the use of foetal tissue is clearly vested in the woman who carries the foetus.

This view is premised on the understanding that a foetus is a part of a woman's body and is therefore not a separate entity until such time as it is born. Abortion, spontaneous or planned, does not constitute the act of birth, and therefore the foetus must be regarded as an extension of the woman's body, with dispositional authority for foetal tissue always vesting with the woman.

Serious consideration must also be given to the effect on children created from rejected foetal tissue. The emotional experimentation involved is unacceptable. As was stated very eloquently in a recent editorial of the *Australian* on this subject:[8]

> There is a clear connection between the biological process and human psychological development. Our sense of personal identity and relation to others is directly affected by how we understand our origins. To have been the child of an aborted foetus or from eggs taken from the body of a woman who had died, offers an alarming scenario, both in explanation and identity.

The fact that the technology may potentially provide benefits in a few rare and obscure cases must not be taken to provide a rationale for its more wide-ranging acceptance. Legislation on organ donation must be amended to specifically exclude donations of reproductive tissue, and particularly gametes of deceased persons.

## Conclusion

In the light of the issues raised in this discussion, the current guidelines and legislation relating to IVF and ET must, as a matter of urgency, also address the implications of IVM techniques, placing a moratorium on them until such time as these issues are adequately resolved. This is clearly an area where the advances in medical science have overtaken the capacity of governments to respond to the questions raised by the technology.

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The views expressed are those of the author and do not necessarily reflect those of the Queensland Government.

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**ADR**

# Resolution or resoluteness?

## JULIE MARGARET reports on the first attempt in Adelaide at mediating an outcome in a social security appeal.

The many tiers of the Social Security Appeals system are well known to those familiar with income support law. Clearly, the requirement that appellants and respondents must progress through various steps before an appeal is finalised, means inevitable delays in the delivery of 'justice' to the users of the system. As with other areas of the legal system where such delays occur, mediation has also entered the social security arena, as a possible solution to the prolonged litigation and extra costs which may be incurred through the appeals system.

However, although mediation holds out some improvement in the process of resolving social security disputes, there are serious questions which must be raised about the extent to which it is the cure for the ills of the social security appeals system. As others have already observed in other contexts, mediation (particularly between an individual and government departments) does not necessarily address power and economic imbalances, which can make 'negotiated' outcomes less than beneficial for the individual. These issues have come to the fore with the first attempt at mediating an outcome in a social security appeal in Adelaide.

## Mediation and the DSS in Adelaide

In September 1993 the first mediation conference was held in Adelaide between the Department of Social Security (DSS) and a client. The matter related to the recovery of an assurance of support debt. The debt had been incurred by the client solely because of administrative errors on the part of the DSS and a failure to follow its own guidelines. The Social Security Appeals Tribunal found in favour of the client and decided to waive the debt. The DSS then appealed to the Administrative Appeals Tribunal.

This was the first occasion that the DSS had requested or attended mediation in Adelaide. It appears that the idea to do so arose after a suggestion from a visiting DSS advocate from Sydney.

A skilled AAT mediator (flown in from Melbourne for the day) explained that mediation aimed at getting the parties to hear each side of the case in order to reach mutual agreement. It is questionable whether such mutuality was reached, although a resolution was finally made to vary the SSAT decision. The process took almost five hours to complete, with the parties being placed in separate rooms for most of that time, the mediator working between the parties, and apologising to the client on numerous occasions in respect of the time taken, and with regard to DSS pedantry.

Client frustration at the length of time taken, and petty resistance tactics by the DSS, rather than any noticeable

acknowledgment of the situation the DSS had created for the client, may best explain the client's consent to resolution.

A final blow for the client came when the agreement giving effect to the resolution was drawn up. Unfortunately, the SSAT in its initial decision (although favourable to the client) failed to give actual reasons for its decision. This meant that the AAT mediator lacked the power to include the DSS acknowledgment of its fault, and a denial of client fault, in the AAT official decision, although this information can be found if one can access the client's file.

## Issues

The process raises a number of issues with respect to the DSS and mediation.

First, a *Mediation Kit* was mentioned at the hearing prior to the mediation conference, but this did not materialise, so neither party was able to become familiar with the general aims and procedure of the mediation process. Clearly, if the mediation process is to address the issue of power imbalance mentioned above, such basic information should be readily available.

Additionally, the SSAT needs to be aware that a failure to provide *reasons* for its decisions could disadvantage parties who later participate in a mediation process at the AAT level. The provision of such reasons means that the AAT has the power to include them in an agreement reached at a mediation conference.

Interestingly, the mediator, in commenting on the mediation process occurring for the first time in Adelaide, also suggested that DSS offices outside the more populous States need further information and training in the area of mediation. Perhaps the Department could consider sending Adelaide staff interstate for familiarisation with this process.

## Conclusion

Although mediation between the DSS and clients should not be discouraged as it can achieve quick, effective and cheap resolutions when properly managed, the other realities of mediation should not be ignored. In the social security context mediation takes place between a very powerful bureaucracy and an individual with scarce resources. As a result there will be a risk that the DSS can utilise the mediation process to further wear down the client who has already progressed through a number of tiers of the appeal system. To work fairly for the client the mediation process must have built into it some minimum standards which are observed by the DSS uniformly around the nation.

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***References continued from p. 74***

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7. See *Australian Capital Television Pty Ltd v Commonwealth* (No.2) (1992) 177 CLR 106 and *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1.
8. See *County of Oneida v Oneida Indian Nation* (1985) 470 US 266.

# NOTICES

## DISABILITY DISCRIMINATION

The Federal Government has recently completed a Legal Aid Impact Statement on the *Disability Discrimination Act*. This revealed the need for specialist disability centres, operating in each State of Australia.

These Centres will provide legal advice relating to issues arising from the *Disability Discrimination Act,* and provide community legal education in the area. They are expected to open in May 1994. For further information, please contact the Federation of Community Legal Centres in your State.

## VOLUNTEERS NEEDED

The St Kilda Legal Service needs volunteers on Thursday evenings. Experience in criminal law and family law preferable. Also needed - a solicitor to take on a supervisory coordinating role.

If interested, please contact Suzy Fox or Anthea Teakle on tel (03) 534 0777.

## BUSH HERITAGE

Governments can be lobbied to protect valuable pieces of Crown land but many areas in private hands are being increasingly threatened by inappropriate development. The Australian Bush Heritage Fund, a national non-profit organisation, was established to purchase privately owned land in areas of high conservation value.

The inspiration for Bush Heritage came from large land acquisition groups in the US and the UK although buying up land in Australia to preserve it is not new. Many groups have been raising funds to save special areas which may be threatened. Bush Heritage has now established a national approach to this type of nature conservation.

A nationally registered company with its own tax deductibility status, it is governed by a Board of Directors and has a scientific advisory panel to oversee the identification and management of areas of high ecological significance. The organisation already has more than 2000 financial supporters.

The Fund has so far acquired 241 hectares in the Liffey Valley in Tasmania abutting the World Heritage area and 8.17 hectares of fan palm forest in the Palm Valley area of Queensland's Daintree rainforests.

*To help, contact:*
The Australian Bush Heritage Fund
102 Bathurst St
Hobart, 7000
tel 002 31 5475, fax 002 31 2491