In 1980, Australia's first in vitro fertilization (IVF) baby was born and in 1984 the Australian State of Victoria became the first jurisdiction in the world to pass comprehensive legislation to regulate the use of assisted reproductive technology (ART). Today 4 per cent of babies born in Australia are a result of ART, and national guidelines and a mandatory accreditation regulate ART. In addition, half the states and territories have ART specific legislation.

This paper provides a perspective on the introduction of world-first comprehensive legislation in 1984 to regulate assisted reproductive technology (ART) in Victoria, Australia, and current ethical issues facing both regulators and the community.

Why legislate in 1984?

Victoria was the first jurisdiction in the world to introduce comprehensive legislation to regulate the use of ART in 1988. Victoria was at the forefront of research and treatment utilizing IVF. The first IVF pregnancy was achieved in Victoria in 1973, five years before the world’s first IVF baby, Louise Brown, was born in the United Kingdom in 1978. Australia’s first IVF baby, Candice Reed, was born in Victoria in 1980. Following this birth, the Victorian Government established a committee in 1982 to investigate the social, ethical and legal issues surrounding IVF procedures and research in Victoria.

Legislation was seen as a way of protecting the community and the individuals undergoing IVF treatment. Legislation enabled advances in medical technology to take place within an ethical and legal framework. In 1987, the Fertility Society of Australia set up the Reproductive Technology Accreditation Committee (RTAC) to implement a national accreditation scheme for ART clinics. This provided a quality assurance scheme for the industry.

Regulation of ART in Australia in 2012

There is ART legislation in four Australian States and Territories and legislation impacting on surrogacy throughout Australia. Australian ART clinics are required to be accredited to operate and to be compliant with National Health and Medical Research Council (NHMRC) ethical guidelines which were developed in 1996.

How ethical guidelines are implemented in Victoria

Victoria can serve as an example of how ethical principles are embedded within legislation. Within the current Victorian legislation there are five guiding principles; (1) the welfare and interests of persons born or to be born as a result of treatment procedures are paramount; (2) at no time should the use of treatment procedures be for the purpose of exploiting, in trade or otherwise (a) the reproductive capabilities of men or women, or (b) children born as a result of treatment procedures; (3) children born as a result of the use of donated gametes have a right to information about their genetic parents; (4) the health and wellbeing of persons undergoing treatment procedures must be protected at all times; and (5) persons seeking to undergo treatment procedures must not be discriminated against on the basis of their sexual orientation, marital status, race or religion.

In considering these guiding principles, Victorian law requires counselling for recipients of all types of ART treatment. The requirements for donor treatment or surrogacy arrangements are more rigorous. It is mandatory for people considering donor treatment and their donor to be counselled. It is also mandatory for all parties involved with surrogacy arrangements, including the surrogate, to receive counselling and legal advice.

ART clinic counsellors discuss the rights of each party to apply for information; potential links that can be made with related parties; the long-term consequences of using a donor; and encourage parents to be open with their children about how the family was formed. The Victorian Assisted Reproductive Treatment Authority provides supportive information for parents in this situation as part of a public education role.
Central and voluntary registers have been set up to record the details of donor-conceived children, their parents and donors. The Central Register, established in 1988, enables donor-conceived adults, parents and donors to apply for information about each other. The Voluntary Register provides an opportunity for these parties and relatives to lodge information. It also enables donor-conceived people born prior to the introduction of legislation in 1988 or their donors to lodge information. If a match occurs through use of the same donor code, donor-conceived half-siblings, recipient parents, donors or relatives can exchange information or choose to meet.

The recent 2010 Victorian ART legislation introduced a birth certificate addendum to birth certificates for donor-conceived children born after 2010. This means that, on application for a birth certificate as an adult, the Registry of Births, Deaths and Marriages (Registry) will notify the adult, on enquiry, that they are donor-conceived. This also means that Victorian donor-conceived adults born during and after 2010 will be able to apply for information about their donor from the Registry, even if their parents do not disclose how they were conceived.

In the interests of donor-conceived children and donors, only ten families can be formed from one donor. Donors can specify a smaller family limit, if desired. Legislation also provides for the registration of ART clinics; time limits, for the storage of eggs, sperm and embryos; and approval for the import or export of donor eggs, sperm or embryos containing donor eggs or sperm.

Access to ART treatment is broad for women who cannot conceive or carry a pregnancy. However, police and child protection checks are required prior to treatment, taking into account the health and welfare of children to be born from ART.

How ethical guidelines are implemented across Australia

Throughout Australia, guiding principles embedded in legislation vary. National guidelines provide guidance for States with or without legislation. Commercial donor or surrogacy arrangements are banned in Australia. In a few States, there are criminal penalties for the use of commercial surrogacy in another jurisdiction. Surrogates are required to be over 25 years, have had a child previously and for the arrangement to be altruistic. The intending parents cannot advertise for a surrogate and only gestational surrogacy arrangements are allowed.

Impact of guiding principles - donor conception

The impact of agreed guiding principles for legislation in Victoria since 1988 is profound. Central records of sperm and egg donation were established in 1988 and donor-conceived persons or parents of younger children could receive information about the donor with consent. Ten years later, the rights of children were strengthened and the donor was required to consent to identifying information being made available, on request, to the child on reaching adulthood, under the Infertility Treatment Act 1995 (Vic). As mentioned, Victorian registers enable donor-conceived persons, their parents and donors a mechanism for information exchange.

Since 2006, the national accreditation scheme has prohibited anonymous donation of sperm, eggs or embryos. Increasingly, clinics record details of recipient parents, donors and the children born from donor treatment. Increasingly, clinics are also assisting donor-conceived adults by contacting their donor to see if he or she is willing to exchange information. Central Registers have been established, or are in the process of being established, in states with ART legislation.

Impact of guiding principles – multiple births

The national accreditation scheme encourages the use of single embryo transfer. As a result, the rate of multiple births has dropped from 8.4 per cent in 2008 to 6.5 per cent in 2012. In 2012, 76 per cent of treatment cycles involved single embryo transfer, with the clinical pregnancy rate of 23 per cent remaining stable. This has resulted in better outcomes for mothers and babies.

The current ART environment

The ART industry is rapidly developing and a growing number of ART providers are providing services in more than one country or providing services globally. In Australia, 4 per cent of all women who gave birth had received some form of ART treatment. Success rates are improving markedly. Postponement of attempts to conceive and the lifestyles of both men and women are also having an impact on the capacity to conceive and have a healthy baby. One in four women undergoing ART treatment is over 40 and age-related infertility is common. Some Australian ART clinics have started providing information or link with other providers for preconception health or lifestyle programmes to optimize the chance of patients conceiving and having a healthy baby.
ART providers, while extending their reach beyond State and national borders, are becoming more corporate, with heavy investment from those outside the industry and rapid developments in technology creating new opportunities. Social and ethical issues are emerging as a result of these factors, providing challenges for regulation.

Different cultural views in other countries about the use of identity-release versus anonymous sperm or egg donation, and altruistic versus commercial surrogacy, can create tensions when those who have sought ART treatment abroad return home. As children conceived through overseas donor treatment and surrogacy arrangements become adults, their views are likely to influence the use and regulation of cross-border reproductive treatment.

In conclusion, after 30 years of ART, ethical issues associated with treatment continue to challenge regulators and the community. Today families are formed in many different ways and babies are born through cross-border reproductive care within Australia, and internationally. While altruistic surrogacy is legal in Australia, many travel abroad to access commercial surrogacy. The increasing age of couples accessing ART and the risk to fertility posed by certain lifestyle factors such as obesity also raise questions about access to ART.

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*The views expressed in this paper are those of the author and not those of the Victorian Assisted Reproductive Treatment Authority.
