

**The Australian Family Association (AFA)**



**Submission to the inquiry into the rights of donor-conceived persons to access identifying information about their biological parents and siblings**

The Executive Officer  
Law Reform Committee  
Parliament House  
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## To the Executive Officer:

The Australian Family Association (AFA) commends the Victorian Parliament for its ongoing commitment to addressing the issues relating to donor-conception and IVF in this state.

The AFA agrees with donor-conception advocacy group Tangled Webs in recognising the inherent injustice of the practice of donor-conception. In the context of the current inquiry, Tangled Webs have stated:

...the fact that [donor-conceived] children cannot give consent [to donor-conception] because they are not yet alive is not an argument for putting their interests to one side; rather it is a powerful argument for ceasing the practice of [donor-conception] altogether, or at the very least for being extremely careful about and limited in the ways we practice it.<sup>1</sup>

## Recommendations

Notwithstanding our general view that the practice of donor-conception should cease in Victoria, it is our respectful submission that the Victorian Parliament should act urgently to ensure the following:

1. That retrospective legislation be enacted to enable all donor-conceived persons to access information about their biological parents and other biological relatives (including siblings), regardless of when they were conceived.
2. That as a matter of priority, all existing records of gamete-donors be protected by law so as to prevent their destruction.
3. That appropriate counselling and other services be established to meet the needs of any donor-conceived persons, gamete donors and their respective social and biological families.

## The time has come to protect the rights of the donor-conceived

Protecting the rights of donor-conceived persons has long been an important issue for the AFA and its members and supporters. In an address to the National Seminar of the AFA in 1984, the AFA's founder, B.A. Santamaria, made the following prediction regarding the impact of assisted reproductive technologies (ARTs) on children:

...the conception of the child apart from normal intercourse, if widely practised, will ultimately produce a large and increasing category of ***children in whom the sense of identity and 'personhood' has been weakened and destroyed***. A child's sense of identity derives primarily from its knowledge that 'X' is its father and 'Y' is its mother [emphasis added].<sup>2</sup>

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<sup>1</sup> Submission No. DCP/21, page 1.

<sup>2</sup> B.A. Santamaria, *Australia at the Crossroads* (Melbourne University Press, 1987), page 197.

Submissions to this and other Australian inquiries into donor-conception – particularly those of donor-conceived persons and donor-conception support groups – demonstrate the prescience Santamaria’s insight. In one submission to the current inquiry, Narelle Grech – a donor-conceived woman who is now 27 – states:

I want what is an intrinsic part of me; answers that will help me to feel that I completely know myself. I can say without a shadow of doubt that at the age of 27 I still do not know myself like I should... [T]his curiosity and yearning is like an open wound with no one to be able to offer a bandage.<sup>3</sup>

That anonymous gamete donation has caused – and continues to cause – harm and suffering to donor-conceived children is clear. That this outcome was so predictable only increases the urgency with which it must be corrected.

### **Donor-conceived persons have a *right* to know**

The urgency of the need to allow retrospective access to donor records is compounded by the increasing recognition being given to children’s fundamental human rights in the context of reproductive technology. A recent article published in *Bioethics Research Notes* by Australian-Canadian ethicist, Professor Margaret Somerville, sets out a compelling case for recognising and protecting, among other things, the child’s right to know the identity of his or her biological parents.<sup>4</sup>

Such a right corresponds with the child’s right to “know and be cared for by his or her parents” as set out in Article 7 of the United Nations Convention on the Rights of the Child. Since Australia is a signatory to the Convention, it is incumbent upon Australian legislators to ensure that our domestic laws do not breach any of the rights contained therein.

By enabling retrospective access by donor-conceived persons to identifying information about their donor parents, the Victorian parliament would bring Victorian law into line with the Convention.

### **Competing rights: an issue already addressed in relation to adoption in Australia**

In considering the right of donor-conceived persons to retrospectively access identifying information about their biological parents and other relatives, it is obviously necessary to consider the rights of gamete donors who donated on the condition of anonymity.

Although instances of competing rights present a significant challenge for legislators, we submit that the rights of the child should be given precedence wherever possible. This approach reflects Principle 2 of the United Nations Declaration on the Rights of the Child, which states that, in creating legislation on matters involving the rights and

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<sup>3</sup> Submission No DCP/18, page 4.

<sup>4</sup> Margaret Somerville, “Children’s Human Rights To Natural Biological Origins And Family Structure” (2011) *Bioethics Research Notes*, Vol. 23, No. 1, pages 1-11.

interests of children, “the best interests of the child shall be the paramount consideration.”

This approach is also reflected in the current Victorian legislation governing the use of ARTs, which states: “the welfare and interests of persons born or to be born as a result of treatment procedures are paramount”.<sup>5</sup> The application of this principle means that donor-conceived children in Victoria are now guaranteed the right to know the identity of their biological parents and other relatives.

However this guarantee for *prospective* donor-conceived children is not sufficient; if Victorian legislation is to fully conform to the principle of the paramountcy of children’s rights, and the right of Victorian children to know and be cared for by their biological parents, then it must also deliver this right to persons who were conceived before the current legislation was implemented.

In this regard, ART legislation should be amended in the same manner as adoption legislation has been amended. The paramountcy of children’s rights and interests has been a long-standing element of adoption legislation.<sup>6</sup> Full compatibility with this principle required that the retrospective right of adopted children to access to identifying information about their biological parents and other relatives be recognised. This right is now protected by the law.<sup>7</sup> The same right should be extended to donor-conceived persons.

### **Challenges posed by retrospective access**

Enabling donor-conceived persons to discover the identity of their parents and other relatives naturally poses significant challenges for such persons, their custodial/social families, and for gamete donors and their families. It is therefore necessary that the Victorian government establish appropriate counselling services to meet the needs of those involved.

In addressing this difficult issue, we submit that all parties involved in the practice of donor-conception – including the government – must rise to the challenges of rectifying past injustices.

### **Related issues which should be urgently addressed**

We further submit that the following related matters be addressed urgently, either by referral to further inquiries, or otherwise:

1. That laws governing the registration of births be amended such that the birth certificates of donor-conceived persons must include an accurate indication of the child’s true (i.e. biological) parentage.

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<sup>5</sup> *Assisted Reproductive Treatment Act 2008*, s5.

<sup>6</sup> *Adoption Act 1984* (Vic), s9.

<sup>7</sup> *Ibid*, s93(1).

2. That the Victorian government take positive steps towards the creation of and participation in a national gamete-donor register.
3. That the number of families a sperm donor is allowed to create be limited by legislation.
4. That at the time of donating gametes, all donors be required to state in writing a willingness to meet and form a relationship with a prospective donor-conceived child.
5. That the importation of gametes into Victoria from overseas be banned.
6. That the entering into commercial surrogacy arrangements by Australians both here and abroad be banned.

### **Need for research**

Finally, we suggest that the impact of the practice of donor-conception on the various parties involved is not well understood in an Australian context. We therefore urge the Victorian government to take proactive steps to promote and encourage research in this area. In particular, we suggest that substantial research is needed in assessing:

- the impact of donor-conception on donor-conceived persons, both in childhood and adulthood;
- the impact of donor-conception on the relationship between the child's custodial parents;
- the impact of donor conception on the family relationships of gamete donors;
- the nature of the relationship between donor-conceived persons and their biological parents (where such a relationship exists);
- the nature of the relationship between donor-conceived persons and their social parents.

We thank the Committee for the opportunity to make this submission.

Sincerely,

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National Research Officer  
Australian Family Association