

**Submission  
No 9**

**MANAGING INFORMATION RELATED TO DONOR  
CONCEPTION**

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Submission: **Enquiry into Managing Information Related to Donor Conception**

Firstly, there needs to be a uniform agreement on who is defined as being a donor in this context. I support the view that there are three individuals who meet the concept requirements of donor:

The person who donates sperm

The person who donates eggs

The person who donates a womb

Of all these groups referred to above, the person donating her womb is involved both more intimately and in greater depth and for a longer period. For these reasons, she is entitled to acknowledgement as a donor. We encourage organ donation, blood donation and recognise those who do so; surely we should extend the same recognition to a surrogate mother for her nine months donated from her life and her acceptance of all that comes with pregnancy and child birth.

Since same sex couples can be legitimately nominated as the parents of a child when neither of them have any biological relationship with that child, surely a surrogate mother deserves to be considered when she is a crucial part of the process and has had a biological relationship with that child.

There is significant research supporting the fact that a child in the womb is affected in many ways by the life style etc of the particular mother carrying that child. A child of such a surrogate donor, if they wish, should be entitled to knowledge of the person who had such an influence on their development.

There is the further division of each of these above three groups into either of the two possible sub-divisions, namely, formal (official) or private. It is known that donations have occurred and will occur outside of official clinics etc and although these should be subject to the same identification requirements, it is unlikely such requirements will be met since the parties do not wish to be recorded. Even with offence provisions applying for failure to provide identification, it is unlikely to be effective since it cannot be expected that anyone involved in a private procedure would want to report themselves or others involved.

Perhaps this lack of identification is no different when a woman conceives a child and refuses to nominate the father, or falsely identifies her partner as the father or nominates another male as the father. In effect, some male has "donated" his sperm and has created a relationship with a "donor conceived" child and subsequently this child then has existing half brothers and sisters or will have them in the future but they may remain unidentified. At least when couples officially marry, full details are provided and recorded so

that when subsequent marriages occur following an initial divorce, relationships between the members of the different families can be established. However, when couples just live together and breakup several times, there is not the same detail provided. The identification of the "donor" father becomes critical if the issue of child maintenance payment arises. Already there have been cases where a male has subsequently obtained DNA to clearly prove he is not the father but courts have ruled that payment by him must continue despite the fact that the true father was identified. Oddly, DNA for identification of paternity by a male is currently illegal unless the mother agrees so this creates another complication in ensuring identification is valid. The present accuracy of identification records leaves much to be desired and I have had personal experience of this when 6 out of the 7 certificates I was concerned with had incorrect details, not just wrong names but wrong persons, wrong sex. Fortunately, in one case, the original handwritten notification was still available in the country town office so the record was corrected after some 30 years.

Considering all this, one could well ask, why is there a need for donor conceived children to obtain identification details when they are only a small group when compared with the number of other conceptions which lack identification. Additionally, as I discuss later, how can it be determined that the donor's official contribution and no other person's action brought about successful conception. Unless this can be established conclusively, then the donor identification records may not be correct.

An issue of which I have no knowledge is whether donors are informed that a child has been conceived as a result of their donation. It could be argued that they have a right at least to know if their action has achieved the desired result. They are the aware of the fact that they may be approached in the future for contact issues.

It can be argued that all those affected by a donation should have the right to access the records relevant for them. In an existing family with children, if one of the parents becomes a successful donor, then the children have a half sibling so they then have new relationships. We hear of donor conceived persons referring to fact that they want to know if they have such relatives as half brothers and sisters and similarly, half brothers and sisters are interested in any extended family they may have as a result of a donation.

a) Everyone conceived at any time by donor conception including all cases of a surrogate mother should have the right to access complete donor information. Such information must extend to the identification of the donors and also a summary of the details of other offspring the person is now related to by virtue of being a donor conceived person. The reasons for such an ambit claim are critical since one cannot predict the future and hence adequate measures must be taken in advance to address issues which may arise subsequently between these relatives.

As an aside, I ask the question, since a donor has no rights, obligations or responsibilities with respect to the conceived child, then why cannot the donor remain anonymous and not be part of any identification procedure. Vice versa, if the child has a right to identification knowledge of the donor, should not the donor have the right to identification of the conceived child, if any.

Yes, I may be considered a scaremonger, pedantic and painstaking when I look at such issues but since they involve a fundamental aspect of being a person, then such concern is justified since the harm which may occur cannot be readily remedied. It is for those reasons that I thoroughly examine the matter from so many possibility points. This practice has enabled me to find anomalies, flaws and omissions in various pieces of both Commonwealth and State legislation which I have brought to attention and which lead to amendments, several which were very significant and which were not anticipated and provided for. In one such instance which I quote as an example, I indicated to a Government Department that part of its phrasing in the legislation could lead to a person making a legitimate claim for a payout entitlement (not a compensation issue here) which would have significant financial repercussions for that Department and the Treasury. This was dismissed on the basis that only a person like me would think of that ever occurring.

However, three years later, a Professor of Mathematics at a NSW University saw what I had seen and did exactly what I had warned them about and the Department then contacted me after seeing my reference on the file to ask how they could get out of the problem. It simply was not possible. I am providing this example not as a boast but rather to support my argument that I am making this submission in good faith and to have the points I have raised considered even though they may appear odd or even farfetched or some may say fanciful.

When dealing with such personal issues concerning people, we need to pay particular attention to what can possibly happen and not just what will probably happen. The fact that in our legislation etc there is a continuing need for amendments is often the result of an emphasis on probable effects without sufficient attention to the possible effects. Some years ago when Parliamentary Libraries across many nations assessed the volume of their existing legislation, Australia came top as being the country with the most laws and regulations.

Relationships are one of the primary issues to be addressed in supporting total identification in this context.

Since incest is not an approved relationship, unless identities are known donor conceived persons could develop relationships with their donor father, donor mother, half brother, half sister.

These same persons above could also then become donors again later and donate to a person who was conceived earlier as a result of their earlier donation. This would give rise to a father donor then being a donor to his biological daughter (conceived by his original donation) so he is his daughter's father as well as being the father of his daughter's child, ie father of his own grandchild. Similar complicated results would occur in the case of half brothers and half sisters, eg. a half brother becomes an uncle and a father to the same person.

A person could subsequently and unknowingly adopt, foster or marry someone to whom they are biologically related to in the first degree. With divorce and remarriage so prevalent now, there is the increased probability of unintentional incestuous relationships being established. Additionally, the fact that there are now many de facto relationships as well as short term relationships increases the likelihood of such occurrences. In the case of same sex couples, further complicated relationships can occur.

Should a family desire to use the same donor for subsequent children in their family, then identification for those children becomes an important matter since they will have a biological link to each other which they need to be aware of for the future.

Now that medical science can assess health, longevity, etc, on a probability basis, it is important that people are aware of their biological parents so that an issue of this nature in their life can be considered having regard to its significance with respect to their parents. This then enables them to take remedial action or action to cope best with what may be a problem or an inevitable future tragedy. Already we have young women opting for breast removal on the basis of adverse family history but they are fortunate enough to know their parentage. Donor conceived children may not be aware of their biological origin.

There are an increasing number of donor conceived children now speaking out as adults. Frequently, they highlight their need to not only know their biological parents but also if they have any half brothers and sisters. This desire is not purely for practical reasons but has an emotional aspect associated with feelings of belonging, knowing your origins, your past. We see the same ideas being expressed in the aboriginal community where there is a need to make contact and confirm who you are. Failure to provide the opportunity for donor conceived people to find their roots could lead to a stolen generation - people

deprived of the intrinsic right to know and decide how they were formed, how they then fit into the community, who are their community and what choices they have in deciding who their community is.

A donor conceived person can have up to five different individual persons/parents involved in their life. There is the sperm donor, the egg donor, the surrogate mother and the two persons who finally take the child. The identification of all these should be available to the conceived person.

Strict identification requirements are essential. People can change their name, can marry and adopt a new name, children in the same "blended" family can have different surnames or have their names changed.

Situations can arise where it is not possible to ensure that the conceived child is the result of the donor(s) since it is assumed that neither of the receiving parties has had or is having a sexual relationship with each other or other persons. Also, it is not unknown that an apparently infertile person does actually conceive with their partner (or someone else) and it can occur despite the donor process being applied concurrently to one of the persons requesting the donation. One has to rely on the report from the donor receiving parties as to their abstaining from sexual relations during the donor process. The records may be completed on the basis that the conception was due to the donation but this is an assumption which may not be valid hence a donor conceived person incorrectly acknowledges relatives, as identified, who have no actual relationship with them

b) Since it is to be a database of identified people and their relationships, it is comparable with the information recorded in Birth, Marriage and Death Records. These same records will be impacted upon by donor activities in many instances. As an example, a sperm donor may subsequently marry the egg donor in the situation when both were the donors for the same conceived child though they were not the couple receiving that child at that time. The child of this relationship is biologically totally theirs but either one or both of them may have made other donations so children of this new partnership may have step siblings. It may be an enormous task to identify and keep track of the many permutations and combinations which can occur and which should be recorded. Links would need to be established across all the databases so that any change in one record can be reflected in any others where appropriate. In effect, a complex family tree would need to be developed showing links which can affect marriages, deaths and future conception of children. A task for astute and very competent programmers attempting to cover not only the current records, but determine the many paths linking records and leading to providing a total picture when the need arises with respect to a particular person or situation. Cross indexing would be essential so that if a birth, death etc occurs with respect to a person involved in the family tree, the link is edited or deleted by the system and the links extended if necessary.

Some attention should be given to the issue as to whether every donor conceived child should be informed by their parents of the facts surrounding their conception. Some adopted people have indicated that they only found out about their adoption very late in their life. Theoretically, once a database is available, many people will consider requesting information as to whether they were conceived by donation since they may have no knowledge of it from their parents but wish to confirm their antecedents. A minimum age for making a request is very desirable. If it is considered appropriate that the parents be involved, then various government records would need to be accessed to determine where the parents were now and whether they had spoken to the person about their use of a donation(s).

For these reasons, the current Registry appears to be the hub around which the database should be built. Having regard to the emphasis we now see on human rights, it can be argued that there is an inherent right to know who you are and in this, the biological parents (donors) have played a fundamental part. Every person should have the right to supply their identifying details to the registry with a request that the

registry confirm if they were conceived by donor involvement of any sort or not. It would then be up to the individual to decide if they wished to proceed further if a positive response has been given to them.

It is likely that many donor conceived persons would limit the extent of the information they required while some others would want to obtain the identity of those to whom they are now related.

There is also the question as to whom else, if anyone, should know that the person is donor conceived. Should step children have the right to know about the donors and the conceived person to whom they are related.

The issue of a donor conceived person actually contacting those involved in the donation and/or their relatives, should remain their own task. However, the Registry should be the co-ordinating authority for all parties as to whether all those involved are willing to have contact. There could be different degrees and types of contact specified for each case as determined and agreed by those involved. Some may want no further contact other than confirmation as the donor, others may accept a short term contact, others may stipulate contact in writing for information only, others may accept contact with them and not their family.

One problem with a Registry database, is that it receives information, adds new data, updates data, deletes data, and corrects data after the event. Notifications do not occur simultaneously with the relevant event so only provisional information can be given with the understanding that additional or new information may be coming in some cases.

c) It is quite conceivable that some of those wishing to make contact may be experiencing an emotional and difficult situation as result of finding that they are donor conceived. It may impact on their current relationship or family and some health etc issues may already have come to the fore and knowledge of their donor could affect their prognosis etc. For this reason, the Registry should contain staff competent to counsel and advise those making enquiries, they can also indicate the options available for contact and the fact that the response may not be favourable. It would be the role of the administrative staff of the Registry to access the records and provide the relevant information (if any) to the counsellor who then works with the person. An information section in the Registry could be established to provide introductory information as to how the system operates and what a person must do and provide when making an enquiry. This could be supplemented with a brochure outlining this information and how to make contact with the Registry.

d) Perhaps, persons in the process of receiving donations should be given information at the time concerning the fact that their child may eventually request the Registry for details. Further, they should also be provided with the details of the procedures etc which would occur if their child proceeds after receiving confirmation.

Consideration would need to be given to the issue of the acceptable age for a person to make an enquiry, whether the person can give permission for another person to act on their behalf, what identification is required of the person making the enquiry to ensure their identity is supported by the documentation provided, to which other persons can the information be disclosed, should there be any restrictions on the conceived person promulgating the information they have received.

I would not be surprised if any system became of dubious or very limited value since there are so many potential relationships possible ; married, de facto, single, same sex open to be donors and/or donor recipients.