

not invariably, be one which remits the matter for further consideration accordingly to the law. . . .

The court upheld the appeal, and ordered Mr Hurford to consider the applications for temporary entry permits in accordance with the law.

**minister's reconsideration.** Mr Hurford publicly welcomed the decision:

The full Federal Court has saved us from an extraordinary precedent, set earlier this week by Mr Justice Wilcox, whereby a federal court judge sitting alone could decide who is granted a temporary entry and working permit. (*Daily Telegraph*, 21 July 1986)

He promptly granted the temporary entry visas to the Platters to proceed with their tour.

**review of immigration appeals.** The issue of appeals against decisions of the Immigration Minister has been the subject of a long-term study by the Administrative Review Council (ARC). It delivered a Report on the subject to the Attorney-General at the end of last year but that Report has yet to be made public. According to a report in the *National Times on Sunday* (10 August 1986), the ARC Report recommends expanding the avenues of appeal for immigration decisions. The *National Times on Sunday* also reported that despite these recommendations and, it seems, in the light of the Platters case, the Minister for Immigration and Ethnic Affairs has prepared a Cabinet submission seeking to restrict the scope of appeals against decisions by him.

The Government's approach in this matter and the non-disclosure of the ARC's Report have been the subject of criticism by the International Commission of Jurists and the Australian Law Council. It appears the debate over what avenues of appeal there should be in relation to immigration decisions which, at present constitute almost 50% of applications to the Federal Court

under the ADJR Act, will be the subject of much debate over the next few months.

## test tube babies

The reasonable man adapts himself to the world; the unreasonable one persists in trying to adapt the world to himself. Therefore all progress depends on the unreasonable man.

George Bernard Shaw, *Man and Superman*

The Senate Select Committee on the Human Embryo Experimentation Bill 1985 (see [1985] *Reform* 112) tabled its final Report in the Senate on 8 October. The Committee was established just under a year ago arising out of Senate consideration of a Bill introduced into the Senate by Senator Bryan Harradine (Independent, Tasmania) on 25 April 1985. The broad purpose of the Bill was to prohibit non-therapeutic experiments on human embryos developed by IVF procedures.

The Senate Committee saw its primary task as recommending to the Senate whether Australian society should permit experimentation, and particularly non-therapeutic experimentation, to be carried out on that entity which results from the fusion of an egg and sperm in the petrie dish.

The Committee attracted a total of 270 submissions of which 90 were classified as major. It conducted nine public hearings where a total of 64 witnesses gave evidence.

**broad thrust of bill supported.** The major conclusions of the Report adopted the broad thrust of the distinction made in the Human Embryo Experimentation Bill 1985 between therapeutic and non-therapeutic experimentation. The Committee drew support for this distinction from the international declarations of medical ethics such as the Helsinki Declaration.

The Committee said

The Committee recognizes that in putting forward its view in a pluralist society it cannot clai

to reflect the unanimous view of the community. Nevertheless it considers that it is responding to evidence put forward and indicates its resolution that the issue is based on other well accepted features of our social and legal arrangements particularly guardianship and bio-medical ethics. It has sought guidance in the protective role of the law recognised in the jurisprudence of our legal system as the minimum, and for some the only, justification for interference with the freedom of others.

**embryo is human.** The Committee clearly concluded that the embryo should for the purposes of bio-medical ethics especially, be treated as a human subject. It considered carefully the various 'marker events' put forward by some witnesses in evidence to it but was not persuaded of the inherent ethical validity of these events, in particular the ones chosen by the National Health and Medical Research Council. It further rejected any supposed distinction between so called 'spare' embryos and those created specifically for experimental purposes.

**ethics committee is not enough.** the Committee's Report stressed that these issues were not merely of local concern. Like the Asche Committee Report (see [1985] *Reform* 159), the Committee recommended that voluntary adherence to guidelines monitored by institutional ethics committees was not adequate. Instead, research licenses should be required before experimentation of any kind on human embryos is undertaken. Only in this way, would the fear expressed by a number of medical witnesses that they would be exposed to continuing legal assault be removed. That fear, according to the Committee, was based on sometimes inadequate understanding of the legal effect of the Bill.

**co-operative approach.** The Committee did not however recommend that the Human Embryo Experimentation Bill be adopted by the Senate. Instead, it preferred a Commonwealth Statute, preferably in company with the States and the Northern Territory, establishing a broad declaration of the principle banning non-therapeutic embryo ex-

perimentation which frustrated the development of the embryo and an accreditation and licensing scheme.

This model, if it can be implemented is likely to be more effective than the prohibition model put forward by Senator Harradine with its dependence on the criminal law and the obtaining of injunctions as the sole method of regulation and enforcement.

**re-action.** Senator Harradine, a member of the Committee, although joining in the Committee's recommendations, attached qualified comment to the Report. He pointed out that, in common with other parliamentary committees, the Report was the result of Senators with a wide diversity of views attempting to reach common ground and was therefore couched in 'minimum, measured, and restrained terms'. His qualifying comments clearly indicated that in his view, the complexities of federation were enough to make the Human Embryo Experimentation Bill 1985 a more expeditious and less costly way of 'meeting the challenge posed to our society by proposals for non-therapeutic experimentation of human embryos'.

**dissenting report.** Two members of the Committee, Senators Crowley and Zakharov, published a dissenting report concluding that 'guidelines about research on embryos should be open enough to allow proper and responsible medical and scientific research to proceed so as to optimise the prospects of a successful outcome of a live normal baby'.

**a landmark contribution.** Senator Durack (Lib WA), who moved the motion referring Senator Harradine's Bill to the Select Committee, called the Committee's Report 'another landmark contribution by the Senate to the public resolution of important and social and ethical question's!

Commending the Committee and the chairmanship of Senator Michael Tate (ALP Tas) for the careful and thoughtful way in which the very difficult scientific, ethical, religious and social problems have been dealt

with and the ‘sensible and practical’ recommendations, Senator Durack said

Governments (State and Federal) should act on this Report without delay. If they show no sign of doing so there are many Senators who will be prepared to introduce a new Bill to give effect to the Senate Select Committee’s most valuable Report.

*ivf practitioners.* Meanwhile, IVF practitioners have had further difficulties. Under the Victorian Infertility (Medical Procedures) Act 1985, special approval from a ministerial committee is required for embryo experimentation. The legislation came into effect in August.

The chairman of that committee, Professor Louis Waller, recently said that the spirit and intent of the Victorian Act was to assist childless couples to have children and ensure the highest regard is given to the principle that human life be preserved and protected. (*Australian* 11, 12 October 1986). The Director of the Centre for Early Human Development at the Queen Victoria Medical Centre, Dr Allan Trounson, has threatened, that, as a result of the Victorian Act, Melbourne’s pioneering test tube research team will leave the country. The *Weekend Australian*, October 11, 12 1986, reported that a five member IVF team from Adelaide has left to work in Los Angeles because they were not confident of being able to continue their work. Dr Trounson was reported as saying that ‘part of the problem was the time it was taking to examine and discuss his team’s desire for a way around the Victorian legislation.

He said that human embryo experimentation was necessary if Australia was to maintain its IVF lead.

In this regard the Senate Committee Report said

The Committee was not persuaded that to prohibit destructive non-therapeutic experimentation would be to so disable the IVF program so as to render it inoperable. . . . The Committee ac-

cepts that, if its recommendation were carried out, there could be a limitation on some advances within the IVF programs. But it considers that the ethical principles involved are of sufficient importance to outweigh the requested use of embryos for that purpose.

**alrac 1986**

Fresh from brawling courts  
And dusty purloins of the law  
Tennyson, *In Memoriam*

*law reform methods discussed.* This year’s Australasian Law Reform Agencies Conference was held in Wellington, New Zealand on August 14 and 15. Hosted by the recently constituted New Zealand Law Commission, the Conference was attended by delegates from all Australian agencies except the Law Reform Committee of South Australia. Delegates included representatives from the Fiji Law Reform Commission, the Victorian Legal and Constitutional Committee and the federal Administrative Review Council. (A full list of formal participants appears at the end of this article). On their arrival at Wellington Airport, delegates were met by the Rt Hon Sir Owen Woodhouse, founding President of the NZLC. His gesture reflected the tone and degree of hospitality extended by NZLC to visiting participants. Formal proceedings took place in the Legislative Council chamber of New Zealand’s Parliament House. The Conference was opened by Sir Owen and delegates and observers welcomed by the Rt Hon Geoffrey Palmer, Attorney-General of New Zealand.

*commissions, departments and government.* One of the dominant themes that emerged during the conference was the need for agencies to maintain good public relations with ministers and departments.

During an address on the ‘Aspirations’ of law reformers the ALRC President, the Hon Xavier Connor AO, QC, observed that:

There is scope for a great disparity between the aspirations of the institutional law reformer and those of the institutional bureaucrat. It is up to