

# REDEFINING FATHERHOOD: LOWERING THE TEMPERATURE OF DEBATES ABOUT THE USE OF DONOR SPERM BY SINGLE WOMEN AND LESBIANS

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## Abstract

Single Australian woman Leesa Meldrum's quest for access to infertility treatment inspired both moral panic, and the continued pursuit by the Federal Government of amendments to the *Sex Discrimination Act 1984* (Cth) that would make discrimination against women like her legal. While supportive of the Australian High Court's refusal in 2002 to overturn the state court's judgement that the marriage requirement of the Victorian *Infertility Treatment Act 1995* was discriminatory, this article argues neither the moral nor legal case for the equality of all women before the law. Rather, it contends that the source of the moral panic surrounding the Meldrum case can be found in the development of the DNA paternity test and resulting legal changes to the definition of fatherhood, as well as economic and social changes that have led some men to the mistaken conclusions that women are sidelining them in the important business of family formation. Lowering the temperature of debates surrounding inevitable future bids by single women and lesbians to access infertility treatment, including donor sperm, may not only require social and economic changes, but the legal redefinition of fatherhood as a social, rather than biological, relationship.

## Introduction

On July 28 2000 Leesa Meldrum, a single infertile Australian woman seeking access to infertility treatment in the state of Victoria was vindicated in the Victorian Supreme Court. *McBain v State of Victoria & Ors* rendered inoperative the marriage/de facto marriage requirement of the Victorian *Infertility Treatment Act 1995* because of its inconsistency with (and the prevailing authority of) section 22 of the *Sex Discrimination Act 1984* (Cth). The media reported Meldrum's joy at the decision, and her determination to immediately commence treatment.

Political and media reaction to the Meldrum decision was swift and fierce. Newspaper editorials pontificated on the adverse implications of such rulings for the “rights” of children “to know [their] true biological identity.”<sup>1</sup> The Prime Minister John Howard sought (though ultimately failed) to amend Federal anti-discrimination legislation in order to allow discriminatory state laws to stand because he believed children had a “fundamental right...all things being equal, of the care and affection of both a mother and a father.”<sup>2</sup> The former Deputy Prime Minister Tim Fisher claimed the court’s grant of permission to lesbians to “create...designer children who from day one are locked into a fatherless upbringing” was a denial of innocent children’s rights.<sup>3</sup> The Catholic Church took to the airwaves and later, with a legal leg-up from the Howard government, to the High Court to press its view that Meldrum’s victory should be overturned to protect the rights of the family, and future children “to know and be cared for by both parents.”<sup>4</sup>

At the same time, the opinion pages of the newspapers were flooded with men deploring the court’s decision as an extension of society’s mistaken view that, in the words of one columnist, “children don’t need fathers.”<sup>5</sup> These views, often coming from Father’s Rights activists or sympathisers, could have been expected. There had been growing alarm in such circles about rising rates of “fatherlessness” and, amongst some, the condemnation of the use of donor sperm to create children as socially sanctioned male irresponsibility.<sup>6</sup> As well, Australian Fathers’ Rights groups have long been uniformly hostile to female-headed and lesbian households because they lack “an appropriate paternal masculinity.”<sup>7</sup>

## **Moral Panic**

But while the moral panic in the Meldrum case progressed in the language of children's entitlements and was, by and large, responded to by feminists and equal opportunity advocates with claims about women's rights,<sup>8</sup> it was hard to escape the feeling that it was really the interests of men that were driving the debate. Meldrum's story seemed to have given shape – and a vehicle to voice – male fears that in the important business of forming families and raising children, they were being sidelined. That, to put it another way, in the often zero-sum game of reproductive politics, women were increasingly holding all the cards and were turning men into little more than means to their mercenary reproductive ends: namely, walking wallets or one-stop sperm shops.

There are a number of facts that support such an interpretation. The first is that, if current trends are any indicator, only a tiny number of Australian women are likely to pursue single motherhood or motherhood in the context of a lesbian relationship.<sup>9</sup> While over one in four children in Australia is now born to unwed parents, roughly half of these children's parents are part of a de facto couple that presumably at least intends to raise the child together.<sup>10</sup> More importantly, of the 75,719 ex-nuptial births in Australia in 2001, paternity was acknowledged in 96 per cent of cases. Only four per cent of Australian children, in other words, have the "father" space on their birth certificate left blank.<sup>11</sup> Further, only 132,000 women between the ages of 16 and 59 even identify as lesbian or bisexual, and just less than half of these (46.9%) are in a

regular relationship.<sup>12</sup> Given that it is from this group that nearly all lesbians who seek donor sperm are likely to come, and less than half of such women (41%) even intend to parent,<sup>13</sup> the number of lesbians who are likely to seek donor sperm to become pregnant is infinitesimal. Indeed, in the wake of the Meldrum decision, the media reported that infertility treatment clinics in Victoria were receiving only four inquiries per month from single or lesbian women seeking treatment.<sup>14</sup> Such figures suggest that something else was behind the fact and size of the moral panic surrounding the Meldrum case.

The other piece of evidence in support of speculation that the driver for the moral panic surrounding the Meldrum case was men's – not children's – interests comes from the relatively muted or even supportive public response surrounding high profile attempts by widows to use their dead husbands' sperm to become pregnant. Such "posthumous conception" cases, all of which took place during roughly the same time period as the Meldrum one, include the "AB" and Simone Baker cases in Australia and the case of Diane Blood in the UK. While such stories certainly attracted public comment, as well as intense legal and ethical debate, breast-beating about the rights of children to know and be cared for by their fathers were conspicuously absent.<sup>15</sup> Indeed, what little dissent there was surrounding these women's quests focused largely on the right of the dead man to give effective consent to all possible post-mortem uses of his sperm, something which also motivated the somewhat contradictory decision of the Victorian government to amend the Infertility Treatment Act in 2001 to remove the prohibition on the implanting into a widow of an embryo created with her dead husband's sperm,

but to retain the ban on posthumous use of that sperm, even if it had been stored with his consent. Fatherless children didn't rate a mention.<sup>16</sup> Yet arguably the only clear difference between such widows and women like Leesa Meldrum is that they had been married, had intended to have children within a traditional family context, and saw such conceptions as an expression of love for and fidelity to their deceased partners.<sup>17</sup> It was death, in other words, not these "good wives," that had sidelined such men from full participation in the business of forming and raising a family.

## **Explaining Male Anxieties**

### *Changes to Child Support Laws*

So if male anxiety about their place in the family is the true source of the moral panic surrounding the Meldrum case, what is the source of such male anxieties? To understand this, we must hark back over a decade to the introduction in Australia of the *Child Support (Assessment) Act 1989*. The Act effectively transformed the age-old definition of a father as the man married to a child's biological mother, to the man whose sperm contributed to the child's creation. Designed to compel men to take fiscal responsibility for the fruit of their loins, the new law was lauded by politicians as a boon to both women and children.

Overnight, the world changed for men. From a situation in which they were largely in control of their relationships with women (as most women lacked the financial capacity to leave unhappy or abusive marriages) and whether and

how much they might support the children of those relationships in the event of separation (the majority didn't), women began initiating the majority of marital break-ups while government agencies used set formulas to assign male child support liabilities that could be automatically deducted from his salary through the tax system.

According to one Australian family law specialist, the new child support regime ended the happy-go-lucky days when men could boast – as some did - that they didn't even know how many children they had.<sup>18</sup> Now, the onus was on men whom women named as the biological fathers of their children to either disprove their paternity, or pay up.

Australian courts have been implacable in enforcing the new biological definition of fatherhood. In the 1996 case of *B v J*, the judge invalidated a contract between the mother and the biological father that released him from financial responsibility for the child, citing the risk to taxpayer of being left with the bill if parents were free to contract such fiscal responsibility away<sup>19</sup>. In the 2002 case of *Re Patrick*, a man the mother considered a “known donor” was granted contact with the child on the grounds of his “genuine and profound paternal love” for a child bearing his “genetic blueprint”<sup>20</sup> while in 2003 another “known donor” was allocated fiscal responsibility for his genetic progeny conceived through sexual intercourse with one member of the lesbian couple parenting the child.<sup>21</sup> Outside of Australia, an unshakeable commitment to the “biological father pays” formula has seen the man's financial liability upheld even when he had a mental disability, was

unconscious, or even underage – and thus a victim of statutory rape - at the time of sexual intercourse.<sup>22</sup> The only exception to this rule has been where married or de facto couples attempt pregnancies through artificial insemination with anonymous sperm. In Australia, State and Federal legislation enacted in the mid-1980s exempts such biological fathers from both rights and obligations to any resulting children.<sup>23</sup>

Lurking behind such a profound recasting of the definition of fatherhood and consequent paternal obligation is the DNA paternity test. With it, the ancient wisdom summed up pithily by Lord Kilbrandon that “maternity is a matter of fact, paternity one of mere inference” has been stood on its head. Where once grudging assumptions of maternal fidelity led to the assignment of paternal rights and obligations to the mother’s husband, DNA tests allow them to be delegated on highly accurate evidence of biological paternity. Where once male consent was the ultimate arbiter of whether a man accepted the title – and corresponding responsibilities – of fatherhood, now an immutable biological fact was deemed to hold sway.

According to David Blankenhorn, author of *Fatherless America: Confronting our most urgent social problem*, the industrial revolution’s movement of male industry outside the home began the decline in paternal power over the family, as well as a powerful and clearly defined role within it. Blankenhorn argues that when the post-industrial reconstruction of the economy began, and women began streaming into the workforce in the 1970s and – with the help of government pensions – away from unhappy marriages, what was left

of existing paternal roles, and related notions of masculinity, began their final fade. What such an analysis suggests is that, as men like Blankenhorn see it, changes to legal definitions of paternity have saddled men with non-consensual responsibilities to children at precisely the time when male power with regards to the family is at an historic low.<sup>24</sup>

There is little doubt that the last four decades of social, political and economic changes have, in relative terms, been more favourable to women than men. Contraception and abortion have given women historically unprecedented sexual freedom, while for first time since universities opened their doors, women make up roughly half of student bodies. The shift from an industrial to a post-industrial economy has seen a decline in full-time “blue collar” jobs – traditionally occupied by men – while women have flooded into the growing number of part-time positions in the service industry. While Morton points out that expanded employment opportunities for women do not mean their access to “power, status and influence in the ‘commanding heights’ of the economy have increased,” he does suggest that women’s life choices – including economic ones that lessen their dependence on men – have been expanding at precisely the same time as men’s have been contracting. Morton argues that it is this perception of choice that is both giving women greater bargaining power in their relationship with men, and making some men feel deeply threatened. In particular, it is has led some men to wonder what, if they are not needed to win the bread, they must do to remain relevant to family life. Do they need to become better lovers? Communicators? Conversationalists? Participate more in child-care and homemaking?<sup>25</sup>



At the bottom end of town, men's sense that their loss has been women's gain is even more acute. Research suggests that low-income women are, unlike their better-paid sisters, still willing to embark on the traditional breadwinner exchange - but not with low-paid men in insecure jobs or those with no paid employment at all. What this means is that poorly paid or unemployed men are the least likely of all men to find a partner and, when they do, the most likely to separate and to fail to re-partner.<sup>26</sup> Compared to the predictability of a sole parent pension, in other words, women in the market for a breadwinning partner may see an unemployed or low paid man as little more than another pair of dirty socks to pick up around the house.

#### *Paternity Fraud*

At the same time that men are grappling with the decline of their power over the family, and uncertainty over their role in it, DNA paternity tests midwifed the first cases of "paternity fraud" into public consciousness. The significant amount of attention both the media and Father's Rights groups give to such cases suggest they are seen as pivotal illustrations of the fate of men in the contemporary family: not just rejected but held up to ridicule by women who want their money, but not their contribution to the family as either husband, social parent or even biological father.

While reliable estimates are hard to find, there seems to be general agreement that approximately 10 per cent of children have not been sired by the man they believe to be their biological father.<sup>27</sup> However, Father's Rights

groups and DNA testing companies often quote figures that are much higher, as well as indignantly lionising the male “victims” of “deceptive” women who falsely led them to believe they were the father of “another man’s” child, and who fought back in the courts not just for relief from maintenance payments to support such children – who they may have raised from birth – but for refunds for amounts already paid.<sup>28</sup> For Australian men whose marriages disintegrated after October 1989 when the new child support laws came into effect, there is a relatively straightforward procedure for them to present “negative” paternity test results as grounds for the discontinuance of maintenance payments, although the courts have discretion to reject such applications.<sup>29</sup> In addition, men can apply to the courts for refunds of amounts already paid and, if such amounts are ordered, the mother alone is liable for them.<sup>30</sup> Indeed, tort law has even been used successfully to compensate paternity fraud “victims” separated prior to the new laws came into effect. In 2002, Melbourne man Liam Magill’s ex-wife was ordered to pay him \$70,000 for general damages and the economic loss he suffered as a consequence of her false declaration that he was, as one of the “quality” newspapers phrased it, the father of “her lover’s children.”<sup>31</sup>

Even the most ardent Father’s Rights supporters concede that nearly all attempts by father’s to disavow paternity or to claim refunds or compensation terminate the relationship between him and the children he once called “his.”<sup>32</sup> However, most defend the man’s decision to pursue a just outcome, allocating most of the blame for the children’s distress and embarrassment on “mothers who cheat and lie.”<sup>33</sup> When such wronged men are invited to express regret

about the loss of their relationship with their child, only some do, and then rarely convincingly. For instance, reporter Brooks Egerton asked Morgan Wise, who divorced his wife after discovering – through testing related to his son’s Cystic Fibrosis – that three of his four children were not really “his,” whether he would give up his very public legal battle to disown them if it meant he’d never see them again. “So be it,” was his unhesitating response.<sup>34</sup>

### **Defining Fatherhood in Biological Terms: Have Men’s Losses Been Women’s Gains?**

Children are not the only ones to have lost out under the new system. While politicians justified the legal reassignment of child maintenance obligations to the biological father on the grounds that both women and children would benefit, Australian courts have not been alone in making the protection of the taxpayer from the spiralling costs of single parent pensions a top priority.<sup>35</sup>

The *Child Support (Assessment) Act* compels women on benefits to all reasonable action to obtain child support or lose their pensions, while benefits are reduced as household income increases.<sup>36</sup> However, Australian research, as well as that conducted in the UK (where the system is roughly similar), suggests that the lion’s share of savings from the new arrangements have gone to government; with sole supporting parents (mostly mothers) and their children obtaining relatively little.<sup>37</sup>

The primary reason for this is the difficulty even the most determined of governments have squeezing blood from stones, and the fact that the vast majority of men chased for child support are on very low incomes, or pensioners themselves. One Australian study found that in the wake of child

support changes, only 22 per cent of fathers were significantly contributing to the upkeep of their children because, in the main, the rest weren't in a financial position to do so.<sup>38</sup> The UK government estimated that of the 530 million pounds it expected to save on single-parent pensions, only about 50 million would be pocketed by sole resident parents.<sup>39</sup>

The new system has also cost women in other ways. The decision of the courts to override contracts women have signed - in an informed and voluntary way - to exempt men from fiscal responsibility for the children born of their sperm, and the capacity of Child Support agencies to go after the biological father for support regardless of the mother's wishes, not only undermines women's moral and legal agency but compels those on lower incomes to remain economically dependant on men from whom they may, for good reason, wish to make a clean break. Finally, applying the "you play, you pay" mentality to men is eerily reminiscent of the sentiment social conservatives used with great success to deny women access to contraception and abortion: in essence compelling them to accept children as appropriate "punishment" for sexual activity.

### **Looking Towards the Future**

Australian single women and lesbians will almost certainly mount further legal challenges to laws, like the Victorian *Infertility Treatment Act*, that discriminate against them because of their marital status.<sup>40</sup> While in the wake of Meldrum's victory the paragraph referring to marriage status was dropped from the Act, the retention of "clinical infertility" as a requirement for access continues to

mean that socially infertile women (namely, those lacking a man with whom they fail to conceive despite regular heterosexual sex) continue to be denied treatment.<sup>41</sup> It is imperative to consider how, in the wake of such a challenge, another Meldrum-like moral panic, and possibly yet another attempt<sup>42</sup> by the Federal government to undermine the potency of the *Sex Discrimination Act*, can be avoided.

If the real source of such a panic about cases like Meldrum's is male anxieties about being sidelined in the important work of forming families and raising children, then feminist insistence on the legal and moral rectitude of equality for women is unlikely to answer it. This is not because principles of non-discrimination are not defensible, or even correct, on both legal and moral grounds, nor that they aren't an appropriate counter to the surface concerns expressed in such debates about the entitlements of children. Rather, it is simply because they do not go to the real source of male unease about the use of donor sperm by single women and lesbians to create female headed – or socially fatherless – households.

#### *Reality Check*

A more effective response may be the provision of a long-overdue "reality check" about the current state of women's desires and intentions when it comes to the role of men in the formation of families and the raising of children. Leesa Meldrum repeatedly said it during media coverage of her ordeal, and both large-scale and small-sample research show she is far from alone: the vast majority of Australian women do not wish to conceive, give birth to or raise a child on their own. Rather they want and intend to establish

a stable, monogamous partnership with a man and to have children with him within its confines.<sup>43</sup>

Throughout her time in the press spotlight, Meldrum insisted that while she believed she and other unmarried women had a right to access infertility treatment, her dream had always been to have a child with her husband in a picket-fenced house.<sup>44</sup> The 39,000 strong Australian Women's Health Study conducted in 1996 found that 96 per cent of Australian women aged between 18 and 22 years aspired to be in a stable relationship by the time they were 35, and 92% also wanted at least one child.<sup>45</sup> Both of the women in Cannold's study of fertile childless women who had considered, or had attempted, pregnancy using anonymous donor sperm were adamant that this decision had been a last resort after their failure to find a man able and willing to partner and raise a child with them."<sup>46</sup>

This is not to say that women's newfound economic independence has not caused tensions between the sexes: ones related to better-off women's capacity to hold out for a new kind of Mr Right or – if he fails to show – to have children on their own and pension-dependant women's capacity to reject breadwinning partnership propositions from men who lack paid employment. But social researchers suggest that time and the successful working out by men of their post-breadwinning roles in the family will do wonders for the former concern, while the latter one can be addressed by an increase in employment opportunities and wage levels at the less-skilled end of the job market.<sup>47</sup>

### *Redefining Fatherhood as a Social Relationship*

There may also be a need to re-examine the legal changes enacted by self-serving governments that have defined fatherhood as a biological rather than a social relationship. One solution may be to assign social and financial obligations for children to men based on the commitment they make or demonstrate to parenting a child. When a man signs a child's birth certificate, adoption form, or simply – over a sustained period of time – assumes the work of parenting, this could be what is legally required to make him Dad. Making fatherhood, in essence, a matter of one-time only, non-rescindable consent may have a number of advantages. The most obvious is to children, whom will no longer be faced with losing their father's financial support – and love – when he discovers they are “biological strangers.”<sup>48</sup> Child support agencies would assign maintenance obligations to men based on the man's consent – in writing or through action – to social fathering and the responsibilities associated with this commitment would not be open to disruption based on new biological evidence coming to light. Because biological paternity no longer has legal bearing on a man's parental responsibilities, there would hopefully be less business going the way of the now-thriving DNA paternity testing industry (One high profile “paternity fraud” father, Carnell Smith, apparently got the idea of testing from a billboard hanging near the court where he was contesting his wife's request for increased child support payments.<sup>49</sup>) It might also be predicted that the elimination of “unwanted” fatherhood may benefit children, given the negative

outcomes that have so conclusively been shown to affect children born to mothers who don't want them.<sup>50</sup>

Women as a group may also gain indirectly from the abolition of a system that reinvigorates outdated notions of “paying” for the “sin” of sexual activity with parenthood. Legal support for the long-held feminist assertion that what really makes a man a father is not his “being there” at the time of conception but instead for the long but meaningful haul of supporting and guiding a child to adulthood might also benefit women and children. For without such an alteration in what it means to be a father, the social changes necessary for men and women to achieve equality in the workplace, and balance between their employment and childcare responsibilities, are likely to remain out of reach.

There may also be disadvantages to such a change. Arguably, the meaning attached to a man's signature on a birth certificate would be altered, making the document less a statement of genetic fact and more one of social intent. However, this process is already underway in Australia, as currently children born of anonymous sperm donation to married women have the mother's husband noted as the father on their birth certificate. Indeed, given the concern children born from anonymous sperm donation have expressed about the secrecy surrounding their conception, a changed approach to child maintenance could provide a long overdue opportunity to alter current birth certificates so more information could be included on them. Places where



information could be recorded about gestational mothers, genetic mothers and fathers, as well as those committing to social parenting would be a start.

Some may also worry that making fatherhood a matter of one-time only non-rescindable consent would reduce the number of children with an acknowledged father, and thus the number of women able to claim child maintenance because – at the risk of stating the obvious – while all children have a biological father, not all of them have a social one. This could increase the burden taxpayers bear in supporting such socially fatherless families: the outcome politicians and judges have been so eager to avoid. Further, for men who are only willing to commit to parenting children who are biologically “theirs,” it could lead to an increase in post-birth DNA testing and the consequent elimination of a small percentage of men from the social fathering stakes who, had they continued to believe the child was “theirs,” might have stuck around.

There are a number of things to note about these possibilities. Firstly, the number of children born in Australia each year with out an identified father is low.<sup>51</sup> Because little is known about men’s reasons for accepting paternity, it is unclear that less would do so if they understood that what they were doing was giving a one-time only non-rescindable consent to social fathering. However, there is no reason to believe this would necessarily be the case. Further, anecdotal evidence suggests that a rise in post-birth DNA testing is unlikely, as after the birth of a baby is the last moment where most men want to potentially disrupt their relationship with their partner and the new child by

looking for DNA skeletons in the closet.<sup>52</sup> Indeed, it may even be anticipated that men's interest in discovering whether their sperm contributed to a child they are raising will wane, not only because such a discovery no longer has practical implications, but because of a decline in the social meaning and value placed on biological fatherhood. Further, if at the end of the day the discovery of his partner's infidelity or his biological unrelatedness to her child – or both – is enough to deter a man from maintaining his financial and emotional commitment to a child, it may be better that he never accepts it in the first place: provided the government fulfils its obligation to step into the monetary gap caused by his absence.

Finally, objections might be raised that making fatherhood, but not motherhood, a matter of limited consent would create a situation of inequity between the sexes that disadvantages women. Arguably, it is men's different relationship with pregnancy, birth and breastfeeding that is at the heart of the different social commitment mothers and fathers have historically made to children. Unlike women, for instance men can be the biological fathers of a child they don't even know exists. But whatever the cause of such differences, it has been the long history of male irresponsibility towards children that are biologically theirs and/or whom they have parented prior to marital separation that are behind legal efforts to define and enforce such obligations: a social problem without parallel in the case of mothers.<sup>53</sup> However, should women wish to legally redefine motherhood, as well as fatherhood, as a matter of one-time only non-rescindable consent, there seems little reason to object to such a change. In the rare situation where neither the biological mother nor

father is willing to commit at the time of a child's birth to a social parenting role, as is the case currently, adoption can be arranged.

Of course, changing the way fatherhood is defined will not alleviate all the difficulties associated with current management of child support obligations: like the way the current system delivers relatively little to resident parents; compels women on low incomes to remain financially dependant on men from whom they may desire a clean break; and the inability of informed, consenting men and women to make legally valid contracts that rid them of parental obligations. But an emphasis on what men commit to do –or do – when it comes to children, rather than whether half their biological material went into creating them, could be the start of making things better for particular children, women and men, and these groups more generally.

## **Conclusion**

The moral panic surrounding the Meldrum case led to a slight reduction in the discriminatory reach of the Victorian *Infertility Treatment Act*, but also incited the Federal government to attempt to amend – and thereby weaken - the *Sex Discrimination Act*. There will almost certainly be future cases to eliminate persistent discriminatory aspects to the law, and avoiding or reducing the level of moral panic surrounding them is vital. Decreasing male anxiety about their role in family formation may require raised awareness amongst men of what women really want when it comes to forming and raising families, continued progress by those men seeking to redefine their role in the post-breadwinner family and better employment opportunities for men still pursuing breadwinner-exchange partnerships. Legally redefining fatherhood from a

biological relationship to a matter of one-time only non-rescindable consent may also assist in lowering the temperature of debates surrounding the pursuit of single women and lesbians of their legal rights, as well as providing a range of possible benefits to men, women and children.

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<sup>1</sup> {Editor, 2000 #4}

<sup>2</sup> {Gordon, 2000 #1}

<sup>3</sup> {AAP, 2000 #5}

<sup>4</sup> {Religion Report, 2001 #82}

<sup>5</sup> {Devine, 2001 #23; See also \Grose, 2000 #2; Shanahan, 2000 #83; Bolt, 2000 #84} {Arndt, 2002 #21}

<sup>6</sup> {See, for example, \Blankenhorn, 1995 #39; Callahan, 1992 #38}

<sup>7</sup> {Kaye, 1998 #3, 29}

<sup>8</sup> {See for instance \Australian Human Rights & Equal Opportunity Commission, 2001 #52} {Walker, 2002 #47; WEL, 2001 #53}

<sup>9</sup> Both single and lesbian women who are part of couples would be affected by any legal or policy changes regarding access to donor sperm since both are considered to be unmarried. In a previous Australian case where an infertility clinic was found to have unlawfully discriminated against a partnered lesbian woman, the moral panic following the decision was astoundingly similar in content and intensity to that surrounding the Meldrum case. {See \Millbank, 1997 #30}

<sup>10</sup> {Carlton, 1997, 1999, 1999 1999}

<sup>11</sup> {Australian Bureau of Statistics, 2002 #57}

<sup>12</sup> {Smith, 2003 #58; Grulich, 2003 #59}

<sup>13</sup> {Victorian Gay and Lesbian Rights Relationships Survey Working Group, 2001 #56}

<sup>14</sup> {Arndt, 2002 #21}

<sup>15</sup> {For some examples of legal and ethical debate see \Winckel, 1998 #28; McLean, 2002 #26; Strong, 1999 #60; For a selection of media articles regarding debate in the UK and Australia see \Smith, 1998 #62; Chester, 2003 #63; Hall, 1996 #66; Cadwalladr, 1996 #67}

<sup>16</sup> In his second reading speech, health minister John Thwaites justified changes to the Act on the grounds that it would allow widows to create a sibling for an existing child that has the same father – the woman's now dead husband. {VicHansard, 2001 #86} Leaving aside the issue of whether the dead man consented to precisely this posthumous use, this still raises the obvious problem – of such great concern to the government during the Meldrum debate – of a child being created who would never know or be cared for by its father. {Marr, 2001 #22} Yet in this instance, the government seemed unconcerned.

<sup>17</sup> That Dianne Blood saw her conception of both her children through her dead husband's Stephen's sperm as the act of a good wife is made clear in her ongoing battle to get Stephen's name on her son's birth certificate to address what she sees as the incorrect impression that her children are illegitimate. {See \Booth, 2003 #65}

<sup>18</sup> {Rhoades, 2003 #68}

<sup>19</sup> In the final analysis, the man was not held fiscally responsible, but for reasons that had nothing to do with the formal agreement struck between the parties. {See \Sandor, 1997 #32}

<sup>20</sup> This case had a tragic outcome when the mother, distraught at the judge's decree that contact between her son and his biological father should be sustained and ultimately increased, murdered the little boy before taking her own life. {See \Legge, 2002 #48}

<sup>21</sup> {, 2003 #88}

<sup>22</sup> {Sheldon, 2001 #10}

<sup>23</sup> All states as well as the Commonwealth have passed laws to this effect. {See \Kovacs, 1997 #12}

<sup>24</sup> Blankenhorn, D. (1995). Fatherless America : Confronting our most urgent social problem. New York, Basic Books.



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- <sup>34</sup> Egerton, B. (1999). DNA Tests Alter Legal Landscape for Dads. The Dallas Morning News. Dallas.
- <sup>35</sup> In summarising the findings of US court decisions on matters pertaining to child support, Sheldon notes that one of the three broad characteristics of such decisions is the "considerable hostility" expressed "towards the idea of leaving the taxpayer financially liable to support illegitimate children." Sheldon, S. (2001). "'Sperm Bandits': Birth control fraud and the battle of the sexes." Legal Studies 21: 460-480.
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- <sup>39</sup> Sheldon, S. (2001). "'Sperm Bandits': Birth control fraud and the battle of the sexes." Legal Studies 21: 460-480.
- <sup>40</sup> Discrimination against single women and lesbians takes place across Australia, both in the three states where regulation exists and the remainder. Prior to the Meldrum case, women had successfully challenged restrictive legislation or practice related to their marital status in South Australia (*Pearce v South Australian Health Commission & Ors* in 1996), Queensland (*JM v QFG, GK and State of Queensland* in 1997) and Victoria (*MW & Ors v Royal Women's Hospital & Ors* in 1997). Millbank, J. (1997). "Every Sperm is Sacred?" Alternative Law Journal 22(3): 126-129.
- <sup>41</sup> Legal scholar Kristen Walker has insightfully noted the discrepancies in current notions of social infertility. She wonders, for instance, whether a woman who had a tubal ligation would be considered socially infertile or a fertile woman in a de facto or married relationship with an infertile man. Walker, K. (2002). "Should There be Limits on Who May Access Assisted Reproductive Services?" Flinders Journal of Law Reform 6(1): 67-93.
- <sup>42</sup> The Meldrum case was not the first one to inspire the Conservative Howard Government to propose amendments to the Sex Discrimination Act. In 1997, the decision by the Queensland

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Anti-Discrimination Board to award compensation to one partner of a lesbian couple for the humiliation and offence she suffered after being refused treatment at an infertility clinic saw the Federal Attorney General float the idea of amending the Sex Discrimination Act to specifically exclude unmarried women from fertility services and adoption. Millbank, J. (1997). "Every Sperm is Sacred?" Alternative Law Journal 22(3): 126-129.

<sup>43</sup> Wicks, D. and G. Mishra (1998). Young Australian Women and Their Aspirations for Work, Education and Relationships. Unemployment, Economic Promise and Political Will. E. Carson, E. Jamrozik and T. Winefield. Brisbane, Australian Academic Press, Cannold, L. (2000). Who's Crying Now? Chosen childlessness, circumstantial childlessness and the irrationality of motherhood. A study of the fertility decisions of Australian and North American women. Department of Learning and Educational Development. PhD University of Melbourne Melbourne. <http://adt1.lib.unimelb.edu.au/adt-root/public/adt-VU2001.0024/index.html> Rissel, C. E., J. Richters, et al. (2003). "Attitudes towards Sex in a Representative Sample of Adults." Australian and New Zealand Journal of Public Health 27(2): 118-123, Rissel, C. E., J. Richters, et al. (2003). "Selected Characteristics of Regular Sexual Relationships." Australian and New Zealand Journal of Public Health 27(2): 124-130.

<sup>44</sup> Blazic, M. (2000). Twenty Eight Days. Australian Story, ABC TV, Button, V. (2000). A Woman, A Dream and a Prime Minister. The Age. Melbourne: 2.

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<sup>48</sup> This was the term used by the judge to describe the relationship between a man and the teenage boy who no longer called him Dad as a consequence of a "negative" paternity test. (2002). G & N, Federal Magistrates Court of Australia. FMCAfam 281.

<sup>49</sup> Parker, K. (2001). Fathers Fight Paternity Fraud, Townhall.com Conservative Columnists. [www.townhall.com/columnists/kathleenparker/printkp20010224.shtml](http://www.townhall.com/columnists/kathleenparker/printkp20010224.shtml)

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