

MANAGING INFORMATION RELATED TO DONOR CONCEPTION

Organisation: Life, Marriage and Family Centre
Name: Most Rev Peter Comensoli
Position: Auxiliary Bishop of Sydney
Date Received: 13/02/2013



Life, Marriage & Family Centre

Catholic Archdiocese of Sydney

Polding Centre, 133 Liverpool Street, Sydney NSW 2000

Phone: (02) 9390 5283 Fax: (02) 9390 5288

lifemarriagefamily@sydneycatholic.org

Submission

The NSW Legislative Assembly Law and Safety Committee Inquiry into managing information related to donor conception

15 February 2013

The **Life, Marriage and Family Centre** is an agency of the Catholic Archdiocese of Sydney and has been established to extend the research, policy, educational and pastoral activities the Church undertakes with respect to marriage and family issues. The Catholic Church has a long and ongoing tradition of caring for children and their families and has extensive, tested and ongoing expertise in matters relating to children and parenting. In New South Wales, the Catholic Church is a major provider of pregnancy support, maternity, counselling and adoption services to the wider community.

Catholic agencies and organisations dedicate very significant resources to assisting with the pre-natal care, birth, education and ongoing nurturing of children, based on the principles of respect for the inherent human dignity of the child, and the child's right to know and be raised by their natural parents, as far as possible. These principles of respect for the dignity of children and their family origins are fundamental values of our society and affirmed by both international¹ and domestic² law.

The Catholic Church believes that donor conception, and particularly anonymous donor conception, is a grave injustice to the child, because it does not respect the child's human dignity. It fails to respect the right of the child to be conceived in a fully human manner, through the love of their father and mother.

In relation to the terms of reference for this inquiry, we wish to make the following submissions.

TERM 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.

It is a grave matter of justice that children conceived by donor conception prior to January 2010 should be accorded access to information about their biological father and siblings. The

¹ *UN Convention on the Rights of the Child* (CRC) Article 7(1): "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."

² *Family Law Act* (Cth) Section 60B(2A): "Children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together."

right to know our biological identity – to know the father and mother who have created us – is an essential aspect of our nature as human persons. The Marquardt study of 485 donor-conceived children found that two thirds agreed with the statement “*my sperm donor is half of who I am.*”³

The testimony of adult children of sperm donors strongly demonstrates support for their right to know the identity and existence of their fathers and siblings.⁴ Children, by reason of their dignity as persons, have a right to information about their genetic heritage for due purposes of their health and medical care, a right to know their identity and family history, and a right to know any siblings they may have.⁵

To know who we are and where we have come from is an irreplaceable feature of our basic humanity. As Damon Martin explains:

Information such as this is a precious commodity to people affected by adoption or donor conception, and it is impossible to underestimate the importance of the basic human right to have access to information about one’s biological parent. Not having access to this information can create complex identity issues and be a source of ongoing frustration for the individual.⁶

Social attitudes to the issue of anonymous sperm donation have changed significantly in recent years as children conceived by anonymous donors have reached adulthood and spoken publicly, through organisations such as Tangled Webs⁷, of their personal heartache and deep sense of loss in not knowing their biological identity, a phenomenon long-identified among adopted children and known as ‘genealogical bewilderment’. As the Canadian ethicist Professor Margaret Somerville has explained:

Knowing who our close biological relatives are and relating to them is central to how we form our human identity, relate to others and to the world, and find meaning in life. Children – and their descendants – who don’t know their genetic origins cannot sense themselves as embedded in a web of people, past, present and future, through whom they can trace the thread of life’s passage down the generations to them.⁸

Many donor-conceived children suffer distress at the loss of their family history and the intergenerational connectivity that they long for and wish to be able to give their own children.⁹ They mourn the fact that anonymous sperm donation has cut off these links – and, as one donor-conceived woman has put it, “*not just with the biological father, but aunts, uncles, grandparents. It’s half of the family.*”¹⁰

³ Marquardt, op cit.

⁴ Elizabeth Marquardt et al, *My Daddy’s Name is Donor: A New Study of Adults Conceived through Sperm Donation*. Institute for American Values, New York, 2010, Executive Summary, pp. 5-14.
http://www.familyscholars.org/assets/Donor_FINAL.pdf

⁵ Ibid.

⁶ Damon Martin, *The right to Information for Donor Conceived People: Lessons Learnt from Adoption*. International Social Service Australia.

⁷ <http://tangledwebsorg.wordpress.com>

⁸ Margaret Somerville, ‘Brave new babies’, MercatorNet, September 12, 2008.
http://www.mercatornet.com/articles/view/brave_new_babies/

⁹ Ibid.

¹⁰ Jennifer Ludden, ‘Donor-conceived children seek missing identities’, National Public Radio, September 18, 2011.
<http://www.npr.org/2011/09/18/140477014/donor-conceived-children-seek-missing-identities>

Donor-conceived children often experience a growing sense of loss of their medical history, which becomes increasingly important as they form relationships and marriages and bear children of their own.¹¹ Knowledge of the particular illnesses and medical conditions experienced in our biological family assists us greatly in recognising and coping with our own health challenges and those of our children.

Although for a variety of reasons some children cannot be raised by their biological parents, their right to this knowledge must be respected and protected by the law. The UN Committee on the Rights of the Child has pointed out the conflict between the right of children to know their parents and a policy that keeps secret the identity of a child's donor father.¹² Such a policy is deeply unjust because it fails to extend the protection of the law equally to all children, regardless of how they have been conceived.

The justice of retroactivity

Responsibility falls upon the Parliament of New South Wales to remedy the original injustice done to children conceived by donor conception prior to January 2010. Prior to this time, the rights of these children to know their biological fathers and siblings were sadly ignored by the law, which permitted the harmful practice of anonymous sperm donation. The failure to protect the legal rights of these children reflects an assumption that biological origins are only an incidental, not an essential, aspect of a child's identity. Such an assumption is unjust and deeply inhuman. It violates accepted principles of domestic¹³ and international¹⁴ law, to which Australia is a signatory, which affirm the importance of children knowing who they are and where they have come from. International law recognises the responsibility of the state to remedy any injustice to children in this regard.¹⁵

Although such a legal remedy will involve retroactive operation, in the case of children we believe that retroactivity is both necessary and justified under the principle of restorative justice. It would reflect a desire to repair the damage done to innocent persons who have experienced harm and alienation as a result of the failure of the state to accord them due protection.

Some opponents have argued that a retroactive law will undermine the integrity of the original agreement between the donor and the fertility clinic. But it would be deeply unjust to the donor-conceived child, who had no capacity to consent to such an agreement, for the law to continue to bind him or her to the severe and unjust consequences of that agreement. The law of contract regards agreements which are of a severely inequitable and unjust nature as being unconscionable, or void. The original agreement between the anonymous donor and the fertility clinic which produced his child or children clearly falls into this category, and as such should not be upheld.

¹¹ Ibid.

¹² Committee on the Rights of the Child, *Concluding Observations for Norway*, CRC/C/15/Add23, para 10.

¹³ *Family Law Act*, Section 60B(2A), op cit.

¹⁴ *UN Convention on the Rights of the Child* (CRC) Article 8(1): "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference; (2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

¹⁵ Ibid.

We ask the committee to take into consideration also the unfairness of the fact that without a change in the law, donor-conceived persons risk incurring higher medical and life insurance premiums as a result of their inability to provide biological family information.

A further concern

We note that an equivalent inquiry in the Victorian Parliament last year recommended that the Victorian government introduce legislation to ensure that all children conceived by donors prior to 1998 are given access to information about their biological fathers. Regrettably, the Victorian government has not to date acted on this recommendation, to the distress of the donor-conceived children who gave evidence to the inquiry. The Victorian government has explained that it is seeking more time to consult more widely with donor fathers before taking action, on the basis that only a small number of fathers made submissions to the inquiry.¹⁶ However, justice delayed is effectively justice denied. We hope that the NSW government will act expeditiously upon the recommendations of this inquiry, should the inquiry recognise, as we trust it will, the right of all donor-conceived children to have access to father information.

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

Although the ART Central Register is currently maintained by the NSW Department of Family and Community Services, we believe there is a strong case for donor conception information to be maintained by the Registry of Births, Deaths and Marriages. The Registry is the custodian of the legal records relating to births and is the traditional institutional vehicle for public recognition of the crucial events in family formation. As such, the Registry continues to be the natural place to which people turn for family and genetic information. To place this information in an institution apart from the Registry risks treating donor-conceived children as a class differently from all other children in New South Wales, whose paternal information – when it is known – is recorded by the Registry.

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

An appropriate public education campaign, sponsored by the NSW government, would be vital in reaching and informing young Australians, who may be donor-conceived, about their right to access information about their biological origins. Appropriate materials could be provided to senior schools, universities and other tertiary institutions, GPs and health centres. An advertising campaign could be deployed involving the use of media popular with young adults, including television, radio, cinema, internet and social media. The website to which the campaign directs people could be modelled on that section of the website of the UK Human Fertilisation and Embryology Authority (<http://www.hfea.gov.uk/23.html>) which addresses the

¹⁶ ‘Sperm donor steps up for offspring who want to know’, *The Age*, December 9, 2012.

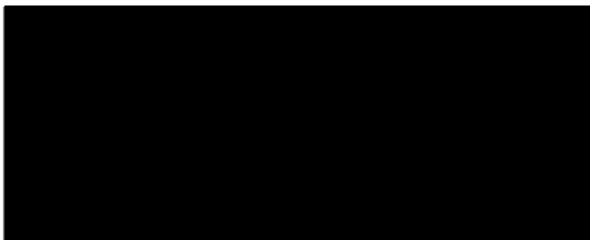
needs of donor-conceived persons and their families (although other parts of this website are somewhat problematic).

It is important to emphasise that future public education efforts must not undermine or diminish the significance of biological connectivity in a misguided attempt to reduce the level of public concern. The seriousness of the injustice done to children conceived by donors prior to 2010 and the significance of the state's decision to remedy this injustice should not be trivialised.

It is fitting that appropriate counselling services for people seeking access to donor conception information be provided by the state. The State of New South Wales bears responsibility for allowing the original injustice to occur to these children, and hence the responsibility for providing the counselling necessary as they seek the information about their biological fathers that they were previously denied.

Thank you for the opportunity to make a submission to this inquiry. I hope that the committee's consideration of these issues will produce a just outcome for donor-conceived children and that it will affirm the importance of the knowledge of one's father that is intrinsic to the identity of every person and reflective of their human dignity.

Yours sincerely,



Most Rev Peter A Comensoli
Auxiliary Bishop of Sydney
Episcopal Vicar for Life, Marriage and Family

Life, Marriage and Family Centre
Level 11, 133 Liverpool St
Sydney NSW 2000
02 9390 5283
lifemarriagefamily@sydneycatholic.org