

**Inclusion of Donor details on the Register of Births (Inquiry)**  
**LPCLR: Responses to Questions on Notice**

**1. Is there any legislative basis for regarding the interests of the child or donor-conceived person as greater than the interests of other parties?**

Article 3(1) of the United Nations Convention on the Rights of the Child, to which Australia is a signatory, states that:

*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

Whilst the Convention is not binding in domestic law, this principle has been incorporated in several areas of domestic legislation, for example:

- Section 60CA of the *Family Law Act 1975* (Cth) states that “[i]n deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.” This is so even where the Court makes a parenting order with the consent of the parties<sup>1</sup>. Similarly, the Court must regard the best interests of the child as the paramount consideration when considering whether to make a variety of other orders under that Act, such as recovery orders (s67V) and welfare orders (s67ZC);
- The *Children and Young Persons (Care and Protection) Act 1998* provides the statutory framework for the child protection system in NSW. Section 9 of the Act provides that “[t]his Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount”;
- Section 8 of the *Adoption Act 2000* states “[i]n making a decision about the adoption of a child, a decision maker is to have regard (as far as is practicable or appropriate) to the following principles: (a) the best interests of the child, both in childhood and in later life, must be the paramount consideration...”;
- Section 3 of the *Surrogacy Act 2010* states that “[t]his Act is to be administered by reference to the principle that, in relation to any surrogacy arrangement, the best interests of the child of the surrogacy arrangement are paramount”;
- The *Child Protection (International Measures) Act 2006* implements the Hague (Child Protection) Convention<sup>2</sup> in NSW. Section 3 states that an object of the Act is to recognise that “a child’s best interests are a primary consideration in relation to a measure for protecting the person of the child or a measure for protecting the child’s property”; and
- The *Children (Education and Care Services) National Law (NSW)* lays the legislative foundation for nationally consistent standards to ensure quality education and care is provided by long day care, family day care, preschool and outside school hours care services. Section 3(3) of that Act states that “[t]he

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<sup>1</sup> *Reid v Lynch* (2010) 44 Fam LR 141; [2010] FamCAFC 184; BC201050893 at [212]-[213].

<sup>2</sup> The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

*guiding principles of the national education and care services quality framework are as follows— (a) that the rights and best interests of the child are paramount;...”*

- 2. Does LPCLR have a position on whether a donor conceived child should be provided with information that identifies their donor prior to a prescribed age in certain circumstances, such where there is a medical need or the child is sufficiently mature?**

LPCLR does not wish to pre-empt the findings of the Committee, and therefore does not have a formal position on whether information that identifies a donor should be provided to donor-conceived children prior to a prescribed age.

Jurisdictions in Australia that have established Assisted Reproductive Technology Registers differ in relation to when a donor-conceived child may access this information. This information is summarised in the table at Annexure A<sup>3</sup>.

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<sup>3</sup> This table is prepared on the basis of the prospective operation of the relevant legislation. In all relevant jurisdictions the legislation has a limited retrospective effect (generally on the basis of information voluntarily provided).

## Annexure A: Access to information identifying donor

State	Legislation	Age of child	Circumstances allowing access to information identifying donor prior to prescribed age
NSW	<i>Assisted Reproductive Technology Act 2007</i> (NSW)	18	A child cannot access identifying information about their donor prior to turning 18, however the legal parent of a child can access such information if the disclosure of that information is reasonably necessary to save the life of the child or to prevent serious damage to the child's physical or psychological health, and the information cannot reasonably be obtained by the parent in any other way. If based on psychological grounds a certificate from a registered medical practitioner with expertise in mental health or a registered psychologist is required <sup>4</sup> .
Victoria	<i>Assisted Reproductive Treatment Act 2008</i> (Vic)	18	A child can access identifying information about their donor prior to turning 18 if: (i) If the child's parent or guardian has consented to the making of the application; or (ii) A counsellor has provided counselling to the child and advised the Registrar, in writing, that the child is sufficiently mature to understand the consequences of the disclosure <sup>5</sup> . A parent can access donor identifying information if the donor consents <sup>6</sup> . In all cases donor identifying information may only be disclosed if the applicant has received counselling <sup>7</sup> .
Western Australia	<i>Human Reproductive Technology Act 1991</i> (WA)	16	When consent of all parties is obtained. A child under the age of 16 cannot consent to the release of identifying information – although a parent or a person with parental responsibility could consent on their behalf <sup>8</sup> . Approved counselling must be undertaken before the release of identifying information.

<sup>4</sup> *Assisted Reproductive Technology Act 2007* (NSW), section 38. An 'appropriate person' may obtain this information in lieu of the parent in certain circumstances.

<sup>5</sup> *Assisted Reproductive Treatment Act 2008* (Vic), section 59.

<sup>6</sup> *Assisted Reproductive Treatment Act 2008* (Vic), section 58.

<sup>7</sup> *Assisted Reproductive Treatment Act 2008* (Vic), section 61.

<sup>8</sup> *Human Reproductive Technology Act 1991* (WA), section 49.