Submission No. DCP12
Received 04/08/2012
Law Reform Committee

3 August 2010

Executive Officer

Victorian Parliament Law Reform Committee

Parliament House

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My name is Myfanwy Cummerford. I am twenty-nine and was conceived in 1980 via the use of an anonymous sperm donor at the Royal Women's Hospital in Carlton. I discovered the truth of my conception at age twenty.

I am one of eight children who share the same biological father. Four of whom were also conceived using sperm donated by him. One is my brother with whom I was raised. The three others are females born to three separate families, I know virtually nothing else about them apart from their approximate birth dates.

I have met and am in regular contact with my biological father as well as my half sisters, daughters born during his first marriage. My eldest half sister has a young son, as do I. The little cousins met for for the first time recently, not only do I benefit from contact with my paternal family, my son also benefits from contact with his only cousin and is illustrative of the fact that the issues raised by the practice of donor conception are inter-generational. I am incredibly fortunate to be able to enjoy a relationship with my biological father and half sisters, simultaneously I am acutely aware that currently most donor conceived people in this state are unable to experience the same. The following is my submission in the hope that the Victorian government will, as a result of this inquiry, effect changes to rectify the inequity of rights between donor conceived individuals in this state.

Terms of Reference

To inquire into, consider, and provide an interim report by September 2010 and a final report by 2011 on --

a. the legal, practical and other issues that would arise if all donor-conceived people were given access to identifying information about their donors and their donor-conceived siblings, regardless of the date that the donation was made;

b. the relevance of a donor's consent or otherwise to the release of identifying information and the National Health and Medical Research Council's ethical guidelines on the use of assisted reproductive technology in clinical practice and research;

c. any practical difficulties in releasing information about donors who provided their gametes before 1 July 1988, because in many cases records are not available either because the procedure was carried out privately or records were not stored centrally;

d. the options for implementing any changes to the current arrangements, including non-legislative options;

e. the impact that any such changes may have on the donor, the donor-conceived person and future donor programs;

f. the impacts of the transfer of the donor registers currently held by the Infertility Treatment

Authority to the registrar of births, deaths and marriages; and

g. the possible implications under the Charter of Human Rights and Responsibilities Act 2006.

Overriding Premise

Conceiving a child using donated sperm, eggs or embryos can not be equated with conceiving a child conventionally. The government has a responsibility by virtue of its facilitation of the practice of donor conception to inquire into and ensure the best interests of any person conceived.

Consequentially the question arises - on what basis can the government justify the denial of identifying information and contact between the donor conceived person and their biological family particularly in light of legislation which provides these opportunities for adopted people and the recent government apologies to the Stolen Generation and Forgotten Australians/Care Leavers recognising that to be denied knowledge of and contact with ones family is damaging and often results in a deep sense of loss.

Inequity of Rights

Currently the rights afforded to a donor conceived person depend on where and when they were conceived. This is supremely unjust.

Australia is a signatory to many international human rights instruments most relevant to this inquiry being the *United Nations Convention on the Rights of the Child* (UNCROC). Notwithstanding the constitutional and jurisdictional issues that prevent direct legal recourse to the UNCROC domestically, its ratification by Australia requires governments to recognise all children as bearers of a broad range of rights, including a right to identity and a right to maintain relations and contact with their parents unless this would be contrary to their best interests.

That Australian children have rights with respect to their identity and parents is further fortified by the various provisions in the *Family Law Act 1975 (Cth)* under Pt VII and in particular the objects and best interests principles espoused in s60B.

And even more specifically best interest principles clearly apply to Victorian donor conceived people under s5 of the *Assisted Reproductive Technology Act 2008 (Vic)*. Of particular relevance ss5(c) states plainly that donor conceived people have a "**right to information about their genetic parents**".

NOTE: *Whilst the term parent can be broken down to distinguish between legal and biological/genetic parents I must emphasise that the issues faced by a donor conceived person persist beyond the age of majority when the role of a parent shifts from that of legal guardian. To not recognise the term parent as inclusive of legal and biological parents in relation to best interests principles is prescriptive and treats the donor conceived person as a perpetual child.*

<u>The Charter of Human Rights and Responsibilities Act 2006</u>

I submit that ss59(b) of the *Assisted Reproductive Treatment Act 2008* is inconsistent with s8 of the *Charter of Human Rights and Responsibilities Act 2006* on the basis that it discriminates between donor conceived people depending on when the gametes used to conceive them were donated.

The majority of Victorian citizens can take for granted the ability to access identifying information regarding their family members. I submit there is no sound argument nor "demonstrable justification" (s7 - *Charter of Human Rights and Responsibilities Act*) for denying donor conceived people the opportunity to do the same. Any right to privacy with regards to the donor is not absolute. ss69V - 69ZA of the *Family Law Act 1975 (Cth)*

provide an example of where the need to establish parentage will trump privacy permitting a court to order DNA testing and where a party refuses to undergo testing, infer parentage even when such an inference might be contrary to that parties interests (*G v H* (1994) 181 CLR 387).

Furthermore the alleged anonymity agreement asserted as an obstacle to allowing retrospective access to information can only exist between the donor and recipient parents. As the donor conceived person did not exist at the time of the anonymity agreement they can not be and I submit, are not, a party to it.

• **Recommendation:** That all donor conceived people be awarded the right to access identifying information regarding their unknown family members. This must be retrospective.

The Status of Children problem (Status of Children Act 1974 (Vic)

The following is not referred to under the terms of reference but is nevertheless relevant because if a donor conceived person is not aware that they are donor conceived then they are unable to exercise any right to information regarding their biological parent(s). The current system of parentage presumptions and birth registration contributes to the inequity of rights.

The treatment of a donor conceived person as child of the mother and her intended partner under the various parentage presumption provisions in the status of children legislation creates a legal fiction of parentage and severs any connection between the child and gamete donor. I believe this method of relinquishing and reassigning legal parentage is the root cause of the complex legal situation that entangles a donor conceived person currently.

It fosters deceit by producing a birth certificate that is not indicative of true parentage and permits recipient parents to refrain from disclosing the use of donor gametes to any child conceived.

The lack of any formal record documenting the familial link between the gamete donor and any children produced means that should the recipient parents not disclose then the donor conceived person has no way of ascertaining the truth. And any descendent researching their family history shall be(colloquially) led up the garden path.

It is at the point of birth and registration of the child that the practice of donor conception diverges most markedly from the best interests principles. The current practice of pretence is parent-centric and must be changed.

• **Recommendation:** That the current legislative framework must be overhauled. Victorian legislation champions the best interests of children as an ideal but fails them in practice. I believe the system of open adoption provides a good example of how links between the child and their biological family can be maintained as well as a system of birth certification that provides a mechanism for the donor conceived person to independently discover the truth.

Conclusion

I thank the committee for the opportunity to participate in this inquiry. I have kept my submission deliberately brief but I make myself available to elaborate further if necessary. I would also like to draw to the attention of the committee the following papers which are relevant to the inquiry terms of reference.

Dr Joanna Rose - A critical analysis of sperm donation practices : the personal and social effects of disrupting the unity of biological and social relatedness for the offspring. Available online: http://eprints.qut.edu.au/32012/

Professor J. David Velleman - Family History. Published in Philosophical Papers Vol. 34 No. 3 November 2005.

Elizabeth Marquardt, Norval D. Glenn, and Karen Clark - My Daddy's Name is Donor: A New Study of Young Adults Conceived through Sperm Donation. Available online: http://www.familyscholars.org/assets/Donor_FINAL.pdf

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