

# Australian government backs Church bid to overturn IVF ruling

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A few weeks ago, in the lead up to Prime Minister Howard's announcement of a November 10 election, the Australian government gave a rare legal authority to the Catholic Church to challenge a recent court ruling. Attorney-General Daryl Williams handed a legal fiat to the church's bishops to appeal to the High Court against a decision made by the Federal Court last August, outlawing a discriminatory ban on single women receiving in vitro fertilisation (IVF) treatment. The church was not even a party to the original case.

Williams admitted that it was the first time he had used the fiat—an ancient form of government legal intervention—since taking office in 1996 and that it had not been applied in Australia since 1991. Even more unusually, he allowed the church to reopen a Federal Court ruling in favour of a doctor who sued the Victorian state government over the IVF issue, despite the fact that neither party wished to contest the outcome.

His actions were so extraordinary that in a recent two-day hearing, five High Court judges openly criticised the government's conduct. Justice William Gummow declared: "The Attorney-General seems to take the view that it is part of his role to undermine the structure of the federal judiciary." Justice Mary Gaudron called the proceedings "close to abuse of process" and said, "it makes a mockery of the judicial process".

Under traditional legal principles, courts confine themselves to determining disputes between contesting parties, and the right of appeal is limited to those parties. By granting his fiat to the church, Williams has, in effect, required the High Court to become a political forum for testing the determination of the Catholic Church and the Howard government to prevent unmarried women from having access to IVF treatment. The court is expected to hand down its decision toward

the end of the year.

Dr John McBain, a Melbourne gynaecologist, brought the original case against a Victorian law that barred him from treating his patient Lisa Meldrum, a single woman. He argued successfully that the Victorian Infertility Treatment Act 1995, banning IVF treatment for women who are not married or in a de facto marriage, breached the federal Sex Discrimination Act. In August 2000, Federal Court Justice Sundberg found in favour of McBain's right to treat Meldrum, rendering the Victorian act invalid. The state Labor government decided not to appeal.

Together, the Howard government and the church are attacking the fundamental democratic right of women and their partners to obtain medical treatment and have children, regardless of marital status and sexual preference. It is blatant discrimination directed against women in *de facto* relationships, as well as single and lesbian women.

Over the past two decades, IVF treatment—a major scientific advance—has allowed thousands of couples to overcome fertility problems, including endometriosis, immunological problems and unexplained infertility. The first IVF baby was Louise Brown, born in 1978 through the pioneering work of British embryologists Bob Edwards and Patrick Steptoe. The first Australian IVF baby was born in 1980 and the first American IVF child in 1981.

An estimated 300,000 children have been born worldwide as a result of IVF techniques. Of these, 45,000 births occurred in the United States and over 30,000 in Australia. IVF has now become a standard medical procedure. To ban it for women who are not in a legally recognised heterosexual relationship amounts to a state ban on these women having children at all. And if they can be prevented from accessing IVF

treatment purely on the basis of their marital status, what is to stop them being denied access to other medical procedures in the future?

The government and the bishops expressed outrage at the court ruling. Howard gave numerous media interviews arguing that it denied “the rights of children”. Archbishop George Pell claimed that the court had opened the way “for a massive social experiment on children”. Pro-Catholic right-wing independent Senator Brian Harradine said the ruling would create a “stolen generation” of thousands of children deprived of the right of knowing both parents.

Howard’s bid to posture as a champion of children flies in the face of his government’s record of slashing child care funding, starving public hospitals of funds, undermining public education, moving to strip single mothers of social security payments and gutting other welfare programs, including public housing.

As for the church, its policy is derived from the Catholic Catechism, which damns all IVF treatment as venturing “into the realm of immorality”. The Catechism forbids sexual relations outside marriage and condemns both IVF and artificial insemination on the ground that they “infringe the child’s right to be born of a father and mother known to him and bound to each other by marriage”.

The Catechism opposes IVF even for married couples because it “entrusts the life and identity of the embryo into the power of doctors and biologists and establishes the domination of technology over the origin and destiny of the human person”. By this yardstick, Catholicism should equally condemn humidicribs for premature babies, caesarean sections, the use of anaesthetics during childbirth and antiseptics to prevent puerperal fever.

As has been the case for centuries, the church is fundamentally hostile to scientific and medical breakthroughs that permit humanity to regulate and harness nature and technology to overcome suffering, not to speak of ignorance and superstition. Moreover, it callously insists that infertile women and their partners should simply resign themselves to their childless state.

The Howard government’s first reaction to the court ruling was to amend the Sex Discrimination Act to permit state governments to ban IVF treatment for single women. Its legislation was defeated in the Senate, however, despite the public support of a

number of Labor Party senators, as well as Anglican Archbishop Harry Goodhew, who called on MPs to support the government’s measure.

In the course of the parliamentary debate, Tasmanian Independent Senator Harradine claimed that discarding embryos from unsuccessful IVF cycles constituted the murder of unborn children. Christian fundamentalists have employed the same argument in their efforts to ban stem cell research, which can cultivate cells from failed embryos. US President George W Bush recently prohibited federal funding for such research, despite strong evidence that it offers the best prospect for treatment of a wide range of diseases, from Parkinson’s disease to spinal cord injuries and cancer. Howard’s pandering to these extreme right wing positions is a key aspect of his drive for re-election.



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