

**Submission  
No 25**

## **INQUIRY INTO INCLUSION OF DONOR DETAILS ON THE REGISTER OF BIRTHS**

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21 December 2011

The Committee Manager  
Committee on Law and Safety  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Committee Manager,

**Submission on the Inquiry into the inclusion of donor details on the register of births**

Thank you for the opportunity to contribute to the Committee of Law and Safety's inquiry into the inclusion of donor details on the register of births.

**Inner City Legal Centre (ICLC)**

The ICLC provides specialist legal services to anyone in New South Wales who identifies as Lesbian, Gay, Bisexual, Transgender or Intersex (LGBTI). ICLC provides a wide range of legal advice, representation and education to LGBTI communities in areas such as family law, domestic violence, homophobic vilification, discrimination and employment.

**Introduction**

A birth certificate is an administrative document that captures particulars relating to a person at their time of birth. A birth certificate is primarily a record of parentage at time of birth not a record of significant people in the child's life, and not a document of cultural identity.

Donors are not currently listed on the birth certificate. We support this position as listing a donor confuses what a birth certificate is, potentially dilutes the importance of parentage, and conflates the role of the donor.

**Central Registry**

Donors who donated eggs, sperm or embryos after 1 January 2010 provide particulars for inclusion on the Central Register. This information is made available to the donor-conceived person or their parents upon application. We agree that it is in the best interests of donor-conceived people to be able to access information about their donors.

ICLC supports the Central Register as an appropriate mechanism to store information for donor-conceived people.

### **Who should manage the Central Registry?**

A donor-conceived person is able to approach the NSW Registry of Births, Deaths and Marriages about information regarding their families. In our submission, the family of the donor-conceived person is made up of the intended parents and any existing siblings.

For this reason we do not think it is necessary for the Central Registry to be managed by the NSW Registry of Births, Deaths and Marriages. If people would like to explore their *family's* history then the NSW Registry of Births, Deaths and Marriages will be able to provide that information not the Central Registry.

The Central Registry is repository of information connected to the donor-conceived person's biology, not the donor-conceived person's family. As noted above, we acknowledge that it is important for medical information to be kept for the emotional and physical well being of the donor-conceived person, however we strongly advocate that this information is not familial information.

We consider the distinction between parents and donors to be of great importance. In gay or lesbian families one parent will not have a biological connection to the child. In law, this does not mean that they are not the child's parent. If the gay or lesbian couple have used a donor it is appropriate that particular information is available, if needed for the child's physical or emotional well-being, in our submission this is a health issue and unrelated to the child's identity as a member of that family.

### **Case study 1:**

*Sam and Tsu are two women in a loving relationship. Sam and Tsu decided to have a child and asked their friend Patrick to be the donor. Patrick agreed and told Sam and Tsu that he would like to know their child – Sam and Tsu agreed. Tsu gave birth to a little girl called Lily. Sam and Tsu were listed on the birth certificate as parents of Lily. Patrick has met Lily and visits her regularly.*

In the above case study Sam and Tsu are clearly parents and it is appropriate to have their names on Lily's birth certificate. Patrick is a donor, a friend and potentially someone concerned with Lily's well being. Patrick is not a parent and

therefore it is inappropriate for him to be listed on the register of births, or the birth certificate.

### **Case study 2**

*Ally and Taylor are in a relationship and are raising two children. Ally and Taylor had used a clinic to conceive their children and their donor details are lodged at the Central Registry. Both Ally and Taylor consider themselves parents to both children. They do not consider the donor to be relevant to them in anyway, except as a source of information for health records relating to their children.*

In the above case study both Ally and Taylor are clearly parents. Their donor does not have a role in their lives and therefore it is inappropriate for him to be listed on the register of births, or the birth certificate.

Within the gay and lesbian communities families may take many forms. As in case study 1 the known donor may exist as a significant figure in the child's life. Such a relationship can be reflected by agreement between the donor and the parents and if necessary this can be formalised through the family court. In case study 2 the known donor may not play any role at all. There is no reason why in either scenario, the donor needs to be listed on a birth certificate.

In our submission it is important that the NSW Registry is clear that there is a definite distinction between parents (whether same or opposite sex) and donors. Unless this distinction is clearly maintained there is the potential to further confuse an already confusing area of law.

### **Registration of the birth**

If a person is named as a parent on a birth certificate then there is a 'presumption of parentage'. This presumption has broad legal ramifications including liability for child support and Centrelink entitlements. While the presumption of parentage may be rebutted upon application to the Family Court or the Federal Magistrates Court, the process involved in obtaining a declaration that the individual is not the parent may be time consuming and expensive.

A birth certificate is not an emotional document that captures everything about an individual, a personal document that assists a person to understand themselves or even a record about an individual's family (for example the oldest child will not have their siblings listed on their birth certificate even though they make up their immediate family). The Register of Births, and by extension birth certificates, have a simple purpose, that is, to provide a record of parentage at the time of birth. A known donor is not a biological father or a parent. A known donor is simply someone who has donated sperm, eggs or an embryo. In our submission, the addition of a donor on a birth certificate has the potential to undo some of the

important changes brought in by the *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008 No 23*.

**Conclusion**

In our submission, donor's names should not appear on birth certificates or the register of births.

A birth certificate is an administrative document that shows a snap shot of a person's life at their time of birth. A birth certificate is primarily a record of parentage, not a record of significant people in the child's life, and not a document relating to biological information.

Thank you again for the opportunity to contribute to this inquiry. We would be delighted to discuss our submission further in person.

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Yours faithfully,

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Dan Stubbs  
Director