

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

**Organisation:** Australian Christian Lobby  
**Name:** Mr David Hutt  
**Position:** NSW Director  
**Date Received:** 21/12/2011



**New South Wales Office**  
PO Box H331  
Australia Square NSW 1215

**T** 02 8005 3834

**E** [nswoffice@acl.org.au](mailto:nswoffice@acl.org.au)

**W** [acl.org.au](http://acl.org.au)

ABN 40 075 120 517

21 December 2011

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

***Re: Inclusion of donor details on the register of births***

The Australian Christian Lobby (ACL) welcomes this opportunity to comment on the Law and Safety Committee's inquiry into the inclusion of donor details on the register of births.

The register of births should record the historical reality of a person's birth. The truth of a child's biological origins cannot be altered by registering a different name. A child's identity is inseparably linked to its biological parents. The register should reflect genetic reality.

This inquiry should be approached giving the best interests of children priority. A child's genetic identity is a question of fact, and not of family circumstance or makeup. The register of births should not be used to facilitate social experimentation or advance an alternative agenda, nor should it be manipulated to satisfy the sensitivities of adults. It should record the truth.

ACL believes that families which do not fit into the "norm" should be afforded full respect under the law. Children born to same-sex couples, single parents, or couples where one or both parents are infertile should not suffer any disadvantage, either legally or socially. There is no evidence that children would suffer such disadvantage from an accurate register of birth, and falsifying it is more likely to lead to ridicule and social exclusion.

Comments regarding the register of births are not in this context comments on the adequacy or otherwise of any particular parenting arrangements.

## **A person's right to know his or her parents**

The right of donor offspring to know their heritage is fundamental. The right of a child to know his or her parents "as far as possible" is protected by the UN *Convention on the Rights of the Child*.<sup>1</sup>

The genetic origins of a person are a fundamental part of his identity. Denying donor conceived persons the right to know where they come from is denying them access to an intrinsic part of who they are.

Legal and medical ethicist Margaret Somerville has argued that "the most fundamental human right of all is a child's right to be born from natural biological origins".<sup>2</sup> She has argued that the first step in dealing ethically with issues of donor conception "is to place the future child, and the child's human rights and our obligations as a society to him or her, at the centre of the decision-making as to what should be required, allowed or prohibited".<sup>3</sup> She adds that "when a person seriously affected by a decision cannot give consent, we must ask whether we can reasonably anticipate they would consent if able to do so. If not, it's unethical to proceed".<sup>4</sup> This is known as the "ethical doctrine of anticipated consent".

These arguments are made in the context of donors remaining anonymous from their children, either by the choice of the donor or of the child's parents, or, more usually, both. However, regardless of what is agreed by adult parties, donor conceived children have no ability to consent to have information withheld from them to which they would ordinarily have a fundamental right.

## **The harm caused by donor anonymity**

Donor conceived persons denied access to information about their donor fathers or mothers often suffer considerable anxiety. Although not registering donor details does not always mean a donor conceived person's father or mother will be unknown, ACL believes that ignoring the donor's details is not in the best interests of children. It may facilitate denial of identity, and it may distance donors from their children because they are not regarded as the father or mother in any legal sense.

The recent inquiry by the Australian Senate Legal and Constitutional Affairs References Committee into donor conception practices in Australia recommended that:

*donor conceived individuals should be able to access identifying information about their donor, once the donor conceived person reaches 18 years of age, or such younger age as agreed by all states and territories*<sup>5</sup>

---

<sup>1</sup> Article 7.1, *Convention on the Rights of the Child*.

<sup>2</sup> Margaret Somerville (2008), 'Brave New Babies: Children's human rights with respect to their biological origins and family structure', *Centre for Medicine, Ethics and Law, McGill University, Montreal*, pp 1-2. Article available here: [http://www.mercatornet.com/articles/view/brave\\_new\\_babies/](http://www.mercatornet.com/articles/view/brave_new_babies/)

<sup>3</sup> Margaret Somerville (10 July, 2010), 'Life's essence, bought and sold', *The Globe and Mail*,

<http://www.theglobeandmail.com/news/opinions/lifes-essence-bought-and-sold/article1635165/>

<sup>4</sup> Somerville, 'Life's essence, bought and sold'.

<sup>5</sup> Legal and Constitutional Affairs References Committee (February, 2011), *Donor conception practices in Australia*, [http://www.aph.gov.au/Senate/committee/legcon\\_cte/donor\\_conception/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_cte/donor_conception/report/report.pdf), Recommendation 9, p xii

The Committee's report contained anecdotal evidence from donor conceived persons who were "deeply traumatised" or "dehumanised and powerless" at not having access to the knowledge of their genetic origins.<sup>6</sup>

A number of countries have banned donor anonymity in recent years, including Britain, Sweden, Norway, the Netherlands, Switzerland, and New Zealand. In May this year, the Supreme Court of British Columbia also overturned donor anonymity.<sup>7</sup>

These considerations are important when addressing whether donor details should be included on the register of birth. A society which values the rights of children to know their biological parents should consider the potentially devastating effects of ignoring the details of a donor mother or father, artificially removing the mother or father from the child's existence, at least in terms of official registration. As the Senate Inquiry heard, it is dehumanising to present a child with genetic origins by registering birth details which clearly do not represent a natural situation.

### **The recording of donor details**

The Legal and Constitutional Affairs References Committee recommended that records relating to donor conception be "appropriately preserved", and that, until such time as a "consistent and permanent long-term solution to the management of records" be implemented, that "a temporary moratorium be placed on the destruction of all records... that identify donor conception treatment procedures undertaken by donors and donor recipients".<sup>8</sup>

In its submission to the Law Reform Committee of Victoria's inquiry into access by donor-conceived people to information about donors,<sup>9</sup> ACL recommended that they have an absolute right to identifying information about their donor from the age of 18. It also recommended that donor conceived persons have the right to non-identifying information about their donor whenever they are required for medical purposes.

ACL reiterates these recommendations in the context of this inquiry, and recommends that provisions for the registering of donor details be made to facilitate these aims. As part of the "consistent and permanent long-term solution", details of a donor must be registered.

---

<sup>6</sup> *Donor conception practices in Australia*, pp 70-71, 77.

<sup>7</sup> CBCNews (19 May, 2011), 'Sperm donor anonymity overturned by B.C. court', <http://www.cbc.ca/news/canada/british-columbia/story/2011/05/19/bc-sperm-donor-ruling.html>

<sup>8</sup> *Donor conception practices in Australia*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/donor\\_conception/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/donor_conception/report/report.pdf), Recommendations 20 and 21, pp xiv-xv

<sup>9</sup> Australian Christian Lobby (8 August, 2011), Submission to the Law Reform Committee's *Access by Donor-Conceived People to Information About Donor*, [http://www.parliament.vic.gov.au/images/stories/committees/lawrefrom/iadcpiad/submissions/DCP56\\_-\\_Australian\\_Christian\\_Lobby.pdf](http://www.parliament.vic.gov.au/images/stories/committees/lawrefrom/iadcpiad/submissions/DCP56_-_Australian_Christian_Lobby.pdf)

## **AA v Registrar of Births, Deaths and Marriages and BB**

This court case<sup>10</sup> was decided in August 2011 and allowed the removal of a girl's sperm donor father from her birth certificate in favour of the female partner of the biological mother. The female partner had been estranged from the biological mother for some years. The father was known to the child and had a good relationship with her. He had also provided towards her upkeep.

Although the decision does not change the practical arrangements between the father and the child, it sends a powerful and symbolic message of how our society regards children. In this case, the estranged female partner of the girl's mother was given precedence over the biological father because of the irrebuttable presumption under the *Status of Children Act*, discussed below.

### **Status of Children Act – Section 14 (1A)**

The *Status of Children Act* was amended by the *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008*. Section 14(1A) provides that a female *de facto* partner of a woman who has a child as the result of a fertilisation procedure (such as IVF) is presumed to be the parent of the child, if she consented to the procedure. This presumption is irrebuttable.<sup>11</sup> Thus, in *AA*, the presumption overruled the rebuttable presumption in section 11 that the sperm donor father was the girl's parent because his name was registered in the Births, Deaths and Marriages Register.

Birth registers should reflect the reality of a child's birth. A child will always be the result of one woman and one man. The register should reflect the biological truth of a person's origin and existence. It should not be manipulated to cater to the agendas and desires of adults. Two women may be good and loving parents to a child but only one possesses any genetic or biological link. Allowing another woman to take the place of the sperm donor father ignores the genetic link of a donor conceived person with his or her father.

ACL calls for the repeal section 14(1A).

### **Conclusion and Recommendations**

ACL believes that the best interests of the child should be paramount when considering issues of donor conception, parenthood, and the registration of the child's birth, closely followed by the need to reflect biological truth.

ACL understand the complexity involved in some family situations, especially when artificial reproductive technology is involved, or when family structures outside the traditional norm of "mum, dad and kids" are involved.

Nevertheless, that birth registers should record accurately the truth of a person's birth, and should not be manipulated to meet the desires of adults. Donor details should be recorded on the register of births.

---

<sup>10</sup> *AA v Registrar of Births Deaths and Marriages and BB [2011] NSWDC 100*.

<sup>11</sup> Section 14(4), *Status of Children Act 1996*.

It is for these reasons the Australian Christian Lobby offers the following recommendations for the Committee's consideration

- **donor details be included on the register of births.**
- **donor conceived persons have an absolute right to identifying information about their donor from the age of 18.**
- **donor conceived persons have the right to non-identifying information about their donor whenever they are required for medical purposes**
- **Section 14(1A) of the *Status of Children Act 1996* be repealed.**

Thank you for the opportunity to comment on this important issue. Should you desire further information regarding ACL's views on this matter, please do not hesitate to contact me.

Yours sincerely,



**David Hutt**  
NSW Director