

Ad Hoc Interfaith Committee

C/o Rev David Palmer, Ph 03 95216024 Email: djpalmer@pcvic.org.au

Tuesday, 9 August 2011

The Executive Officer
Mr Clem Newton-Brown
Law Reform Committee
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

Email: vplrc@parliament.vic.gov.au.

Dear Mr Newton-Brown,

Re: Donor Conceived Persons

Thank you for the opportunity to make a submission to the inquiry into donor conceived persons.

The Ad Hoc Interfaith Committee was formed to provide an opportunity for people of different faiths to meet and to respond to the many social issues that are currently the subject of public policy formation. The membership of the Committee is by invitation to people who share similar ideas about being unafraid to give witness to faith and to seek respectfully to persuade others by that witness as well as by appeal to reason. We regard it as a civic responsibility to listen to what others are saying and to add our voices to the discussion on issues that shape the kind of community to which we belong.

We are concerned about the need of donor conceived people because they are severely disadvantaged by the fragmentation of their parentage into the different roles: genetic, gestational and social. That fragmentation exposes them as children to risks of not knowing those who contributed to their origins and to not knowing who their extended family may be. The word "parent" has become confusing in the role being divided. We use the word to apply to each of the roles: genetic parent, gestational or birth parent, social or nurturing parent and substitute parent.

Overview

Since the development and growth of Assisted Reproductive Technology in the last part of the 20th Century, the law has often struggled to keep pace with the implications of a rapidly developing technology. It might also be said that while much attention was focused on the technology, not enough energy was devoted to considering the long term implications. This is especially true for those lives that would be brought into being by the use of such technology. The focus was on

helping the infertile, a laudable aim, but somehow this cast all other questions into the shadows. Here we are today, 30 years later, grappling with the consequences.

The main thrust of this inquiry relates to the rights of the donors who provided gametes prior to 1988 and the persons so conceived from these donations. We understand that this date is critical because prior to this date most or many donors were told that their donation was anonymous. Agreements were entered into, donations were made and in some cases steps were taken to “cover the tracks” by mixing male sperm so as to make it difficult to identify the donor.

The basic premise of this submission is that the rights of the donor conceived person to know their genetic parents should be given greater weight than any ‘agreements’ entered into that assured donors of anonymity. All people have a right to know their origins. Further, the agreements were made that affected them and there was no-one to represent their interests. An agreement of that nature is not morally binding.

This submission will not attempt to address each of the seven (7) specific questions contained in the Terms of Reference; however it will make some reference to suggestions as to practical methods of balancing rights and protecting people in vulnerable circumstances.

The right to know one’s parents.

Reading some of the submissions made to the earlier inquiry, begun but not concluded in the term of the previous Parliament, it is clear that many donor conceived persons develop a strong desire, even a need, to know “from whence they came” that is, to know their genetic parents. This is not because they do not love or care for those who provided the role of nurturing parents. This innate desire to know your origins is something that cannot and should not be set aside by an agreement reached between a fertility clinic and a donor. It is also related to a wish to know whether one has half brothers and sisters and other family members. There are also fears about the possibility of consanguinity.

Where can we find justification in law for two people (donor and clinic) to make an agreement between themselves that has such profound impact on the rights of a third party (donor conceived person) without their involvement or consent? The consequences of these agreements infringe on the rights of and can deeply impact the well-being of the donor conceived person.

Reports show that donor conceived persons often have profound struggles with their origins and identities.¹ These are compounded by their inability to access identifying information about their genetic parent/s.

The rights to know and to have access to one’s parents are recognised by the UN Convention on the Rights of the Child to which Australia is a signatory. Unfortunately, the Victorian *Charter of Rights and Responsibilities* did not include the rights of children.

¹ My Daddy’s Name Is Donor, page 7, isbn: 1-931764-20-4, Institute for American Values, 2010

We recommend that identifying information of donors be made available to all donor conceived persons, once they attain the age of 18 years, or earlier with the consent of their social parents.

The rights of donors.

As this inquiry specifically relates to donors who provided gametes on the understanding of anonymity, their rights must also be considered.

Even if these donors were motivated by a sincere desire to assist infertile couples, this does not relieve them of all responsibility for their actions, even if not fully considered at the time. As has been stated previously, agreements made that impact people not party to the agreement are not morally valid and should carry limited weight.

It is possible that donors could be harmed by having their identity revealed and then being approached by one or more people conceived as a result of their donations of gametes many years prior. Donors could be fragile, suffering a mental illness or other condition that rendered them vulnerable in some way.

We recommend that donors should have the option to decline allowing identifying information being passed on, and to have their reasons reviewed and assessed by a group such as the "Patient Review Panel". This panel would be required to assess if genuine or substantial damage would be done to the well-being of a donor should identifying information be released to the offspring.

The future implications

With the passage of the *Assisted Reproductive Treatment (ART) Act 2008*, which allowed for surrogacy arrangements, especially for same-sex couples, further complications arise. While it may be possible, and potentially damaging, for heterosexual parents to fail to inform their children that they are donor conceived, this is clearly not possible for same-sex parents who "acquire" a child via surrogacy either in Australia or overseas. It is important therefore that the standard should be set now that children must have the right to know their genetic origins and the contributions of anyone who was in a parenting role to them, such as those who have relinquished after giving birth, their partners and those who have been substitute parents. Some consideration will need to be given to regulating the procurement by couples, same-sex or heterosexual, of children via surrogacy overseas. We appreciate that this is not in the direct purview of this committee, but it is a matter considered recently by the Standing Committee of Attorneys General.²

Transfer of records

While there may be some difficulties in identifying and securing records of donors that are held across a number of locations, action that would assist in preventing the loss or destruction of these records must be given priority.

² SCAG, the Australian Health Ministers' Conference and the Community and Disability Services Ministers' Conference Joint Working Group, *A Proposal for a National Model to Harmonise Regulation of Surrogacy*, January 2009, http://www.scag.gov.au/lawlink/SCAG/ll_scag.nsf/pages/scag_pastconsultations, accessed 5th August 2011.

The recent inquiry by the Legal and Constitutional Affairs References Committee into Donor conception practices in Australia³, included recommendations for the establishment of either National or State based donor registers and that retrospectivity should be considered in gathering data held by clinics and others.

Ideally the information about those who occupied roles as genetic parents, gestational or birth mother, and social or substitute parents should be registered with the Registrar of Births, Deaths and Marriages and included on the birth certificate. Donor conceived people should have the same rights in that respect as adopted people.

Conclusion

ART has created a dissonance and disconnect between genetic parents, gestational parents and nurturing parents. It has led to children who will grow into adults, being faced with a myriad of emotional and identity issues. While we may not be able to turn back the clock, the rights of donor conceived persons should be given great weight.

We would be pleased to provide further information to the committee if requested and to answer any questions that may arise from our submission or the deliberations of the committee.

Yours sincerely,

Rev David Palmer
Presbyterian Church of Victoria

On behalf of the undersigned

³ http://www.aph.gov.au/Senate/committee/legcon_ctte/donor_conception/report/index.htm

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