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MANAGING INFORMATION RELATED TO DONOR CONCEPTION

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In Defence of the Sperm Donor

Submission from Andrology Department, Concord Hospital, Sydney Local Health District

To

NSW Legislative Assembly Committee of Law and Safety Inquiry into Managing Information Related to Donor Conception

Synopsis

In the tripartite arrangement for donor sperm-based conception (donor, recipient, offspring), the sperm donor has always been a shadowy figure. Dwelling in his own privacy and having acted from unknown, misunderstood or misinterpreted motives, he lacks any independent voice to defend his own legitimate legal, ethical and privacy rights. In their natural desire for undisturbed individual privacy, they have no common purpose nor do they form public lobby groups.

As a result, public and academic calls to subordinate donor's privacy rights to those of the offspring often appear uncontested by any defence of the sperm donor's legal and privacy rights. Like any other individuals, however, sperm donors have a simple and reasonable expectation of living their lives free from unwelcome intrusion or disruption forced by state authorities. As an undefended minority, we believe there is a strong legal and moral responsibility on a law-abiding, civil society to protect sperm donor privacy. While we support the wishes of donor offspring to know the identity of their sperm donor, this must be with the consent of the sperm donor within the specific terms of their legal consent agreement. There is no sound basis to override the protection of the sperm donor's privacy following the altruistic gift of sperm provided under the terms on which that donation was made and without which he would not have donated. Having acted out of goodwill in charitably trying to help infertile couples complete a family, the sperm donor remains innocent of any wrongdoing. He should not be subjected to forcible "outing" without his freely given consent.

Since 2010, NSW law requires sperm donors consent at time of donation to future disclosure of their identity on request of an offspring who reaches legal maturity. Many infertility clinics, including those in SLHD, anticipated NSW legislation by more than a decade (~1997) in requiring

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such consent. However prior to that time, in keeping with the custom and practice as well as beliefs and values of the 1980's and early 1990s, the sperm donor's written consent agreement provided the donor with an enduring guarantee of privacy, without consent for future contact, disclosure of identity or other recriminations. Virtually none of these altruistic sperm donors would have been willing to provide the gift of sperm for donor insemination if disclosure was required at the time of their donation.

Where a sperm donor has provided their donations on the basis of enduring anonymity, he may subsequently relinquish his privacy; however, this must be on their own volition, without coercion or harassment. Retroactive legal quashing of privacy rights of an innocent party to a lawful agreement is inherently abhorrent, an anathema to any law-abiding society. This is specifically contrary to the Universal Declaration of Human Rights which enshrines protection of privacy (#12) and from retroactive laws (#11).

In a few cases, pre-1997 sperm donors have indicated subsequent interest in the outcomes of their sperm donation. In these instances non-identifying information has always been available to donors (and recipients), but most donors have not sought to get such information on outcomes. From knowledge of the sperm donors and their motivations, most may not wish to know or be further involved with the outcomes of their sperm donation.

A large proportion, probably more than half, of infertile heterosexual couples who used donor sperm to form their family have not told their children of their donor origins. Despite any prevailing disapproval of this, it would be intolerably intrusive to force disclosure on such families or even to survey them (risking breach of privacy) to determine if their children had been informed of their donor origins. It is hard therefore to understand why similar protection for sperm donors against irrevocable, unauthorised and potentially harmful breach of privacy requires elaborate defence.

When the NSW Ministry of Health established the Voluntary Gamete Donor Registry it was part of its planning to conduct a state-wide publicity campaign to make the Voluntary Register known to the general public. This had the laudable goal of encouraging past sperm donors – on their own initiative - to voluntarily register to allow for contact, exchange of information and/or identification to offspring (and vice versa). Unfortunately the publicity campaign has never materialised and the Voluntary Register remains virtually unknown to the public including past sperm donors. This would be a very reasonable and widely acceptable alternative to oppressive legal retroactive forced disclosure of sperm donor identity without consent. A properly undertaken approach of this type would achieve, by lawful and non-oppressive means, the maximal possible uptake of voluntary registration, recognising that failure to register is likely to represent a wilful decision to opt out of further contact or disclosure rather than unawareness of the Voluntary Register.

Factual Background

1. Sperm donation developed as a NSW hospital service in the late 1970's in a few large metropolitan teaching hospitals. At RPAH/KGV Hospital in Camperdown, sperm donors were recruited originally in KGV Hospital's semen laboratory. From around 1979 onwards and, progressively in the early 1980's, this task was taken over by the RPAH Andrology Unit. Ultimately responsibility for sperm donor management transferred in 1999 when the RPAH Andrology Unit moved to Concord Hospital to become the Andrology Department, Concord

Hospital, both hospitals being within SLHD and its predecessor Area Health Service. In the Andrology department, the same medical staff has been involved in this sperm donor recruitment, counselling and management since its origins. The present comments are based on careful reflection after decades of continuous first-hand experience.

2. A distinctive feature of the SLHD's donor insemination program has been the separation of responsibilities for sperm donors and recipients. In virtually every Australian infertility clinic and IVF program, sperm donors were managed by the same medical staff whose primary responsibilities were to treat recipients with the donated sperm that the same clinic obtained from sperm donors. Our separation of responsibilities reflects an early recognition that these needs might conflict, as has transpired in present and related issues. The duty to protect sperm donor privacy may be in direct conflict with the desire of mature offspring of sperm donation to make contact with or know the identity of their genetic fathers. No legal practitioner could represent both sides of this conflict as most infertility or IVF clinics have to attempt to do. The outcome is that the protection of responsibilities to sperm donors may be subordinated to those of the clinics primary responsibilities to their patients, the infertile female recipients of the donated sperm and their offspring.

Problem

3. Adult offspring of sperm donation may seek to make contact with, get information from or know the identity of their genetic father. The wish for such contact or disclosure must still be subject to agreement of the sperm donor. This consent to contact and/or disclosure is usually provided in advance, governed by the legal agreement made at the time of sperm donation. Such legal agreement may be varied subsequently but this must be at the sperm donor's initiative and strictly at his discretion. Consequently, the genealogical curiosity of some donor offspring may conflict with, and be frustrated by, the sperm donor's legal and privacy rights.

Nature of sperm donor consent

4. Broadly, sperm donors are of three types

    a. Anonymous donors.
    These are recruited by medical professionals. Based on the written legal consent agreement at the time of donation, they do not expect to be contacted further nor ever to become known to the recipient and/or offspring. Anonymous sperm donation was no longer accepted in SLHD since ~1997 and, by NSW law, it is illegal from 2010 in NSW.

    b. Conditionally anonymous donor.
    These are recruited with consent to remain anonymous but only until the offspring reaches legal maturity. At that time the disclosure of the sperm donor's identity to the offspring is agreed to in advance. The difference between permanently and conditionally anonymous sperm donors depends on the consent provided at the time of sperm donation reflected in the written legal agreement together with the verbal and written details that informed their written consent.

   c. Known donors.
      A known donor is recruited by the recipient wishing to use his sperm. It is an open arrangement, often informally negotiated, which may occur outside medical services.

5. The conflict between offspring curiosity and sperm donor privacy arises only for the 1st category of sperm donors. For known and conditionally anonymous sperm donors, disclosure of sperm donor identity is agreed in advance on request by mature offspring.

6. From Jan 2010, the ART Act (NSW) requires that any sperm donor must consent at the time of donation to disclose his identity on request by a mature offspring. The sperm donor consent procedures at RPA/KGV/Concord Hospitals anticipated this requirement by well over a decade with our written sperm donor agreements since 1997 requiring the donor to disclose his identity, on request by a mature offspring. Nevertheless, there remain earlier (pre-1997) sperm donors whose consent offered permanent confidentiality and neither specified nor implied consent to be approached in the future.

7. In the 1970-80s anonymous sperm donation was a last resort for couples with an infertile (usually azoospermic) husband to have a family. Prior to circa 1997, sperm donation in Australia (and all comparable countries), was considered a simple, charitable act aiming to help complete a family for a couple who suffered the misfortune of male infertility. Its legal status was designed to ensure this altruism was free from adverse long-term consequences for the donor. Other than for a very short period where a token payment ($10-15 per donation) was offered, nearly all sperm donations were provided without any financial reward. Despite the pervasive stereotype, sperm donors were not usually students but were mostly men with personal experience (among family or friends) of the hardships of infertility. Becoming a sperm donor was explicitly envisaged as a social generosity, analogous to blood donation, as a one-off, obligation-free altruistic gift with the understanding that there would be no further contact, disclosure of identity and other recriminations. That metaphor was embodied in the form of the sperm donor's consent and risk declarations which were, even within the last decade, virtually identical to those for blood donation.

8. The universal experience of sperm donor programs is clear that the introduction of the mandatory disclosure requirement produced a dramatic, near total, reduction in willingness to become sperm donors. This was our experience in screening over 600 men who provided over 200 sperm donors, 90% of which were pre-1997. Whereas recruitment had previous been easy and abundant, under a mandatory disclosure regimen, recruitment slowed to a trickle. The experience of modern donor insemination programs elsewhere is that sperm donors are very scarce and costly (or impossible) to recruit. This clearly highlights that most sperm donors of the pre-mandatory disclosure era would not have become sperm donors had disclosure been required with their donation. This is also verified directly by first-hand comments from sperm donors. Whatever hindsight wisdom that may be applied now, the legal contract entered into voluntarily and in good faith by the donor and institution should not be breached without the donor's freely given consent.

9. SLHD has long had almost uniquely superior protection for sperm donor rights because the medical staff recruiting and managing sperm donors were always distinct from those whose primary responsibilities are to the recipients and their offspring. In all other Australian fertility centres, including public hospitals, the sperm donors are recruited and managed by the same medical team. Thus, in situations like this where interests and rights conflict,

sperm donors are not independently represented in medical or legal terms. This results in their privacy rights being subordinated to those of sperm recipients and their offspring, the fertility centre's primary responsibilities. Undoubtedly this is administratively simpler but it does not afford natural justice to the sperm donors.

10. Pre-1997 sperm donors were not screened for personality or motivation any more than were blood donors. Further, as they were healthy by definition, they were not routinely followed up. Our internal operating principle was that we would only approach them if it was clearly in their best interests to do so. In 3 decades this only occurred twice, although there were occasional frivolous requests which were not acted upon.

Harm from Breaching Donor Privacy

11. Forcible involuntary disclosure of a donor's identity can create major damage to him and his family. After the passage of two decades, sperm donors may forget or regret actions from much earlier life. In their very different life circumstances decades later, they may or may not agree to accept what may be an unwelcome intrusion into their lives. It is easy to imagine circumstances of which we are aware where disclosure of such past actions would constitute a damaging intrusion in the past donor's life. The sperm donor no less than anyone else in society is perfectly entitled at his own discretion to maintain privacy over matters he prefers not to divulge to family, friends and/or workmates. The impact of such forcible or even accidental disclosure on the past sperm donor should not be underestimated merely because it is unfamiliar. For an example of harm, see #28.

Privacy Risk of Approaching Past Sperm Donors

12. Attempting to make contact with anonymous sperm donors, whose contact details have inevitably changed over decades, places their privacy at great risk. This could damage their personal circumstances, which will have changed greatly since their donation. Such contact should only be attempted if it is in the sperm donor's best interests. The circumstances must allow them the chance to decline contact and to be assured of ongoing strict confidentiality. Despite the impression that is a simple matter to contact past sperm donors to seek a change in their consent, such attempts at contact, where unexpected contact risks damaging intrusion into the sperm donor's life, carries major and unacceptable privacy risk in itself.

13. The strong obligation to carefully protect highly sensitive private information is especially serious where the sperm donor gave no consent for any future contact and expects none. We are aware, from personal information that substantial numbers of sperm donors from the pre-disclosure era have decided to keep this issue strictly personal and private and, specifically, do not wish to disclose their donor history to their family or friends. Where that is their decision, we are obliged to respect it. Accidental but irrevocable breach of their privacy is highly likely with using any conventional means of written or electronic contact so that making contact with donors while maintaining strict privacy poses major practical difficulties. It is not acceptable to write or leave phone messages in case details left create suspicion and divulge matters that defeat the purpose of his privacy protection regarding matters he may wish not known to his family, friends or workmates.

14. We therefore developed careful and sensitive procedures to contact sperm donors but only when required in their own best interests. We do not make contact with previous sperm donors unless (a) it responds to their requests (such as for non-identifying information on outcomes) or (b) important new information becomes known such that it is in their best interests and of their family(s) to disclose to them. The latter has happened only twice in 3 decades with a genetic disorder newly diagnosed long after donation in either a donor offspring or in the donor himself. Our approach is based on personal knowledge of the individual donor and their stated preferences on whether, how or where to make contact if essential.

15. Infertile families have never been required to disclose the use of donor sperm. Long-term follow-up of infertile heterosexual families with donor offspring indicates that while a minority chose to disclose the fact of donor genetic paternity to their offspring, a majority has always chosen not to do so[1]. This reflects with fidelity the original intent of the sperm donor program despite the hindsight disapproval by others. Some people may think that such couples should be forced to divulge this information to their offspring. However, even worthy ends do not justify the use of any means. As an analogy, it may be worth contemplating an ethics committee's attitude to a researcher who wishes to prove that there are no adverse long-term consequences of termination of teenage pregnancy by contacting women who had terminations 30 years ago. Here, as with sperm donor contact, the very fact of making contact even to seek agreement to participate is likely to breach strict privacy to which the such women would have unqualified entitlement.

Options available

16. For known or conditionally anonymous sperm donors, there is no hindrance to an eligible mature offspring from seeking contact or identifying information through the appropriate channels.

17. For pre-1997 donors, *prime facie* there is no basis to disclose the identity of a sperm donor to anyone without donor consent. After careful reflection, we believe strongly we have a duty to protect the privacy of sperm donors, notably those pre-1997. Sperm donors are real people who value their privacy. They have no common purpose and do not, by their nature, form lobby groups so it is particularly incumbent upon us to defend their privacy.

18. It is clear that most pre-1997 sperm donors would not have donated if they had been required in advance to be identifiable to future offspring. This belief is based on the dramatic drop in volunteers for sperm donation when disclosure requirement was introduced. Whereas we had easily recruited potential sperm donors (over 600 over ~15 years), immediately the disclosure requirement was introduced sperm donors became virtually unobtainable. Similarly, we have received spontaneous, indignant and even threatening comments from our sperm donors when such forced disclosure was recently discussed in public. It is also known that some of our sperm donors have declined to participate in communicating with recipients and/or offspring.

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[1] This differs however for the much more recent involvement in donor insemination of single women and lesbian couples where the need to identify genetic paternity mechanism is unavoidable.

19. While it is possible that some sperm donors might welcome identification, it is equally true that others may decline and fear the impact of unwelcome disclosure to their family, friends or workmates. These donors have a reasonable expectation that this information will be rigorously protected and not disclosed to anyone without the donor's freely given consent. In general it is impossible to know what reaction the sperm donor may have in advance.

20. Another opportunity would be the result of the advertising campaign planned by NSW Health to encourage past sperm donors to enrol on the Voluntary Register. In this case they would express their own wish to make contact with or know or be known to offspring. It is notable however that as we might expect, based on the dramatic chilling effect of the disclosure requirement, few have so far volunteered; however, the promised advertising campaign might change that in case some may have forgotten or not thought about it in recent years. This has started with a recent Ministry of Health initiative to distribute Donor Conception brochures to GP surgeries and ART providers encouraging former gamete donors to join the Voluntary Register.

21. Where we do have grounds to contact the sperm donor, attempts to make contact may not always yield results. Formal identification of sperm donors was never required and anecdotal information suggests that some men may have use false names, especially at clinics where reimbursement was offered. In other cases with common names we may identify several possible men but need to confirm a birth date, which may be difficult without explaining the purpose of the phone call. Some donors left instructions never to contact them at home and/or at work. It is not acceptable to write letters or leave phone messages. The only type of personal contact acceptable is to speak to the donor himself, preferably without others within earshot.

22. Our department has extensive experience with tracing men in the community. This arises from the need for annual follow-up of the highly mobile population of young men who have voluntarily cryostored sperm prior to cancer treatment. We use a variety of databases including the hospital records, Electronic White Pages (EWP) and internet searching. The progressive decline in landlines in favour of usually unlisted mobile phone numbers has reduced the value of EWP. The public census rolls are not useful because a look-up requires a name plus address (typically what we are searching for) and is not permitted for a search for a name plus date of birth (which is what we have as identifiers). Hence, even when it is considered acceptable to trace a sperm donor, such a search may not be successful decades after sperm donation if the donor is now overseas, dead, jailed, has a common surname or gave a wrong name.

23. We are strongly opposed to the Contact Veto mechanism which is, in effect, an opt-out mechanism which defaults to disclosure without consent. Any disclosure requirement for identity disclosure or for contact of any type must be only on an opt-in mechanism which ensures an active agreement.

24. Retroactive laws are an anathema. It is abhorrent to a lawful civic society to enact laws with retrospective effect. Ordinarily, Australian courts normally interpret statutes with a strong presumption that they do not apply retroactively. Exceptionally, retroactive laws have been considered constitutional but only for the most heinous criminality such as war crimes. We submit there is no remote basis for such an oppressive legal approach as retroactive

suppression of their legal and privacy rights of innocent sperm donors on the basis of genealogical curiosity by offspring. See also the detailed response to the Victorian Law Reform Committee's recommendation by Pennings[2].

25. Privacy protection is widely and growingly accepted as paramount even in face of a person's culpability. Some examples where an adult's privacy is considered paramount over other consideration which include obscuring the factual truth include (a) suppression of juvenile criminal records for someone who is then an adult, (b) prohibition on DNA testing without consent even in cases of genealogical fraud (mothers claiming child support payment from a male partner despite suspected non-paternity) and (c) seeking damages for adverse consequences of infectious blood or organ donation. Given these socially accepted protections even for the culpable, the innocent sperm donor has an even stronger case for privacy protection.

26. A salient example of the paramount consideration given to privacy protection is the fact that, according to the best estimate available, approximately half the infertile heterosexual families who ever used donor sperm to have children have NOT notified their children that they are the product of donor conception. This differs significantly from single women and lesbian couples who have used donor sperm as such knowledge is unavoidable. Despite many who would strongly disapprove of this as untruthful or deceitful parental behaviour, it would be rightly considered intrusive and unacceptable to force disclosure on unwilling families. Nor would it even be acceptable to systematically approach such families with a view to determining whether or not the parents have informed their children of their donor conception status. Despite the good intentions and worthy ends, the means of achieving it would irrevocably breach the family's privacy. It is hard to see how the analogous argument is not equally strong for protection of sperm donor privacy. Presumably the invisibility of sperm donors, lacking a lobby group and the appearance of being easily overridden, is why analogous protection of sperm donor privacy has been so poorly defended.

Rebutting False Claims Relating to Sperm Donation

27. False analogy with adoption. We reject a frequently raised but false analogy between donor conception and adoption. Sperm donation is basically a purely voluntary, altruistic act performed by an untroubled person wishing to help form a family which would not otherwise be possible. It usually has no adverse lingering consequences for the donor. This vividly contrasts with adoption where the central tragedy of the relinquishing mother is inescapable. Uniting adoptees with their biological parents provides late relief of this tragic relinquishment. No equivalent drive is present for sperm donation, where the drive to identify genetic paternity is driven solely by genealogical curiosity of the offspring.

28. Forcing disclose of sperm donor identity is harmless. While it is clear that reuniting adoptees with their relinquishing parents can have major psychological benefits in trying to neutralise the motivating tragedy of adoption, it is a simplistic view of human nature to assume that this is entirely without consequences on other parties. For example, some adoptive parents may feel a sense of rejection and/or a lack of gratitude or loyalty by their adopted children.

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[2] See G. Pennings. How to kill gamete donation: retrospective legislation and donor anonymity. *Hum Reprod 27*, 2881-5, 2012.

Indeed dissatisfaction by adoptee or disharmony in the adoptive family may motivate such a search for biological parents as a form of symbolic rejection of the adoptive family but with concrete psychological consequences.

Even within our very limited experience we know of harm being caused by disclosure of sperm donor identity. Contact between a sperm donor and recipient was encouraged and organised by the experienced counsellors. This quickly led to breakdown of the sperm donor's family with the donor and recipient forming a close personal relationship (presumably related in some way to their genetic offspring in common) resulting in an attempted suicide by the donor's wife. That such harm occurred among only a handful of efforts to make such contact suggests that harm cannot be considered irrelevant to the issue of forced disclosure without the sperm donor's consent.

29. A medical necessity to know genetic paternity. It is false that there is any medical necessity for access to sperm donor identity. The claim that a genetic history from the sperm donor is essential for the medical care of offspring is incorrect and misguided.

    Acute or emergency medical care does not require a detailed family genetic history. Emergency medical facilities are used to dealing with patients who are unconscious, don't speak the local language where no interpreter is immediately available as well those with limited intellect, orphans or adoptees, all of whom may provide no or incomplete family history.

    For chronic medical care, a family history is usually not required and only occasionally desirable but rarely if ever essential. The absence of a complete and accurate family history is a well understood feature managed in chronic medical care. Sperm donors are carefully screened medically for transmissible genetic or infectious diseases at the time of donation. Any major known genetic diseases are screened out to the extent possible at the time. For complex diseases with a measurable but usually minor genetic component (like virtually all common diseases), such knowledge is desirable but not essential.

30. The "right" to knowing the circumstances of one's conception or genetic paternity. A right, defined as an enforceable entitlement, is not automatically created by wishful, forceful or repeated assertion by a potential beneficiary of that claim.

    There appears to be no basis for this "right", which would be in any case neither enforceable nor a realistic entitlement.

    This supposed "right" does not have any charter basis such as in the Universal Declaration of Human Rights, which does, however, enshrine protection of privacy and from retroactive laws.

    Some have claimed such a "right" might be derived from the UN Convention on the Rights of the Child. However this Convention does not apply to adult donor offspring who are not children. In any case, it does not specify a "right" to know one's genetic paternity or other circumstances of one's conception.

    One practical reason such a "right" is not recognised is that it would be unenforceable and inconsistent with normal social life. Probably about half the children born from donor insemination, as well as many more children born from extra-marital conceptions may not be aware of, or informed by, their social (upbringing) family of their actual genetic origins nor the circumstances of their conception (eg whether their conception was accidental or intended, whether parents wished for a child of different gender or other characteristics etc).

    Even if such a "right" were invented, it does not automatically override valid legal agreement or statutory privacy rights of a sperm donor.

31. Indemnity required to make unauthorised contact. In the absence of any agreement to make further contact with anonymous sperm donors, there are high risks of accidentally breaching their privacy by such contact. We believe that such unauthorised, attempted contact if mandated by law must be covered by an indemnity against harm caused by unauthorised attempts to make contact likely to breach privacy.

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Response to Terms of Reference

a) whether people conceived by donor conception prior to January 2010 should have access to donor conception information, including information that identifies their donor and donor conceived siblings.

Yes they should, but subject to sperm donor consent.
Sperm donor consent may have been obtained at the time of sperm donation. This would be true of sperm donors since ~1997 in most NSW clinics according to their own practices which anticipated the 2010 changes in NSW law by over a decade.
Pre-1997 sperm donor provided their donations on the basis of a legal undertaking to provide enduring protection of their privacy. Their donations were given in good faith on these undertakings and would not have been given without them.
We support the right of offspring to gain identifying information from such past sperm donors - if the donors agree voluntarily to do so. However, as the donors are an innocent party having breached no obligations to void that legal donation contract, it would be fundamentally wrong in moral terms and oppressive in legal terms, to force retroactive overriding of the donor’s legal and privacy rights.
The more appropriate approach is to conduct a publicity campaign to encourage past sperm donors to register on the Voluntary Register which provides them the opportunity to change on their own volition to change or relinquish their privacy rights. This gives past sperm donors the chance to register to the extent that they are willing to allow for contact and/or identification. While some may participate, others may decide not to.

b) which agency should manage donor conception information and provide services related to the release of this information.

We regard the legal consent of the sperm donor are part of the medical records held by their doctors and as such remain valid in perpetuity. The relationship of sperm donors should remain primarily with their doctors and not with any new Agency.
The introduction of any new Agency will be costly and inefficient. Inevitably the cost will grow based on initial underestimating the scope and efficiency of the Agency as well as inevitable mission-creep.

c) what counselling or support services and public education measures are necessary to support people who are seeking access to donor conception information.

We have no comment on these issues except that counselling services however offered should be voluntary and not mandated.

d) any other relevant matter.

See detailed comments above.

Response to Specific Questions

Question 1*: Should donor-conceived adults have retrospective access to donors' identifying details? (p 3)*

Yes but only with sperm donor consent whether obtained at the time of sperm donation or subsequently on the sperm donor's own volition and without undue coercion, pressure or pegal oppression.

Question 2*: If retrospective access were granted what conditions should apply? (p 4)*

It must be with sperm donor consent.
Any attempt to force unauthorised contact on past sperm donors will also require an indemnity against the high likelihood of accidental but irrevocable breach of privacy in the process of trying to make contact.

Question 3*: What other issues would be raised by granting retrospective access? For example, how would the process of applying for information be managed? Would counselling and support services be required? (p 4)*

It would irrevocably breach the sperm donors legal and privacy rights. Harm to the sperm donor or his families might be the cause for legal action against his doctors, clinic and the State for recovery of personal damages and hardship caused.

Question 4*: Which agency is best placed to manage the register of donor conception information (donor register)? Is the current management of the register adequate? (p 5)*

We believe doctors and their clinics are in the best position of trust to manage gamete donors. Any costly and intrusive new Agency should be limited to making contacts and not to holding medical records.

Question 5*: Should a standalone body be established to manage the register? What other areas could it have responsibility for? (p 5)*

Not in our view. It is likely to be expensive and inefficient. It should not take over primary responsibility for medical care and management as required of sperm donors or their interest such as privacy rights.

Question 6*: Should counselling and support services be offered to those seeking donor conception information from the donor register? (p 5)*

It should be offered and available voluntarily but should not be mandated.

Question 7*: Are there other types of support that could be offered? (p 5)*

Question 8*: How would support services be funded? By the government, the individual seeking the service, or by ART clinics? (p 6)*

Question 9*: How would such support be provided? By referral to the Department of Family and Community Services (as with adoption) or by a standalone body (as has been recommended in Victoria)? (p 6)*

Question 10*: How long should ART clinics be required to retain records? (p 7)*

This is already specified in the 2007 ART Act as 50 years.

Question 11*: What should happen to records if a clinic closes? (p 7)*

Records should be transferred to another willing doctor or infertility/IVF clinic willing to manage them with the appropriate confidentiality.
Such a service for orphaned medical records could be offered by some NSW clinics.

Question 12*: How can we ensure the integrity of records? For example, ensuring that they are not destroyed or tampered with. (p 7)*

This is already required by law.