

INQUIRY INTO INCLUSION OF DONOR DETAILS ON THE REGISTER OF BIRTHS

Organisation: NSW Commission for Children and Young People
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Mr John Barilaro MP
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Committee on Law and Safety
Parliament of New South Wales
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Dear Mr Barilaro

I write in response to your correspondence inviting the Commission for Children and Young People, (the Commission), to make a submission to the Inquiry into Inclusion of Donor Details on the Register of Births. The Commission has a mandate to promote the wellbeing, welfare and safety of children, and the participation of children in matters that concern them.

The terms of reference of this Inquiry are to consider whether there should be provision for the inclusion of donor details on the register of births maintained by the NSW Registrar of Births, Deaths and Marriages (the Registrar). It is understood from the Committee's media release that the Inquiry will consider whether the current system of recording donor information is adequate and whether these details should be kept by the Registrar. The Committee is also interested in the issue of access to information for donor-conceived people and how details should be maintained to facilitate this access.

Donor details are currently collected on a central registry administered by the NSW Ministry of Health (NSW Health) under the *NSW Assisted Reproductive Technology (ART) Act 2007* and *Assisted Reproductive Technology Regulation 2009*. The Commission's view is that donor information arising from ART should continue to be held and administered under this legislation, but has no particular view on whether this role should continue to be performed by NSW Health or whether the Registrar should be responsible for this legislation and perform this role.

However it is noted that NSW Health performs a number of other functions in regard to donor information, including operating a voluntary register for people who were donor-conceived before 1 January 2010 and for donors who donated before this date. NSW Health has also developed internal procedures for the exchange of voluntary information to assist donors and donor offspring seeking information about each other, and liaises with ART providers in this regard.

In addition, NSW Health assists parents of a donor-conceived child to contact the donor in exceptional circumstances such as a medical emergency. If responsibility for this information were to transfer to the Registrar, responsibility for these additional functions would also need to be transferred. The suitability of the Registrar to perform these functions, and any additional functions performed by NSW Health under the above Act, and its capacity to do so, would need to be explored.

The Commission supports the current arrangement whereby donor information arising from ART is held in a separate register, and is of the view that donor information relating to donations through ART should not be included in the register of births, deaths and marriages. It is noted that the Victorian Registrar of Births Deaths and Marriages is responsible for management of the Central (mandatory) Register and Voluntary Register under the *Victorian Assisted Reproductive Treatment Act 2008* and that this information is held separately from the register of births.

There are a number of reasons for not including donor details arising from ART in the register of births and for managing this information separately. Most importantly the register of births records details of a child's legal parents, and these are the names listed on the child's birth certificate. The certificate is an important record of legal parentage and is of assistance to parents who need proof of this as they raise their child. It is also an identification document that will later be used by the child. It is thus important that the names of the parents who have legal parental responsibility for the child at the time of birth, or later through adoption, are recorded on the child's birth certificate. Inclusion of donor details in the register of births has potential to create confusion in this regard.

NSW legislation is clear that donors are not presumed to be parents, but rather that the woman who has undergone the fertilisation procedure and her partner, whether male or female, are considered to be the parents of the donor conceived child (s14, *NSW Status of Children Act 1996*). It is also the case that most donors donate with an expectation of anonymity and do not have an expectation that their biological parenthood will be formally acknowledged. Nor do most donors expect to have a relationship with a child conceived as a result of their donation. It would thus not be appropriate to include their details on the register of births and to do so would appear to be contrary to existing NSW legislation about presumptions of parentage.

As the information held under NSW ART legislation is of a private nature and includes the name and address of the donor and their health information, the Commission considers that the current protections to privacy should continue to apply. The current situation under this legislation is that only the donor, the donor conceived child and the parents of the child have access to information on the ART register and that only certain information can be made available to each party. This offers more protection to privacy than would be available under the *Births, Deaths and Marriages Registration Act 1995*. While access to the register of births must seek to "protect the persons to whom the entries relate from unjustified intrusion on their privacy", access is at the discretion of the Registrar, provided there is an adequate reason and it conforms with internal policies.

However the Commission is also of the view that donor conceived young people should have improved access to information about their donor under current NSW ART legislation. At present the parents of a donor conceived child have access to medical information about the donor that may be relevant to the child, and details of the donor's ethnicity and physical characteristics, but children do not have access to this information until they turn 18. The Commission considers that there may be occasions when a young person 14 years and over wishes to seek medical assistance independently of their parents, and that they should be able to access


medical information about the donor of relevance to their health for this purpose (s 49 of the *Minors (Property and Contracts) Act 1970* recognises the right of a minor aged 14 years or above to consent to medical and dental treatment). The Commission is also of the view that donor conceived young people should be able to access information about their donor such as their ethnicity and physical characteristics, independently of their parents.

The Commission's position is that being honest with children about their status, circumstances, genealogy and general background is important to their identity formation and their mental health and that children and young people should have reasonable access to information in this regard. This should involve being able to access this information as required, in the case of health, or as desired, in the case of ethnicity and physical characteristics. Continued access to this information for parents and children, whichever NSW government agency administers the ART register, is very important.

While the Commission considers that donor details related to ART should not be included in the register of births, there should be scope to include the names of donors of children conceived through informal arrangements in cases where all relevant parties agree at the time of birth that the donor is to perform a parental role for the child. This would clearly require the capacity to include three persons as parents in the register of births, and on a child's birth certificate.

The Commission believes that allowing the donor's name to be included in the register of births in this circumstance is likely to be in the best interests of the child. Research conducted by the Commission indicates that having a loving and supportive family is of great importance to the well-being of children. Formal recognition of key relationships in a child's life where there is shared parental responsibility could serve to validate and strengthen these relationships. It may also mean that the child has access to additional financial resources, as being registered as a legal parent may give the donor additional financial obligations towards the child. To protect the privacy of the donor and the child, only the same information that is held on other parents of the child should be kept on the donor under this register.

I appreciate the opportunity to contribute to this Inquiry and trust that the comments provided are of assistance.



Yours sincerely



Megan Mitchell
Commissioner

19 December 2011