

APPENDIX 6



NEWS RELEASE

— ATTORNEY-GENERAL —

— THE HON. DARYL WILLIAMS AM QC MP —

17 August 2000

SEX DISCRIMINATION AMENDMENT BILL (NO 1) 2000

Today I will introduce a Bill to the Parliament which will remedy a problem with the operation of the Sex Discrimination Act identified by the Federal Court in its decision in *McBain v the State of Victoria*.

The court held that Victorian legislation restricting access to assisted reproductive technology (ART) treatment to women who were married and living with their husband on a genuine domestic basis, or living with a man in a de facto relationship, was inconsistent with the Commonwealth Sex Discrimination Act and, as a consequence, was invalid under Section 109 of the Constitution.

It is the Government's view that it was not contemplated that the Sex Discrimination Act would prevent the States legislating to restrict access to ART procedures to women who are married or living with a man in a de facto relationship.

The Sex Discrimination Amendment Bill (No 1) 2000 will amend the Sex Discrimination Act to allow States and Territories to legislate to restrict access to any form of ART services on the basis of marital status.

The Commonwealth has limited constitutional power to legislate in this field. It is consistent with the States' and Territories' responsibilities in the provision of health and medical care and treatment that they be permitted to legislate in the area of ART as they consider appropriate.

This legislation is not intended to reflect on the efforts of the many single parents in Australia who do an excellent job raising children under difficult circumstances. The issue primarily involves the right of a child within our society to have the reasonable expectation, other things being equal, of the care and affection of both a mother and a father.

The amendment will apply to State or Territory legislation dealing with access to ART services. ART services are defined to mean technology that is used to assist in non-coital fertilisation. The main forms of ART include in vitro fertilisation (IVF), artificial insemination, gamete and zygote transfer and embryo transfer.

The Bill will commence upon Royal Assent. When the Bill commences, any provisions of the Victorian and South Australian Acts that have previously been ruled inconsistent with the Sex Discrimination Act will revive. The amendment will also ensure the validity of the existing Western Australian legislation.

If a State or Territory chooses not to legislate in this area, the Sex Discrimination Act will continue to apply.

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