

Modern families: children conceived by the use of reproductive technologies and the Commonwealth's family law power

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*'Reproductive technologies are comparable to modern developments in social lifestyle that accommodate unmarried and serial married reproduction, in that they contribute to the creation of families in which children may be genetically unrelated to their social or psychological parents.'*²

Introduction

The Commonwealth Constitution contains provisions in Sections 51(21) and 51(22), the "marriage" and the "divorce and matrimonial causes" powers, respectively, which have determined the basis of the Commonwealth's powers to legislate on family law. Because the Commonwealth's legislative capability has been constricted by narrow interpretations by the High Court of these two heads of power, historically it had been difficult to develop a broad set of national laws that might have established a comprehensive family law system, covering not only marriage but also matters such as child welfare, guardianship and adoption.

There has been a disjointed approach to family law in Australia by the division of powers between the Commonwealth and the States, whereby the latter exercise powers in matters not covered by the Commonwealth. The effect has been the legal marital status of a man or woman, or in the case of a child, the legal marital status of his/her parents, has become a critical factor in whether a particular legal problem will be covered by the Family Law Act or by State laws pertaining to guardianship, adoption and legitimacy.³

In which case, with the exception of Western Australia (WA), a person would need to determine whether he/she will need to apply to a Federal court such as the Family Court of Australia or to a State Court, eg magistrates court or the Supreme Court, to seek a remedy.⁴ These arrangements have meant

'there is, and will continue to be, a frenetic tinkering with a patchwork quilt whose overall pattern is liberally interspersed with gaps, exceptions and anomalies (considered from a family law point of view'.⁵

The consequences of the emasculated Federal family law power in the 1901 Australian Constitution becomes manifest when we apply established rules to new legal issues created

¹ **Note: This paper was written in mid 1993 and accordingly reflects the laws extant at that time.**

² B M Dickens, "Reproductive technology and the 'new' family," in *Family rights: family law and medical advance*, ed. E Sutherland and A M Smith (Edinburgh, Scotland: Edinburgh University Press, 1990), 28.

³ In WA the Family Court of Western Australia is a State court created under a WA statute (*Family Court Act 1975*), which has been vested with Federal jurisdiction. It is the only jurisdiction to have adopted this approach: I W P McCall, *Family courts - some jurisdictional questions*, Proceedings of Fifth National Family Law Conference, (South Melbourne, VIC: Business Law Education Centre, 1992).

⁴ In the case of the Supreme Court of WA, it may also exercise its equitable jurisdiction through its *parens patriae* powers to obtain jurisdiction in respect of a child. But it has been argued this prerogative power may have been removed from the Supreme Court by S. 5(4) of the *Family court Act 1975* (WA) and is now exercised by the Family Court of Western Australia: A Dickey, "The Supreme Court's *parens patriae* powers in Western Australia," *Australian Law Journal* 67 (1993): 149.

⁵ H A Finlay and R J Bailey-Harris, *Family law in Australia (4th ed)* (North Ryde, NSW: Butterworths, 1989), 61.

by changes in social values and new methods of family formation, such as blended families through remarriage, and marriage-like relationships between persons of the same gender.⁶

It is a restatement of the obvious that many of the values and attitudes towards marriage, the roles of men and women, the control of fertility, the notion of family and the welfare of children held in the late 1890s, when the Constitutional Conventions were held, and which determined the scope and form of the legislative provisions framed in the Constitution, have radically changed.⁷

Advances in modern medical technology are remarkable and far reaching.⁸ This means with the possibilities for the conception of children by the application of reproductive technologies (RT) that have developed over the past two decades, a whole host of legal conundrums have arisen.⁹

In a recent discussion on the weakness of our Constitutional framework in being able to accommodate the impact of changes brought about through medical science, Justice Michael Kirby, in referring to Windeyer J's oft-quoted statement in *Mount Isa Mines v Pusey*, that whereas the 'law, marching with medicine but in the rear and limping a little', opined Windeyer's remark 'may be too kind when applied to the response of family law to the remarkable advances of knowledge and technology affecting human sexuality and conception'.¹⁰

It is the purpose of this paper to show that there is a need for a comprehensive, coherent and uniform constitutional framework in family law that is relevant to the needs of Australians living in the 1990s, by consideration of some of the specific legal problems of individuals who are unable to procreate without the assistance of medical science. It will be suggested that as RT creates a wide spectrum of possibilities for the formation of families and relationships constitutional reform is highly desirable, as otherwise the legal system may become discredited and create two classes of children, depending on whether they fall under the scope of the *Family Law Act 1975* (Commonwealth).

This essay will briefly review the history of the Commonwealth's family law powers contained in Ss 51 (21) and 51 (22), and document some of the consequences of this

⁶ M Otlowski, "The legal status of a sexually reassigned transsexual: R v Harris and McGuiness and beyond," *Australian Law Journal* 65 (1990). This case involved a determination by the NSW Court of Criminal Appeal that a person born male who had undergone full sex reassignment surgery was for the purposes of the criminal law a female rather than a male, and therefore not capable of committing an act of indecency with another male. It is suggested that while the determination was expressly confined to the criminal law, it does illustrate the types of cross-jurisdictional problems that may arise as under the *Family Law Act 1975* (Commonwealth), such an individual would be regarded as male and therefore be incapable of entering into a legal marriage.

⁷ Until the end of the nineteenth century the term 'family' was used in England to mean all persons who lived together as part of the household, whereas subsequently the term became used in a narrow sense, referring to a husband and a wife and their natural children: A Dickey, "The notion of 'family' in law," *University of WA Law Review* 14 (1982).

⁸ M D Kirby, "Human rights - the challenge of the new technology," *Australian Law Journal* 60 (1986-87): 170.

⁹ I Davies, "Fabricated man: the dilemma posed by artificial reproductive techniques," *Northern Ireland Legal Quarterly* 35 (1984); K De Gama, "A brave new world? Rights discourse and the politics of reproductive autonomy," *Journal of Law and Society* 20 (1993); G P Smith, "Australia's frozen 'orphan' embryos: a medical, legal and ethical dilemma," *Journal of Family Law* 24 (1985-86).

¹⁰ M D Kirby, "Medical technology and new frontiers of family law," *Journal of Law, Medicine and Ethics* 14, no. 3-4 (1986): 196.

constitutional arrangement on the capacity to develop a uniform legal framework to regulate the creation of children by the application of medically assisted treatments for infertility.¹¹

Overview of human reproductive technologies

Infertility has been a known problem in human societies for thousands of years. There is the example of a surrogacy arrangement reported in the Bible, where, because Abraham's wife Sarah was infertile, he inseminated a concubine to produce a child.¹² Infertility is surprisingly common; it is estimated that up to 15 per cent of couples are infertile, about half of which is caused by male infertility.¹³

The longest established procedures have involved donor insemination, whereby gametes (sperm) are introduced into the woman's cervical canal and/or uterus. The source of the gametes for insemination may involve, in the instance of male infertility, anonymous insemination donor (AID) or by artificial insemination by husband (AIH) where the infertility may be due to incapacity to achieve conception through intercourse.¹⁴

In recent years sophisticated techniques have been able to deal with more complex problems that tend to be associated with female infertility, these often involve invasive procedures. It is beyond the scope of this paper to discuss in detail *in vitro* fertilisation (IVF) and other methods, such as gamete intrafallopian transfer (GIFT)¹⁵, embryo transfer (ET), egg donation or surrogacy¹⁶ that have also been developed.¹⁷

¹¹ However, it should be acknowledged that technology to assist reproduction is not unequivocally beneficial, as there can be high risks to women with some procedures. Other procedures, such as commercial surrogacy, raise profound concerns about baby selling and exploitation of poor women paid to be birth mothers and that some practices compromise the principle that the interests of the child should be paramount: Family Law Council, *Creating children: A uniform approach to the law and practice of reproductive technology in Australia* (Canberra, ACT: Australian Government Publishing Service, 1985). <https://nla.gov.au/nla.obj-1613451735/view?partId=nla.obj-1613901099#page/n0/mode/1up>; R D Klein, *Infertility: women speaking out about their experience of reproductive medicine* (London, UK: Pandora Press, 1989); M Warnock, *A question of life: the Warnock report on human fertilisation and embryology* (London, UK: Basil Blackwell, 1985).

¹² Genesis 16: 1-16.

¹³ Kirby, "Medical technology and new frontiers of family law," 407; R Scott, "Test tube babies, experimental medicine and allied problems," *Australian Law Journal* 58 (1984).

¹⁴ It is estimated that 5,000 – 6,000 inseminations per year are performed in Australia: National Bioethics Consultative Committee, *Discussion paper on access to reproductive technology* (1990), 14.

¹⁵ GIFT is a variant on the IVF procedure in that the gametes and oocytes are directly transferred to the woman's fallopian tubes, where fertilisation may occur.

¹⁶ Logically the law should treat egg donation in the same way as AID. The considerable public anxiety about surrogacy and access to IVF by women not in marriage-like heterosexual relationships which has been noted in numerous inquiries, occurs because 'surrogacy and IVF have both become a site for the expression of collective fears about the trend towards autonomous motherhood': De Gama, "A brave new world? Rights discourse and the politics of reproductive autonomy," 123.

¹⁷ In 1988 there were in Australia and New Zealand 9,191 IVF treatment cycles, of which there were 743 pregnancies that resulted in a live birth, and 2,869 GIFT treatment cycles, of which there were 528 pregnancies that resulted in a live birth: National Bioethics Consultative Committee, *Discussion paper on access to reproductive technology*, 14-15.

The effect of these developments mean that

‘parenthood itself has become divisible into genealogical or genetic parenthood, gestational motherhood, and social and psychological parenthood, and different people may discharge the functions of such parenthood regarding the same child’.¹⁸

A child created by IVF, where only the gametes of the husband and ova of the wife are used, would have the same legal status as a child of the marriage naturally conceived. However, a child conceived by the use of ova not from its gestational mother would in effect have three “mothers”.¹⁹

‘IVF, egg donation, and surrogacy mean that motherhood is no longer a self-evident unitary concept. It is fragmented, divisible into its constituent ovarian, uterine, and social functions.’²⁰

Controversy has been attached to the use of donor oocytes, donor gametes and donor embryos, as IVF has been expanded beyond a treatment of primary infertility of women with tubal blockage, to situations where donor gametes or donor embryos have been used as a procreative option for couples where there was a risk that use of their own gametes would have resulted in producing offspring with genetic abnormalities.²¹

These developments have resulted in commercial and altruistic surrogacy agreements. A surrogate pregnancy can occur either (i) as a result of sexual intercourse between the commissioning father and the surrogate; (ii) by artificial insemination by either AID or AIH, with the surrogate providing her own ova; or (iii) where the surrogate has been implanted with an embryo produced by IVF or GIFT.

In situations (i) and (ii) as the genetic material used may not come from either the commissioning mother or commissioning father, there is the potential for enormous legal problems as to the status of the child.

Certain kinds of arrangements have been prohibited, for instance in the UK, Victoria and South Australia commercial surrogacy arrangements are prohibited and written agreements are rendered unenforceable.²² Queensland is the only state to completely prohibit either altruistic or commercial surrogacy arrangements.²³ There are no legislative provisions against surrogacy in WA, though a number of inquiries have recommended that it should not be permitted or recognised as an acceptable practice.²⁴

¹⁸ Dickens, "Reproductive technology and the 'new' family," 28.

¹⁹ All States have enacted legislation to determine the status of a child conceived by artificial conception: *Artificial Conception Act 1985* (WA). The Commonwealth amended the *Marriage Act 1961* in 1985, S. 92(3) so as not invalidate State law: Kirby, "Medical technology and new frontiers of family law," 196.

²⁰ De Gama, "A brave new world? Rights discourse and the politics of reproductive autonomy," 123.

²¹ The problem of legal ownership and disposition of two cryopreserved embryos at Melbourne's Queen Victoria Medical Centre, after the death in 1984 of their biological parents is but one example of the complex legal problems that have arisen: Smith, "Australia's frozen 'orphan' embryos: a medical, legal and ethical dilemma," 27.

²² Cf. *Human Fertilisation and Embryology Act 1990* (UK), S. 36(1): 'No surrogacy arrangement is enforceable by or against any of the persons making it'.

²³ National Bioethics Consultative Committee, *Surrogacy - Report 1* (Adelaide, SA: Department of Community Services and Health, 1990).

²⁴ Select Committee Appointed to Inquire Into the Reproductive Technology Working Party's Report,

However, in the United States surrogacy has been widely regarded as a legitimate and unobjectionable method to overcome infertility.²⁵

The creation of children by RT has arguably redefined what had been the accepted legal concept of family as consisting of a heterosexual, monogamous marriage²⁶ and genetically determined parenthood. WA and the other states have buttressed this concept of family by restricting IVF only to individuals who conform closely to these elements.²⁷ Also, the linkage between genetic parenthood and family is preserved by deeming a woman's husband to be the father of a child conceived by a fertilisation procedure, even though his sperm was not used.²⁸

'The paradox of the new reproductive technologies, as they exist at this time, is that they operate to permit a few privileged heterosexual couples to become genetic parents. This attempt to restrict access renders the entire concept of genetic parenthood problematic, as IVF, egg donation and surrogacy challenge the assumption that genetic parenthood implies the existence of a familial relationship.'²⁹

The constitution and family law powers

The framers of the Constitution intended to avoid the problems of the American Constitution which had failed to support uniform legislation with respect to marriage and divorce, and to this end they included a clause that enabled the Commonwealth Parliament to legislate with respect to "marriage and divorce". This provision in the 1891 draft was endorsed as the subsequent 1897 conventions in Adelaide and Sydney.

However, at the Sydney Convention a provision for the Commonwealth to have wider power to legislate with respect to "parental rights and the custody and guardianship of infants", as distinct from matters related to divorce was not supported. At the 1897 Melbourne Convention the earlier clause was divided into the two separate clauses, marriage and matrimonial causes enacted in the Commonwealth of *Australia Constitution Act 1901*.³⁰

Though the framers of the Constitution saw the advantages of uniform laws with respect to

Report (Judyth Watson Chair) (Perth, WA: Legislative Assembly, Western Australian Parliament, 1988); C McMichael, *Report of the Committee Appointed by the Western Australian Government to Inquire Into the Social, Legal and Ethical Issues relating to In Vitro Fertilisation and Its Supervision* (Perth, WA: Health Department of Western Australia, 1986).

²⁵ R Lawrence, "The medico-legal, social and ethical implications of surrogate motherhood," *Medicine and Law* 11 (1992).

²⁶ Cf: Lord Penzance in *Hyde v Hyde* (1866) LR 11 P&D at 130, that marriage was 'the union of one man and one woman, for life to the exclusion of all others'. The *Marriage Act 1961* (Commonwealth) S. 46 requires that a similar worded statement must be addressed to both parties about to be married.

²⁷ The *Human Reproductive Technology Act 1991* (WA) S. 23(c) stipulates that IVF shall only be carried out where the persons involved are married to each other or have lived in a 'heterosexual relationship as man and wife' in aggregate for five years over the preceding six year period.

²⁸ The *Artificial Conception Act 1985* (WA) S. 6(1) provides that if a married woman becomes implanted with the fertilised ova from another woman, she is deemed to be the mother of the child: S. 5(1); and the woman who provided the ova is not the mother of the child: S. 7(1).

²⁹ De Gama, "A brave new world? Rights discourse and the politics of reproductive autonomy," 123.

³⁰ For a summary of the development of these two heads of powers at the Constitutional Conventions see: R Sackville and C Howard, "The constitutional power of the Commonwealth to regulate family relationships," *Federal Law Review* (1970): 30, <http://classic.austlii.edu.au/au/journals/FedLawRw/1971/2.pdf>.

marriage and divorce and matrimonial causes, they also restricted the Commonwealth's legislative ambit to matters concerned with personal status.

These proponents asserted the States should have a dominant legislative authority in matters they characterised as private rights, such as adoption, child welfare matters (eg homelessness, protection of children from abuse etc) and illegitimacy (ie children born outside of marriage) and accordingly opposed possibility of the wider power proposed at the 1897 Sydney Convention.³¹

A key issue is the way in which the High Court has interpreted Ss 51(21) and 51(22) of the Constitution. It has been argued that the High court should reflect contemporary values and attitudes, as

‘there is positive encouragement in the form not only of the Engineer's case, that express Commonwealth legislative powers are to receive their widest, as opposed to narrowest, reasonable interpretation: that the words of the Constitution are not to be read as if they bore forever the precise meanings they had in 1901, but on the contrary are to be adapted to new conditions and concepts’.³²

When interpreting the constitution the High Court attempts a gymnastic feat by looking back to determine the intention of framers of the Constitution while at the same time moving forward, which the Court itself has said:

‘It is right, in construing a grant of power, to ascertain as a starting point at least what the words used in the Constitution meant in 1901 when the Constitution was enacted, but it's quite another thing to attempt to confine the legislative power of the Parliament to making the kind of laws then in existence’.³³

Recent history of family law (until early 1990s)

As the Commonwealth possesses only concurrent legislative powers under Ss 51(21) and 51(22), there is an in-built tension between State and Federal laws, with the effect the latter will prevail to the extent of inconsistency.³⁴

The first piece of Commonwealth legislation in this area, the *Matrimonial Causes Act 1959*, contained a very wide provision of a "child of the marriage" with the effect that the Act covered children who lived in the household of a married couple, even if it was a child of only one of the spouses, such as ex-nuptial children, children of a prior marriage or children adopted by one of the spouses.

This concept of the nature of a household was re-enacted in the *Family Law Act 1975*. But after a major constitutional challenge in 1976, in the case of *Farrelly v Farrelly*, it was held to be too wide.³⁵ Following this decision in a series of other cases the High Court narrowed the meaning of the term a "child of the marriage" to extend only to children who were either a natural or adopted child of the parties to the marriage.

³¹ H A Finlay, "A Commonwealth family law?," *Australian Law Journal* 56 (1982): 129.

³² Sackville and Howard, "The constitutional power of the Commonwealth to regulate family relationships," 30.

³³ *Lansell v Lansell* (1964) 110 CLR 353 at 369 per Menzies J.

³⁴ *Commonwealth Constitution* S. 51(37).

³⁵ Jointly decided with another case and referred to as *Russell v Russell and Farrelly v Farrelly* (1976) 134 CLR 495.

A Commonwealth parliamentary report in 1980 by the Joint Select Committee on the Family Law Act was critical of the narrow interpretations by the High Court of the Commonwealth's powers.³⁶ In 1983 the Act was amended to try and circumvent constrictions imposed by High Court decisions, including a wide definition of a child of the marriage, including a child born to a wife through artificial insemination. However, in a number of subsequent decisions, the High Court also struck down these broad definitions of a child of the marriage as *ultra vires* the Commonwealth's powers.³⁷ The logic of the Court's reasoning is illustrated by Brennan J in a 1986 case:

'The familial identity of a child is not amenable to change by a marriage entered into by either of his or her parents to a person who is not the other parent ... it is the status of the child of the marriage, not the rights of the spouses *inter se*, which brings the custody and guardianship of the child within the legislative power.'³⁸

Since the mid 1980s various methods have been considered to resolve the restrictive scope of the Commonwealth's family law powers. The Constitutional Commission recommended comprehensive amendment (by referendum) to Section 51, to enable the Commonwealth to have power to legislate on a wide range of family matters, including custody and guardianship of children, adoption and parentage of all children.³⁹

A report in 1985 by the Family Law Council supported the need for a uniform legal framework to deal with problems such as the legal status of child created by the use of RT and suggested that this could be achieved by the reference of family law powers by the States, to expand the operation of the *Family Law Act 1975* (Commonwealth) in conjunction with cross-vesting of Federal and State powers.⁴⁰

Over the period 1986-87 New South Wales, Victoria, South Australia and Tasmania referred powers with respect to the custody, guardianship and maintenance of ex-nuptial children to the Commonwealth.⁴¹ At the time of writing WA remains the only State which has not referred its State family law powers to the Commonwealth.⁴²

Conclusion

The paper argues because the High Court has adopted a restrictive concept of a "child of the marriage", through a narrow legalistic constitutional definition of this term, it has lagged in responding to the changing nature of marriage and thereby been cast as operating in a narrow fashion, to retain the conservative status quo.

Similarly, the Court can also be criticized for not recognising the distinctions between social, psychological and genetic dimensions of parenthood, as these terms now have different

³⁶ Joint Select Committee on the Family Law Act, *Family law in Australia* (Canberra, ACT: Australian Government Publishing Service, 1980).

³⁷ *Cormick and Cormick v Salmon* (1984) 56 ALR 245; *Re F* (1986) 60 ALJR 594.

³⁸ *Re F* (1986) 60 ALJR 594 at 604.

³⁹ Advisory Committee on the Distribution of Powers, *Issues paper* (North Ryde, NSW: Constitutional Commission, 1987), 24-33; Advisory Committee on the Distribution of Powers, *Report* (North Ryde, NSW: Constitutional Commission, 1987).

⁴⁰ *Commonwealth Constitution* S. 51(37).

⁴¹ The referrals expressly excluded referral of the State powers related to adoption and child welfare matters: Finlay and Bailey-Harris, *Family law in Australia* (4th ed), 124-26.

⁴² Dickey, "The Supreme Court's *parens patriae* powers in Western Australia," 149.

meanings to those understood at the time the Constitution had been framed in the 1890s, some one hundred years ago.

There is now a significant number of medically assisted procedures occurring each year in Australia to treat infertility. It is likely demand will rise and may reach the American RT rate of 5% of all births.⁴³ This growth in RT assisted conception will continue to be a source of confusion and impose strains on the legal system, without an expanded Constitutional family law power.

The narrow interpretation of the Commonwealth's powers means that the system of family law has been constructed on

‘a biological conception of parenthood and the family, specifically, that ‘true’ parents are those with whom biological links exist, and that a person's true identity is determined genetically. This is an asocial conception of kinship and personality and undermines both the social influences on personality formation and the conception of the family as a social institution constituted by relationships structured by norms and values.’⁴⁴

More recently there has been an acceptance by all jurisdictions, except WA, that in order to overcome the patchwork arrangement of concurrent Federal and State legislative powers, that the scope of the *Family Law Act* can be expanded by the referral of key State powers to the Commonwealth.

This approach should go some of the way to establishing uniform legal rules so that children conceived through the application of RT enjoy the same status and protection as children conceived naturally.

⁴³ S Callens, "IVF in the USA, who pays for it?," *Medicine and Law* 11 (1992).

⁴⁴ S L R Anleu, "New procreative technologies, donor gametes and the law's response: developments in Australia," *Australian Journal of Social Issues* 25 (1990).

Acronyms and abbreviations

AID	Artificial insemination donor
AIH	Artificial insemination husband
ET	Embryo transfer
GIFT	Gamete intrafallopian transfer
IVF	In vitro fertilisation
RT	Reproductive technologies
WA	Western Australia

Table of legislation

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Commonwealth of Australia Constitution Act 1901
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Matrimonial Causes Act 1959
Marriage Act 1961

Western Australia

Adoption of Children Act 1896
Artificial Conception Act 1985
Child Welfare Act 1947
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Guardianship of Children Act 1972
Human Reproductive Technology Act 1991

United Kingdom

Human Fertilisation and Embryology Act 1990

Table of cases

Cormick and Cormick v Salmon (1984) 56 ALR 245
Hyde v Hyde (1866) LR 11 P&D 130
Re F (1986) 60 ALJR 594
Russell v Russell and Farrelly v Farrelly (1976) 134 CLR 495
Lansell v Lansell (1964) 110 CLR 353

References

- Advisory Committee on the Distribution of Powers. *Issues Paper*. North Ryde, NSW: Constitutional Commission, 1987.
- . *Report*. North Ryde, NSW: Constitutional Commission, 1987.
- Anleu, S L R. "New Procreative Technologies, Donor Gametes and the Law's Response: Developments in Australia." *Australian Journal of Social Issues* 25 (1990): 49.
- Callens, S. "Ivf in the USA, Who Pays for It?". *Medicine and Law* 11 (1992): 73.
- Davies, I. "Fabricated Man: The Dilemma Posed by Artificial Reproductive Techniques." *Northern Ireland Legal Quarterly* 35 (1984): 354.
- De Gama, K. "A Brave New World? Rights Discourse and the Politics of Reproductive Autonomy." *Journal of Law and Society* 20 (1993): 114.
- Dickens, B M. "Reproductive Technology and the 'New' Family." In *Family Rights: Family Law and Medical Advance*, edited by E Sutherland and A M Smith. Edinburgh, Scotland: Edinburgh University Press, 1990.
- Dickey, A. "The Notion of 'Family' in Law." *University of WA Law Review* 14 (1982): 417.
- . "The Supreme Court's Parens Patriae Powers in Western Australia." *Australian Law Journal* 67 (1993): 149.
- Family Law Council. *Creating Children: A Uniform Approach to the Law and Practice of Reproductive Technology in Australia*. Canberra, ACT: Australian Government Publishing Service, 1985. <https://nla.gov.au/nla.obj-1613451735/view?partId=nla.obj-1613901099#page/n0/mode/1up>.
- Finlay, H A. "A Commonwealth Family Law?". *Australian Law Journal* 56 (1982): 119.
- Finlay, H A, and R J Bailey-Harris. *Family Law in Australia (4th Ed)*. North Ryde, NSW: Butterworths, 1989.
- Joint Select Committee on the Family Law Act. *Family Law in Australia*. Canberra, ACT: Australian Government Publishing Service, 1980.
- Kirby, M D. "Human Rights - the Challenge of the New Technology." *Australian Law Journal* 60 (1986-87): 170.
- . "Medical Technology and New Frontiers of Family Law." *Journal of Law, Medicine and Ethics* 14, no. 3-4 (1986): 113.
- Klein, R D. *Infertility: Women Speaking out About Their Experience of Reproductive Medicine*. London, UK: Pandora Press, 1989.
- Lawrence, R. "The Medico-Legal, Social and Ethical Implications of Surrogate Motherhood." *Medicine and Law* 11 (1992): 661.
- McCall, I W P. *Family Courts - Some Jurisdictional Questions*. Proceedings of Fifth National Family Law Conference. South Melbourne, VIC: Business Law Education Centre, 1992.
- McMichael, C. *Report of the Committee Appointed by the Western Australian Government to Inquire into the Social, Legal and Ethical Issues Relating to in Vitro Fertilisation and Its Supervision*. Perth, WA: Health Department of Western Australia, 1986.
- National Bioethics Consultative Committee. *Discussion Paper on Access to Reproductive Technology*. 1990.
- . *Surrogacy - Report 1*. Adelaide, SA: Department of Community Services and Health, 1990.
- Otlowski, M. "The Legal Status of a Sexually Reassigned Transsexual: R V Harris and McGuiness and Beyond." *Australian Law Journal* 65 (1990): 67.
- Sackville, R, and C Howard. "The Constitutional Power of the Commonwealth to Regulate Family Relationships." *Federal Law Review* (1970): 30.
- <http://classic.austlii.edu.au/au/journals/FedLawRw/1971/2.pdf>.
- Scott, R. "Test Tube Babies, Experimental Medicine and Allied Problems." *Australian Law Journal* 58 (1984): 405.
- Select Committee Appointed to Inquire Into the Reproductive Technology Working Party's Report. *Report (Judyth Watson Chair)*. Perth, WA: Legislative Assembly, Western

- Australian Parliament, 1988.
- Smith, G P. "Australia's Frozen 'Orphan' Embryos: A Medical, Legal and Ethical Dilemma."
Journal of Family Law 24 (1985-86): 27.
- Warnock, M. *A Question of Life: The Warnock Report on Human Fertilisation and Embryology*.
London, UK: Basil Blackwell, 1985.