Dear Law Reform Committee Secretariat

Inquiry into access by donor conceived people into information about donors

I refer to the Public Interest Law Clearing House’s (PILCH’s) submission to the above inquiry dated 12 August 2011 and my appearance as a witness before the Committee on 8 September 2011.

We note that submissions closed on 12 August 2011 but, nevertheless, ask the Committee to consider the following recommendation which was not included in our previous submission. PILCH further recommends that:

The Assisted Reproductive Treatment Act 2008 (Vic) (ART Act) should be amended so that decisions made by the Registrar of Births, Deaths and Marriages (Registrar) under that Act are reviewable by the Victorian Civil and Administrative Tribunal (VCAT).

As the Committee is aware from PILCH’s previous submission, PILCH has previously acted for a donor conceived person (conceived using gametes donated before 1988), Ms Kimberley Springfield, who sought a review by VCAT of a decision by the Registrar to refuse her request to write to her biological father to inform him about the Voluntary Register. In this regard, we refer the Committee to the decision of the Tribunal in Springfield v Registrar of Births, Deaths and Marriages (General) [2011] VCAT 130 (10 February 2011) in which it was held that decisions of the Registrar in performing functions conferred on the Registrar under the ART Act are not reviewable by the Tribunal. In that case, the Tribunal dismissed Ms Springfield’s argument that the Registrar’s decision was reviewable pursuant to an enabling provision in the Births, Deaths and Marriages Registration Act 1996 (Vic)(section 52).

As Ms Springfield’s experience demonstrates, the functions that the Registrar performs under the ART Act and the way in which the Registrar performs those functions can profoundly impact upon donor conceived persons. Accordingly, we submit that it is appropriate for decisions made by the Registrar under the ART Act to be subject to review by VCAT.

Yours faithfully

Public Interest Law Clearing House

David Fixler
Lawyer