

5th April 2022

Dear Legal Affairs and Safety Committee,

I'm a donor conceived person, a Walkley-winning journalist and the author of *Brave New Humans: The Dirty Reality of Donor Conception* (pub May 2021). *Brave New Humans* is the story of a ten-year investigation into donor conception and the fertility industry. It's currently being made into a documentary film for SBS, titled *Inconceivable*.

In 2019, I was a member of the first ever group of donor conceived and surrogacy born people, representatives from around the world, to address the United Nations in Geneva on the rights of the child in the age of biotechnology.

Following that address, our international delegation of donor conceived people drafted our own International Principles for Donor Conception and Surrogacy (the 'Geneva Principles'), which were given to the UN's Committee on the Rights of the Child.

The Geneva Principles are the **only** policy document in existence on these practices drafted by the people actually born of these practices. That is, they are the only document providing minimum standards for third-party reproduction **written by the products of third-party reproduction**. In other words: self-determination. The Geneva Principles are appended at the end of my submission, and can be found [here](#) in petition form.

I **strongly** urge the Committee to read my book *Brave New Humans*, or listen to it in audiobook form.

It is **highly** relevant to your inquiry and extremely important background.

Donor conceived people come first

In any discussion, policymaking, or legislation on donor conception, the products of donor conception - the human children, and later adults produced - must come first. That means that the rights of donor conceived people are put first and foremost, ahead of any considerations of the wants and needs of commissioning parents, donors, the fertility industry, and so on.

This is because **donor conception affects the donor conceived the most, and they are the only parties in donor conception who do not have a choice about their involvement**. They are the most vulnerable. As with all other areas of law domestic and international, the rights of the child must come first, because children are the most vulnerable parties - and, in the words of the UN's Committee on the Rights of the Child, 'if the interests of children are not highlighted, they tend to be overlooked' and that 'a larger weight must be attached to what serves the child best'. (*Brave New Humans*, p33)

Australians accept the concept of children's rights first when it comes to thinking about adoption. Donor conceived people are no different. We may be raised by one of our biological parents - or by none, in the case of donated embryos. Having only one parent who sold you or otherwise gave you up does not ameliorate any of the problems with donor conception as it exists.

I find it often helps to ask people to substitute the term 'donor conceived person' for 'adoptee'. Consider my first paragraph in this section with that substitution. It would then read: 'In any discussion, policymaking, or legislation on adoption, adoptees must come first. That means that the rights of the child being adopted must be put first and foremost, ahead of any considerations of the wants and needs of would-be adoptive parents, surrendering biological parents, adoption agencies, adoption brokers or orphanages.' This, of course, is a truism. So why are donor conceived people, somehow, different?

There is a lot of woolly thinking around the fertility industry, the desire for children, and donor conception. I am sure the Committee is experiencing a lot of it. I certainly have. It has been facilitated by permissive

media coverage, an enormously profitable baby-making business which lobbies politicians, an absence of law, and political reluctance to act to protect children when only their parents vote.

To put it in the simplest manner possible, as I say in my book, and in many arenas:

There is no right to have a child. But every child has rights.

Malpractice in the Australian fertility industry

Nationally, the Australian fertility industry is self-regulating. Only half Australia's states and territories have laws on the fertility industry. The other half, including Queensland, do not.

No highly concentrated, extremely profitable industry should be trusted to operate in the absence of law - least of all one which makes its profits by creating human life.

As I show in my book, even where state laws exist, they are piecemeal, inadequate, and have been broken with impunity.

In *Brave New Humans*, I reveal the below events have all taken place in the Australian fertility industry - without any individual or clinic being held to account:

1. Systematic destruction of the records of donor conception, in fertility clinics public and private across the country, including Queensland. Such destruction prevents donor conceived people from ever finding not only their biological parent but their biological siblings. It erases any accountability for how many siblings have been created from a single donor, and it eliminates liability for transmittable disease.
2. Sperm trading interstate between fertility clinics and fertility specialists. This breaks any family limits placed on a donor's children within one state, thereby raising the risk of accidental incest within siblings.
3. Even where laws on family limits do exist, they have been broken **within** that state, including, in the case of one Victorian donor, more than three times over. (The Victorian legal limit is no donor should donate to more than ten families. In this particular case this donor donated to more than thirty families.)
4. Egg swapping between women undergoing fertility treatment, in circumstances where it is highly unlikely the 'donating' female patient was in a position to give fully informed, considered consent.
5. The transmission of HIV to women via HIV-positive donor sperm, and the resulting deaths of at least five women. It is unclear whether any donor conceived children, or sexual partners of those women were also killed as a result.
6. A culture of record destruction and lies around donor conception, inculcated by the fertility industry, leading to men donating sperm not realising they themselves were donor conceived - a fact which should have seen them eliminated as donors, given that they could not provide full family medical history. This is inter-generational exploitation.
7. The exploitation of donors, including the 'world's best egg donor', Australian woman Faith Haugh (dead at 42); donors who were told they donated for 'research'; donors being lied to about how many children they had actually produced; donors being paid in contravention of Australia's bans on trafficking in human tissue.
8. Donor conceived people and donors alike repeatedly being given differing accounts by their fertility clinics on how many siblings/offspring they actually have
9. Two accounts of Australian doctors using their own sperm to inseminate their unwitting female patients.
10. Australian sperm donors donating sperm hundreds of times to multiple fertility clinics, giving rise to the possibility of thousands of donor conceived siblings. Each donation, depending on the individual donor, can be divided into between five and 20 straws. Each straw is a treatment and a potential child. I have discovered

that at least two men donated sperm hundreds of times in Australia to multiple clinics. One of them is my own biological father.

11. An Australian fertility operation, [REDACTED], holding records indicating that sperm donated in 1977 to the [REDACTED] had been frozen and was still available for use in 2015 - thirty-eight years later. This was the clinic that made me. As I have revealed, the [REDACTED] was one major fertility operation which practised systematic, deliberate destruction of donor conceived information (ie tampering with the files of recipient women, but appearing to retain files pertaining to the sperm itself).

In my book I also reveal that in our Australian donor conceived community (perhaps numbering more than 100 000 at this stage, but no fertility specialist or clinic has bothered to keep the numbers, so it's impossible to tell), we have seen the following:

1. A serious allegation of at least one instance of accidental incest in a marriage of two Australian donor conceived siblings.
2. Narelle Grech, an outstanding advocate for donor conceived people, die at age 30 of bowel cancer. Her surgeon told her that terminal bowel cancer in one so young was due to genetic factors. Rel was devastated, saying that if she had known there was a risk of bowel cancer in her family, she could have been screened from an early age and caught the disease while it was still treatable.
3. Despite the existence of a legislated donor conception register in NSW, a NSW donor conceived child being stolen after embryo transferral, with the recipient mother simply ending all contact with the fertility clinic and donor parents and claiming the child as her own.

My story

I was donor conceived at Sydney's [REDACTED], a major public facility, which had a so-called [REDACTED] Unit known as [REDACTED].

I was not told I was donor conceived until age 27.

Upon being told the truth, I went back to [REDACTED] to ask for the records of my conception.

After 17 years of operation in the public sector, [REDACTED] its staff, its records and its bank of sperm had passed into the private sector and become part of [REDACTED] owned by [REDACTED]. No one in the NSW Government can explain to me how that happened.

[REDACTED] told me that the donor information in the records of my conception had been destroyed. What this meant was that holes had literally been cut out of pages in the medical file. What was cut out was not the donor's name, as that was never in the file in the first place, due to all the usual anxieties around donor 'anonymity'. Instead each donor was assigned a code - to protect their identity. However, that code had been cut out of the pages in the file. Without that code, no one could tell who my donor might be, how many siblings I had, trace any transmissible disease, or provide me with any basic family medical history.

[REDACTED] then told me I had no right to even the mutilated file on my conception, as it didn't belong to me, it belonged to my mother.

My mother, traumatised by years of silence and being encouraged to lie about donor conception, refused to give me permission to access the file.

Months later, after a health scare of her own, she changed her mind.

I received the file. Just two pages were about my conception. There were holes in them.

I tracked down the [REDACTED] nurse who literally cut out those holes and obtained an admission from her about what she had done, as well as two sperm donor codes, either of which might be the code for my biological father.

I blew the whistle on what the [REDACTED] had done, writing a feature for Fairfax/Channel 9's Good Weekend magazine and appearing in a two-part Australian Story.

The NSW Government announced an inquiry into [REDACTED].

I was not allowed to know anything about that inquiry, despite asking.

After several attempts to find out what was going on, I was told that that inquiry had been closed and a second investigation would take place, to be led by an investigator whose apparent area of expertise was workplace bullying.

I provided that second inquiry and investigator with copies of all my files, conversations, and research, including names of those working at [REDACTED] and admissions/allegations of what they had done.

The findings of the second [REDACTED] inquiry were announced at a press conference. I was only told the day beforehand, and was interstate, unable to attend the press conference about my own life. I was told I would not receive a copy of the report. I was not even sent a copy of the press release.

The [REDACTED] inquiry findings were a baffling whitewash. They found that donor codes had been destroyed in dozens of files, and that this was standard, acceptable policy. Despite my evidence and also it being a matter of public record as to who was working at and running [REDACTED], no one was named as responsible. No policy documents were produced giving public hospital staff licence to tamper with public hospital records. The [REDACTED] also added that none of the women with tampered files would be contacted and notified of the record destruction - they would only find out if they actively came forward to request those files.

I presented my evidence at a NSW government inquiry into donor conception and birth certificates. I was the only NSW donor conceived person to do so. On the strength of my evidence alone, the Committee launched a second NSW Parliamentary inquiry into whether there should be retrospective access to donor conception information, and whether record destruction should be criminalised.

The Committee did not find in favour of full retrospective access to donor conception information in NSW - but they did find that record destruction should be criminalised, and that records should be taken away from the fertility clinics and instead centrally held by the NSW government.

In 2014, that too was watered down. The records were left with the fertility clinics. Destruction of records became an offence, but any proceedings had to be brought within two years of that destruction. And with the records all still with the fertility clinics, how would you know?

As the Sydney Morning Herald reported at the time: 'The NSW had agreed to transfer the donor files from clinics, which had been caught destroying records, to a central electronic database after a recommendation by a 2013 NSW parliamentary inquiry. But lobbying by the IVF industry, which claimed it would be too expensive, has resulted in a significantly watered down bill being introduced to NSW Parliament this week by Health Minister Jillian Skinner.'

After this, I gave up hope that medicine, the law, or the government would ever actually hold any individual or organisation to account, or make sure that no donor conceived person could be harmed in the same way again.

In 2016, I did a DNA test with Ancestry DNA. I did this test at the same time as one of my friends.

As a result, I discovered that that friend is my sister.

Several months later, we banded together to track down our biological father by using DNA.

We found him and made contact. He responded swiftly. He agreed to do a DNA test himself to confirm any link. It proved he is our biological father.

It turned out he had actually written letters, and left photographs of himself with every fertility clinic he donated to, to be given to his biological children.

He had also informed the clinics that he was happy to be contacted by us.

None of this, of course, occurred.

We were happy to find him, and he was happy to find us. But we were kept apart for decades (in [REDACTED] - she knew she was donor conceived by age 11) by the middleman - the fertility clinic, the people who worked there, and the people who ran it.

This is just one Australian donor conceived story. I can honestly say that no authority, organisation, or medical so-called professional in this entire search acted with basic competence, professionalism, or probity. This is a very common Australian donor conceived experience.

Responses to the Inquiry's terms of reference:

1. a) Rights of donor-conceived persons, including to know their genetic origins

Every child has the right to family, and to identity, as per Article 8 of the United Nations Convention on the Rights of the Child, which Australia ratified way back in 1990. As a result, according to the Australian Human Rights Commission, 'Australia has a duty to ensure that all children in Australia enjoy the rights set out in the treaty.'

From the UN Convention on the Rights of the Child flows a mountain of Australian domestic social policy and domestic law. Indeed, section 60B(4) of the Family Law Act (Cth) specifically references the UN CRC, saying its 'object' is to 'give effect to the Convention on the Rights of the Child'.

In this, it is the enormously profitable Australian fertility industry and its practice of donor conception which is an anomaly. The Australian fertility industry is an aberration. It does not uphold the UN CRC, and it functions in the absence of law.

As per Australia's ratification of the UN CRC, all donor conceived people are entitled to the same rights which all other Australians enjoy, including adoptees: the right to the truth about their origins, and the right to biological family. This includes the right to siblings.

1 b) Extent to which identifying information about donors should be given to donor-conceived persons, taking into consideration the right to privacy of donors;

As per my response to 1 a), **no biological parent has the right to anonymity from their own child**. That is a nonsense. Not even biological parents who 'accidentally' conceived that child and then surrendered them, as in the case of some adoptions.

Donor conceived children are conceived **by design**. That is: they would not be conceived were it not for the deliberate acts of adults. Donors, arguably, are even **less** entitled to anonymity from their own children than the biological parents of adoptees - and biological parents of adoptees do not have any such entitlement in Australia, because the fundamental human right of the child, as per the UN CRC, to family and to identity, trumps any wish of the biological parent.

Regarding the so-called 'right to privacy of donors', I strongly urge you to read Brave New Humans. In it, I explain that:

- You cannot sign a contract on behalf of an unborn third party;
- The rights of the child, as the vulnerable party, must be paramount, as per the UN CRC;
- Often there were no ‘contracts’ signed with donors in terms of actual paperwork;
- There is strong evidence around Australia from donors that even when the contracts were signed, they did not reflect the donor’s actual wishes;
- Wrongful guarantees of ‘anonymity’ have been overturned in recognition of the rights of the child; as in adoption across all Australian jurisdictions, and donor conception in Victoria, and the sky has not fallen in;
- Any concerns about contact (which is different to identifying information) have been dealt with most successfully using the system of contact vetoes**, both in adoption (all Australian jurisdictions) and in donor conception (in Victoria). If a party - either a biological parent or a child - does not wish to have contact following the exchange of identifying information, they may enact a contact veto. Significant penalties apply if that veto is broken.
- The undeniable reality is that **the data shows such contact vetoes are almost never used**. That is, the fears of so-called ‘privacy’ violations, beaten up by the fertility industry, **do not materialise in practice**.

1c) Access to historical clinical records and implications of retrospectivity

All children have the fundamental human right to family and identity, as per the UN CRC.

It is discriminatory in the extreme to say that only children from a particular point in time onwards, for eg from the passage of any legislation following this inquiry, are entitled to that fundamental human right.

It makes no sense, and would be deeply damaging to say, that a child born in 2015 in Queensland is not entitled to a biological father, but a child born in 2022 is.

That discrepancy cannot be upheld, **and nor can any other**. This is the discrimination which lawmakers in the state of Victoria decided could not stand, and which has been done away with in all adoptions across Australia.

All records of donor conception in Queensland must be opened to the people who were made as a result.

All donor conceived people, regardless of date of birth, are entitled to the truth of their biological family, and origins.

In terms of the ‘implications’ of opening up the records, all records must be handed over by clinics and practitioners to the Queensland government. This must be accompanied by legislation making it a crime with immediate effect to conceal, destroy, falsify, or tamper with the records of donor conception (the need for which I demonstrate in Brave New Humans). We have seen too many acts of bad faith by the Australian fertility industry to trust that records would not be destroyed to prevent the truth being known.

1 d) Access to support and counselling for donor-conceived persons and donors

Donor conceived people should be entitled to **independent** support and counselling. What that means is counselling provided by individuals **who are not in the pay of any fertility clinic, nor have come from the fertility industry**. The conflict of interest is insurmountable.

In my book, I detail how I personally had to navigate this system, eventually attending services run by the Post Adoption Resource Centre.

Donor conceived people should **never be forced** to undertake counselling, particularly in return for the truth about their own biological family. That is an insult.

1 e) Whether a register should be established

The Queensland Government should establish a register of donor conceived people and donors as soon as possible.

This register must include all donor conceptions which have already occurred in the state of Queensland.

It must include a central repository for the records of all donor conceptions past, present and future in the state of Queensland.

The register must be actively maintained, unlike the NSW register (as I show in Brave New Humans).

It must be accompanied by legislation making it a crime to destroy, falsify, or tamper with the records of donor conception (the need for which I demonstrate in Brave New Humans.)

1 f) Benefits, risks and implications on donor conception practices arising from any recommendations.

I am bemused by the Inquiry's consideration of 'risks or implications' for donor conception practices arising from any recommendations.

As I have said above, the evidence shows that many Henny-Penny-like fears, promoted by the fertility industry, fail to materialise in practice - for example, hysterical (and offensive) concerns about donors needing to be protected from their angry biological children.

I would also caution the Committee against believing the old red herring of 'removing donor anonymity means less people donate'.

This has been disproven in Australia by peer-reviewed research, as I discuss in Brave New Humans. In 2016, the Journal of Law and Medicine published a paper entitled 'Does the removal of anonymity reduce sperm donors in Australia?'. The data shows that once you remove donor anonymity, **donor numbers go up**. This phenomenon was also observed in the UK.

Above all, saying the Inquiry must consider 'risks' for donor conception - against a considerable phalanx of existing donor conceived people in Queensland crying out for basic human rights, some of whom are in extreme distress - is wrong-headed.

It is not the role of government to ensure that everyone gets a baby.

It is the role of government to ensure that all citizens are granted their fundamental human rights.

Sarah Dingle

Appendix

International Principles for Donor Conception and Surrogacy (the 'Geneva Principles')

Purpose:

The International Principles for Donor Conception and Surrogacy (the Principles) have been drafted to provide minimum standards for laws and practice in Nation States where surrogacy and/or donor conception are already permitted or tolerated. The Principles require strict regulation of such practices to uphold the human rights and best interests of people born as a result, in accordance with the principles universally agreed to by Member States as per the United Nations Convention on the Rights of the Child (UNCRC), the most successful human rights treaty in history.

Background:

Donor conception is the commonly used term for the practice of intending parents using third party gametes (such as third party sperm, egg or embryos) to create their own child(ren).

Donor conception also applies to people who are born via surrogacy arrangements, where one or more gametes do not come from the intending parents. These surrogacy-born people are also donor-conceived. The birth mother in surrogacy may or may not be related to the child she carries and births, but she is always also important to the person born as a result.

The Principles are based on the recognition that regardless of the type of assisted reproduction used, all donor-conceived people and people born of surrogacy have a fundamental human right to their full and true identity, a right to preserve relations with their families, and a right not to be bought or sold as enshrined in the UNCRC and other international instruments.

The Principles originally arose out of a [presentation](#) by the drafters at the Conference on the 30th anniversary of the UNCRC, at the Palais des Nations, Geneva, November 19, 2019. They are informed by the lived experience of the drafters as donor-conceived. They respond to practices past and present that have impacted and/or continue to impact their lives. Many feel that they are the products of an international industry in human eggs, sperm, embryos and wombs which profits from human life – their lives. Yet as of this writing there is no jurisdiction in the world that fully protects the human rights of donor-conceived or surrogacy-born people despite all UN Member States having signed, and all but one having ratified, the UNCRC.

The Principles are also informed by extensive engagement by the drafters in advocacy on behalf of their community at local, national and international levels, and examination of laws and policy that directly impact them and their genetic, social and gestational families. In addition, the drafters draw upon their professional legal, communications, policy, social services, scientific and other qualifications and experience to inform their work.

In drafting the Principles, it is recognised that many countries maintain prohibitions on assisted reproduction including surrogacy and/or donor conception, as contrary to their values and the human rights of men, women and children. The Principles are not intended to be used to condone, widen or to encourage such practices. Rather, they are intended to set minimum standards that should be adhered to by nations that already permit such practices, and to require strict regulation where such practices occur. They are relevant to all donor-conceived people, including those born of surrogacy – past, present, and future.

Former and current initiatives to formulate policy and/or principles on donor conception and surrogacy by government agencies and not-for-profits are unacceptable. They have failed to adequately consult with donor-conceived and surrogacy-born people. They often choose to ignore the voices of donor-conceived and surrogacy-born people who do not support certain practices in favour of the interests of the fertility industry and intending parents. All policy-making, both national and international, henceforth must include meaningful consultation with a broad representation of donor-conceived and surrogacy-born persons in recognition that the people created by reproductive technology are overwhelmingly those most affected by it. These voices need to be heard, listened to, and acted upon.

We call upon all governments, agencies, and lawmakers to hear directly from this constituency, to recognise the rights of donor-conceived and surrogacy-born people and to enact laws that uphold and implement the following principles.

The Principles:

Best Interests and Human Rights of the Child Paramount

1. The best interests and human rights of the child who will be or has been born as a result of donor conception and/or a surrogacy arrangement must be the paramount consideration in all relevant laws, policies and practices and in any judicial and administrative decisions relating to donor conception and surrogacy.

Pre-Conception Screening and Post-Birth Review

2. Pre-conception assessments and screening of donors, intended parents and potential surrogate mothers and post-birth review of the best interests and human rights of the child born as a result must occur in every case of surrogacy and donor conception.

The Right to Identity and to Preserve Relations

3. All donor-conceived and surrogacy-born people have an inalienable right to identifying information about all of their biological parents, regardless of when or where they were conceived or born.

4. All donor-conceived and surrogacy-born people have an inalienable right to identifying information about all of their biological siblings, be they half or full siblings, regardless of when or where they were conceived or born.

5. All surrogacy-born people have an inalienable right to identifying information about their surrogate mother, regardless of when or where they were conceived or born.

6. All donor-conceived and surrogacy-born people have the right to preserve relations with biological, social and gestational families, regardless of when or where they were conceived or born. Such relations should be able to be maintained if mutually agreeable.

7. Anonymous donation of gametes and embryos, and anonymous surrogacy must be prohibited.

Record Keeping, Birth Records, and Access to Information

8. Comprehensive and complete records of the identity and familial medical history of all parties involved in the conception and birth of donor-conceived and surrogacy-born people must be kept. Such records must be held by each Nation State in which the conception and birth is commissioned and/or occurs, in perpetuity and for future generations. Verification of the identity of donors, surrogate mothers, and intending parents must occur.

9. All children's births should be notified to and registered with the appropriate competent authority in the Nation State of birth. Truth in registration, noting the child is donor-conceived and/or surrogacy-born, must occur. Birth records must be maintained in perpetuity and for future generations that recognise biological, social, and birth parents.

10. All donor-conceived and surrogacy-born people have the right to be notified of their status and to access records pertaining to their identity, familial medical history, and birth registration.

11. Parents should be encouraged and supported to tell their children of their donor-conceived or surrogacy-born status as early as possible, and preferably from birth. This should be coupled with efforts to reduce stigma related to infertility.

Prohibitions on commercialisation of eggs, sperm, embryos, children and surrogacy

12. All forms of commercialisation of eggs, sperm, embryos, children, and surrogacy must be prohibited. This includes, but is not limited to any kind of consideration (payment or other consideration) for a) the recruitment of potential donors and/or surrogate mothers; b) gametes or embryos; c) ‘services’, time, effort, ‘pain and suffering’ related to the conception, pregnancy and/or birth of a child, or termination of pregnancy.

13. The sale and trafficking in persons and/or of gametes in the context of assisted reproduction and surrogacy must be prohibited.

14. The participation of paid intermediaries or agents in arranging surrogacy and/or recruiting or procuring women or donors of gametes for the purposes of surrogacy or gamete donation for profit, should be prohibited on the basis that their participation increases the risks of the sale and/or trafficking of women and children.

Prohibitions on transnational surrogacy and donor conception

15. It is not in the best interests of the child to be conceived or born in circumstances in which the ‘intending parents’ have circumvented or breached laws within their own country by engaging in cross-border assisted reproduction, including but not limited to donor-conception and/or surrogacy. States that prohibit such practices should include extraterritorial prohibitions in their laws. States that allow such practices should limit access to their own citizens. Extraterritorial prohibitions should be enforced.

16. It is not in the best interests of the child to be intentionally separated from their genetic families by geographical, linguistic or cultural barriers. As such, inter-country transfer of gametes should also be prohibited.

Family limits

17. To avoid the risk of consanguineous relationships, and the psychological impact of an unlimited number of potential siblings, the number of families that may be created using one donor’s gametes should be limited to five.

Requirement for Counselling and Legal Advice

18. Independent counselling and legal advice must be a requirement prior to entering into donor conception and surrogacy arrangements. All parties to donor conception and/or surrogacy must be able to give their informed consent after receiving information about the processes involved, material risks, legal and financial implications and their rights and responsibilities. All information must be delivered in a language the person receiving the counselling and advice can understand. All decisions must be made autonomously and free from duress, coercion, and/or exploitation.

19. The provision of counselling and legal advice must always uphold and convey the best interests and human rights of the child(ren) born to be the paramount consideration.

Transfer of Legal Parentage (Surrogacy)

20. Upon the birth of a child conceived as a result of a surrogacy arrangement, the child should share the birth mother’s nationality to avoid the situation that a surrogacy-born child is ‘stateless’, and records to this effect must be kept.

21. Transfer of legal parentage in cases of surrogacy from a surrogate mother to ‘intending parent(s)’ should never be automatic nor based solely on intention. Intending parent(s) do not have a right to exclusive legal parentage or parental responsibility of a child born through surrogacy, regardless of any expenses they may have incurred through the process. The surrogate mother must never be compelled to relinquish the child(ren) she has given birth to.

22. Where a surrogate mother has carried the full genetic child of another couple and does not wish to relinquish the child, legal parentage of the child should be determined by a Court dependent on the best interests of the child.

23. Enforcement of contractual terms that purport to transfer legal parentage is not consistent with the best interests or human rights of a child.

Posthumous Use of Gametes

24. Gametes or embryos which a) have been retrieved posthumously from a person, or b) are stored by a clinic on behalf of a person who has since died must never be used in donor conception or surrogacy arrangements, regardless of whether any consent had been given by the person from whom those gametes were obtained prior to their death.

Commentary:

The Principles express the common view of the members of the November 2019 UN presentation on The Rights of the Child in the Age of Biotechnology as part of the 30th anniversary conference on the UNCRC.

The Principles recognise that, pursuant to the UNCRC, donor-conceived people and people born of surrogacy have a fundamental human right to:

- as far as possible, know and be cared for by their parents (Article 7);
- preserve their identity, nationality and family relations, to not be deprived of any elements of their identity, and to seek State assistance to re-establish their identity (Article 8);
- maintain personal relations and direct contact with both parents on a regular basis (Article 9);
- express their views in all matters affecting them (Article 12); and
- seek, receive and impart information and ideas affecting them (Article 13).

Most importantly, ALL children have a fundamental human right not to be bought or sold.

Donor-conceived people and people born of surrogacy also have the right to:

- have their rights in the Convention respected by States Parties without discrimination of any kind, irrespective of the child’s birth or other status (Article 2); and
- have the best interests of the child as the primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3).

States Parties should undertake all appropriate legislative, administrative and other measures for the implementation of these human rights as recognised in the UNCRC (Article 4).

As noted in the background to this document, all policy-making, both national and international, must henceforth include meaningful consultation with a broad representation of donor-conceived and surrogacy-born persons, as they are the population overwhelmingly affected by the practice of third-party reproduction.

The full United Nations Presentation by Donor-Conceived and Surrogacy-born People for the 30th Anniversary of the Convention on the Rights of the Child can be viewed [here](#).

The transcript of the presentation can be found [here](#).

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Dr Joanna Rose, donor-conceived person, BSocSC; BA(Hons) Applied Ethics; PhD – ENGLAND

Ms Hayley Smith-Williams, donor-conceived person, BEnvSc – AUSTRALIA

Mx Matty Wright, donor-conceived person – AUSTRALIA

Ms Beth Wright, donor-conceived person, BSc(N) – AUSTRALIA

Ms Ceri Lloyd, daughter of donor-conceived mother, BA (Hons) - UNITED KINGDOM

Ms Sharni Wilson, MA, donor-conceived person - AUSTRALIA