issues including our intentions of entering into this relationship with a child, care arrangements, decision making processes and dispute resolution models. We are disappointed that the document does not have legal status as all three parties are very happy with the range of issues the agreement covers. ' – Caitlin and Caz

'We discussed at length the reason why we wanted to be parents, why we chose the donor and the conditions of the contract with our donor. We have organized a written contract with our donor. He has stated that he is the donor only and does not want any ongoing commitment to the child. As a friend he is supporting our desire to be parents. He does not want to be identified as the donor until the child knows his identity. We do not expect nor want any financial assistance/support from our donor. We do not want his name on the birth certificate. He does not expect any ongoing contact with the child unless it is a mutual arrangement. As a friend we would welcome the contact and consider it a positive male role model. ' – Cathy

'Any agreement that we draw up now is not legally binding, and though we trust our donor, we are still aware that things can change – it is a very uncertain and stressful position to be in.' – Cristi and Sabdha

The arrangements and agreements made between lesbian women and known donors are very diverse, depending on the relationship between the parties, and the varying levels of involvement that the donor is likely to have in the process.

For some donors, the act of donation is entirely altruistic. They do it because they want to help someone who wants children, and have no wish for ongoing contact with those children, though many will be happy for the children to contact them in the future should they wish to do so. Other donors are keen to have some form of contact with any children resulting from their donation, which may vary from occasional visits (perhaps special holidays or birthdays), to semi-regular or regular contact. Yet others, particularly gay men, may enter into donor arrangements because they are one of the very few options available to gay men to experience parenting. Such donors may work out elaborate, flexible co-parenting arrangements (which could incorporate a wide variety of financial, child-care and living arrangements) with the single women or lesbian couples to whom they donate.

Agreements between women and their donors are generally very carefully thought out and discussed, and frequently involve consultation with lawyers. The process of writing agreements is often a very useful one for everyone involved, in that it clarifies expectations and provides a forum for exploring issues and processes such as how any future changes in circumstances or conflicts might be resolved. And yet lesbians and their donors are acutely aware that their agreements have little or no legal standing, and that decisions could be made about their family contrary to anything they had originally negotiated or agreed. Increasingly women are also seeking Parenting Orders through the Family Court, aware that these also can be challenged by anyone with an interest in the child's welfare.

'Our agreement with Cameron, our donor, is a story of our journey towards creating a family. When Cameron was in Melbourne last year, three of us wrote it together over a few days (and a few bottles of wine!) at the culmination of lengthy email and phone discussions. We included sections on technical stuff about how we would try to conceive, who can name the child, who will be responsible for day to day parenting and the relationship of our donor's family of origin to the child/ren. We all acknowledge that this agreement will change over time but we wanted to create

something to express what our shared ideas and opinions were before we started to try, even though we know our agreement has no legal standing. We also want to be able to show the agreement to our child.’ – Felicity and Sarah.

‘With my first child (born 24 years ago – I am his birth mother and I was single at the time) I had a verbal understanding between the “donor” and myself. This year, my partner and I have so far got a verbal agreement with her donor and we are working on a written agreement right now. This agreement or contract is being developed to record our wants and wishes in regard to acknowledgement, contact, roles, and responsibilities. The aim is to have these details written and recorded to safeguard against changes in circumstances or situations in the future, which may impact on any party’s feelings, wants or wishes. The other agreement we have is between me and my partner (the birth mother of my second child) describing our relationship and our intentions as parents, our roles and responsibilities currently and into the future and also in case anything should happen to either of us or if we separate. This will form the basis of documentation required for a formal parenting order.’ – Louise

‘We are at a very early stage with our donor. We asked him if he would be interested in donating, and he has said he is very pro the idea. We have had a preliminary discussion covering each of our expectations regarding parenting, contact with him and his family, and financial expectations. Luckily, our intentions and desires match up very well - he is not interested in being a father or parenting in any way, and we didn’t want him to. In return for rescinding his parenting rights, we will never ask him for any financial support. His main concern at this stage is doing some more research for himself (he has already spoken to another mutual friend who has donated to a lesbian couple), and talking to his family about the idea.

‘We are not opposed to his family having some contact with the children, however we want it to be very clear that we are the children’s parents. we all want the arrangement to be above board - for the children to know him as their donor and as a family friend, but not as a member of our immediate family. when we are a bit closer to actually attempting to conceive (about a year away), we want to put all of our expectations and desires into a document and hopefully keep it with a lawyer. We wish there was a way for him to donate directly to us, but be recognized legally as a donor as are men who donate through fertility clinics (that is, for his parenting rights to automatically be rescinded).

‘We also wish that there was more information and support for him as a donor. It is lucky that we have mutual friends who have a donor arrangement, as this has given him someone who has had a positive experience to talk to about the idea. Law reform in this area would allow for counselling and support to be available for men who wish to donate to their friends, and we feel this is very important, as it is a very big thing to do for someone.’ – Sabdha

QUESTIONS FROM THE CONSULTATION PAPER

6. Should some or all types of self-insemination be treated as criminal offences? What are the effects of these provisions? Should these activities attract prison sentences?

No form of self-insemination should be treated as a criminal offence, whether this is done by a potential birth-mother, her partner, a licensed fertility clinic or anyone else.

7. Should ‘self-insemination’ be allowed regardless of who performs the insemination?

There should be no restriction whatsoever in who is able to perform insemination, so that women can inseminate themselves or have their partners or friends help them.

29. Are there public health and/or other benefits in allowing licensed clinics to provide screened donor sperm to women for the purposes of self insemination?

YES. Many women will continue to choose self-insemination as a method of conception, particularly if they wish to use a known donor. Allowing licensed clinics to store and provide this sperm would alleviate

the risks to the prospective birth mother and foetus of infections (which would be screened out), and would allow mother/s and donor (and his partner if he has one) access to counselling and other services. The potential benefits for all parties – not least any future children – are immense, as counselling can ensure all parties fully understand their rights and responsibilities throughout the process and in relation to any child/ren conceived, and have talked through potential issues that may arise.

30. Should licensed clinics be able to do so?

YES, fertility clinics are the most appropriate providers to offer this service.

31. Should there be eligibility requirements for access to donor sperm for self-insemination? If so, what should these eligibility criteria be?

Once again, the principle for eligibility must be based on a broad definition of being 'unlikely to become pregnant' which is inclusive of single and lesbian women, and on principles of non-discrimination.

32. Should women wishing to self-inseminate have access to sperm from the clinics or should they be required to find their own donor?

Women wishing to self-inseminate SHOULD have access to sperm from the clinics. Lack of access to donor sperm can result in some women entering into less-than-ideal known donor arrangements, with potential consequences that are discussed in detail in various parts of this submission.

33. Should the provisions of the Infertility Treatment Act that apply before women can undergo a treatment procedure (for example, the counselling requirements) also apply before women can access donor sperm through the clinic system for the purposes of self-insemination?

YES we believe that provided service providers such as fertility clinics understand and are sensitive to the diversity and various issues relevant to GLBTI families, counselling and other requirements for ART re just as applicable to those who use donor sperm for self-insemination, and are very useful for ensuring that all parties fully understand their rights and responsibilities under the law throughout the process and in relation to any child/ren conceived, and have talked through potential issues that may arise.

39. What kinds of oral or written arrangements do single women and lesbian couples typically make with sperm donors?

A variety of oral and written arrangements are made. Some people make no written arrangements. There are NO typical arrangements. When they do exist, agreements generally encompass the hopes, dreams and expectations of all parties. Sometimes people have legal advice prior to drawing up or signing an agreement while others write stories of their journey towards creating a family.

40. What is the best way of encouraging people to plan their arrangements in order to minimise future conflict?

Equality under the law, including protection of the diverse family structures chosen by lesbian and single women in creating their families, would go a long way to address emotional stress and to minimise the possibility of future conflict. In particular, this should include presumptive parenting status for the non-birth mother, and the ability for the family to define for themselves the role and status of all parties including known donors, extended families etc.

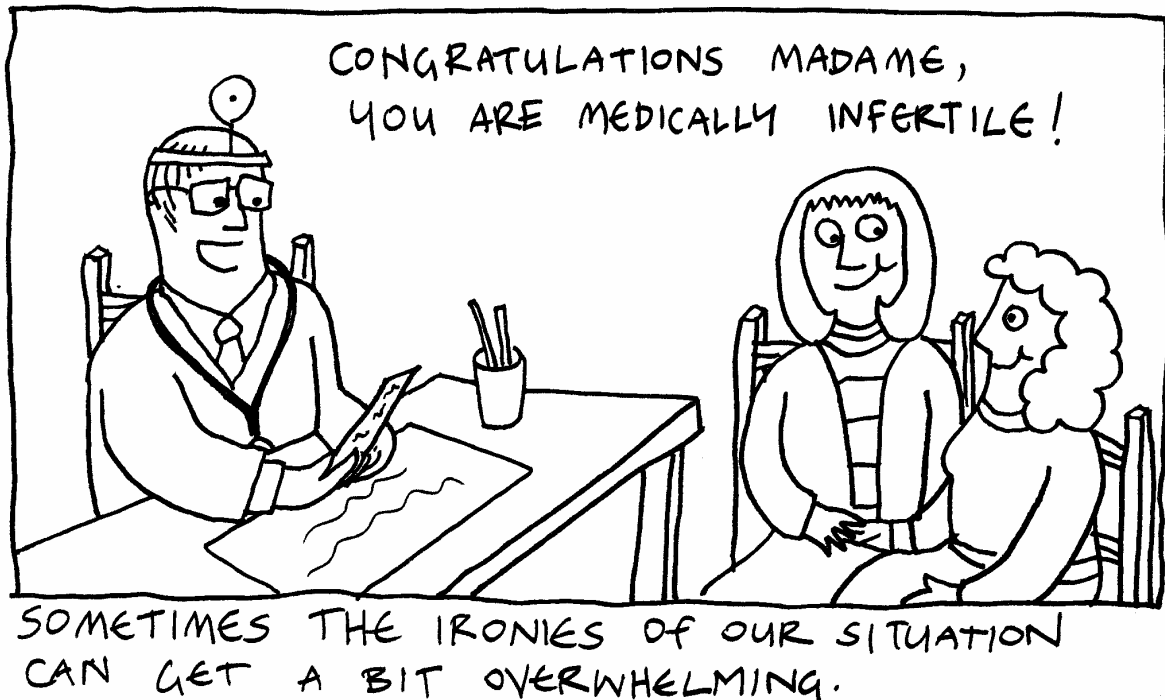
46. Where a birth mother self-inseminates with sperm from a known donor should she be required to notify the name of the donor? If so where should this information be recorded?

YES, this information should be kept with the Infertility Treatment Authority as is currently the case with any person eligible for ART.

Summary of PLP recommendations made in this section

- That self-insemination should not be treated as a criminal offence, whether done by the woman herself or with the assistance of her partner, a friend or anyone else.
- That health service providers be encouraged to support women who are self-inseminating with appropriate testing, and referral for services including counselling, donor insemination, investigation of possible fertility issues, instruction on correct techniques for self-insemination, storage and screening of donor sperm.
- That ART services offered be broadened to include providing women with screened donor sperm (from their own known donor or from the clinic) for self-insemination, counselling and instructions for correct techniques for self-insemination.
- That access to ART, including self-insemination with clinic-screened sperm, be under terms similar to the current system for those who are now eligible, including consent requirements and supportive counselling be undertaken prior to having access to ART. Such counselling would be with all parties involved: the prospective birth mother, her partner if she has one, their known donor (if they have one) and his partner – if this is appropriate and desired by the parties.
- That the counselling would be given by counsellors trained in and sensitive to all the issues relevant to our diverse families, and would be aimed at establishing that all parties had explored the issues involved not only with the outcome (i.e. the child and their roles in her/his life) but also the likely process.
- That GLBTI families be granted equality under the law, including the legal means to protect the self-defined relationships within our families – and thus, some legal underpinning for the agreements made between lesbian women and our donors.
- That GLBTI people including same-sex couples be granted adoption rights equal to heterosexual people and couples in relation to both known child and placement adoptions (including overseas adoption).
- That 'second parent' adoption be available to gay and lesbian couples i.e. that non-birth mothers be able to fully adopt their child without any change in the birth mother's legal status. NB there should also be the option of 'presumptive parenting' status i.e. that provided she consents to it, a woman is presumed to be the parent of a child borne by her female partner.
- That the definition of parents be expanded within all relevant legislation to allow adoption of children by one, two, three or more parents, whatever their biological relationship to the child.
- That information about the identity of known donors to children conceived via self-insemination be required to be recorded with the Infertility Treatment Authority, as is the case for recipients of ART in Victoria.

PART 3C: ACCESSING SERVICES IN VICTORIA



'It is a sad indictment upon Australian law that a lesbian celebrates a diagnosis of an undesirable gynaecological condition just so that she can fulfil the legal criteria of "medical infertility" and gain to access safe, identity traceable donor sperm in Victoria.' – Zoe

Since the *McBain* case in 2001, ART has been available in Victoria to single women and lesbians who qualify as 'clinically infertile' (for discussion of this term see below), with the effect that such a diagnosis becomes for some women – at least initially – a cause for celebration. However, there remain a number of issues even for those who are deemed eligible for ART, including:

- lack of clarity around the legal status of the clinic donor,
- non-recognition of the non-birth mother
- the so-called 'lifestyle declaration' and its impact on gay donors
- institutionalised homophobia in clinic practices, including donors being able to direct that their donations not be used by single/lesbian women.
- continuing exclusion from any form of adoption.

LACK OF CLARITY AROUND STATUS OF CLINIC DONOR

Under current Victorian law, there remains a lack of clarity around the legal status of the donor, even if he donates through a clinic. Currently a child created as the result of sperm donation through a clinic has the right to make contact with their donor at age 18. PLP supports this, and believes that the law should even be strengthened to facilitate earlier contact if this is desired by the child, their parent/s and the donor.

However the current law states that the donor does not have the rights and responsibilities of a parent, but does not definitively state that he is NOT the father. Thus there is the potential that a donor – even

one who has donated through a clinic – could potentially go to court seeking to be recognised as a child's father. This area of the law should be tightened.

'It was a relief in so many ways that I was deemed 'medically infertile', not least because that meant that rather than flying interstate to self-inseminate (which believe it or not was the most affordable alternative, given that our donor lives interstate) I will be receiving ART using his sperm in Victoria. This clears up Cameron's legal status to a great extent, but not completely, as the counsellor explained to us. We trust Cameron to honour the agreements we've made, it's more the state that we're concerned about, for example we have agreed that he will not be liable for child support – the last thing we would want is Centrelink pursuing Cameron for maintenance on our behalf, without our consent. This has happened with other lesbian couples, against their wishes. Having ART through the clinic using his sperm gives us a fairly good guarantee that this sort of thing won't happen with us.' – Sarah

NO RECOGNITION OF NON-BIRTH MOTHER

Lesbian women using ART in Victoria are treated in a legal sense as single; their partners have no recognition in consent forms or as the parent of children born as a result of treatment. Some services do their best within the law to be inclusive of lesbian couples and to give them equal treatment clients, however the stark reality is that in a legal sense they are irrelevant to, and outside of, the system.

'LIFESTYLE DECLARATION'

Victoria clinics requires donors, even those who are providing directed donations, to sign a form known as the "Sperm Donation Statement", or more commonly as the 'lifestyle declaration'. Given that the form includes questions related to gay or bisexual men's sexual activities, many gay and bisexual men who may wish to donate in Victoria are unable to. Such questions seem irrelevant as testing and quarantine periods already exist before access to the donation is allowed.

'In terms of STIs, it makes a lot more sense to screen people in terms of 'unsafe behaviours' rather than by their sexuality. I can understand the point of screening potential donors before spending money on testing their sperm, but given the general lack of donor gametes, screening out gay men because of their sexuality rather than looking at the sexual behaviours of all donors is homophobic and short-sighted.' – Sabdha

'We were outraged and upset when our donor Cameron, who was donating directly to us, was asked to sign a 'lifestyle declaration'. Even though there is a six-month quarantine period and extensive testing for blood born viruses and all STIs, he was still being asked about his lifestyle because he identifies as a gay man. The questions don't even ask about risk-taking or safe sex. Because Cameron lives interstate, we need access to technology to assist us to create our family. Fortunately at Melbourne IVF we have the option to sign a waiver to say we understand that he's answered 'yes' to one of the questions in the lifestyle declaration and we still want his sperm.' – Felicity and Sarah.

'How can the exclusion of people on basis of sexual preference be anything but discrimination when all blood and sperm samples undergo routine virology testing. As long as sperm donors are asked if they are willing for their sperm to be given to a lesbian couple and gay men are forbidden to donate blood, we shall not be a rational and just society. I cannot understand how this could still be the case in the 21st Century.' – Zoe

INSTITUTIONALISED HOMOPHOBIA/SEXISM IN CLINIC PRACTICES

'In the last month my partner and I have signed up to IVF with an anonymous donor. Our child won't have a known biological father, and we have little to no information about this person. I was not able to have donor inter-uterine insemination, as I was told that the sperm is reserved for heterosexual women experiencing difficulties getting pregnant. For lesbians like me, who are

only allowed onto the program if they are deemed 'infertile' then I only have the option of the invasive procedures of IVF.' – 'Lisa'

For the many women who do not have a known donor, there remains the very concerning issue of the extreme shortage of donors available, greatly exacerbated by the common clinic practice of allowing donors to specify whether they will allow their gametes to be donated to single or lesbian women.

Even in this conservative environment, clinics and lawmakers would not dream of allowing donors to decide that their donated gametes should not go to people with a disability, or to Indigenous people, or people from minority ethnic backgrounds. And yet somehow the prejudice against single women and lesbians, in particular their 'suitability' to become mothers is seen as acceptable, and is supported and institutionalised by these widely-accepted clinic practices.

Prospective Lesbian Parents believes if all discrimination on the basis of marital status and sexual identity is to be removed from the law and made illegal, this practice should not be allowed to continue. PLP finds the practice offensive, and has had some advice that they may actually be illegal under current equal opportunity legislation. If this is not clearly currently the case, then legislative change should include legislation to stop this and any other practices, which effectively institutionalise both sexism and homophobia.

'We like to think of our anonymous donor as a kind-hearted, generous man (he wasn't paid to donate, unlike in the USA) who wanted to help couples who couldn't have children together. As such, my partner (the non-biological parent of our son) has donated her eggs (anonymously) once and is about to do it again, to help another couple realise their dream of having a family. The egg donation could easily occur here, to help a Victorian couple, but because the Victorian law didn't help us to have a family, the egg donations are in Albury, to help a NSW family.' – PLP participants C

'My partner has been deemed 'medically infertile' now as she has tried over 13 times to fall pregnant. This means she has had to use IVF rather than Donor Insemination. Had she been in a married/defacto heterosexual relationship, she could have tried DI. IVF carries far more health risks than DI, including the risks associated with ovarian hyperstimulation, anaesthesia, and other risks of surgery. The IVF drugs caused her to have nausea and migraines which required time off work. The IVF ovum pick-up has caused pain. These things could have been avoided had we had access to the services available to lesbians in other states.' – Amanda

EXCLUSION FROM ADOPTION

Another irony of the current system in Victoria is the gay and lesbian couples are able – and indeed actively recruited by community agencies – to foster children. Apparently we can be entrusted with the welfare of children if the need is desperate enough, as it always is for foster children. Such ironies are not lost on any member of the GLBTI community, including the many single and coupled gay men and lesbians with the energy and generosity to become foster carers.

And yet gay and lesbian couples remained barred from being able to adopt children, whether known children or through 'placement' (Australian or overseas) adoptions. This has a number of impacts. The most urgent and common impact is that lesbian women, for example, are barred from 'second parent' adoption of their partner's birth children, as is discussed in detail in Part 4. The bar on adoption is another example of institutionalised homophobia, where the decision about a child's future – be that a child is based not on the capacity of the prospective family to love and care for a child, but on prejudiced notions about who is 'fit' to be a parent.

Overseas and placed adoption has become one of the primary ways that gay men in the US and Europe are increasingly becoming parents. One impact of the restrictions on gay and lesbian couples adopting from overseas is to greatly reduce the options for gay men in particular, to become parents, and to reduce the pool of potential parents for orphaned and needy children from overseas. Another very specific impact of these restrictions is that if the closest relatives of children living overseas are, for example, their lesbian aunt and her partner, and if those children's birth parents should die, then the children would be unable to be adopted by their closest relatives, even if that is clearly in their best interests.

QUESTIONS FROM THE CONSULTATION PAPER

9. How appropriate is the current regime for balancing the desire of people to donate gametes with the need for the safest possible provision of donated gametes to recipients? Is it still necessary to screen out on the basis of certain high-risk activities, and if so, what are those activities? Are the questions currently asked about sexual activity capable of determining the risk that a person poses in transmission of infectious diseases such as HIV? If not, what are the appropriate questions to ask? Does the current system unnecessarily exclude sectors of the population, such as gay men, through asking general questions about sexual activity rather than specific questions about particular sexual behaviour that involves risk of HIV infection? Is screening for HIV through semen and blood testing guaranteed to eliminate risk of transmission to a recipient or child?

The current system is discriminatory and homophobic. The current regulations and clinic practices for donation of sperm include a six-month quarantine period and testing for HIV and a range of other STIs. This requirement should be the primary restriction on who is able to donate gametes. The current system unnecessarily excludes sectors of the population, such as gay men, through asking general questions about sexual activity rather than specific questions about particular sexual behaviour that involves risk of HIV, Hep B or other infections.

It is appropriate for some screening to occur apart from the quarantine period to ensure that the risk of infections which are not yet known (and therefore not yet testing for) is minimised. Such screening should ask questions focussing on high-risk behaviour such as sharing of needles for intravenous drug use, or anal sex without a condom with casual or non-monogamous partners. In the case of directed donations, the option of the recipient/s signing a waiver as currently available for the 'lifestyle declaration' should be continued. The quarantine and other restrictions should also be able to be waived by donor sperm recipients in cases where a couple has already been attempting conception with a known donor, the result of which would be equality with current practices for heterosexual couples (which do not require such screening).

10. Who should be able to donate gametes for reproduction?

Anyone who wishes to do so should be able to donate gametes for reproduction, provided that this does not subject either the recipient(s) of such donations or any children produced as a result of them to any potential health risk, for example HIV or other STIs, or serious genetic disorders.

22. Should people who are donating semen to an unknown recipient be able to stipulate qualities or characteristics of the recipient?

NO, the current practice of allowing donors to stipulate whether they are willing to allow their gamete to go to single women and lesbians is effectively condones institutionalises discrimination based on marital status and sexual orientation. Another flow-on effect is to greatly exacerbate the shortage of donor sperm for these groups. Such practices must not be allowed to continue.

25. Should donated sperm and eggs be able to be used for assisted reproduction after a person has died? If so, what conditions should apply before this can occur?

YES, a donor should be able to consent to their gametes being used for assisted reproduction in the event of their death. This consent should be able to be withdrawn at any time prior to death.

26, 27 and 28. Should the importing and exporting of gametes and embryos be regulated? If so, should this be done by defined rules, or broad principles? Should people who are ineligible for treatment be able to import sperm into Victoria? Should the same regulations that apply to sperm sourced and used within Victoria also apply to imported sperm (for example, the information provisions of the Infertility Treatment Act 1995)?

Importing and exporting of gametes and embryos should be regulated to some extent. The broad principle of import and export of gametes should be that where possible, the same regulations applicable to Victorian gametes should apply to imported gametes, in particular if this is from known donors. However, it is not always possible to ensure that sperm sourced from other clinics and imported into

Victoria complies with the information provision regulations. Therefore – particularly in view of the extreme and ongoing sperm shortage – there should be capacity to relax these provisions where necessary. The widening of eligibility criteria should ensure that anyone who requires ART in order to conceive is eligible.

37. Should the Status of Children Act 1974 explicitly provide that a child born as the result of a semen donation to a single woman or a woman in a lesbian relationship is not the child of the semen donor?

YES, all relevant legislation should make it absolutely clear that a child born as the result of a gamete donation, whether that is a semen donation used for self-insemination, or a donation made and used through services in a fertility clinic, or in any other way IS NOT the child of the gamete donor. That is, for example, that the semen donor is not the father, is not a parent, and has no rights or responsibilities as such. If all parties to an agreement wish for the donor and his partner, if he has one, to have some parental role and status, this should be provided for via adoption and/or Parenting Orders.

41. Should same-sex couples be permitted to adopt children? Should this apply in all circumstances in which heterosexual couples can adopt – that is, both known child and placement adoptions?

YES, same-sex couples should be able to adopt. The most important and urgent reform in this area is the area of ‘second parent’ adoption, where the same-sex partner of a biological parent is able to adopt a child without the biological parent losing their status. In fact, this should not only be restricted to ‘second parent’ adoption, as the family arrangements of GLBTI people may include a number of adults as parents e.g. a lesbian couple, their donor and their donor’s partner. Thus what has come to be called ‘second parent’ adoption should be broadened to allow any number of adults to adopt a child as they wish.

In order to establish full equality for GLBTI people under the law, same-sex couples must also have the same adoption rights in terms of both known child and placement adoptions as other people. To legislate otherwise is to legislate discrimination based on homophobia.

42 and 43. Should a donor be able to adopt a child jointly with a single mother or with a lesbian couple? Should a donor and his partner be able to adopt a child jointly with a single mother or with a lesbian couple?

YES, blended families with more than one or two parents are increasingly common in the broader society. Some single and lesbian women, including couples, are entering into co-parenting arrangements with their donors, which can also include their donor’s partner if he has one. These arrangements should be able to be protected by law, including through adoption if that is what all parties agree to. A variety of legal options should be available to people for recognising and legally protecting their chosen family structure.

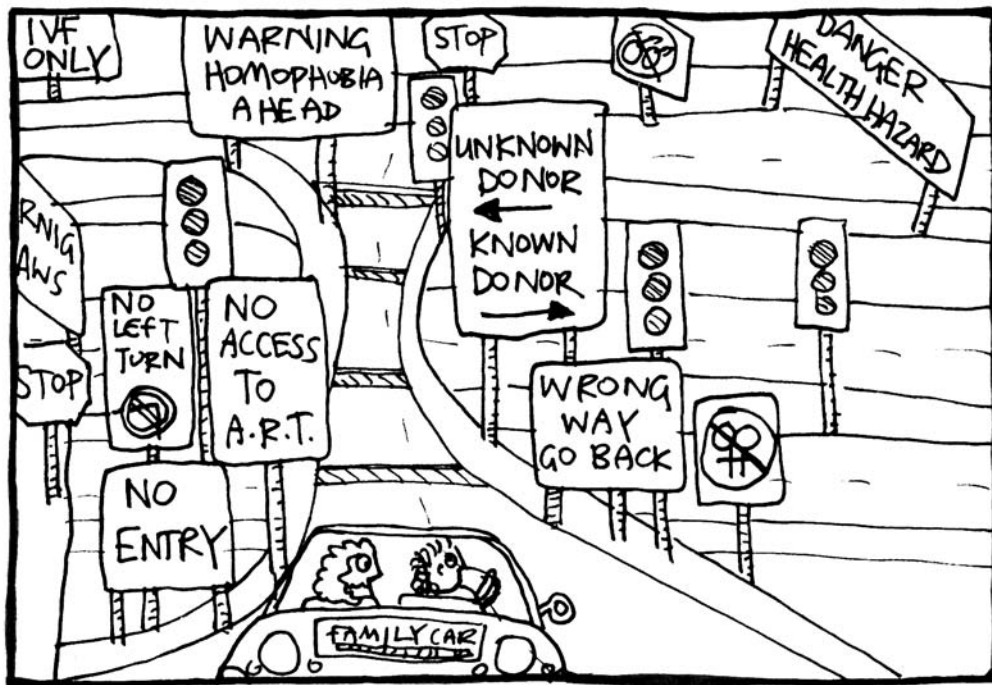
44. To what extent are lesbian and homosexual couples involved in overseas adoptions? What legal difficulties arise in these circumstances?

To date PLP has not had direct contact with lesbian and gay couples involved in overseas adoption. Our understanding is that overseas adoption by lesbian or gay couples is not currently allowed, and that the only circumstances in which a GLBTI person might be able to adopt is if they are single and probably not open about their sexual orientation. Overseas and placed adoption has become one of the primary ways that gay men in the US and Europe are increasingly becoming parents. One impact of the restrictions on gay and lesbian couples adopting from overseas is to greatly reduce the options for gay men in particular, to become parents, and to reduce the pool of potential parents for orphaned and needy children from overseas. Another very specific impact of these restrictions is that if the closest relatives of children living overseas are, for example, their lesbian aunt and her partner, and if those children’s birth parents should die, then the children would be unable to be adopted by their closest relatives, even if that is clearly in their best interests.

Summary of PLP recommendations made in this section

- That relevant legislation be amended to clarify that the donor for a child conceived via gamete donation – whether through a clinic or through self-insemination with or without clinic support – is not that child's parent, father or mother, and has no rights or responsibilities as such.
- That lesbian couples who are recipients of ART in Victoria be given equal treatment to heterosexual couples, and thus the potential birth mother's female partner be treated equally in terms of counselling, consents and recognition as the parent of a child born as a result of treatment.
- That people who are donating gamete to unknown recipients NOT be able to stipulate qualities or characteristics of the recipient.
- That anyone who wishes to be able to donate gametes for reproduction, provided that this does not subject either the recipient/s of such donations or any children produced as a result to any potential health risk e.g. infections or serious genetic disorders.
- That the 'lifestyle declaration' be removed, and screening limited to very specific questions aimed to identify activities which are high risk for blood-borne and sexually transmissible infections.
- That the requirement for a six-month quarantine be able to be waived for women who have been self-inseminating with a known donor, ensuring equality of treatment with heterosexual couples, as long as relevant medical tests were obtained prior to attempting to conceive.
- That gamete donors be able to consent to the use of their donation after their death, and that this consent be able to be reversed should the donor change their mind.
- That importing and exporting of gametes be allowed, but regulated to some extent. That where practicable, the same regulations applicable to Victorian gametes should be adhered to. However if practices in other clinics whether interstate or overseas make this impractical, that there be flexibility in the regulations to allow for this.
- That there be no discrimination on the basis of sexual orientation or marital status in the regulation of any form of adoption including known child, placement and overseas adoption.
- That there be no restriction on the number of gender of adults able to adopt a child, to allow adoption, for example, by a child's non-birth mother, donor and donor's partner with no change in the legal status of the child's birth mother.

PART 4: LEGAL RECOGNITION OF OUR FAMILIES



SOMETIMES IT FEELS LIKE THE WORLD PUTS
NOTHING BUT BARRIERS IN OUR WAY.

'As the prospective non-birth mother, I feel angry that I will be unable to have legal recognition as a parent of my child. My partner and I have discussed starting a family together. It is a decision we made together. I believe the laws are completely outdated, exclusionary and discriminate against same sex couples. Furthermore, these laws exclude the rights of our children to have both their parents registered as their legal parent.'

'Our children will have two mothers. These laws discriminate by excluding our children and attempt to undermine our sense of family. The fact is that lesbians and gay men are starting different families and the laws must be changed to reflect that change. Our families must be legitimated and the laws must change for that to occur.' – 'Frankie' and 'Lara'

All families consisting of lesbian, gay, bisexual and transgender parents must be given equal protections and rights under the law as heterosexual-headed families. In relation to the children of lesbian parents, these families are carefully planned for by their mother/s over many years, as evidenced by the personal stories contained in this submission. There is no road-map for lesbian-headed families which shows us the way forward; indeed, many obstacles are continuously put in our way. Nevertheless, single lesbians and lesbians in long-term committed relationships continue to bring children into our lives, and to raise a whole new generation of children with love, commitment and ingenuity. They are doing this despite laws that at times can feel as if they have been created in order to actively undermine the stability and wellbeing of our families.

INTERSECTIONS WITH FEDERAL LAW INCLUDING MARRIAGE

This section of the submission deals with a number of issues around legal recognition of our families, some of which have already been touched on in other sections of the submission. Prospective Lesbian Parents understands that the scope of the current Victorian Law Reform Commission Enquiry is to enquire about the impact of Victoria laws only, and that issues including Parenting Orders, other aspects of law related to the Family Court and marriage are federal matters. We acknowledge that the intersections of federal and state law in all areas related to marriage, families and children are complex, however we believe it is important to put into context the extent of the impact current relevant Victorian law has in relation to federal laws.

The issue of marriage is not one raised in detail in this submission, however it is clearly very relevant to it. If GLBTI people had the same rights both to marriage and to de facto relationship recognition as our heterosexual counterparts, many of the following issues would be to some extent resolved. The right to marry may at times seem a long way off in the current political environment, however relationship recognition has already occurred to some degree in other state jurisdictions (notably Tasmania), while the right to marry is an increasing trend in various US states, Canada, Asia and Europe.

ISSUES AROUND LEGAL RECOGNITION OF OUR FAMILIES

As discussed in many other sections of this submission, the issues around non-recognition of GLBTI families are some of the most urgent areas of reform, and have amongst the greatest impacts on lesbian women, including the choices that we make about how to create our families. These issues include:

- Non-recognition of the non-birth mother
- Being barred from second-parent adoption (or third, fourth or more parent adoption)
- Birth certificates (and their implications for many other issues)
- Parenting Orders – currently the only, very inadequate means of giving some recognition to the relationship between non-birth mother and her child/ren.

NON-RECOGNITION OF THE NON-BIRTH MOTHER

‘As the non-birth mother is not legally a true parent, it affects her confidence and legal standing in dealing with government/authorities. She has a right to be treated as a parent at all times, not just in our personal family life.’ – ‘Kate’

‘My sister’s partner will not be recognised as a parent under this state’s law. That is not right. They both have made the decision to become parents like any other couple, she should be recognised as a parent. It is total discrimination.’ – Tracey’s brother

‘As the non-birth mother I think I would feel incredibly invalidated and feel like I didn’t exist.’ – PLP participants A.

‘Sarah and I have made all decisions related to our future family equally yet I am often made anxious at the thought of having no legal status in our future child’s life. What if something happens to Sarah and the baby during the birth and I have to make a decision about their medical care? I’m not sure how much weight our parenting agreement will have at that moment.’ – Felicity

Under Victoria law the relationship of the non-birth mother in a lesbian-couple headed family to children borne by her partner is given absolutely no legal recognition or protection. Yet as illustrated by the quotes and case studies of PLP participants included in this submission, non-birth mothers are frequently as deeply engaged in the process of planning, conceiving and raising children as the birth mother. Indeed, research has shown that lesbian couples parenting together on average share the work of child-rearing far more equally than our heterosexual counterparts (Brewaeys et al 1997).

There are many impacts of this aspect of the law. It creates a high level of stress, uncertainty, and emotional distress for both mothers, and sometimes the donors, and some potentially very serious consequences for the child and non-birth mother, for example if the mothers should separate, or if the birth mother should die or be seriously incapacitated. In these instances it may be that the birth mother's family of origin, the donor or even the donor's family of origin has more 'right' to the care and residence of the child/ren than the non-birth mother. In some instances we know of, such situations have resulted in permanent separation of child/ren from their non-birth mother – a tragic and patently unjust situation that can only damage both adults and children involved.

This aspect of the law affecting gay or lesbian couples contrasts sharply with the parallel situation for heterosexual couples. If a child is born to a woman in a heterosexual relationship with a man who is not biologically the child's father, the law automatically presumes that he is the father – with all the corresponding rights and responsibilities – provided he consents to this.

Under Victorian law, a man who has a single sexual encounter with a woman and conceives a child has more automatic right to contact with that child than does a non-birth mother who has planned and worked toward conception of a child with her lesbian partner over many years. Even a donor for a lesbian-headed family (unless the donation was made through a clinic) is recognised as having a legal relationship with that child, in contrast with the non-birth mother who is legally a 'stranger' to the child. This situation can create great uncertainty and fear, as is discussed in detail in many parts of this submission.

'A man and a woman in a relationship can have a child by accident, a one night stand, with absolutely no thought of the consequences for themselves, let alone the child. The male partner often deserts his female partner and their children, and even refuses to financially support his children. Yet, by Victoria law, this is better arrangement than preparing for, being discriminated against and fighting all obstacles associated with a gay couple seeking a much-wanted child. It's a gay couple's continual struggle in Victoria which must be recognised – who can doubt their commitment? The child has two parents who will love, care and provide for it, and the child will know no other parents. Victoria law must acknowledge this fact and record it for what it is.' – Samantha's mother Pam

Non-birth mothers should be automatically legally recognised as parents of children born into their family/domestic partnership, as is now the case under Western Australian law. This law should be enacted retrospectively – that is, all families created under such circumstances prior to legislative change should be included, and the non-birth mother deemed a parent with equal status as the birth mother. This would create true equality under the law with heterosexual families. To do otherwise is to continue to enshrine discrimination in law on the basis of sexuality and marital status.

'Emotionally this will impact on our decision in becoming parents. My partner will not be recognised as a co-parent and her name will not be on the birth certificate. We have planned for a child together, it is a joint decision we have made through our commitment and love for each other. We would both be parents, and how dare the law not recognise that, and not recognise both as parents – isn't this in the best interests of the child, giving legal protection to both partners to make decisions about the welfare of the child?' – Tracey and Samantha

BEING BARRED FROM SECOND PARENT ADOPTION

'We have spent several thousand dollars getting a Parenting Order through the Family Court here in Melbourne, enabling the non-biological mother to have some rights/responsibilities over our son. Heterosexual couples have these rights/responsibilities automatically. It would be fantastic if the non-biological parent could adopt our son – two mothers having legal status (without the birth mother giving up her status).' – PLP participants A

'The emotional impact for my partner is significant. How can she feel secure in her relationship with our child/ren when she has so little legal status and so few rights? The law makes her invisible, and this must surely impact on her self-concept, and on how she parents – vigorously,

passionately and with commitment – or carefully, protectively and detached? I'm scared for our child/ren and how the law can be used to drive a wedge between members of our family.' – AB

So-called 'second parent' adoption should also be allowed – that is, adoption of a child by the non-birth mother (whether or not they were partners at the time of the child's birth) with the birth mother retaining her legal status. This is also provided for in Western Australian law. Under current Victorian law, a child can be adopted by the heterosexual partner of its biological parent, but not by a same-sex partner. The law does not consider a family of two mothers or two fathers to be legitimate. Once again, this is clearly discrimination, enshrined in the law, on the basis of sexuality.

PLP also recommends that the law in relation to adoption be opened up to recognise and protect the great diversity of families, not only those headed by GLBTI people, by recognising that children may have more than two parents, whatever their gender/sexual orientation. As it stands, Victorian law does not even fully recognise the great diversity of blended heterosexual-headed families, let alone the diverse constellations of co-parents that GLBTI people may include in their families. PLP is aware of families which include two lesbian mothers and two gay fathers, two gay co-parents and a single lesbian mother, and others which include two lesbian mothers and one gay father. A parent is someone recognised as such, who gives care – which may be full-time, or part-time – to a child, whatever their biological relationship to that child. This is the reality of many families, and the law should be reformed to provide legal clarity and protection to that reality.

BIRTH CERTIFICATES

'As the birth certificate must be presented to open bank accounts, schooling etc, it is highly sensitive in nature. We believe it should reflect the family situation and have provision for parents (multiple and possibly up to four), siblings and donor (if desired but not compulsory). The current Mother/Father preprint form is out of date and causes unnecessary complications and stress, often at a time when the family is adjusting to life with a new baby.' – 'Kate'

'We have decided to start our family with an unknown donor. I believe strongly that there be provision for the non-birth mother to be registered on the birth certificate. This will enable both parents to be legally recognised on the birth certificate. I believe that will help to legitimise our families, which is extremely important for a child's sense of family and community.' – 'Frankie' and 'Lara'

'Like many others we experienced difficulties with BDM. We were already aware that they would not recognise the non-birth mother as a parent but were somewhat surprised that they required written proof from the clinic of our children's conception. Surely the signed declaration of the birth mother should have been adequate and we resent that they actually have details of the clinic involved. If we had have had a known donor by private arrangement, that person's name would have been forced to appear on the certificate or as a minimum be held in the records of BDM. The only alternative to this would be to lie about the conception and say that it was from an unexpected encounter with an unknown person – hardly satisfactory but unfortunately what is currently happening within the system to avoid having to identify known donors who provide a special gift on the condition that they not be identified.' – 'Kate'

The issue of birth certificates is both a practical and symbolic one. It is practically tied to recognition of the non-birth mother as a parent, with all the consequent legal rights and responsibilities. Symbolically, it is about recognition of our families on an important legal document that our children will carry throughout their lives. Current Victorian birth certificates have a place for 'Mother' and 'Father' only. There is room for one other name on the certificate, under 'Informant'. Many lesbian families choose to put the name of the non-birth mother there, simply because it is the only way of having her name on the certificate at all.

There are several areas where the current system affects lesbian women:

- *Invisibility of our relationships*

'I have all the responsibility of a parent, but am not recognised. I am on the birth certificate as an 'informant', which for me is woefully inadequate. Being included on the birth certificate as a

parent would make an enormous psychological difference to me, as well as all the legal ramifications.’ – Jacqui Tomlins

‘It saddens us that the non-biological mother of our son has no recognition on his birth certificate, and that there is a huge gap on the certificate next to ‘Father’. Our son has two loving, caring parents who carefully planned his conception and really wanted him – perhaps more than some ‘heterosexual conceptions’, and yet one of his parents has not recognition on the legal document of his birth. Perhaps the birth certificates could have (instead of mother and father) Parent/Parents.’ – PLP participants C

Trying to fit our families to the pre-printed forms which are all the Victorian Registry of Births, Deaths and Marriages currently offers is like trying to fit many differently-shaped pegs into uniformly round holes. Symbolically and emotionally, the effect is to make lesbian-headed families feel excluded from society, outside the law and its protection. The emotional reality of years of planning, commitment, love, strength and courage that it takes for us to create our families is rendered invisible by a simple form with too few boxes.

- *Recognition of known donor*

The listing of a donor (if he is known) or otherwise is a particularly thorny issue for many families, particularly given the possible legal and financial ramifications of putting a donor’s name under ‘Father’. Many families would like to have the option of listing their known donor on the certificate, along with the birth and non-birth mothers if they are a couple. They have chosen to conceive through a known donor, and often to also involve him to some extent in their family, through contact that can vary from annual or occasional to weekly. They want their child’s birth certificate to reflect the reality of their conception and the make-up of their family.

- *Definition and role of ‘father’*

‘For those who decide to have a known donor, it is important to differentiate between the parents and the donor. A ‘father’ is very different to a ‘sperm donor’. I believe there must be provision to write down who the legal ‘parents’ are. Being a parent is not about biology and genes, it is so much more than that. – ‘Frankie’ and ‘Lara’

Currently, the only place to list the donor on the birth certificate is under ‘Father’, yet the legal meaning of ‘Father’ may be very different to the role of donor in a lesbian-headed family. Against the wishes of everyone involved, the donor may end up being pursued for child maintenance, or the donor or lesbian parent/s may be disadvantaged in other ways associated with taxation or benefits. In the event of dispute between the donor and/or the lesbian parent/s, a non-birth mother in particular may be disadvantaged by the fact that the donor is listed on her child’s birth certificate and she is not. Thus, some lesbian-headed families are putting themselves at some risk by listing their donor as ‘Father’, while others have felt pressured to conceal the identity of their donor. Still others have felt pressured to reveal their donor’s identity, when anonymity for the donor was a condition of his donation.

The Victorian Registry of Births, Deaths and Marriages (BDM) has no official policy at this time to deal with the situation of lesbian or gay families. Some staff at BDM have been sympathetic, and have been trying to develop policy that will allow – to the extent possible within legislation – for arrangements that to some degree reflect the realities of lesbian-headed families. For example, some families have been able to negotiate an arrangement whereby their known donor is not listed as ‘Father’ on the birth certificate, but that his details are held by BDM to ensure that birth records are accurate as to biological ties.

- *Recognition of other siblings born to mother/s*

Other families have different concerns; for example there is the issue of whether the siblings of a child in a lesbian-headed family will be recognised on the form if they have different donors or different birth mothers. Many lesbian-headed families are made up of children borne by both women in the relationship, often with the same known or anonymous donor. These children are just as much a family as any borne into a long-term, committed relationship, and should be recognised as such.

'We also have our concerns about whether BDM will recognise our second unborn child as a sibling to our first if they have different anonymous donors. BDM seem to be a law unto themselves. Hopefully the birth certificate will show our first as a sibling and eventually the non-birth mother as a parent.' – 'Kate'

PARENTING ORDERS

'As the non-bio Mum I find it extremely difficult not to have a legal relationship with my son. I was there when he was born, gave him his first cuddle and bath, and am now the primary care giver. Yet legally I have no real standing. I have a parenting order which gives some practical help, but does not feel anything like adoption.' – Jacqui Tomlins

'For us to arrange [legal] protection for our son ... we had to embark on an expensive legal journey. First step was to have wills made for each of us, stipulating that all our assets be left to each other (so we could use them to raise our child – otherwise if Paula died her money would go to her family, potentially leaving me and the child broke), and that Paula would be our child's legal guardian if I were to die. Next we had to arrange a parenting order for Paula. This was an involved and costly process – we had to meet with our lawyer several times, including writing affidavits, providing the birth certificate of our child (another involved process – and we were unable to get a certificate that names Paula as our child's mother as well as me) – and as we wanted this all in place as soon as possible, it meant that rather than enjoying our early days at home with the baby, we were traipsing across the city attending meetings to sign documents. We also had to ask Mark to obtain legal advice, a process that for him was drawn out and frustrating. He understood and agreed with the documents we were serving on him (which stipulated he would not have parental responsibilities for the child), but the courts needed him to sign them in front of a lawyer ... Paula and I, paying for Mark's legal expenses as well as our own, were out of pocket several thousand dollars.' – Asphyxia

The only provision for recognition of the relationship between children and their non-birth mother in a lesbian-headed family currently available in Victoria is the ability to obtain Parenting Orders through the federal Family Court. These provisions have not been designed for this kind of situation; they were originally intended (and are generally used) to provide legal orders for the care, access and residence of children in situations of heterosexual marriage/relationship breakdown. The procedure for obtaining Parenting Orders is unsuitable for our families, being based on the assumption of an existing dispute. It is also prohibitively expensive; a major factor for women who will often have spent many thousands of dollars in the process of conceiving their children.

Many lesbian parents do not know that they are able to apply for Parenting Orders through the Family Court, or cannot afford to do so, and therefore live without even the protection these would provide for their family relationships. The consequences of the lack of legal recognition of the non-birth mother's relationship with her children are many, and can be very serious. Without a Parenting Order, the non-birth mother cannot legally make decisions about the child, from whether the child can have non-emergency surgery to whether the child can go on a school excursion. If a lesbian-headed family breaks down, the non-birth mother can be completely excluded from any contact with the children, as is discussed in detail in Part 2.

Even if lesbian parents are able to afford and obtain Parenting Orders, the Orders are far from adequate. If a lesbian-headed family has a known donor, he must consent to the Parenting Orders. That is, as the law currently stands, a known donor (unless he has donated via a clinic) is still regarded as having the rights and responsibilities of a father. He can consent to 'give up' some of these rights (e.g. to residence of the child) through Parenting Orders, but it is most unlikely that the court will order that he have no contact with the child, even if this is the wish of all the parties. What is more, the Family Court allow any of the parties, and indeed anyone with an 'interest' in the welfare of the child (which could include the donor's family of origin, or the birth mother's) to apply for a change in the Parenting Orders, if there is a dispute about the arrangements e.g. for residence or access – a situation which once again can create great uncertainty for some families.

'This issue has great impact on our decision in becoming parents. The non-birth mother (my partner) being recognised as a parent and having legal rights as any heterosexual couple of most importance to us. The law as it stands is discriminatory and hurtful. It will force us to spend a lot of money to set up a parenting order, which is very unfair.' –Samantha

'We feel the psychological and social difficulties for the non-birth mother (and subsequently, the birth mother) are significant obstacles. However, if the law were to change to reflect our position (i.e. That we have made this decision as a couple, because we are a couple so see ourselves as equally responsible for our child/ren) it would certainly ease our way, both legally and socially. Legally, because we would not have the inconvenience and financial and emotional burden of having to apply for parenting orders. And socially, because individuals and organisations would be encouraged and forced to accept the non-birth mother's rights, rather than us potentially having to fight every step of the way. Basically, legal recognition of non-birth mothers would by no means solve the challenge, but it would be a significant and helpful step that would make our lives as a family easier.' – Caitlin and Caz

QUESTIONS FROM THE CONSULTATION PAPER

34 and 35. Should the law recognise the birth mother's female partner as the parent of the child? If so, in what circumstances should the law treat the birth mother's female partner as the parent of the child? Should it be necessary to show that the partner:

- **adopted the child;**
- **consented to the birth mother undergoing the procedure;**
- **was living with the birth mother on a genuine domestic basis at the time the child was born; or**
- **was registered as a parent in the Register of Birth's Deaths and Marriages?**

YES, the law should automatically recognise the female partner of a birth mother (that is, the non-birth mother) as the child's parent, as is currently the case with heterosexual couples. The law should be applied retrospectively, such that the non-birth mother in all families created in such circumstances would automatically be deemed a parent.

The circumstances for this should be that the non-birth mother consents to be recognised as the parent. The criteria for recognising parenthood should not be based on consent to treatment, as the relationship between the two women may have begun after treatment was undergone, and should not be based on living arrangements, as some women may choose to live apart while in a relationship.

In addition, the female partner should be able to be registered as a parent in the Register of Birth's Death and Marriages, and have this recognised on the birth certificate. Birth certificates should be flexible enough to allow the recognition of the diversity of family structures in the community.

36. Are there any other legal means of recognising a relationship between the child and the birth mother's female partner?

Families are currently using Parenting Orders obtained through the Family Court to achieve some legal protection, however this is extremely inadequate. The option of 'second parent adoption' should be available to allow a non-birth mother (partner of the birth mother, whether or not they were

partners at the time of the child's birth) to adopt a child with the birth mother retaining her legal status. Adoption law should also be amended to allow there to be more than two parents, and for the parents to be any combination of genders, to allow recognition of the diversity of family structures in the community, both at the birth of children and throughout the lives of families.

38. Alternatively, should the Status of Children Act 1974 recognise a known donor of semen to a single woman or a woman in a lesbian relationship as the father of a child born as the result of self-insemination, but provide that a father who is a donor has no rights and responsibilities in relation to the child?

This is a difficult question to answer because of the inconsistency and changeability in case law, federal and state legislation around the definition of 'parent' and 'father'. Some families may wish for their donor to be recognised as a 'father', provided that it is clear that this does not imply any 'rights and responsibilities' (if this were possible to guarantee given the highly politicised and controversial nature of this area of law). However other families may not regard their donor in any way as a 'father', and particularly in view of the legal situation, would not want any 'official' recognition of their donor as a father. All relevant legislation should allow various legal options for the great diversity of families to have legal recognition and protection of the chosen roles of all involved in the creation of their families, including automatic recognition of the non-birth mother, adoption and so on.

Summary of PLP recommendations made in this section

- That the female partner of a birth mother (i.e. the non-birth mother) should be able to consent to be recognised as the parent of a child born into their relationship.
- That non-birth mother be able to be registered as a parent in the Register of Birth's, Death and Marriages.
- That the criteria for recognising parenthood should not be based on consent to treatment, as the relationship between the two women may have begun after treatment was undergone, and should not be based on living arrangements, as some women may choose to live apart while in a relationship.
- That the option of 'second parent adoption' be available to allow a non-birth mother (partner of the birth mother, whether or not they were partners at the time of the child's birth) to adopt a child with the birth mother retaining her legal status.
- That the definition of family and parents under the relevant legislation be broadened to allow one, two, three or more people to adopt a child, according to their agreed family structure.
- That Birth Certificates be amended allow for a diversity of parent and family combinations to be recorded officially and legally on the Birth Certificate itself.
- That there be the option for donors to be recorded on the birth certificate as 'father' alongside the birth and non-birth mother, without any legal ramifications in terms of rights and responsibilities, ie that families be allowed to define for themselves what different roles mean within their families. This is what people do unofficially, it should be reflected in official forms etc.
- That all relevant legislation be amended to allow various legal options for the great diversity of families to have legal recognition and protection of the chosen roles of all involved in the creation of their families, including automatic recognition of the non-birth mother, adoption and so on.

PART 5: THE LINK BETWEEN LEGAL REFORM AND SOCIAL ATTITUDES



'Tenacity, courage, faith and hope for future equality and an end to hurtful and flagrant discrimination. These could have been the words of Nelson Mandela in the 1960s. Sadly they are the words of a 32 year old Australian lesbian fighting for access to fertility services in her home country in 2004. Shame Australia.' – Zoe

'Law reform will not change some people's attitudes towards our families – but gee, it makes our lives a lot easier to navigate!! When we have the law on our side, we don't have to invest time and energy in arguing with people every time we interact with a social institution – be that a school, the BD and M registry, a hospital, DHS, the courts, our local council ... We get to just say 'Well, it's the law!' – end of argument! – and the start of a less stressful, disempowering and exhausting life for us and (most importantly) our children ... The impact of a legal fait accompli will over time I believe change people's attitudes.' – AB

'People are doing lesbian and gay parenting anyway, as it is such a basic human instinct that unfriendly laws will rarely override personal decisions about our bodies and humanity. Obviously, society has come a certain way to enable some limited support and understanding to be available to queer families. And obviously, society still has to move much further to a point of basic acceptance, let alone support. Law reform in the areas mentioned above would speed this process of acceptance onwards and give antagonists less to hide behind. Queer families could know where we stand, and stand more proudly.'
– Caitlin and Caz

GLBTI PARENTS AS THE NEW 'TAMPA'

As we complete the writing of this submission, GLBTI parents – in particular lesbian mothers – are once again a hot topic in the media. Ominously, gay rights, including the rights of GLBTI families and prospective parents, have become a wedge issue in the upcoming federal election. Once again following the lead of US President Bush, the Howard government is trying to push through amendments to the *Marriage Act* – not to change the law, because gay marriage does yet not exist in Australia – but to try and ensure that GLBTI people will never, can never have the right to marry in Australia. In its original incarnation the legislation also sought to ban overseas adoption by lesbian and gay people, a measure that itself seems likely to fail due to firm opposition by non-government parties.

Parallel and connected to this issue, a farcical 'controversy' erupted around the extraordinarily non-confrontational representation on ABC TV's *Playschool* program of a girl called Brenna visiting the fair and riding the merry-go-round with her friend and her two mums. Half the Federal Government's front bench, in addition to the Opposition Leader, felt impelled to comment on the 'issue', resulting in a storm of debate about 'political correctness' and, to paraphrase Deputy PM John Anderson, whether those of us who 'choose a certain lifestyle' must accept that other choices – i.e. parenthood – are not open to us.

The recent media and political frenzies have been a difficult and upsetting time for GLBTI people, not least lesbian parents and their children, despite the many people voicing positive and accepting views in the letters pages and on talk-back radio. Institutionalised and social homophobia are intimately connected. The opinions and policies of our political leaders, reflected in the legislation they write and pass, have a direct impact on social attitudes and the experiences of those most directly affected.

The latest media and political storm was, of course, not the first. When Justice Sundberg ruled in 2001 that barring single women and lesbians from treatment for infertility contravened the federal *Sex Discrimination Act*, Jacqui Tomlins and Sarah Nichols were brave enough to stand up publicly against a tidal wave of homophobia expressed by the PM, church leaders, conservative media and many others.

'The shit – as they say – hit the fan. The phone went at about ten that morning and didn't stop until after six. The first call was from a doctor we knew who was involved in lesbian health. She'd already had a number of calls from the media who wanted to interview someone affected by the Sundberg ruling. Would we go public? ...

We spent the day being interviewed by journalists and posing for photographs: The Age, The Australian, The Herald Sun, Channel 7 and 9 news and sundry radio stations. Today Tonight filmed us in the house going about our daily lesbian business: here's a lesbian in the kitchen, and here's two lesbians sitting on the couch ...

'The next day – in fact for the next two weeks – the front pages, the letters and opinion columns of our national press were given over to the misogyny and homophobia. Single women and lesbians were creating a new 'stolen generation'; we were – once again – unravelling the very fabric of society ...

It's hard to describe the intensity of the outrage I felt each morning as I read page after page. I wanted to gather up all the Catholic bishops, the 'consultant ethicists', the family values MPs and poke them repeatedly in the stomach with long needles. In the end we satisfied ourselves with hoping all their children would be gay.

'I have rarely felt personally discriminated against as a lesbian. I've been abused in the street a few times, and have had to deal with people's bigotry and rudeness, but nothing that's really had a lasting impact, and certainly nothing systemic. Being white, middle-class and educated has protected me against the worst excesses of homophobia out there. Ironically, Sarah was able to emigrate to Australia on the basis of our relationship. But I have never felt so explicitly and openly discriminated against.' – Jacqui Tomlins

THE LAW AS A REFLECTION OR A CATALYST FOR SOCIAL CHANGE

'Does the law lead or follow? I'd suggest it needs to do both. This is an opportunity to reform Victorian fertility law to the point of at least being relevant, and possibly even helpful, to the growing numbers of people who are currently hindered and hounded by the obsolete heterosexism of the old laws.' – Caitlin and Caz

'Many people are unaware and often surprised at the law restrictions in regard to same-sex conception and parenting in Victoria. I believe that law reform will serve to legitimise these areas at a level that many people already expect would be the case. In our daily lives, contrary to our expectations, acceptance is wide spread. So maybe law reform is more about the Victorian legal system catching up with Australian society in general. Naturally, there will always be some who do not understand our situations but they are not living our lives nor parenting our children and are generally people who have little or no exposure to same-sex parents.' – 'Kate'

'I don't know that reform impacts on attitudes and acceptance, but it lets those who do accept assist us without fear of legal censure. And if discrimination is illegal, then of course we get tools to fight with if we're not treated properly.' – Ali

We believe that whether or not it is supported by the PM, conservative churches, radio shock jocks or an Age Poll, legal change is desperately required to recognise and protect the rights and realities of LGBTI families' lives. Reform to any laws should address the concerns of and bring justice to those who are most directly affected by those laws – in the case of the laws discussed in this submission, that means gay and lesbian parents and our children. Reform would also demonstrate that Victorian lawmakers support the rights of LGBTI families, leading to greater acceptance in the broader community.

Like racism, sexism and discrimination against people on the basis of age or ability or any other aspect of identity, homophobia is deeply ingrained in many aspects of Australian society. And while the past few decades have seen enormous positive change for LGBTI people in terms of both legal rights and social attitudes, we are under no illusions that the struggle for our rights and our children's rights, and against the prejudice of those who oppose them, will be ongoing. Legal reform will give impetus to that change, and give LGBTI families the tools we need to assert and protect our rights.

And yet, the most common experience of many lesbian mothers and prospective parents is that despite the pronouncements of conservative political, church and media leaders, the broader community is overwhelmingly accepting of lesbian mothers and our children. Time and again our fears about the attitudes of health providers, childcare workers, teachers, other parents and people in our community provide happily unfounded. As is so often the case in overcoming ignorance or prejudice, it just takes meeting a lesbian mum and her child to make people realise that in some ways we're different, but in all the most important ways we're just like any other families – and that our differences are just another part of the kaleidoscope of 21st century Australian society.

'Once we began to have children, we realised that in order to help protect and raise well-balanced children we had to openly identify our situation. Whilst I still operate at times on a need to know basis (as blurting out your family position is at times confronting and unnecessary), I have yet to have any exposure to negative attitudes. Most of our friends and family and other people in our lives at the moment such as doctors, childcare workers etc are heterosexual and yet we have found such an unexpected level of overt acceptance that we feel that we were probably far too paranoid previously. The only negative attitudes that we have encountered are from some media (e.g. Neil Mitchell) and others not directly known to us who have no experience with same-sex couples let alone families.' – 'Kate'

'All our friends (straight and gay) think its outrageous that we had to go interstate to access donor sperm. We have found nothing but positive attitudes and acceptance – at our son's child care centre, the maternal health nurse, hospital staff, mother's group etc. Law reform would make things much easier for our family, but we feel social attitudes are changing already, for the better.' – PLP Couple A

CASE STUDIES

One of the realities that many lesbian women face in confronting their limited options for becoming parents is that their first choice is probably not going to be the one that results in them – hopefully – conceiving and bearing a child. This is clearly demonstrated in the seven case studies that follow. Each of the case studies illustrates a variety of issues, all of which have been touched on to some extent in the previous discussion.

Case study 1: Jacqui and Sarah

Interstate and overseas ART with unknown donors to IVF with an 'identity release' donor.

Case study 2: PLP Couple B

Interstate ART with a known donor and the risk of unscreened self-insemination.

Case study 3: Tracey and Samantha

Interstate ART with an 'identity release' donor to self-insemination with a known donor.

Case study 4: Sarah and Felicity

The search for a known donor, declared 'medically infertile', ART in Victoria with a known donor.

Case study 5: Lisa and Amanda

Incorrect self-insemination with a known donor, unprotected sex with a known donor, self-insemination with unscreened sperm to IVF with an identity release donor.

Case study 6: Cristi and Sabdha

Exploring the options for conception, finding and negotiating with a known donor.

Case study 7: Asphyxia and Paula

Self-insemination using a known donor (partner's brother) and parenting orders.

CASE STUDY 1: JACQUI AND SARAH

Jacqui Tomlins and her partner Sarah Nichols have always wanted to have children. Soon after they first met in 1992, they began talking about the family they would one day create. Six years ago, when Jacqui was 35, they decided the time had come.

'We had decided the time was right for us to start a family and I was eager to begin trying ... I had always believed I would have children – being a lesbian made no difference to that – it was just a matter of waiting for the right time.' – Jacqui

Initially Jacqui and Sarah began trying to conceive during an extended visit to Sarah's family of origin in Canada. There they were presented with an overwhelming variety of choices at the local fertility clinic, and encountered absolutely no discrimination in accessing services. When they returned home to Melbourne, it was a very different story:

'In Melbourne I was refused services because I was 'single' – neither married nor in a de facto relationship with a man and so my only option was to go interstate. At the time, the closest clinic, in Albury, had only two donors available to single women and lesbians, and our closest friends were using one of them.

'Once a month, Sarah and I would get up before dawn and drive to the airport for the six a.m. flight – I had to be at the clinic for the blood test before nine. I'd battle with business men for a taxi at the other end, and arrive at the clinic just in time. I'd have the insemination, the blood test [to see if I was ovulating yet], then take the train to the hotel, check in, and wait for the results ... after the second, third and fourth day of waiting I became fed up and frustrated. Repeating the whole performance the following month, and the one after that, and the one after that was tedious and stressful. The Melbourne clinic was only five minutes from my home and the whole process should have been over and done in less than an hour. Instead, it was regularly taking three or four days.

'Over a period of eight months I had six inseminations in Sydney followed by six negative pregnancy tests. The disappointment of each was bad enough, but it was compounded by knowing I'd have another interminable interstate trip to get through. I grew weary and began to dread each cycle. Some women spend years trying to conceive, but I certainly didn't have years of this in me.' – Jacqui

Despite investigations revealing no obvious cause of infertility, after much consideration and on the advice of specialists, Jacqui and Sarah then decided to try IVF. At that time, IVF was still not available to single women or lesbians in Victoria, even if they were – as was Jacqui – deemed medically infertile. The process of attempting conception through IVF at an interstate clinic was even more stressful, as they were to discover. Jacqui wrote the following about her second attempt at IVF:

'Sarah arranged more time off work which wasn't easy, but her firm were very supportive. We flew up, hired a car and spent ten days driving across Sydney, to and from the clinic. I was completely debilitated by the hormones, and the anaesthetic and surgery left me exhausted and spaced-out. It was really hard work for both of us, and apart from that, it just didn't seem very healthy. Everything we read about conception emphasised the need to maintain a healthy lifestyle, get good sleep, and avoid stressful situations. I could think of nothing less conducive to conception than this exhausting endurance test we were being forced to undertake.

'Yet we were still hopeful. This time we had put back fertilized embryos and all they needed to do was implant. Two weeks later. Negative. Number eleven. To go through all that – two months of bloody awful treatment and endless stuffing around in Sydney – again and nothing. I just couldn't bear it. I didn't want to stop trying, but I was exhausted ... it was taking me longer to recover – emotionally and physically – from each cycle. Now, even when I wasn't on the hormones, I was emotional and teary, and I felt anxious about things I would normally have brushed aside. I became moody and irritable which was not like me at all, and Sarah and I bickered. I began to

worry about the effect it was having on us, on our relationship. I felt as if my life had slowly slipped out of my control. I felt powerless.’ – Jacqui

Jacqui and Sarah were to try unsuccessfully once more in Sydney and twice at the Albury clinic with sperm the Albury clinic imported from Britain. The second Albury attempt resulted, tragically, in Jacqui conceiving an ectopic pregnancy – a dangerous condition where the foetus implants in the fallopian tube and must be immediately removed through surgery.

It was soon after this very difficult and painful episode that Melbourne IVF specialist John McBain successfully challenged the law barring access to IVF for lesbians and single women in the Victorian Supreme Court. Justice Sundberg ruled that the law contravened the Federal Sex Discrimination Act. The subsequent furore exposed a deep vein of homophobia, misogyny and hatred in the community, and prompted an unsuccessful High Court challenge by the Council of Australian Bishops, backed by the Howard government. The impacts of these attitudes within government and the wider community are explored later in this submission. Nevertheless, the Sundberg judgement opened up a window of opportunity for lesbians and single women deemed ‘medically infertile’ (as opposed to ‘socially infertile’ – for discussion of this term see below), giving Jacqui and others – who had usually also been through long, emotionally damaging journeys in their attempts to conceive – access to IVF in their home town:

The experience of accessing IVF in Melbourne was vastly different for Jacqui:

‘For the first time we were treated as a couple with an acknowledgement of Sarah’s role and of the fact that, as lesbians, we might experience all this somewhat differently ... The clinic was a twenty minute tram ride from our house and from Sarah’s office. With [doctor] ‘Kate’ and [counsellor] Jenny in support, and everything happening so close the home, the next cycle was a breeze – relatively of course. I started to realise how all those people I’d read about who do IVF for four, five, six years managed. They weren’t doing it interstate.’ – Jacqui

Jacqui and Sarah continued to try to conceive using IVF in Melbourne. Altogether, over a period of a little over three years, Jacqui underwent nineteen cycles – nine donor inseminations and ten IVF cycles, five of them interstate. Just before her second-last cycle, Jacqui wrote:

‘I never imagined I would find myself in this place. I never imagined that my desire to bear a child would be so overwhelming. I’m not sure where it comes from, but I know it won’t go away. The last three years have been an enormous struggle, and I really don’t know how much longer I can continue.’ – Jacqui

In fact, Jacqui gave up her desire to bear a child soon after. In part this was due to exhaustion and grief. It was also because Sarah had recently turned 35. A woman’s infertility peaks at 28, and falls sharply from the age of 34 or 35. If they were to try with Sarah, they would need to try soon, especially as Sarah’s own fertility was potentially compromised by endometriosis. After an exploratory laparoscopy, they decided to go straight to IVF, and on Sarah’s second cycle, she conceived.

A week before Jacqui’s fortieth birthday, Sarah gave birth to their son Corin, a beautiful smiling child who recently celebrated his first birthday. Jacqui is Corin’s primary care giver, staying home with him and writing part-time when she can. He is the centre of both their lives, and they have taken care to do everything they can to give legal protection to their family by obtaining Parenting Orders through the Family Court. Yet it is still painful to Jacqui that her legal relationship with her son is not the same as if she had either birthed or been able to adopt him:

‘As the non-bio Mum I find it extremely difficult not to have a legal relationship with my son. I was there when he was born, gave him his first cuddle and bath, and am now the primary care giver. Yet legally I have no real standing. I have a parenting order which gives some practical help, but does not feel anything like adoption.’ – Jacqui

CASE STUDY 2: PLP COUPLE B

'I spent years believing that because I had fallen in love with a woman that I could never have children. Since I was a small child the one thing I always new, my one dream that remained consistent was to have a child/ren. I tried to end my relationship several times in the first few years because I didn't know it was possible to be with another woman and to have a child.

'After we had been together for about five years I started to think maybe I could have a child. My partner and I then began to look into the possibilities of having a child and we began to explore ways in which we could achieve this dream.

'I believe that if the laws were freer this trauma would not have occurred.' – B

B and her partner spent a long time researching their options, and looking for someone who would be a suitable donor. They were very concerned about the lack of legal protection for their family, and subsequently needed to find someone whom they trusted for the long haul.

'This was of great consideration when deciding to have a child, especially with a known donor. I was quite worried about the chances of the father trying to take custody, which is why we chose someone who we love and trust very much, but I don't know how it would be if we did not know him. My partner and I considered changing our surnames to be the same just to ease this burden on the child and enable my partner to have equal rights to obtain legal assistance etc for our child should we have one.' – B

The couple eventually found a donor, a good friend who lives overseas, so ART in the form of donor insemination with known donor sperm was necessary. Yet because B does not have a diagnosis of 'medical infertility', she was not able to access this service here in Victoria. At one stage when the donor was visiting Australia they discovered another benefit of ART through a fertility clinic: the screening of their donor's sperm:

'We nearly tried a fresh insemination and after drilling our donor found out that he had just had an unsafe experience. If the laws were different in Victoria our health would be protected. We could have a donor go under the appropriate testing and have their sperm stored for us by us as required. This would reduce risk to us and our future children, reduce stress both emotional and financial – but most importantly emotional which in turn would increase the likelihood of us creating families.' – B

Eventually she and her partner were able to meet with their donor in Canberra, where laws allow lesbian women to access ART, and he made a donation. 'This process was costly and stressful but very exciting,' says B. An additional benefit to accessing their known donor's sperm via a fertility clinic was that to a large extent it clarified the legal issues, and meant that their donor would be seen as just that in law, without the rights or obligations of parenthood. Even so, the lack of legal recognition of B's partner rankled:

'This was one of the reasons we were happy to have our donor donate his sperm to the fertility centre. In so doing he had to sign over his rights so at least that means that even if he is listed on the birth certificate for the child's knowledge, he would actually have no legal status or obligations. It is however a big problem that my partner can't be listed on the [birth] certificate as she will be the other parent not him. It is not fair that he should be listed as a part of our child's life but my partner should not when she will be providing and caring for our child.' – B

At last B and her partner felt that they were on their way to parenthood, yet this was only the start of a long, stressful journey. B found the clinic's processes difficult, stressful and painful. They would have been hard enough had the women been able to have access to them in Victorian clinics. Having to travel from Cockatoo to Canberra every month added enormously to the stress of the experience.

'Each time we wanted to try to conceive it was highly stressful. Canberra insists that you have blood tests and vaginal ultrasounds to determine ovulation and the only method of insemination is intra uterine insemination, which the first time was quite painful and created great anxiety in

me. I was too scared to go back for a while and ended up having to have hypnotherapy to alleviate my anxiety. Each time we tried it would mean that I had to have blood tests from day 8 of my cycle, then approximately every 1-2 days afterwards until they thought the time was near then I would have to have an ultrasound. If that wasn't positive it was more blood tests and ultrasounds in another day or two.

'After each blood test I would have to call the clinic to find out if we had to arrange flights. I would find out at 4pm the day before that we had to get a plane to Canberra the next morning. At this point we would both have to organise the following day off work, which sometimes was hard for my partner and I would worry that I would have to go through it alone. Fortunately she always managed to get it off. Because we live in Cockatoo we would have to get up very early (around 5am) the next morning to get to the airport and we would not return until late unless she had to work that afternoon then we would get to Canberra have the procedure and be home by 1pm for her to go to work.

'On one occasion all direct flights were booked out and we had to go via Sydney both ways, which was very stressful and exhausting. It got to the point that I would end up with serious health complaints after finding out a negative result. I managed to get pregnant once (they do blood tests at day 8 and 10 and if + again at 12) only to be told two days later that I was no longer pregnant. Through the trauma of this I ended up so sick I had to take two weeks off work.' – B

B and her partner visited Canberra for donor insemination (DI) six times over the next two years. Eventually the financial strain, stress and anxiety took too great a toll, and the women are now taking a break and reconsidering their options. Both believe that their chances of conception would have been much greater if they had been able to access ART in Victoria. Six unsuccessful attempts through DI qualifies B for IVF treatment in Victoria – fertility clinics in Victoria are generally unwilling to give single women and lesbians access to anything but the 'full-blown' IVF treatment option. Yet as B explains, she feels that the stress and problems with her treatment in Canberra mean she has not really given less interventionist treatment than IVF a chance to work.

'I was only 29 when we first started, with no known fertility issues. If it was legal for self-insemination and clinics could store known sperm for you to use at home I believe the chances of me getting pregnant would have been much higher. As it is, the stress is so great on the week that we try that it is not surprising that I can't get pregnant. My partner and I are not on high incomes and even though I now qualify for IVF I don't feel ready to go down that road since we have only tried for six cycles, two of which the clinic made an error and inseminated AFTER ovulation, which added to our stress since I told them I thought it would be too late, but they only trust their tests not my knowledge of myself.' – B

B feels that legal reform in areas including access to ART and recognition of B's partner as a parent are important not only for giving women greater freedom of choice – where they don't feel they have to circumvent the laws in their home state to create their families – but would also have a positive effect on social attitudes.

'I definitely think that this would affect attitudes in general as it would be accepted in the eyes of the law and government, which is one step closer to getting it accepted in society. This would not have a huge impact on us, as our friends and family are very supportive of us having a child.

'I would just like to say that the financial strain has been huge but nowhere near as bad as the emotional pressure. It took us two years to figure out how to go about having a child and to decide if it was the right thing to do by a child and by us. I believe that this would have been easier had the laws been in favour of our freedom of choice.

'We are just like other people only we are attracted to people of the same sex or just happen to be in love with someone of the same sex. This doesn't make us bad, just different. This doesn't change our ability to parent and to provide loving, caring, nurturing homes. The amount of planning and thought that goes into creating our families ensures that the children we create will be loved to the best of our ability.' – B

CASE STUDY 3: TRACEY AND SAMANTHA

'We have a lot of love to give, and should not, and will not, be prevented by laws in Victoria from living the experience of parenthood. If other states can be inclusive and limit discrimination in law, and be encouraging of diversity in families, then Victoria can do the same, if not better.'
– Tracey and Samantha

'My sister and her partner will make fantastic committed parents. They have been through a lot to make this dream come true, the law needs to change, and now!!.' – Samantha's brother

Tracey and Samantha have been trying to conceive for around six months, but have already been on a long and emotionally traumatic journey in their quest to become parents. They are an excellent illustration of the fact that as lesbians, we are not raising our children in isolation: many of us, like Tracey and Samantha, have very loving and supportive families of origin. Others of us may be removed from our families of origin by distance or homophobia, so create our own strong and supportive families out of friends and community networks like PLP. Both Tracey and Samantha's parents and families are very supportive and excited about them having children. Samantha's mother Pam, her brother and her best friends all chose to show their support by contributing to this submission.

'When a couple decide to commit to a relationship – whether they be married, de facto or gay – and through their love they decide to bring life into this world, the most important thing is to understand the responsibilities required to nurture their child, to love it and give it the best of themselves.' – Samantha's mother Pam

'My sister and her partner have to go interstate to access sperm donor clinics, which is both unfair and costly. Why doesn't the law amend the current situation? Because nothing is going to stop them from becoming parents, and nothing should.' – Samantha's brother

Tracey and Samantha's first experience of trying to access services at an interstate clinic was far from positive, and had a major emotional impact:

'We would have loved to stay in Victoria to be close to our loving and supportive parents and family when trying to get pregnant, but due to the discriminating law we have been forced to access medicate support at an interstate fertility clinic. We first went to Canberra from Melbourne, taking time off work, saving money for all the associated costs to see a fertility specialist who had the legal power to make biased judgements about you and decide in a few minutes if you are worthy and decent enough to go ahead with becoming potential parents. Then it's off to the Fertility Clinic and the staff there are great, they are informative and caring and not judging you; well at least not directly, but it is compulsory to see a counsellor, though we understand this is protocol for all couples.

'We soon came to realise in Canberra that our plans to not use fertility drugs, to avoid unnecessary intrusive surgical procedures such as a laparoscopy, and to try natural cycles are taken away from us as a choice. We were informed 'this is protocol' to do upfront laparoscopy and use fertility drugs. This is due to the clinic protecting its own interest of not having enough sperm. This is another important issue, and the law needs reform, allowing all men [gay men are currently banned from donating in many clinics] to donate to fertility clinics.

'A positive point about fertility clinics as a choice of trying to get pregnant is that it is safe, as the sperm has been screened for STDs and other diseases. After the experience of Canberra and the limited options available, we decided against having unnecessary medical procedures, and pursued options in Tasmania. This impacted us both at the time emotionally, as we felt we had limited choice and control, and felt completely judged on our sexuality, and not as a whole person. This forced us to look elsewhere for options.

'So a phone call to Tasmania was made to both the Fertility Clinic and Fertility Specialist, but before this was done we had to prepare ourselves mentally and emotionally, to take the impact of possibly more judgements.' – Tracey and Samantha

Tracey and Samantha's experience of feeling judged for their sexuality by the medical specialist who had the power to give or refuse them access to donor insemination had an enormous emotional impact. The doctor also charged the couple as if they were two single women seeking access to services, despite the fact that Samantha had only been asking questions relevant to Tracey's treatment at the clinic, as would any supportive heterosexual partner. Samantha's mother Pam says:

'As a parent of a young lesbian woman who is in a happy stable relationship seeking motherhood, I witness her trauma in Victoria trying to find the assistance and help needed to have their child. A trip to Canberra was necessary, where they were judged, outrageously charged, and felt discriminated against by the so-called professional medical operators. Luckily Tasmania came to the rescue with their new enlightened laws which treat the gay community with respect. However, living in Victoria means travelling to Tasmania for all procedures in relationship to becoming pregnant, at financial expense. Some women can manage it alone or with family assistance, some I am sure cannot find the money required, resulting in women trying non-safe methods of trying to become pregnant, feeling alone and totally discriminated against, questioning their being and feeling angry and depressed.' – Pam, Samantha's mother

Fortunately Tracey and Samantha's experiences in Tasmania were very positive and supportive:

'This approach certainly makes a difference to your emotional state along the way as the time, money and legal barriers take their toll on you. It is at these difficult times, such as the Canberra experience, that supportive family are there and encourage you not to give up, as at times it feels easier to do. But through our determination, support of family, friends and work colleagues, we remain committed to follow our heart and exercise our right, our choice to become parents.' – Tracey and Samantha

Yet after four tries in Tasmania, the financial strain, and more importantly the stress of interstate travel and taking time off work have taken their toll. Samantha would now possibly be able to access IVF treatment in Victoria as she has had four unsuccessful attempts through a clinic, yet there are a number of reasons why the couple are steering away from this path for now, and considering the option of trying self-insemination with a known donor.

First there is the level of medical intervention involved with IVF, as well as the costs. However the most important issue for Tracey and Samantha is that they both want to conceive children, and it is very important to them that their children have the same biological father. Yet there is no guarantee under the current law that if Samantha conceives a child through IVF using an 'identity release' donor in Melbourne, Tracey will later be able to access the same donor as she has no known infertility condition. This is discriminatory, as the general procedure for heterosexual couples is that if possible, sperm from one donor will be made available for however many children the parents wish to try for.

How and where to try and conceive is just one of the issues weighing on the couple's minds. While they will not have to content with issues around the legal status of their donor – this is greatly clarified because the donation and conception are via a clinic – there remains the issue of the legal status of the non-birth mother.

'This issue has great impact on our decision in becoming parents. The non-birth mother (my partner) being recognised as a parent and having legal rights as any heterosexual couple of most importance to us. The law as it stands is discriminatory and hurtful. It will force us to spend a lot of money to set up a parenting order, which is very unfair.' – Samantha

'We believe it is extremely unfair that two loving parents, regardless of gender or sexuality, are not recognised as parents equally. Both have made the decision to bring a child into this world as do heterosexual couples, and to have the partner not recognised is just morally incorrect.' – Tracey and Samantha's best friends

'My sister's partner will not be recognised as a parent under this state's law. That is not right. They both have made the decision to become parents like any other couple, she should be recognised as a parent. It is total discrimination.' – Samantha's brother

Similarly, Tracey and Samantha have very strong feelings about the inadequacy of the current birth certificate options to recognise their family structure.

'Emotionally this will impact on our decision in becoming parents. My partner will not be recognised as a co-parent and her name will not be on the birth certificate. We have planned for a child together, it is a joint decision we have made through our commitment and love for each other. We would both be parents, and how dare the law not recognise that, and not recognise both as parents – isn't this in the best interests of the child, giving legal protection to both partners to make decisions about the welfare of the child?' – Tracey and Samantha

'Why can't both parents names appear on the birth certificate? Why says that parents only are a male and female, not taking into account of the hundreds and thousands of same-sex families in Victoria. We are not living in the dark ages.' – Samantha's brother

Like many of the contributors to this submission, Tracey and Samantha and their families and friends feel that legal reform is necessary not just in terms of justice and equality, but also in terms of supporting and contributing to social change and greater acceptance of GLBTI families and our children.

'We strongly feel that the more laws that come into play, that give our relationships recognition and the same rights as heterosexual couples, the more society will be exposed to kids of different families, which in turn leads to greater acceptance. This would be of great benefit to our children, and will teach and educate others that we are not something to be scared of, and that our love is the same!' – Tracey and Samantha

'I believe people will do what they have to do in spite of Victorian law – only these laws are forcing them to take unnecessary risks with the means they seek to do it. However, the law will not change their determination to succeed. The current law discriminates and supports hatred and bias in the community. Religion also divides and discriminates and should not be used as a means of judging and dictating to others.' – Pam, Samantha's mother

'Victoria needs to come in line with other states. Laws should chance to reflect the growing needs of our diverse community. We should be recognised as de facto couples are and should have the same rights as they do. It might help to change peoples attitude towards us, having some kind of legal recognition might give us more protection against the bigotry that still exists today.' – Tracey and Samantha's best friends

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Tracey and Samantha have now begun self-insemination with a known donor, an old friend. He also wanted to show his support by contributing to this submission:

I was incredibly honoured when asked by Sam and Trace if I would consider donating sperm to assist them to start a family. In our case, it was more than just sperm donation, it is a gift that I wholeheartedly give to two of my closest friends, I love them very much.

I take this whole event very seriously, and there has been a number of very important things that I needed to be satisfied of before being a part of bringing a child into the world. Sam and Trace are intelligent caring and loving people, responsible, supportive, and committed in a deep and loving relationship with each other, they can provide well for a child, and are surrounded by loving, supportive (and excited) family and friends.

I have been encouraged to be an active participant in the child's life, and am excited about. My life will move on, I have two children from a previous marriage, and I may again marry, who knows. I don't want to be a separated Dad again, someone said "It takes a village to raise a child" and I feel convinced that Sam and Trace's child will have an abundance of love, support, and exposure to many wonderful people!

CASE STUDY 4: SARAH AND FELICITY

Sarah and Felicity have been together almost four years, and have spent more than two years planning their future family. Felicity is a community development worker with young people, and Sarah is a writer and communications worker currently in women's health. Like many women, Sarah and Felicity began the process with research, trying to find out what their options and rights were under Victorian law. They became involved with Prospective Lesbian Parents, finding it an invaluable source of information and support, not least from the other women who were trying to conceive and having babies.

'It seems strange to say it now, but it took us more than a year to even decide how we wanted to try and conceive our child. Did we want to go interstate and use a clinic? Or did we want to take the risk of finding a known donor? We were really torn. In many ways we wanted to have a known donor, but the fallout from a couple of cases that went through the Family Court at that time was a heightened degree of fear about what the courts could do to our families, despite our best intentions. And in such a conservative political climate, it didn't seem likely that legal change was coming any time soon.'

'In the end, however, we both felt that it was really important to do what we felt was right, not out of fear, but out of love, hope and confidence in the future of our children. We wanted our child to be aware of their biological heritage, and to have some sense of having a 'father'. We wanted a known donor, someone we could trust to negotiate our way through the risks and challenges. We wanted to find someone who we felt had the same values and beliefs as we did. We also wanted someone who would be involved in our future children's lives in a meaningful way.' – Sarah

Once the decision was made, it was a matter of finding the right person, whose own wants matched Sarah and Felicity's. The couple ideally wanted someone who lived in the same city, even close by, who would have contact on a fortnightly to monthly basis.

'Looking around our friends and families, we initially couldn't find anyone suitable to ask. So we decided to register on the Australian Sperm Donor Registry site and advertise for a donor on PinkBoard (Australian GLBTI news and classified site). It was just like Internet dating – full of trepidation and horrible sleazy men who wanted to do it the 'natural' way with a lesbian. It felt pretty unsafe, and a surreal way to try and find the future father of our children, but what options did we have?' – Felicity and Sarah

After exchanging emails with perhaps ten to fifteen men, most of them gay, and with good intentions but very different expectations, the couple felt dispirited. Then a chance conversation with a friend changed everything.

This friend said to us over dinner – 'but what about Cameron?' Well we'd never even considered him before, not because he isn't a great person, but because he lived interstate. Yet there was no one living in Melbourne that fit the bill. We'd both known Cameron, a wonderful, caring and committed gay man, for many years. A few nerve-racking phonecalls and a weekend together later, and the decision was made. He's in Melbourne every few months visiting his family, and we visit him regularly too. Cameron's really excited about it, and so is his family. It is the best solution possible. We feel very happy and fortunate to have found him.' – Felicity and Sarah

Felicity, Sarah and Cameron found negotiating their parenting agreement easy, as their values and wishes coincided so well, and they already had a high degree of trust and excellent communication.

'Trying to conceive with a known donor is such a leap of faith, especially in the current political environment – I just can't imagine doing it with anyone I did not know extremely well and trust implicitly. In fact trust with my life.' – Sarah

'Our agreement with Cameron is a story of our journey towards creating a family. When our donor was in Melbourne last year, three of us wrote it together over a few days (and a few bottles of wine!) at the culmination of lengthy email and phone discussions. We included sections on technical stuff about how we would try to conceive, who can name the child, who will be

responsible for day to day parenting and the relationship of our donor's family of origin to the child/ren. We all acknowledge that this agreement will change over time but we wanted to create something to express what our shared ideas and opinions were before we started to try, even though we know our agreement has no legal standing. We also want to be able to show the agreement to our child.' – Felicity

The next step was working out the logistics – not an easy thing when you're a two-hour plane ride away. The ideal would be if Sarah – the intending birth mother – could simply have ART here in Victoria, using a directed donation through Melbourne IVF. Yet this seemed unlikely given the legal situation, so the couple began looking at other options, including flying Cameron to Albury or Hobart to make donations, then flying there themselves for DI. The least expensive option seemed to be flying to Brisbane to self-inseminate, yet the logistics of that seemed almost impossible, particularly given Sarah's very irregular periods and hard-to-predict (often non-existent) ovulation. The couple decided to investigate Sarah's irregular cycle, which turned out to be polycystic ovarian syndrome, as a result of which she was deemed 'medically infertile' and offered treatment in Victoria.

'It was a relief in so many ways that I was deemed 'medically infertile' ... This clears up Cameron's legal status to a great extent, but not completely, as the counsellor explained to us. We trust Cameron to honour the agreements we've made, it's more the state that we're concerned about, for example we have agreed that he will not be liable for child support – the last thing we would want is Centrelink pursuing him for maintenance on our behalf, without our consent. This has happened with other lesbian couples. Having ART through the clinic using his sperm gives us a fairly good guarantee that this sort of thing won't happen with us.' – Sarah

As a result, Cameron made a number of donations when visiting Melbourne, and underwent counselling with the clinic's infertility counsellors by himself and with Felicity and Sarah – all requirements for using ART services.

'We didn't fit any of the clinic's forms, and despite the fact that lesbian women have been using ART in Melbourne since the 2001 McBain decision, it seemed like they didn't quite know what to do with us. They were supportive and interested, but had had little exposure to the kinds of issues that are particular to non-traditional families.' – Felicity and Sarah

All three of them were particularly upset when – despite advice to the contrary from their referring infertility specialist – they were advised that Cameron would have to sign a 'lifestyle declaration'.

'We were outraged and upset when Cameron, who was donating directly to us, was asked to sign a 'lifestyle declaration'. Even though there is a six-month quarantine period and extensive testing for blood born viruses and all STIs, he was still being asked about his lifestyle because he identifies as a gay man. The questions don't even ask about risk-taking or safe sex. Because Cameron lives interstate, we need access to technology to assist us to create our family. All we have to do is sign a waiver to say we understand that he's had male to male sex in the last 12 months and still want his sperm, but we still reject the idea that our donor is required to sign the declaration in the first place. It's pure homophobic discrimination.' – Felicity and Sarah

Now the couple are about to begin their first round of ART, relieved that they don't have to travel interstate and hopeful that the treatment will work despite Sarah's ongoing problems with her menstrual cycle. Already it's been a long and exhausting journey, and it's really only just started. If Sarah is unable to conceive, they will be back to square one, as Felicity has no known fertility problems. With this in mind, the couple have also asked Cameron to donate to a clinic in Brisbane, to ensure that if he is overseas when Felicity needs to begin trying conception, sperm will be screened and available. This process has entailed a great deal more expense and paperwork. Meanwhile the lack of legal support or recognition for their future family weighs heavily on Felicity and Sarah.

'Sarah and I have made all decisions related to our future family equally yet I am often made anxious at the thought of having no legal status in our future child's life. What if something happens to Sarah and the baby during the birth and I have to make a decision about their medical care? I'm not sure how much weight our parenting agreement will have at that moment.' – Felicity

CASE STUDY 5: LISA AND AMANDA

Some opponents to reform in the laws around access to ART and recognition of GLBTI families argue that children need parents of both genders. Yet ironically the current laws can have the effect of preventing couples like Lisa and Amanda from creating their families with a known donor/father.

'We have a strong preference for a known donor. This is for the sake of the child – it's sense of identity, and a relationship with it's biological father. In contrast to public stereotypes of lesbians as 'man haters', we acknowledge that a relationship with the biological father can be important to a child. We have done everything we can to try to make sure this is possible, however, the Victorian laws have made this process a messy, confusing and stressful one.' – Amanda

The couple had no male friends who were in a position to donate to them, so began looking for a donor through friends, the internet and gay press. Eventually they found and got to know 'Brett', a gay man in his 30s who was keen to play a kind of 'uncle' role including semi-regular contact.

'Given that we would have an important connection with this person, probably for the rest of our lives, it was very important that we get to know him and feel confident that he would be both a good person to have in our lives and for a future child.' – Lisa

They visited a lawyer to draw up a contract, and Lisa underwent the usual pre-pregnancy tests, encountering 'widespread ignorance' from health providers. One GP advised her to go to Albury, while another two recommended that Amanda (then 31) try to conceive instead of Lisa (then 35), 'as if getting pregnant and having a baby meant nothing to me as an individual'. 'Brett' also underwent various tests under advice from his doctor.

Once the couple began self-inseminating they found out how difficult the logistics of self-insemination can get, particularly with a donor who lives across town. At times 'Brett' would be unavailable or cancel inseminations, but the couple felt they couldn't express disappointment or pressure him. The hazy legality of self-insemination made it hard for Lisa and Amanda to find adequate information about doing it correctly – a major factor, the couple think, in their lack of success after seven tries. At this point 'Brett' began travelling overseas.

Next step was the clinics. However because lesbians can only receive treatment in Victoria if 'medically infertile', Lisa could not be offered uninvasive donor insemination, as would a heterosexual married or de facto women in the same circumstance. Instead, Lisa had a painful laparoscopy to see if she qualified for IVF. 'The surgery was quite traumatic, it required taking three days off work, and when I left the hospital I became sick,' she says. No sign of medical infertility, so back to searching for a new donor.

Donor two was Lisa's ex-partner. The couple agreed to try using sexual intercourse as a method of conception, hoping it would be more successful than self-insemination.

Five months of trying to conceive through sex with donor two really tested Lisa and Amanda's relationship, and there was still no conception.

With her 38th birthday approaching and feeling she had little time to spare, Lisa was back to searching for a new donor. Donor three was a straight man willing to have occasional contact. They asked him to donate to the Royal Women's Hospital clinic (Melbourne IVF) straight away, so that if self-insemination should be unsuccessful at least they would have less of the six-month quarantine to wait through. But after two self-inseminations Lisa and Amanda found that donor three had cytomegalovirus (CMV), a common virus which can cause foetal abnormalities.

'None of the doctors we saw advised us to have the donor tested for [CMV] (he did have however the standard tests for Sexually Transmitted Infections). The CMV was only detected when we had him donate sperm to the Royal Women's Hospital. Had we had access to properly screened donor sperm via a clinic, we would have avoided putting a future child at risk of disability or other abnormality.' – Amanda

Lisa's 'unexplained infertility' now qualifies her for treatment here in Victoria. Yet instead of being offered donor insemination – as would a heterosexual women in the same situation – Lisa's only option is IVF. This is despite advice from a fertility specialist, based on a 'post-coital' test after Lisa's last attempt at home insemination, that they had not been placing the sperm close enough to the cervix. This surprisingly common problem, even with couples attempting conception via intercourse, had never been suggested by any specialist in the two years they had been trying. Lisa felt that this meant they had never really given insemination a chance, and wanted to try the less risky and far less expensive option of donor insemination before going onto IVF. This option was refused her.

'I was not able to have donor inter-uterine insemination, as I was told that the sperm is reserved for heterosexual women experiencing difficulties getting pregnant. For lesbians like me, who are only allowed onto the program if they are deemed 'infertile' then I only have the option of the invasive procedures of IVF.' – Lisa

With some grief the couple have decided to go ahead with IVF, which means their children will not have identifying information about their biological father until age 18. They are willing to do what they must to create their family, but both feel that they have been forced into unnecessary medical procedures, massive expenses and almost unbearable emotional stresses by homophobic laws and practices.

'Had we lived elsewhere we could have taken our first donor to the local clinic and received counselling, health checks and insemination ... Instead we risked my health and our potential child's, and put ourselves under huge emotional and financial strain, all because we wanted our children to know their father ... If the concern were genuine about children and not about an ingrained belief that homosexuality is wrong and therefore homosexual families doubly wrong, the focus would then be on how to make life better for children in lesbian families. How do we reduce the prejudice against their parents? How do we include gays and lesbians in our schools? How do we make the health system more responsive?

'...For the people who think a few lesbians or single women not having access to assisted reproductive services isn't really much of an issue, I wish you had spent one day in my life, in my relationship, talking to one of the health professionals, interviewing the donors, being a member of my family. Being a lesbian in 2004 is to be a second class citizen, not entitled to the same sorts of services of partnered heterosexual women experiencing difficulty getting pregnant.

... I can never explain the anger I feel about this situation, the injustice of it. While the IVF services have been sympathetic and the GPs and other health professional have generally tried to understand the issues, so much of our whole experience has been unnecessary.' – Lisa

'Regardless of the laws in Victoria, lesbians will still try to have children. If the Victorian laws recognised and supported this, it would mean reduced costs to the tax payer of unnecessary medical treatments, and it would have significantly relieved the health, emotional and financial impacts upon ourselves. It would also improve social attitudes and acceptance of lesbian mothers. This would have a huge benefit to our children, in reducing the discrimination they may face in the future.' – Amanda

CASE STUDY 6: CRISTI AND SABDHA

'The laws on access to fertility treatment in Victoria have had a significant impact on our lives. We are a lesbian couple who have been together for a bit over a year, living together in Footscray. Cristi works as a midwife, and Sabdha has just been accepted into the graduate recruitment scheme for the Victorian Public Service, and will be working for the Department of Education as of next year.

'Our dreams for our future together do not seem so radical to us – they include having good stable jobs, buying a home near our family and friends, and starting a family of our own. It is this last dream that is impacted upon by the current state of legislation around fertility.

'Our journey towards starting a family has started in different places for each of us. Cristi has wanted to have children for as long as she can remember, and an unsuccessful early attempt to conceive with a male partner has left her concerned about her fertility. Once we decided we wanted to have children, she was keen to get started on trying to conceive as soon as possible.

'Sabdha had always thought that because she was a lesbian she would never have the chance to have children, and so meeting Cristi was a bit of a revelation! As a midwife, Cristi brings to our relationship a wealth of knowledge about pregnancy, birth and child-rearing, and Sabdha has uncovered a passion for these things that go back to her own home-birth, hippy upbringing.

'Family and friends are of utmost importance for both of us. Many of our friends have recently had or are planning to have children, and Sabdha's cousin has just had the first of probably many children! We would love to bring up our family surrounded by the support, love and friendship of these people and their children. We believe that we will be good parents. Our children will be very well cared for, joyfully played with, and loved unconditionally.

'The choices we can make about the way that we create our family are deeply affected by the current laws. We have decided to use a known donor, an old friend of Sabdha's who has very generously agreed to help us out. While we are very happy with this, we went through months of agonising about whether we should use a known donor, or try to access ART. Neither of us know very many men who we could ask to donate, and using a known donor brings with it a range of issues around who the parents of the child are, health issues, the legal rights of the non-birth mother, and the relationship of the children to the donor's family.

'As much as the idea of having an anonymous donor seems appealing, there are several factors which place it out of our reach. The first, most significant factor is that it is only available for us if we are able and willing to travel interstate. This is simply impossible for us, because it is prohibitively expensive. The cost of ART alone is expensive, however, it is the interstate travel that makes it simply out of our reach. It would have to be a very difficult choice – can we buy a family home (something very important to both of us), or do we stay in cheap rental accommodation and desperately save to be able to travel to NSW or Tasmania monthly? As we are both 30, and fertility significantly decreases after 35, we are very aware of needing to get moving on this as soon as possible – we simply do not believe we have time to wait and save.

'Another big issue for us is that we would both like to conceive and bear children, and for these children to have the same donor. We are concerned that fertility clinics may not recognise our relationship and reserve sperm for both of us to conceive from the same donor. As with many other lesbian couples, we are also worried about the limited pool of interstate donors available to us, and the chances of other children at the lesbian playgroups and in our community having genetic relationships unknown to us.

'If fertility clinics and donor sperm were available to us in Melbourne, it would significantly broaden our options for creating our family.

'As we've said, we have been lucky enough to find a gentle, lovely man to donate to us. However, the current state of the law still affects our situation. There is no process that we can access to make him legally recognised as a donor, through a recognised process of sperm donation. Children conceived through donor sperm from a fertility clinic are not considered the children of that donor – there is no chance that he will claim paternity or any kind of parenting rights. We have no such protection. Any agreement that we draw up now is not legally binding, and though we trust our donor, we are still aware that things can change – it is a very uncertain and stressful position to be in.

'Because we are both women, there is no space for the non-birth mother of our child to be recorded as a parent on the child's birth certificate, and we are unable to adopt without rescinding the rights of the birth mother – the only recourse we have is the expensive process of obtaining a parenting order through the courts. We find this particularly upsetting, given that we are both very committed to being involved in active parenting of both our children. Even a parenting order can't compensate for the lack of legal and social recognition of the non-birth mother's role in the planning, conception, birth, and day-to-day raising of our child.

'Even though we are still fairly early in the process of organising all this, we daily feel sad and frustrated that there are so many barriers along the way to creating our own family, both legal and social. We have talked endlessly about the issues that we've raised here; spent hours of our time researching and worrying and planning for our family. It may be a cliché to say that our children will be among the most wanted children ever, but it is undoubtedly true.

CASE STUDY 7: ASPHYXIA AND PAULA

'My partner Paula and I have been together for six and a half years, and we have a nine month old son. I'd known for many years that I wanted to have a baby, and when Paula became serious about the relationship she knew that if it was going to last it would have to include the baby I wanted to have.

'Her own maternal instincts had recently been stirring, and after a while her own enthusiasm for a baby overtook mine! It took some time for my family to accept our relationship, as we are both women, but eventually I wrote a letter to my mother explaining that I felt her exclusive behaviour was homophobic and very hurtful to Paula who tried so hard to fit in and contribute to our family.

'My mother immediately wrote a letter of apology to Paula, saying she hadn't thought about it from her point of view, and from that day onwards has been very supportive. When we told her we were planning to have a baby she was thrilled, and from the moment I was pregnant she was very supportive and considerate in looking after me and making plans for the new baby.

'Paula has always been close to her brother Mark, and I too felt a deepened bond with him over time. We asked him if he would be the donor for our baby, partly because we felt we could trust him with the enormity of this project, and partly because we loved the idea of the baby being genetically related to Paula as well as to me. Mark said he would consider it and so we embarked on two years of meetings, during which we outlined the details of the relationships we would each have with the baby. We decided Mark would have no responsibility, financial or emotional, to the baby, and would basically be considered an uncle. All parenting would be the responsibility of Paula and myself.

'We came up against a number of legal problems that impeded our plans. The first problem was that it is actually against the law to inseminate at home in Victoria. We could either go to a doctor's clinic and have them do the procedure, or drive interstate to NSW and do it ourselves there.

'Despite the fact that we had been together for five years when we conceived our baby, the laws which would have allowed my partner to be considered a parent of my baby if we had been heterosexual, did not apply. For Paula to be able to perform routine parenting tasks such as picking up our child early from school to take him to the doctor, she would need to prove to the school that she was a legal guardian, and she would need to prove to the doctor that she was authorised to make medical decisions for our son. In an emergency, Paula would have no authority to decide what treatment our son should have, a potentially dangerous situation as we anticipated many occasions on which Paula would be responsible for our child while I would be working (and possibly uncontactable).

'Aside from this, if I were to die without leaving a will, despite the fact that our child would have been raised by Paula and me since birth, laws state that our son would be raised by members of my family. This was of justifiable concern for Paula as my family is large, close-knit, and very excited at the prospect of a new baby.

'For us to arrange protection for our son in all these areas (which are automatically taken care of by the law for heterosexual parents), we had to embark on an expensive legal journey.

'First step was to have wills made for each of us, stipulating that all our assets be left to each other (so we could use them to raise our child – otherwise if Paula died her money would go to her family, potentially leaving me and the child broke), and that Paula would be our child's legal guardian if I were to die.

'Next we had to arrange a parenting order for Paula. This was an involved and costly process – we had to meet with our lawyer several times, including writing affidavits, providing the birth certificate of our child (another involved process – and we were unable to get a certificate that names Paula as our child's mother as well as me) – and as we wanted this all in place as soon

as possible, it meant that rather than enjoying our early days at home with the baby, we were traipsing across the city attending meetings to sign documents.

'We also had to ask Mark to obtain legal advice, a process that for him was drawn out and frustrating. He understood and agreed with the documents we were serving on him (which stipulated he would not have parental responsibilities for the child), but the courts needed him to sign them in front of a lawyer. The first law firm he attended treated him as though he had horns – all the associates craning their heads to look at him and then exchanging glances with each other. He didn't follow through with this one and instead sought out a gay-friendly lawyer. This was better but the lawyer was intent on making more work for himself and kept suggesting (billable) changes to the documents.

'It was exhausting for all of us (and confusing for Mark) to get it to the stage where the documents were signed and ready to be sent to the court. Paula and I, paying for Mark's legal expenses as well as our own, were out of pocket several thousand dollars.

'There are many babies being born to gay and lesbian parents – in particular a boom happening at the moment - and we strongly believe it is imperative that laws are put in place, urgently, to protect the children of couples like us. Many of our friends (lesbian couples who also have children) are not following through with the legal process that we undertook due to the expense, frustrations and complications, and as a result they are vulnerable to the problems I outlined above.

'By allowing gay and lesbian marriage several of the legal steps we had to take could be avoided. By changing the birth certificates to allow for families like ours we could simply fill out the forms instead of spending hours in at the registry of births. We also require legal recognition of Paula's status as a mother and legal guardian without needing to spend thousands on legal processes.'

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