

Submission by  
**AUSTRALIAN REPRODUCTIVE HEALTH ALLIANCE Inc.**  
dated 13 November 2000 to  
**Senate Legal and Constitutional Legislation Committee**  
re  
***SEX DISCRIMINATION AMENDMENT BILL (No. 1) 2000***

### **About ARHA**

The Australian Reproductive Health Alliance Inc. (ARHA) is a non-government organisation committed to (amongst other things) –

- gender equity
- choice for men and women in areas affecting their reproductive health.

### **Background**

The *Sex Discrimination Amendment Bill (No. 1) 2000* (the Bill) would, if passed, allow States and Territories to pass (or enforce) laws which discriminate on the basis of marital status between those seeking access to Assisted Reproductive Technology (ART).

The Explanatory Memorandum describes ART as “the full range of technology available to assist in the achievement of fertilisation by non-coital means”, including (but not limited to) –

- in-vitro fertilisation (IVF)
- artificial insemination
- gamete, zygote and embryo transfers.

According to the Explanatory Memorandum, “Marital status” is defined (in the *Sex Discrimination Act 1984*, which the Bill seeks to amend) as the status or condition of being single, married, married but living separately and apart from one’s spouse, divorced, widowed or the de facto spouse of another person.

ARHA notes that in the Second Reading Speech for the Bill, the Attorney-General states –

- “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 in de facto relationships.”
- “This 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.”

- “Artificial insemination is by far the most commonly used procedure by single and lesbian women to achieve pregnancy in the absence of female infertility. IVF is generally only utilised by single and lesbian women if pregnancy has not been able to be achieved through artificial insemination.”
- “The government is acting to ensure that states and territories have the power to enact legislation to limit the availability of assisted reproductive technologies to married women and those living in a de facto relationship with a male partner. In doing so the government is doing its part to protect the rights of children to have the care and protection, other things being equal, of both their mother and father.”

### **What children need**

ARHA supports, as a societal goal, the need to do everything possible to ensure that children – all children - have the benefit of a loving, supportive family environment in which they can develop with confidence, affection, self-esteem, tolerance, compassion, wisdom and understanding.

Such conditions maximise the child’s prospects for developing into a self-assured, emotionally healthy and socially competent adult, eager and willing to contribute to their own happiness and to society at large.

ARHA acknowledges the benefits for children (male and female) of having, among their close circle of trusted adults, both male and female role models. ARHA believes that children benefit from being able to form relationships with a variety of different caring adults, including adults with differing sexual orientations and different outlooks on life. This extended circle of caring adults should ideally go well beyond the traditional nuclear family of ‘mother’ and ‘father’.

Whether a child has two ‘parents’ or one (of either gender), it needs that wider circle. When a child has – for whatever reason (death, divorce, separation, choosing to be single) – only one ‘parent’, the need for that wider circle is even greater. Many single parents (gay and straight) and many gay same-sex couples recognise this, and go out of their way to give their child this opportunity of an extended circle of caring adults of both genders.

ARHA’s point is that whether a child has the benefit of both male and female role models who are caring, supportive and loving of the child is not primarily determined by the marital status of the child’s parent(s).

It is determined by the quality of care and thoughtfulness of the parent(s), which is a factor that governments can encourage but cannot legislate for.

The rationale implicit in the Attorney-General’s Second Reading speech is thus fundamentally flawed. Denying ART to women without a male partner will not give children improved chances for access to caring and supportive male and female role models. In the absence of that benefit, there is no justification for watering down the application of the *Sex Discrimination Act 1984*.

## **Costs and numbers**

ARHA notes that nowhere in the Second Reading Speech does the Attorney-General argue that one benefit of the Bill would be to significantly reduce the number of costly ART procedures – such as IVF - performed each year.

Presumably this is because the Attorney-General does not anticipate that the Bill, if passed, would have any significant effect in reducing future costs to taxpayers.

It may also indicate that Government has no evidence that, if the Bill were not passed, there would be any substantial rise in the number of additional children born to women without a male partner. If that is the case, again the logic behind the Bill is flawed.

## **Conclusion**

There is much that governments can do to maximise the chances for children to have happy, healthy, secure, loving and supportive environments in which to grow up.

However ARHA is unpersuaded that passage of this Bill would improve those chances.

ARHA is concerned that the Government is contemplating erosion of such fundamental rights as the right of men and women to be free from discrimination on the basis of marital status in order to procure a benefit which seems to have little or no causal nexus with the Bill.

If the Government's overriding concern is indeed the welfare of children, it would be more constructive to commission and fund an ongoing public awareness campaign to encourage ALL prospective parents – whether two-parent or one-parent, same sex or mixed sex couples, straight or gay - to understand what they can do to help their children develop into happy, emotionally secure, tolerant and loving adults.