

The number of people wanting to have children through reproductive medicine treatment has been increasing since the early 1980s. In 1988 in response to the large number of women who were coming to Melbourne to see me from the north east of Victoria and south west of New South Wales, I set up the Reproductive Medicine Clinic in Albury together with Dr Scott Giltrap, a local gynaecologist. This was the first free-standing donor insemination and In Vitro Fertilization clinic in Australia. and in accordance with our wishes a local Ethics Committee was set up to represent the local community and to provide a community advisory point of contact between the infertility services and the community at large.

From 1988 infertile couples in New South Wales and north east Victoria were able to have successful infertility treatment at the Albury clinic. A growing number of couples in de facto relationships started to travel from Melbourne to Albury so that they could use their own gametes to bring about fertilization and development of their embryos in the Albury laboratory, a procedure which was against the law in Victoria. This law, the Infertility Medical Procedures of 1984 followed the report of the Waller Committee to the Victorian Government. That Committee, under the chairmanship of Professor Louis Waller, was asked to advise the Victorian Government of the need for legislation to regulate and control IVF technology and other infertility treatments. At the same time in New South Wales Mr Russell Scott QC, Chair of the New South Wales Law Reform Commission, was invited to advise the New South Wales government on the same matters. In Victoria the Waller Committee opted for regulation and control and in New South Wales Scott's committee advised the government that this was, and should remain, a matter between doctors and their patients.

It was not the intention of the Waller Committee to ban de facto couples from having access to IVF technology, but the then Labour Government required support from the National Party in the Upper House to allow the bill to pass and apparently in a 2am deal the bill passed the Upper House with the amendment that only lawfully married couples could use this technology.

My involvement with the Albury clinic led to many of the de facto couples being referred to me for assessment and pre-treatment prior to their crossing the Murray to have treatment in Albury using their own sperm and eggs to develop their embryos to be transferred to the woman's uterus. This caravan route to Albury continued until 1996 when the Victorian government changed the definition of marriage to include de facto couples. In the years 1995 and 1996 I had been summonsed to appear at the Human Rights and Equal Opportunities Tribunal in Melbourne to explain why I was discriminating against couples on the basis of their marital status and refusing to treat them in Melbourne. My obligations under the Victoria Act were insufficient to prevent the Commission awarding damages to some couples who had been forced to travel to New South Wales for their infertility treatment.

In 1995 the Infertility Treatment Act replaced the Infertility Medical Procedures Act of 1984. The first the infertility community in Victoria knew of the contents of this new Act was during Minister Tehan's second reading speech. The new Act continued to make it an offence to treat de facto couples let alone single women or lesbian couples, and continued to have the same imprisonment sanction against doctors who broke sections of the Act. My colleague, Dr Mac Talbot of Monash IVF, has calculated there are more than 60 things that he could do in infertility treatment, which would put him at risk of imprisonment.

After the adverse findings against me and the Royal Women's Hospital, the government changed the definition of marriage. They maintain that they did so without any influence being brought to bare by the publicity campaign which I had orchestrated or the Commissions findings.

For some years single women and lesbian couples had been flying to Sydney for donor insemination treatment.

Doctor Giltrap and I in Albury had made a number of submissions to our Institutional Ethics Committee requesting permission to offer donor insemination treatment to single women in Albury. In 1997, sensing a change in the social climate, the Ethics Committee in Albury agreed to the clinic offering treatment to single women.

Since 1997 single women or women in lesbian relationships have been having donor insemination at the Albury clinic. Most have found this to be easier than spending days on end in Sydney waiting for ovulation to occur. My association between the Albury clinic and my practice in Melbourne has continued despite my relinquishing a financial interest in that clinic in 1998. Since 1997 women have consulted me in Melbourne so that I might detect their most fertile time and advise them when to travel to Albury for insemination to be performed. This minimizes their trip to one day and usually gives them at least two day's notice as to when they will need to travel.

Having been identified as the person to be sued by the de facto, I was taken before the Commission again by a number of single women to explain why I was not prepared to treat them in Melbourne. The Commission on this occasion accepted that I was not the final gatekeeper to the release of donor sperm at the Royal Women's Hospital, exonerated me but fined the Women's Hospital. The Women's defense was that it was obeying Victorian Law, but this was no excuse.

It became clear that there was tension between the State Law which made it an offence for me or any other Victorian Infertility Specialist to treat a single woman with donor sperm at Victorian Hospitals. While at the same time there was a Federal jurisdiction which was keen to point out that such a refusal was in breach of the sexual discrimination legislation. With the increasing number of single women visiting the Albury Clinic I decided it was only a matter before there were further cases for me to answer in the commission which, whether or not I won, would be expensive in my time and in legal costs.

I decided to seek guidance from the Federal Court as to which law I should obey. Unfortunately I could not call up a justice of the court and discuss this over the telephone, nor could a submission be made to the court. Under our legal system it is essential that there is an aggrieved person. As such, I told every single woman requesting donor insemination that I saw that it was an offence for me to offer that treatment in Victoria. I advised them that they were able to seek legal advice should they feel aggrieved by this. All were aggrieved but none sought legal until one woman felt so offended by what I had told her that she agreed to be a party to the case which I ran in the Federal Court.

For the years in which I have seen increasing numbers of single women or lesbian couples, I have been struck by my inability to tell them apart from single women coming in for the day without their husbands. Their desires are the same, their parenting urges are the same. They react in the same way to disappointment and show the same joy at news of success.

All women having donor insemination at the Albury clinic had seen an experienced donor insemination infertility counsellor, Ms Jenny Blood – senior counsellor at Melbourne IVF ART centre at the Royal Women's Hospital. These women had the same assessment, the same testing, the same counseling as they would have had had they been Victoria having donor insemination treatment. With treatment in Victoria the woman and any resulting child would be placed on the Donor Register held by the Victorian Government. This would have allowed the child at the age of 18 to discover the identity of the sperm donor. Most people, who have participated in the debate about donor insemination for single women, have agreed that in this circumstance in particular it is important that the child should have information available about his or her donor origins. Heterosexual couples married or in a de facto relationship having donor insemination treatment in Victoria because the man has no sperm or because they wish to avoid a genetic condition, have this treatment in the knowledge that the child will be able to identify the biological donor. This is popular with some couples

and unpopular with others. It is suspected that many couples will avoid telling the child of their donor insemination origins to avoid the child seeking this information. The outcome of this major social experiment imposed by the Infertility Treatment Act will be clear in another 20 years or so. In the meantime it seems contrary that those many of those who don't want to know about the donor origins may well have this forced upon them but those who would value having information about the donor, are forced to go interstate to a clinic where no such information exists nor will ever exist.

On discussing donor matters with single women or lesbian couples in my office in Melbourne, most of them want to have information about the donor. That is why more and more are purchasing sperm from a United States sperm bank where part of the condition of sale is that the donor will be identifiable to their child when the child is 16 or 18.

These women want to do the right thing by their children. They also want to do the right thing by the biological donor. Those who have heterosexual sex find the idea of tricking a man into being an unwilling and unwitting father to be repugnant. That is why they take the difficult course of monthly trips to New South Wales.

In 1988 I set up a clinic in Albury to make reproductive medicine treatment easier for couples in regional Victoria. For years couples had been traveling for 3 – 5 hours to spend 15 – 30 minutes with me in Melbourne. It was only after I realized the tedium of the train trip and the waiting around for the return train, that I started to consult in Albury which in turn led to the setting up of the clinic. I continue to find it appalling that women from Victoria are forced to travel 3 – 4 hours so that they may have safe, appropriate medical treatment in a clinic which was set up for infertile couples from the country and just by chance happened to be on the reproductively sane side of the River Murray.