17 September, 2015

Project Officer – ART Public Consultation
Ethics and Governance Section
Evidence, Advice and Governance
National Health and Medical Research Council
GPO Box 1421
CANBERRA ACT 2601

RE: Review of Ethical Guidelines for the Use of ART

Executive Summary

The Australian Christian Lobby welcomes (ACL) this opportunity to comment on the Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research ("the Guidelines").

This submission puts forward ACL’s ethical objections to the clinical practice of ART. It then makes some observations on some aspects of the ethical guidelines in their current form. It highlights specifically the dignity of a created embryo, the significance of the biological link between children and their parents, and the importance to children of having both a mother and a father.

This submission recommends that the guidelines continue to prohibit the practice all three of the proposed areas raised for discussion by the public consultation. Other recommendations made by this submission are the inclusion of a child’s right to know their biological identity, and the need to place the ‘best interests of the child’ into the guidelines governing access to ART.

ACL thanks the Council for considering this submission.

Yours sincerely,

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Managing Director
Australian Christian Lobby
Submission to the National Health and Medical Research Council’s
draft ethical guidelines
on the use of assisted reproductive technology in clinical practice and research

September 2015

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Executive Summary
The Australian Christian Lobby (ACL) welcomes the opportunity to make a submission to the National Health and Medical Research Council’s review of the draft ethical guidelines on the use of assisted reproductive technology in clinical practice and research.

Infertility is a tragic experience for many couples and Assisted Reproductive Technology (ART) has helped many infertile couples to fulfil their desire to have children, however, the serious ethical issues presented by the clinical practice of ART must be discussed openly and unashamedly. The value of human life, the rights of children and sound public policy is at stake.

In this submission, ACL’s ethical objections to the clinical practice of ART are outlined, before responding to issues arising out of the draft guidelines. The three areas proposed by the Council for discussion, namely, the use of sex selection for non-medical purposes, compensation for the donation of eggs and the establishment of a donor egg bank, are then responded to.

This submission recommends that the guidelines continue to prohibit the practice all three of the proposed areas raised for discussion by the public consultation. Other recommendations made by this submission are the inclusion of a child’s right to know their biological identity, and the need to place the ‘best interests of the child’ into the guidelines governing access to ART.
Recommendations

ACL recommends that:

- the ethical guidelines continue to prohibit the use of sex selection for non-medical purposes
- the ethical guidelines continue to prohibit compensation for the donation of eggs
- no donor egg bank be established in Australia
- the guidelines be changed to include the principle that a child has a right to know the identity of their biological parents
- the best interests of the child be the determining factor when considering eligibility of access to ART
Introduction

The Australian Christian Lobby (ACL) acknowledges the pain felt by many infertile couples. Infertility is a tragic experience for many. Not being able to conceive naturally can be agonizing and frustrating. Couples who go through this experience are not only denied the joys of parenthood, but also have feelings of inadequacy, since they are unable to realize what most couples achieve easily. Assisted Reproductive Technology (ART) has helped many infertile couples to fulfill their desire to have children.

There are, however, serious ethical problems with the practice of ART. This submission will begin by assessing these ethical concerns in general, then a number of points will be drawn out from the draft ethical guidelines for consideration before turning attention to the three issues that the NHMRC has put forward for further consideration.

The ethics of Assisted Reproductive Technology

The first concern that ACL has with the use of ART is the significant and deliberate waste of human embryos that occurs as part of the clinical practice. Biology tells us that when an egg and sperm join together a new and unique human being is formed, with its own DNA. Each embryo is a human life. Every discarded embryo is therefore a human life that has been destroyed. Some loss of embryos occur from time to time as a natural part of the reproductive process, however, large numbers of embryos are destroyed as part of ART in the goal towards achieving pregnancy. The destruction of embryos deemed ‘not suitable’ occur as a deliberate part of the process. This is a tragedy of our own making. The human embryo must be afforded full the dignity of a human being. The desire to achieve pregnancy is not a supreme achievement to be fulfilled not matter the cost, it does not override the dignity of human life.

The second issue with ART is that the child comes into being, not through a celebration of love between the married parents, but as a product of a process managed by the laboratory. By replacing the sexual act with the apparatus of a laboratory, children may come to be seen as a ‘product’.

The third issue occurs when a donor sperm or egg is used. Using donor sperm or donor eggs brings a third person into the relationship. This fragments parental roles by adding a genetic parent from outside the marriage and severing the biological links between mother, father and child. The impact of this fragmentation on the child has been referred to by some as “genealogical bewilderment”.1

Unlike adoption, which involves children with no parents or with parents who are unwilling or unable to care for them, donor ART involves deliberately creating a child for the purpose of placing that child with a parent or parents who are not his own biological parents. Separating a child from one or both of his or her biological parents violates a most fundamental right. Thus far, society’s discussion surrounding ART has focused on adults’ rights to access these technologies, while children have become “voiceless citizens” in the process.2 ACL’s position is that children should, wherever possible, be given the chance to start life with both of their biological parents.

ACL acknowledges that current Australian law, both through the Commonwealth guidelines and respective laws in each state, permits the widespread use of ART and that this is unlikely to change in the foreseeable future. The remaining part of this submission will draw attention to other ethical concerns that arise from the current draft guidelines as well as the three areas of potential change that have been proposed for discussion.

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NMHRC Draft Guidelines

Part B - Ethical guidelines on the use of assisted reproductive technology in clinical practice and research

Clinical practice does not respect the dignity of the embryo

The guidelines required that all parties involved in the ART process be respected. Unfortunately the guidelines leave out an important category when setting out the list of those to whom clinical practice should protect from harm. The guidelines require that clinicians undertake ART in a manner that protects from harm the “individual” or “couple” involved and “any persons who would be born”, but does not include “embryos” as a category.

The limiting of protection, under the guidelines, to those “who would be born” means the right to protection from harm becomes a subjective choice on the part of the clinician. ACL submits that in truth, the right to life is not a subjective principle to be decided by clinicians. Everyone has the right to life, liberty and security of person.

The clinical practice of IVF often involves the destruction of those embryos which are not deemed suitable for implantation. ACL submits that the decisions regarding procedures and the use of gametes or embryos should not only take into account the harm done to those who would be born, but potential harm to all embryos that are created. Limiting the harm to only those born thereby leaving out those others brought into existence through the ART process is discriminatory.

Progress in the success of IVF techniques appear to focus around increasing the success of pregnancy with little regard for reducing the number of embryos destroyed in the process. This lack of concern for the dignity of human life is regrettable.

The draft guidelines place a duty on clinicians to “limit the number of embryos created to those likely to be needed”. At first glance this appears consistent with respecting human life, however clinical practice of ART often results in the production of surplus embryos, many of which are discarded prior to implantation and many remaining over never end up being used by the intended parents once pregnancy is achieved.

The existence of surplus embryos following the ending of the services between the parent and clinic also poses an ethical dilemma since every time an embryo is destroyed it is the destruction of a human life. The re-allocation of surplus embryos to other parents who need the embryo (as set out in part 6) is one obvious way to avoid the destruction of an individual embryo, however, this will never be able to prevent the destruction of every surplus embryo created. Re-allocation ignores the source of the problem.

The current guidelines allow clinicians to make subjective decisions about how many embryos might need to be created to bring a healthy baby to term. Such a loose guideline allows clinicians to put technical and cost considerations ahead of any ethical concerns about potential destruction of embryos.

Biological and Social Relationships

The use of donor gametes in ART involves a separation of the biological and social relationships between a child and his or her parents. Donor ART involves deliberately creating a child for the purpose of placing that child with a parent or parents who are not his own biological parents. Donor fathers or mothers will usually have no social-parental role in the child’s life.

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4 Draft Guidelines, section 3.2.
5 Universal Declaration of Human Rights, Article 3.
6 Draft Guidelines, section 3.2 paragraph 4.
The deliberate creation of a child who will be severed from one or both of his or her biological parents violates a fundamental right. This right is expressed by medico-legal ethicist Margaret Somerville:

\textit{the most fundamental human right of every person is the right to be born from natural human origins that have not been tampered with by anyone else. Children’s human rights also include the right to know their biological parents and, if at all possible, to be reared by them within their immediate and wider biological family.}^{7}

Somerville, the founding director of the McGill Centre for Medicine, Ethics and Law, has also stated that society’s ethical discussion surrounding ART has focused on adults’ rights to access these technologies, while children have become “voiceless citizens” in the process.\textsuperscript{8}

\textbf{The right of donor-conceived persons to know their heritage is fundamental}

The right of a child to know his or her parents “as far as possible” is protected by the UN \textit{Convention on the Rights of the Child}.\textsuperscript{9} A person’s genetic origins are a fundamental part of his identity. Denying a donor-conceived person the right to know where they come from is to deny them access to an intrinsic part of who they are.

The right of donor-conceived persons to know their heritage is fundamental

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The Australian Senate Legal and Constitutional Affairs References Committee into donor conception practices in Australia recommended that:

\textit{donor conceived individuals should be able to access identifying information about their donor, once the donor conceived person reaches 18 years of age, or such younger age as agreed by all states and territories.}^{10}

The Committee’s report contained anecdotal evidence from donor conceived persons who were “deeply traumatised” or “dehumanised and powerless” at not having access to the knowledge of their genetic origins.\textsuperscript{11}

A number of countries have banned donor anonymity in recent years, including Britain, Sweden, Norway, the Netherlands, Switzerland, New Zealand, and Canada.

This demonstrates the widespread acknowledgement of the significance of genetic heritage and the importance of allowing donor-conceived persons to have information available to them about their biological parents.

ACL’s position is that children should, wherever possible, be given the chance to start life with both of their biological parents.

The Commonwealth and Australian States do not have uniform laws governing a child’s right to know their biological identity. A consistent approach that recognises a child’s right to know and form biological relationships is desirable.

The NMHRC’s inclusion of a section recognising the importance biological connections and social relationships to persons born as a result of ART is a positive step in the right direction, however, the guidelines fall short of

\begin{itemize}
  \item \textsuperscript{9} Article 7.1, \textit{Convention on the Rights of the Child}.
  \item \textsuperscript{10} Legal and Constitutional Affairs References Committee (February, 2011), \textit{Donor conception practices in Australia}, \url{http://www.aph.gov.au/Senate/committee/legcon_ctte/donor_conception/report/report.pdf}, Recommendation 9, p xii
  \item \textsuperscript{11} Donor conception practices in Australia, pp 70-71, 77.
\end{itemize}
acknowledging a child’s right to know the identity of their biological parents. ACL recommends that the guidelines be changed to include recognition of a child’s right to know their full biological identity.

ACL suggests further development of the guidelines governing the exchange of information about genetic origins to include a child’s right to know their biological parents. This would make the guidelines consistent with the best interests of the child. The guidelines could then be seen as providing the ‘best practice’ approach for children’s rights.

Suggested procedures for facilitating contact between persons with biological connections could also be included in the guidelines as it might be of helpful assistance for clinics to ensure a greater number of biological relationships are fostered. A ‘best practice’ approach would also allow the guidelines to be used as a framework for States to adopt in future reviews of respective laws governing this area.

Eligibility to access ART services

The draft guidelines state at paragraph 3.5 “There must be no unlawful or unreasonable discrimination against an individual or couple on the basis of: race, religion, sex, marital status, sexual preference, social status, disability or age”.

ACL submits that the guidelines should adopt the principle that the best interests of the child be given paramount consideration when deciding who should have access to ART services.

Best Interests of the Child

Public policy should hold the best interests of the child as paramount. This principle is found in Article 3 of the Convention on the Rights of the Child:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.12

Furthermore, the Convention guarantees children a right, “as far as possible... to know and be cared for by his or her parents”;13 the right for children who are separated from one or both parents “to maintain personal relations and direct contact with both parents on a regular basis”;14 and the right to “preserve his or her identity, including... family relations”.15 The Convention later repeats this principle in the specific context of adoption.16

Adopting the principle that the best interests of the child must be paramount would make the ethical guidelines consistent with the Family Law Act 197517 which uses the term ‘best interests of the child’ as the paramount consideration. The ‘NSW Adoption Act 2000’ also uses the term18, and the South Australian Adoption Act 1988 uses a similar term “welfare of the child”19 as the paramount consideration when making decisions.

The needs and wishes of adults wishing to access ART services are important, but access to children through ART should never trump the rights of children. The accessibility of ART should ensure that children are brought into the best situation possible.

12 Article 3(1), Convention on the Rights of the Child.
13 Article 7(1), Convention on the Rights of the Child.
14 Article 9(3), Convention on the Rights of the Child.
15 Article 8(1), Convention on the Rights of the Child.
16 Article 21, Convention on the Rights of the Child.
18 Section 7 contains the objects of the Act.
19 Section 7(a)
The weight of social science research suggests that children do best when raised by their biological mother and father, all else being equal.

Social science shows the benefits provided to children who are raised by their married, biological parents. Professor Patrick Parkinson, in a 2011 study named ‘For Kids’ Sake’\textsuperscript{20}, discusses the research and notes that the “overwhelming evidence... is that children do best in two-parent married families”.\textsuperscript{21}

Men and women provide unique and complementary roles as parents to children, and it is this ideal which should be reflected in the ethical guidelines governing the provision of ART services.

\textit{The importance of mothers and fathers}

Some ART practices involve the creation of a child with the intention of removing that child from one or both of his biological parents. Sperm donor conception necessarily involves the severance of a child from his biological father.

A significant issue raised by ART is family structure. ART is, for obvious reasons, a popular choice for single people and same-sex couples. Access to surrogacy and ART by single people and same-sex couples has implications for children. The importance to a child of a mother and a father holds even when they are not biologically related to the child. As Professor Tom Frame argues in his book \textit{Children on Demand}:

\textit{There are some contributions that are necessary for a child’s nurture that flow from femininity and others from masculinity. The critical issue is not, therefore, whether homosexuals or lesbians have the capacity to be loving and caring parents. It is the belief that same-sex couples cannot provide for a child’s need to experience both male and female parental love.}\textsuperscript{22}

This is confirmed by social science. For example, sociologist David Popenoe has said:

\textit{We should disavow the notion that “mommies can make good daddies,” just as we should disavow the popular notion... that “daddies can make good mommies.”... The two sexes are different to the core, and each is necessary – culturally and biologically – for the optimal development of a human being.}\textsuperscript{23}

Grossman et al state that both a mother and a father “shape their children’s psychological security but each in his or her unique way”, explaining that:

\textit{mothers’ longitudinal influence seem to rest on their functioning as a haven of safety and a secure base from which to explore. In contrast, fathers’ formative influence was found in their functioning as a sensitive, supporting, and gently challenging companion during exploration “out there”}.\textsuperscript{24}

Renowned paediatrician Kyle Pruett also emphasises the distinct roles played by mothers and fathers.\textsuperscript{25}

Sociology also emphasises the importance of fathers in particular for children in general and for the different sexes. Rohner and Veneziano found that “father love is the sole significant predictor of specific outcomes after controlling for the influence of mother love”,\textsuperscript{26} and they found that “father love” is “as heavily implicated as mother love” in children’s “psychological well-being and health [and] an array of psychological and behavioral


\textsuperscript{21} Ibid. p 48. Emphasis added.


\textsuperscript{24} Grossman et al (2002), \textit{The Uniqueness of the Child-Father Attachment Relationship}, p 327.


\textsuperscript{26} Ronald P Rohner and Robert A Veneziano (December, 2001), \textit{The Importance of Father Love: History and Contemporary Evidence}, Review of General Psychology, Volume 5(4).
problems”.27 Coleman and Garfield state “father involvement is of a different nature than mother involvement”.28

Thus the distinct contribution of fathers and mothers to their children is well attested by social science. Additionally, the importance of a father, and the social problem of fatherlessness, is also widely acknowledged. For example, US President Barack Obama has recently shared about his own childhood without a father present, and has launched an initiative to help African Americans called “My Brother’s Keeper”, which among other things acknowledges the disastrous effects of fatherlessness in black communities in America, particularly on young men.29 Fatherlessness is an issue Obama has been talking about since before becoming President.30

Surrogacy fractures the links between genetic, gestational and social parenthood, to the detriment of the child, with cases of donor gametes further fracturing relationships.

As children born through surrogacy could potentially have three sets of parents – biological, gestational and social – this could cause a range of identity developmental difficulties that can and ought to be avoided if the best interests of the child are a primary consideration.31

The evidence does not support the claims some make that there is “no difference” between same-sex parenting and mother-father parenting. As Professor Tom Frame states in his book:

there is no substantial body of evidence supporting the claim that same-sex couples are just as effective as heterosexual couples with respect to a range of measures over a longer period of time. Same-sex parenting is a recent phenomenon. It is still untried and untested in all respects that are relevant to the care and nurture of children.32

Although the research emphasises the benefits of homes with married biological parents, it also demonstrates the advantages of being raised by a mother and father rather than by two people of the same sex. It is clear that men and women provide unique, complementary roles, both of which are important in the development of children, and it is the presence of both a mother and a father that is of most benefit for children.

Paul Sullins published an analysis of over 500 children of same-sex parents from a pool of over 200,000 respondents to the National Health Interview Survey, conducted between 1997 and 2013. The children of same-sex parents were at a disadvantage on eight out of twelve psychometric measures compared with those of opposite-sex parents.33 Sullins concluded that the “no-difference hypothesis” should be rejected, saying:

Intact opposite-sex marriage ensures children of the persistent presence of their joint biological parents; same-sex marriage ensures the opposite.34

This follows a 2012 study by Mark Regnerus which found that children from same-sex headed households performed poorly on nearly every measure compared with those growing up with opposite-sex parents.35

27 Rohner and Veneziano (December, 2001), The Importance of Father Love.
34 Ibid, p 100.
The Sullins and Regnerus studies were significant because of the large representative probability samples. Previous studies suggesting “no difference” in outcomes for children of same-sex and opposite-sex parents have been small, non-random, or flawed in other significant ways, as demonstrated by Loren Marks in his 2012 analysis.  

Posthumous use of gametes
The guidelines envisage the use of a person’s gametes posthumously, where legally permitted by state law.  

ACL opposes this practice. The use of a deceased persons gametes would ensure that the child born of the process never has the chance to form a relationship with one of their biological parents.

Issues for further consideration in the clinical practice of ART

Issue 1. The use of sex selection for non-medical purposes.

Should the current position on sex selection be relaxed and, if so what boundaries should be on the practice and why?

ACL recommends that the guideline’s current prohibition on the use of ART for sex selection for non-medical reasons should remain in place.

ART is permitted already for reasons relating to preventing children being born with genetic disorders where the sex of a child results in increased probability. ACL has already raised its concerns with the use ART for any purpose, but feels compelled to raise additional ethical issues that arise from changing the existing guidelines prohibition of sex selection where the reasons for doing so are non-medical.

Gender is not a disease
The use of either preconception sex selection or in vitro fertilization with preimplantation genetic screening to determine sex sends an erroneous message that having the wrong gender to the one preferred is a disease to be “rectified”. Gender is not a disease.

Social acceptance of such practices will fundamentally transform parenting
The increasing ability to control and commercialize childbearing will fundamentally transform parenting. A commitment to unconditional love is a core value of having and raising a child. Parents should be ready to accept their children as they are, not what they want them to be. If the culture shifts to accept this high degree of control over a child’s sex, it may damage the fundamental bonds between parents and children.

Sex selection is bad for women
Cultural attitudes towards the male and female sex have a strong impact on the preference for either a boy or girl child born with the assistance of ART sex selection. Migrant populations, originating from a number of developing nations, notably from Asia, have cultural preferences for male children. One fertility clinic in the USA has reported that “almost all” Chinese couples and “most” Indian couples seeking sex selection choose a boy. In their originating countries there are economic (breadwinning) reasons and elderly care reasons that may explain the preference that some migrant communities have for boy babies over girl babies. In countries such as India and China, a preference for boys has led to abortion and abandonment of girls, creating a

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37 National Health and Medical Research Council, Draft Ethical guidelines on the use of assisted reproductive technology in clinical practice and research public consultation – 2015, Section 8.16
shortage of women – a shortage that has been placed at 60–100 million.\textsuperscript{39} Despite the fact that these economic and social pressures do not exist in Australia, the cultural impact of such preference for boy babies over girls may persist within communities and families following settlement in Australia.

Women should be afforded the same educational, economic, and cultural potential as men. The ethical guidelines should reflect fixed principles of equal dignity. The ethical guidelines should not justify providing gender-selection services that support and enable sexual discrimination against women.

**Sex selection leads to the destruction of embryos and abortion**

The three techniques of sex selection embody a ‘throw away’ attitude towards life. The first type involves sorting of sperm carrying X or Y chromosomes, then followed by insemination or IVF. This technique is not 100% reliable and so unlikely to be practiced in isolation. The second type involves the pre-implantation genetic testing of embryos. This method may be used to test the sex of the child and would involve the destruction of embryos that do not match the desired sex. The third way of ensuring the sex of a child involves pre-natal testing and termination of pregnancy – abortion. The three techniques may also be used together to ensure the desired sex.

We know that widespread use of pre-natal testing and abortion to prevent the birth of girl babies occurs in China and India, and there has even been suggestion that it takes place to a limited extent in Australia. In response to recent reports that sex selection was occurring in Australia, Macquarie University Demographer Dr Nick Parr said "There has to be some form of pre-natal sex selection taking place. In my opinion the most plausible explanation is that there is sex-selective abortion occurring."\textsuperscript{40} There was also the well-publicised case of Dr Mark Hobart in Victoria who recently came under fire from the medical review board for refusing to refer a couple who wanted an abortion on the grounds that the child was a girl.\textsuperscript{41}

**Sex selection may enable damaging expectations**

There is potential for parents to select a child’s sex based on a desire to fulfil a fantasised unrealistic expectations as to how their relationship with the child will develop. Negative experiences with their own parents may result in a yearning for missed experiences and that may define what they seek in their own child. The unrealistic expectations could potentially cause psychological harm to their children. Children could be pressured to live up to the stereotypes their parents wish them to embody.

It’s possible that the child may not live up to the expectations that the parents have built in their minds. Little girls don’t always love baking, girl talk, make-up and the colour pink, just as little boys don’t always love dirt and trucks and dinosaurs and ‘footy’. If the parents are desperate for a girl, will they be disappointed if they end up with a tomboy who grows up to be an engineer? Parents seeking to control their child’s sex may be disappointed when the child does not conform to their expectations. Parents need to be prepared to accept the child they receive, exactly as he or she is, before that child is conceived, rather than seeking to control the outcome.

**Sex selection will be but the first of a revolving commodification of profitable genetic traits**

The commodification of sex selection adds a further harmful dimension to the already harmful industry of ART. If sex selection for non-medical purposes is permitted then pressure to allow parental preference for other genetic traits such as eye and hair colour will increase. Providing genetic selection for non-medical


\textsuperscript{41} Hugo Gye, “Australian doctor could be struck off after refusing to carry out abortion on woman who didn’t want to have a girl”, DailyMail, 9 October 2013, http://www.dailymail.co.uk/news/article-2449568/Doctor-Mark-Hobart-struck-refusing-abortion.html
purposes beyond sex selection has already been floated by some fertility clinics who see the practice as an appealing to a lucrative market. In 2009, Dr. Jeff Steinberg, an American fertility doctor who specialises in providing sex selection for non-medical purposes, floated the idea of providing his clients with hair colour and eye colour preferential selection. "In the process of doing gender selection ... we've also uncovered the technology [to] characterize things like eye and hair color,"42 said Steinberg. He later changed his mind about providing the service after considerable community backlash. Legalisation of non-medical sex selection could draw away doctors from the sector that services those who have fertility issues. Doctors may be lured money and put aside the smaller market of fertility to pursue the next profitable genetic trait.

Case study 1 - family balancing.

Question 1. Is sex selection more appropriate in one of these scenarios than another?

The ethical issue raised by each of the scenarios is the same, namely, is it acceptable for parents to using the ART process to take control of the natural sex selection process in order to ensure their own subjective sex preference for the child is fulfilled? The answer to this question is a resounding no.

“Family balancing” is a term that has been used to describe subjective parental preferences that have no connection with numerical sex balancing, but rather it is a term used to describe the parental fulfilment of a subjective preference for the sex of their child at that specific time. An outcome seeking equal ratios of male to female is not the aim of “family balancing” at all. The term “family balancing” is therefore a misleading nomenclature and should be avoided when discussing this topic. Terms such as “parental preferential sex selection” might be a more appropriate to describe what these parents are seeking.

Families who choose sex selection have often already had a number of children. The high cost and effort expended by parents who select a child of the opposite sex to those children who already exist within the family sends a bad message to them about their parents’ feelings toward them.

Migrant context must be acknowledged

Scenario D has an added cultural element that is connected with migrants from developing countries. What sex preference the parents have for the child is not mentioned in the scenario, however, an honest discussion of the Australian context will openly admit that the scenario refers to migrant populations in Australia, such as those from Turkey, India, South Korea, China, and Taiwan of which have originating cultures that give preference to the male sex over the female sex.43

Scenario D describes insecurity and vulnerability on the part of the mother. Implied in the scenario is the existence of pressure from the husband and family to have a male child. The provision of ART in this manner would concretely undermine women’s ability to make childbearing decisions free of coercion. ART should not be used as a method of perpetuating cultural norms that have no place in the Australian context.

Question 2. As scenario C is the most common example of ‘family balancing’ would it be ethically acceptable to allow sex selection for scenario C, but not the other scenarios?

Scenario C is not different in any significant way to the other scenarios. Sex selection is not ethically permissible under any of the scenarios, including scenario C.

The temptation to view scenario C as more ethically permissible than the others comes from the sympathy afforded to the couple involved. Having avoided ART sex selections at first, they feel they have no other option.

A search for an underlying ethical principle that draws out such a distinction is elusive because its source is only well meaning sentiment, perhaps connected with sympathy for them at least “having a go”. If for the sake of the argument we accept that the parents “effort” to try the natural way first is the deciding factor that determines whether a person is ethically able to use artificial means for sex selection, then how do we determine what level of effort is required? The number of children in scenario C (two) is an arbitrary figure as the following thought experiment shows. Should a family who has had two boys and wants a girl try only twice before being allowed to use ART sex selection? Is three times enough? What about six, seven or eight boys? Clearly no such ethical judgement can be made on the basis of effort. “Family balancing” is not an appropriate descriptor of any of these scenarios because the essence of what is in question is the legitimacy of clinics assisting parents to make a subjective non-medically necessary preferential choice about the sex of their child using artificial means.

Allowing scenario C but disallowing the other scenarios would be untenable. Advocates for so called “family balancing” would be quick to argue that their philosophical position, which raises autonomy and privacy to the level of absolute, means that policing of the underlying attitudes is both unethical and impractical. Such a position incorrectly assumes that patient autonomy and privacy ought to be the supreme principles of ethical decision making, thereby also ignores the many other serious ethical problems with the practice of sex selection.

Case study 2 – replacement of a child

Question 3. Is the use of sex selection techniques ethically acceptable in these scenarios?

Question 4. Does the need to respect the wishes of the intended parents override the need to respect the child who would be born?

These questions will be answered together as both raise the issue over whether the “autonomy” of parents can override the rights of children.

The desires of parent to have the child of the sex they choose is not a supreme ethical principle or right. The impact on others must be considered when assessing the ethics.

The scenarios in question 3 describe sad and traumatic experiences that have the potential to provoke emotional sympathetic responses. An answer to the ethical question however must look for an underlying principle upon which to base an answer. The procedure that would be required to be undertaken by the clinic that is described in both scenarios of case study 2 is not materially different from that in the scenarios in case study 1. The provision of ART in both cases studies is for parental preference, and nothing in the saddening scenario changes the ethical issues at stake. Therefore, the use of ART sex selection continues to be ethically objectionable, even in these scenarios.

You can never “replace” a lost child. The second child will always be a new unique individual. Furthermore, if the child is raised with knowledge that the parents view the child in this way it would surely cause significant emotional damage to the second child.

**Case study 3 – travelling overseas for sex selection**

**Question 5.** Should the only option available to Australians who feel strongly about parenting a particular sex be to have sex selection performed overseas?

It has already been stated in this submission that the provision of ART for non-medically connected sex selection should be prohibited for ethical reasons. The existence of the various risks and other ethical problems that occur when parents travel overseas for the process do not negate the ethical concerns that exist with the process in Australia.

The scenarios presented in case study 3 raise a number of risks associated with going overseas for this process, including: risks of infection, issues with a child’s access to genetic information and identity, high risk pregnancies, risk of neurological defects, and increased costs. None of these risks or complications warrant a relaxation of the ban on sex selection for non-medically related ART. The ethical objections to ART sex selection are not diminished by the existence of its lax permissibility elsewhere.

To allow something that has already been judged to be morally wrong here in Australia in order to protect from other harms those who choose to pursue the process elsewhere would be a flawed approach to policy making.

**Question 6.** Should the children that are born as a result of ART conducted overseas be exposed to practices that are not ethical in Australia, such as the right to know their genetic parents and or multiple embryo transfer?

ACL submits that this question falls outside the scope of this inquiry. The laws governing ART in other countries are a matter for the policy makers of those other countries. Other countries should ideally adopt more ethical positions in their policies governing ART, such as providing greater legal rights to genetic identity and by removing risk factors etc. However, since the scope of this inquiry is limited to Australian regulation, ACL submits that the NMHRC ethical guidelines should reflect best practice and not allow non-medical sex selective ART on the unsound basis that it would prevent Australians being exposed to bad practices elsewhere; to do so would be a flawed approach to policy making.

**Case study 4 – respecting parental autonomy**

**Question 7.** Should parents have this much control over the children they are proposing to bring into the world?

**Question 8.** Should parental autonomy be respected over the need to respect the child who would be born and their right to an open future?

These two questions explore essentially the same issue, namely the applicability of the principle of autonomy as a basis of trumping the rights of children, and so will be answered together.
Autonomy is not a supreme principle that must be fulfilled regardless of the impact on others. The principle of “Autonomy” is included alongside “Dignity” under the heading “Respect” in the guidelines. When discussing the principle of autonomy, this context must be acknowledged.

The autonomy of the parent should never trump the dignity of the child. In both of the provided scenarios the parent’s misplaced desire to control the natural process of reproduction has damaged their children. Parents do not have a right to put their own desires and needs before the health and wellbeing of their children. The principle of autonomy is not supreme and must be subject to the rights of children, who are the more vulnerable party and therefore unable to exercise their autonomy.

Case study 5 – other potential uses of sex selection

Question 9. Is the use of sex selection techniques ethically acceptable in this scenario?

Sex selection, based on avoiding giving birth to children with disorders, is already happening in Australia. Victoria, Western Australia and South Australia already allow sex selection in order to prevent disorders that occur mostly, or only, in one gender – for example, muscular dystrophy, fragile X syndrome and ASD. During a forum on preimplantation genetic diagnosis and preimplantation genetic screening at Murdoch University, Western Australia, on May 16, 2013, Dr Kathy Sanders, said “Is it acceptable to screen on the basis of sex to avoid conditions like Autism? That has been accepted and has been done.” Figures from one of Sydney’s top IVF clinics show that about one in 20 parents who seek embryo screening are doing so out of a desire to have a female baby to reduce their risk of autism.

Because autism also affects girls, even though in a smaller percentage, parents may still end up with an autistic child. Judy Endow, an Autistic woman, puts it aptly when speaking about the problems with sex selection for autism:

“I was that autistic in the making that the sperm selection article is hoping to prevent. It wouldn’t have worked well in my case because I am female so they would have missed the sperm that made me since they are only booting out the male-making sperm at this point.”

ACL does not condone the termination of any embryo for any reason, even those with genetic disorders, however it is interesting to point out that when it comes to sex selection to avoid autism, what they are doing is not testing for a condition but making a speculative call. It is not autism prevention, it is boy prevention. Such a practice also sends a message to children that if you are going to be autistic it may be better if you were never born.

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45 Draft Guidelines, section 2.1
Issue 2. Compensation of Australian women for the reproductive effort and risks associated with donating their eggs

Response to objections to the current ban on payment for eggs

“Compensation may increase the number of Australian egg donors, and therefor the number of donor eggs available; leading to a reduction in the number of Australian’s undertaking ART overseas”
Response: Concerns about the shortcomings of foreign ART services are not a justification for changing NHMRC guidelines. The ethical objections to payment for gametes persist. It is likely true that compensation for gametes would result in an increase in gametes, however, the NHMRC should put sound ethical principles before all other considerations when drafting the ethical guidelines. A shortfall in eggs does not justify overlooking ethical considerations.

“Compensation recognises the burden and risk faced by the donor”
Response: The desire to recognise a sacrifice does not resolve the ethical problems associated with payment. Furthermore, the desire to recognise the burden undertaken by a donor is not a supreme value that must always be satisfied; very few acts of altruism come without burdens and risks attached, that is what makes altruistic actions admirable.

“The amount would not act as an inducement”
Response: The argument must be rejected as self-evidently wrong. The very intention of compensation is to act as an inducement, thereby increasing the number of egg donations. Money will act as an inducement, which is the whole point of the proposal.

“The amount would not compromise valid consent.”
Response: There is no way of ensuring that this would be the case. Women come from a variety of socio economic situations and it may be that some women need the money desperately enough such that the inducement causes them to put aside any valid concerns in favour of the much needed cash incentive, modest though it may be.

“The establishment of an egg bank in Australia, in a manner similar to existing cord blood banks, could allow for greater regulation of compensation and reduce the potential exploitation of the system.”
Response: ACL believes that an egg bank is not a desirable goal and so rejects this as a justification for the payment of women for eggs. Further reasons for this will be outlined later when dealing with the egg bank question more fully under issue 3.

Reasons to support of the ban of payment for eggs

Compensation may act as an inducement and compromise valid consent. An inducement provides the potential for the exploitation of vulnerable women, particularly those with no or low income. The very purpose of payment is to act as an inducement so as to increase the supply of eggs. Low income and desperate women will find the opportunity for payment attractive. This is bound to exploit those of lower socio economic status. There is no discernible way to safeguard against this apart from removing payment.

Compensation is not compatible with the notion of altruism

If we were to attempt to remove all danger and cost from every kind of altruistic behaviour then the notion of altruism would cease to exist and be replaced with an expectation of reward.

Slippery slope of commodification

The purchasing of gametes (albeit via payment for “effort” rather than the eggs directly) would result the ingredients of human life being traded like commodities on the market.
We must be careful about how we treat the ingredients and processes that start human life. Whilst it is not currently proposed by these guidelines, there may come a day when the acceptability of the sale of embryos is up for debate. This would see human persons are made subject to the manipulations of the market, cut off from their organic social connections with family and culture, made subject to the whims of customers, made subject to contracts and disposed of if not desired.

**Issue 3. The establishment of an Australian donor egg bank**

Rather than address the various case studies provided, it will be sufficient to state our general principle toward the creation of a donor egg bank in Australia.

ACL objects to the establishment of any kind of egg bank to store donated eggs. The creation of a donor egg bank would further facilitate the machinery of what ACL believes is an unethical industry.