

**SUBMISSION TO THE SCRUTINY OF ACTS AND REGULATIONS COMMITTEE
RE THE ASSISTED REPRODUCTIVE TREATMENT BILL 2008**

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INTRODUCTION

That a person has a mother and father is a matter of biological fact. It is not a social construct.

However whether a person is raised by that mother and father is a question of social and legal construct.

Usually, when a person is not raised by their mother and father it is because they have been separated from them by reason of necessity, in order to serve their best interests eg. adoption, foster care.

Under the Adoption Act 1984 for a person to be removed from the care of their biological parents the court must be satisfied that 'the welfare and interests of the child will be promoted by the adoption', section 15(1)(d).

However there is no such prerequisite required under the Assisted Reproductive Treatment Bill 2008 (ART Bill 2008). The donor conceived child is automatically deemed the child of the prospective legal parents. No regard as to whether the welfare and interests of the child will be promoted by this automatic transfer of parental rights is given.

The ART Bill 2008 separates children from their biological parent(s) not by reason of necessity but because it is in the interests of the person (or people) who wish to conceive a child using donor gametes, embryos and surrogacy.

VICTORIAN CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES 2006 AND THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

The Victorian Charter of Human Rights and Responsibilities Act 2006 section 8 states:

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy his or her human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

The Assisted Reproductive Treatment Bill 2008 is inconsistent with the human rights provided under section 8 because:

1. People conceived as a result of donor conception and surrogacy procedures do not and will not have equal rights in law. People conceived via donated gametes are discriminated against depending on when and how they are conceived as to whether or not they have a legal right to information regarding their genetic parentage.
2. People conceived via donor gametes and embryos are not afforded the right to truthful birth certificates or a way to independently discover they are donor conceived.

This is contra to the rights of adoptees as granted by the Victorian government in 1984.

Section 17 of the Victorian Charter of Human Rights and Responsibilities Act 2006 states:

17 Protection of families and children

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.
- (2) Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

The Assisted Reproductive Treatment Bill 2008 is inconsistent with the human rights provided under section 17 because:

The structure of the donor conceived persons family is not protected under law. Legal parentage is promoted over genetic parentage. The identity of a donor conceived child's genetic parents is not able to be independently discovered by them. The majority donor conceived people are not informed of the nature of their conception and remain ignorant as to the truth of their parentage.

Donor conceived people are separated by this Bill from their original genetic family and their identity is not protected in law.

Courts regard genetic parentage as a serious issue for the establishment of identity as stated in the High Court of Australia by Justices Brennan and McHugh:

'finding that a particular man is the child's father might well be of the greatest significance to the child in establishing his or her lifetime identity' - *G v H* (1994) 181 CLR 387.

In *M v M* [1973] 2 All ER 81 the court held that access to parents (either natural or adoptive) is the right of a child and is to be decided with regard to the welfare and interests of the child.

The case *In the Marriage of N and H* (1982) 45 ALR 419 discussed the principle that '[a] child should, except in very rare circumstances, have access to his biological parents'.

There exists no compelling circumstances to justify the continuing inability of a donor conceived person to independently discover the truth of their identity and have access to and knowledge of their biological parents.

The International Covenant on Civil and Political Rights upon which the Victorian Charter of Human Rights and Responsibilities Act 2006 is based and to which Australia is a signatory states:

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Donor conceived people are discriminated on the basis of their status of being conceived via assisted reproductive technology (ART) and the date of their conception/birth.

The Victorian government is complicit in the discrimination by not ensuring that donor conceived people will be able to discover the truth of their identity, know and have contact with (as far as possible) their genetic parents.

RECOMMENDATIONS

It is recommended here that the ART Bill 2008 must (at the very least) include provisions to entitle all donor conceived people irrespective of age access to identifying information regarding their genetic parents.

And additionally that the birth certificates of donor conceived people should be truthful and record both legal and genetic parents.

It is also recommended that the government consider the legal implications of transferring the legal parentage of a donor conceived child without regard to whether their interests and wellbeing will be promoted in doing so.

We welcome to opportunity to present this submission and elaborate on these points in person to the committee. Myfanwy can be contacted on 0408 039 793.