

## Submission

to the

## Inquiry into Donor Conception Information

by the

### Legal Affairs and Safety Committee

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by

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## 1. Introduction

On 24 February 2022 the Legislative Assembly agreed:

*That the Legal Affairs and Safety Committee (the committee) inquire into and report to the Legislative Assembly by 31 August 2022 on:*

1. *Issues relating to access to donor conception information, including:*
  - a. *Rights of donor-conceived persons, including to know their genetic origins;*
  - b. *Extent to which identifying information about donors should be given to donor-conceived persons, taking into consideration the right to privacy of donors;*
  - c. *Access to historical clinical records and implications of retrospectivity;*
  - d. *Access to support and counselling for donor-conceived persons and donors;*
  - e. *Whether a register should be established; and*
  - f. *Benefits, risks and implications on donor conception practices arising from any recommendations.*
1. *That the committee consider:*
  - a. *Views and experiences of donor-conceived people, donors and industry stakeholders of the current framework;*
  - b. *Current governance/regulatory frameworks, including registers established interstate;*
  - c. *Options to manage collection, storage, and disclosure of identifying and non-identifying information about donors, donor-conceived persons and relatives;*
  - d. *Whether and how to collect and disclose identifying information about donors where a donation was made on the condition of anonymity, including matters relating to consent;*
  - e. *Whether any model should include information from private donor arrangements;*
  - f. *Costs of any proposal including to establish and maintain any register and options for efficiencies, including a user-pays model;*
  - g. *Whether regulating donor conception practices and assisted reproductive technology should also be considered as part of establishing a donor conception register; and human rights engaged under the Human Rights Act 2019.*

Submissions are due **5pm on Friday, 29 April 2022.**

FamilyVoice Australia is a national Christian voice – promoting true family values for the benefit of all Australians. Our vision is to see strong families at the heart of a healthy society: where marriage is honoured, human life is respected, families can flourish, Australia’s Christian heritage is valued, and fundamental freedoms are enjoyed.

## 2. Donor conception – what is it?

Donor conception involves the use of gametes – sperm or egg or both – in the conception of a child, where the intention is for the donor of the gametes not to otherwise be a father or mother of the child.

In other words donor conception intentionally seeks to separate genetic fatherhood or motherhood from other responsibility for the child that is to be conceived.

This notion is contrary to our deepest instincts about fatherhood and motherhood. Those who conceive children incur parental obligations to those children. Society provides, for those who feel incapable of fulfilling these obligations themselves, the possibility of relinquishing a child for adoption. However, this is something done after the birth (or at least after conception) of a child and is a response to the child's need for adequate parenting.

Donor conception has been seen as a means of helping those who are unable to have a child derived from their own gametes.

Male gametes (sperm) have been used for married and partnered women whose husbands or partners are infertile. They have also been used by single women or by women in a same-sex relationship.

Female gametes (eggs or ova) have been used where a woman (married or partnered) has been unable to conceive with her own eggs. The egg is fertilised in vitro with the husband or partner's sperm and is implanted in the woman.

In cases where the couple are both infertile, an embryo may be used that has been fertilised in vitro with an egg from another woman and sperm from another man. In this case the child will have no genetic relationship to either parent. If the embryo is created specifically for this purpose, it is a form of donor conception.

## 3. Donor conception and the good of the child

The practice of donor conception focuses on the interests of the adults involved – particularly the infertile couples and the single women and same-sex female couples who seek this service as a way of obtaining a child.

As artificial insemination using donor sperm has been practised for decades, there is a cohort of adults who were donor conceived. We can now hear their voices and consider the outcomes of donor conception on the children who result from this practice.

Accounts written by adults who were conceived as a result of donor insemination describe the profound problems of identity and belonging they experienced both as children and as adults.<sup>2</sup> Some of these problems were related to secrecy – not being told the truth about their origins but intuiting that they were different. However, problems also persisted after the truth was revealed or discovered, including a longing to know the absent genetic parent.

In a submission to the NSW Legislative Council Inquiry into Altruistic Surrogacy by Tangled Webs Inc., this group of donor conceived persons argued, on the basis of their lived experience, that:

*A child's best interests are served when it is conceived and gestated by; born to and nurtured by, one mother. To fragment maternal roles through ova donation/gestational surrogacy is to deny a child its entitlement to a whole mother.<sup>3</sup>*

The first detailed survey of children conceived by donor insemination, fittingly titled “My Daddy’s name is donor”, compared outcomes and opinions of these children with children who were adopted, and also with children who were raised by their own biological parents.

*[Y]oung adults conceived through sperm donation are hurting more, are more confused, and feel more isolated from their families. They fare worse than their peers raised by biological parents on important outcomes such as depression, delinquency and substance abuse. Nearly two-thirds agree, “My sperm donor is half of who I am.”<sup>4</sup>*

*Young adults conceived through sperm donation (or “donor offspring”) experience profound struggles with their origins and identities.*

*Sixty-five percent of donor offspring agree, “My sperm donor is half of who I am.” Forty-five percent agree, “The circumstances of my conception bother me.” Almost half report that they think about donor conception at least a few times a week or more often.*

*The role of money in their conception disturbs a substantial number of donor offspring. Forty-five percent agree, “It bothers me that money was exchanged in order to conceive me.” Forty-two percent of donor offspring, compared to 24 percent from adoptive families and 21 percent raised by biological parents, agree, “It is wrong for people to provide their sperm or eggs for a fee to others who wish to have children.”<sup>5</sup>*

*Family relationships for donor offspring are more often characterized by confusion, tension, and loss.*

*More than half (53 percent) agree that: “I have worried that if I try to get more information about or have a relationship with my sperm donor, my mother and/or the father who raised me would feel angry or hurt.”*

*Seventy percent agree that: “I find myself wondering what my sperm donor’s family is like,” and 69 percent agree that: “I sometimes wonder if my sperm donor’s parents would want to know me.”*

*Nearly half of donor offspring (48 percent) compared to about a fifth of adopted adults (19 percent) agree, “When I see friends with their biological fathers and mothers, it makes me feel sad.” Similarly, more than half of donor offspring (53 percent, compared to 29 percent of the adopted adults) agree that: “It hurts when I hear other people talk about their genealogical background.”<sup>6</sup>*

*More than half say that when they see someone who resembles them they wonder if they are related. Almost as many say they have feared being attracted to or having sexual relations with someone to whom they are unknowingly related. Approximately two-thirds affirm the right of donor offspring to know the truth about their origins. And about half of donor offspring have concerns about or serious objections to donor conception itself, even when parents tell their children the truth.<sup>7</sup>*

These issues are very serious. They justify a moratorium on all practices that involve an intentional fracturing of parenting before the conception of a child. This includes all forms of donor conception and all forms of surrogacy.

No child should be intentionally conceived in a manner that we now know imposes such burdens on children for their entire life. Adult desires are insufficient to justify these practices. Some legislation on assisted reproductive technology or surrogacy requires that, before treatment or before a surrogacy arrangement is approved, the best interests of the child must be taken into consideration. It should now be plain that, to do this authentically, treatment involving donor gametes or any form of surrogacy should never proceed.

**Recommendation 1:**

***There should be a moratorium on all forms of donor conception and surrogacy because, by intentionally fracturing parenthood before the conception of the child, they necessarily impose intolerable burdens of identity bewilderment on the child. Such procedures are never in the best interest of the child to be conceived.***

## 4. Donor conception legislation and regulation

State and territory laws on donor conception vary to some extent.

In general there are few if any limits on artificial insemination. This process is naturally harder to regulate as it may be carried out without medical assistance, although there are obviously health risks in doing so, such as the transmission of HIV.

The best way to regulate artificial insemination would be to repeal the laws which absolve the sperm donor of paternal responsibility for the child conceived with his sperm. No man should be able to father a child and avoid responsibility.

The Commonwealth could take the lead in this process by amending the *Family Law Act 1975* to provide that a man who provides sperm for the purpose of donor conception is the father of the child for the purposes of that Act. Provisions in the Act to the contrary should be repealed.

Assisted reproductive technology that involves more complex medical procedures is more strictly regulated in some states (Victoria, New South Wales, Western Australia and South Australia) more than in others.

**Recommendation 2:**

***The Queensland Government should lobby the federal government to amend the Family Law Act 1975 to provide that the genetic father of a child is a parent of the child for the purpose of the Act. All contrary provisions should be repealed.***

## 5. Payments for donors

Australia, unlike the United States, has to its credit resisted allowing payment of valuable consideration for the provision of gametes. Either state and territory laws, or the guidelines imposed on clinics that wish to be accredited by the national body, have restricted payment to the:

| *reimbursement of verifiable out-of-pocket expenses directly associated with the donation*<sup>8</sup>

If sperm donation is meant to be genuinely altruistic, it would be better to prohibit all payments, including so-called reimbursement payments.

**Recommendation 3:**

***All payment for gametes donation, including so-called reimbursement for reasonable expenses, should be prohibited.***

## 6. Number of offspring born from each donor

It is clear from the reports of donor conceived children that there is a real concern about the possibility of becoming romantically involved with an unknown donor sibling.

Australian guidelines currently limit the number of families that each sperm donor can provide sperm for to five. Depending on the geographical elements – whether the families live in Sydney or in a small country town – the statistical chance of such encounters varies.

However, the problem is more fundamental than the issue of possible consanguine romantic relationships. In the normal course of human life, some men father children to two or more women. Obviously the more women with whom a man has children, the more complex are the familial relationships created.

With sperm donation, these complex familial relationships are intentionally created. It is unjust to the children so conceived that they have siblings being created intentionally in up to four other families. Such siblings have no real chance of getting to know each other until they have all turned 18. This is reckless and thoughtless. It can't be justified by adult desires for children.

If sperm donation is not banned altogether, then the use of the sperm from any one man should be limited to one family only. This is demanded by the best interests of the children concerned.

### ***Recommendation 4:***

***The sperm donated by any one man should only be used by one family. This is necessary to prevent the intentional conception of donor siblings who would be raised apart from one another.***

## 8. Rights of donor conceived children

Donor conceived children have a right to know their biological and genetic origin, including full identifying information about their genetic parents. Access to such information should be available on request at age 18, or earlier with the agreement of the legal parents.

This right should not be dependent on the date of the procedure which led to their conception or on any guarantees of anonymity given to sperm donors in the past. No one – neither clinic nor the state – has the right to offer anonymous fatherhood to a man in order to obtain his sperm to conceive a child.

### ***Recommendation 5:***

***All donor conceived children from age 18, or earlier with the agreement of their legal parents, should be entitled to access full identifying information about their genetic parents.***

## 9. Conclusion

A decades-long social experiment with donor conception can now be examined based on its results. The evidence is in that such procedures impose unjustified burdens on the children conceived in this manner.

Everything possible should be done to prevent any further donor conceptions.

The rights of existing donor conceived children to know their full biological and genetic heritage should be upheld.

## 10. Endnotes

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<sup>1</sup> House of Assembly Standing Committee on Community Development, 6 May 2016, <http://www.parliament.tas.gov.au/ctee/House/Media/Media%20release%20Call%20for%20submissions%20Inquiry%20into%20Donor%20Conception%20Practices%20in%20Tasmania%206%20May%202016.pdf>

<sup>2</sup> “*Who Am I? Experiences of Donor Conception*”, Idreos Education Trust, 2006.

<sup>3</sup> Tangled Webs, “Submission to the Inquiry into legislation on altruistic surrogacy in NSW”, 2 October 2008, <https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Summary/45891/Submission%2021.pdf>

<sup>4</sup> Marquadt, E *et al.*, *My daddy’s name is donor: a new study of young adults conceived through sperm donation*, Institute for American Values, 2010, p 5, [http://americanvalues.org/catalog/pdfs/Donor\\_FINAL.pdf](http://americanvalues.org/catalog/pdfs/Donor_FINAL.pdf)

<sup>5</sup> *Ibid.*, p 7.

<sup>6</sup> *Ibid.*, p 7.

<sup>7</sup> *Ibid.*, pp 6-7.

<sup>8</sup> National Health and Medical Research Council, “*Ethical guidelines on the use of assisted reproductive technology in clinical practice and research*”, 2017, para 5.4, <https://www.nhmrc.gov.au/art>