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The Executive Officer  
Law Reform Committee  
Parliament of Victoria  
Spring Street  
EAST MELBOURNE VIC 3002

***Re: Access by Donor-Conceived People to Information About Donors***

The Australian Christian Lobby (ACL) welcomes this opportunity to comment on the Law Reform Committee's *Inquiry into Access by Donor-Conceived People to Information About Donors*.

The ACL has a strong interest in the best interests of children and families. Without any legal or medical expertise we refrain from commenting directly on the matters raised in the Terms of Reference other than providing a general comment on the issue of donor anonymity.

ACL notes that Victorian law no longer allows for donor anonymity and that children conceived since 1 July, 1988 have the right to access information regarding their donor. However, for donor conceived persons conceived before this date, now in their mid-twenties or above, information is still restricted. This submission addresses the rights of those donor conceived persons who were conceived before 1 July, 1988.

**A person's right to know his or her parents**

The ACL believes that the right of donor offspring to know their heritage is a fundamental right which is of utmost importance. The genetic origins of a person are a fundamental part of that person's identity. Denying a person the right to learn where they come from is denying them the ability to discover an intrinsic part of who they are.

Legal and medical ethicist Margaret Somerville has argued that "the most fundamental human right of all is a child's right to be born from natural biological origins".<sup>1</sup> She has also argued that the first step in dealing ethically with issues of donor conception "is to place the future child, and the child's

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<sup>1</sup> Margaret Somerville (2008), 'Brave New Babies: Children's human rights with respect to their biological origins and family structure', *Centre for Medicine, Ethics and Law, McGill University, Montreal*, pp 1-2. Article available here: [http://www.mercatornet.com/articles/view/brave\\_new\\_babies/](http://www.mercatornet.com/articles/view/brave_new_babies/)

human rights and our obligations as a society to him or her, at the centre of the decision-making as to what should be required, allowed or prohibited".<sup>2</sup>

Furthermore, children, who are unable to consent, should not be subject to an agreement of anonymity between biological parents and "social" parents, especially because it denies them this right to know their biological parent. Somerville argues for the "ethical doctrine of anticipated consent", which requires that "when a person seriously affected by a decision cannot give consent, we must ask whether we can reasonably anticipate they would consent if able to do so. If not, it's unethical to proceed".<sup>3</sup>

### **The rights of anonymous donors**

This lack of consent highlighted by Somerville is at the heart of the issue of donor anonymity. Agreements of anonymity made were made without the conceived person's consent and thus cannot be binding on those conceived persons.

The rights of donors need to be weighed against the rights of donor offspring to know their parents. Even in cases where the donor entered an agreement of anonymity, this agreement was made without considering the party most affected by it – the conceived person. It should thus carry limited weight when being balanced with the rights of persons conceived before 1 July, 1988.

ACL recommends that in cases where donors wish to remain anonymous, their case be presented to an appropriate tribunal which can consider their reasons for wishing to remain anonymous, with due weight given to the rights of the donor conceived person.

### **The harm caused by donor anonymity**

As a generation of donor conceived persons attain adulthood, the harms caused by donor anonymity are becoming more apparent.

During the recent Senate inquiry into donor conception practices in Australia, the Legal and Constitutional Affairs References Committee received many submissions from donor conceived people. Narelle Grech, a 29-year-old donor conceived woman, put it like this:

*I cannot begin to describe how dehumanised and powerless I am to know that the name and details about my biological father and my entire paternal family sit somewhere in a filing cabinet... with no means to access it. Information about my own family, my roots, my identity I am told I have no right to know.*<sup>4</sup>

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<sup>2</sup> Margaret Somerville (10 July, 2010), 'Life's essence, bought and sold', *The Globe and Mail*, <http://www.theglobeandmail.com/news/opinions/lifes-essence-bought-and-sold/article1635165/>

<sup>3</sup> Margaret Somerville (10 July, 2010), 'Life's essence, bought and sold', *The Globe and Mail*, <http://www.theglobeandmail.com/news/opinions/lifes-essence-bought-and-sold/article1635165/>

<sup>4</sup> Cited in Legal and Constitutional Affairs References Committee (February, 2011), *Donor conception practices in Australia*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/donor\\_conception/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/donor_conception/report/report.pdf), Recommendation 3, p 77

Ms Grech has 8 half siblings as a result of her biological father's donations, all born within three years of herself.<sup>5</sup> She does not know who any of them are.

Donor conceived man Damian Adams said:

*[p]ersonally I am deeply traumatised that there could even be one half-sibling that I have never known and will never get to know, let alone the fact that there could easily be dozens. While never being able to know your own family is emotional enough, the fact that there may be numerous half-siblings is deeply disturbing on a level akin to being manufactured to appease the masses. We are human beings with biological and social families yet the ability to produce so many siblings is actually dehumanizing.*<sup>6</sup>

14-year-old Elizabeth Lorbach said:

*I lack the knowledge of who my donor is, I see this as something that I should have the right to know. I think this is unfair, not knowing who my donor is, the clinic knows who he is, but I don't. This information is about me so shouldn't I have the right to this information? It shouldn't be kept from me.*<sup>7</sup>

The Institute for American Values has done one of the only studies of the experiences of donor conceived persons themselves. The study, *My Daddy's Name is Donor*, revealed that most donor conceived persons have a sense of loss or confusion about their identity and would like to know more about their genetic heritage.

Some of the more striking figures in their study were:

- 71% agree, "I long to know more about my ethnic or national background".<sup>8</sup>
- 70% agree, "I find myself wondering what my sperm donor's family is like".<sup>9</sup>
- 69% agree, "I sometimes wonder if my sperm donor's parents would want to know me".<sup>10</sup>
- 65% percent of donor offspring agree, "My sperm donor is half of who I am".<sup>11</sup>
- 48% feel sad when they see friends with their biological fathers and mothers.<sup>12</sup>
- 47% think about donor conception at least "a few times a week".<sup>13</sup>
- 46% agree, "Growing up, I sometimes felt like an outsider in my own home".<sup>14</sup>
- 44% agree that it is wrong to deliberately conceive a fatherless child and 42% that it is wrong to deliberately conceive a motherless child.<sup>15</sup>

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<sup>5</sup> From the website 'Searching for my sperm donor father', <http://www.searchingformyspermdonorfather.org/searching/narelle/>. This website contains many examples of donor conceived people searching for their biological fathers.

<sup>6</sup> Cited in *Donor conception practices in Australia*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/donor\\_conception/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/donor_conception/report/report.pdf), Recommendation 3, p 70-71.

<sup>7</sup> *Submission 15* to the Legal and Constitutional Affairs References Committee inquiry into donor conception practices in Australia, available here: [http://www.aph.gov.au/senate/committee/legcon\\_ctte/donor\\_conception/submissions.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/donor_conception/submissions.htm)

<sup>8</sup> Elizabeth Marquardt, Norval D Glenn, Karen Clark (2010), *My Daddy's Name Is Donor*, The Institute of American Values, p 90

<sup>9</sup> Marquardt, *My Daddy's Name Is Donor*, p 7

<sup>10</sup> Marquardt, *My Daddy's Name Is Donor*, p 89

<sup>11</sup> Marquardt, *My Daddy's Name Is Donor*, p 7

<sup>12</sup> Marquardt, *My Daddy's Name Is Donor*, p 90

<sup>13</sup> Marquardt, *My Daddy's Name Is Donor*, p 94

<sup>14</sup> Marquardt, *My Daddy's Name Is Donor*, p 94

- 43% feel confused about who is a member of their family and who is not.

### Recognition of this issue

The United Nations acknowledges the importance of a child’s right to know his or her parents. Article 7.1 of the *Convention on the Rights of the Child* states the following:

*The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, **as far as possible, the right to know and be cared for by his or her parents.***<sup>16</sup>

A number of countries have banned donor anonymity in recent years, including Britain, Sweden, Norway, the Netherlands, Switzerland, and New Zealand.<sup>17</sup> In May this year, the Supreme Court of British Columbia also overturned donor anonymity.<sup>18</sup>

ACL draws attention to the recent Australian Senate inquiry into donor conception practices. The Legal and Constitutional Affairs References Committee recommended in its report, *Donor conception practices in Australia*, that there be “a prohibition on donor anonymity”.<sup>19</sup> It also recommended “rights of access by donor conceived individuals to identifying and non-identifying information about their donor and siblings”.<sup>20</sup>

The Committee recommended that:

*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*<sup>21</sup>

The Committee further recommended that records relating to donor conception be “appropriately preserved”, and that, until such time as a “consistent and permanent long-term solution to the management of records” be implemented, that “a temporary moratorium be placed on the destruction of all records... that identify donor conception treatment procedures undertaken by donors and donor recipients”.<sup>22</sup>

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<sup>15</sup> Marquardt, *My Daddy’s Name Is Donor*, p 85

<sup>16</sup> Article 7.1, *Convention on the Rights of the Child*, United Nations, emphasis added.

<sup>17</sup> Marquardt, *My Daddy’s Name Is Donor*, p 12

<sup>18</sup> CBCNews, ‘Sperm donor anonymity overturned by B.C. court’, <http://www.cbc.ca/news/canada/british-columbia/story/2011/05/19/bc-sperm-donor-ruling.html>

<sup>19</sup> *Donor conception practices in Australia*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/donor\\_conception/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/donor_conception/report/report.pdf), Recommendation 3, p xi

<sup>20</sup> *Donor conception practices in Australia*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/donor\\_conception/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/donor_conception/report/report.pdf), Recommendation 3, p xi

<sup>21</sup> *Donor conception practices in Australia*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/donor\\_conception/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/donor_conception/report/report.pdf), Recommendation 9, p xii

<sup>22</sup> *Donor conception practices in Australia*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/donor\\_conception/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/donor_conception/report/report.pdf), Recommendations 20 and 21, pp xiv-xv

## **Recommendations**

In the light of the foregoing considerations, ACL recommends that:

- there remain a general prohibition on donor anonymity;
- donor conceived persons have the absolute right to identifying information about their donor from the age of 18;
- donor conceived persons have the right to non-identifying information about their donor whenever they are required for medical purposes;
- there be a prohibition on any destruction of records;
- if a donor who has donated sperm on the understanding that he remain anonymous does not wish to be identified by the donor conceived person then the case be referred to an appropriate tribunal to decide whether the donor should be allowed to remain anonymous. The tribunal should weigh the rights of the donor against the rights of the donor conceived person.

ACL would be pleased to provide further information regarding our submission at any time.

Yours sincerely,



***Rob Ward***

***Victorian Director***