

Submission to
Legal Affairs and Safety Committee
Inquiry into matters relating to donor conception information

By

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Background

This submission relates to the inquiry into matters relating to donor conception information.

Jigsaw was established in Australia and New Zealand in 1976 and was incorporated in Queensland in 1988. We have assisted more than 40,000 people affected by adoption in their search for their biological heritage and many more who were not actively engaged in the process of searching or seeking reunion. Jigsaw Queensland services include:

- Emotional support by phone or email
- Monthly Support Group meetings for birth mothers, adoptees, and open events for all those affected by adoption
- Adopt Perspective Podcast (Apple, Spotify, Google & Deezer)
- Providing information to assist individuals with their own search
- Providing search and intermediary services
- A commonwealth-funded Forced Adoption Support Service
- Referral to professionals and other agencies

Jigsaw Queensland is a non-profit, member-based organisation relying on trained volunteer helpers and professionals to provide a range of services to all those affected by adoption. We rely on membership and donations from individuals, business, and government to achieve our objectives and to help us provide ongoing services to our members and the community at large.

We have worked closely with Adoptive Services Queensland and other nongovernment post-adoption service providers to monitor and review current legislative policies and practices as they impact people affected by adoption. We meet quarterly with other funded providers of post-adoption services in Queensland and annually at a national meeting of funded post-adoption service providers. We

participated extensively in community consultations leading up to the reform of adoption laws in Queensland in 1990, 2009 and 2016 and have been party to discussions at the federal level about post-adoption support and access to information, both directly as an organisation and through representation in the National Intercountry Adoption Advisory Group, which was represented from time to time on the Harmonisation

Working Group of the Adoption Central Authorities meetings regularly hosted by the Commonwealth Attorney-General's Department. We were also involved in the public consultation processes attending the Senate Inquiry into past forced adoption practices and the consequent state and federal apologies for those past practices.

Jigsaw Queensland believes that good policy and practice ought to be based on sound evidence, reason, and experience. Our submission takes into account these factors and is based on our daily experience of contact with a wide variety of impacted individuals. It has long been part of our constitution to extend our support to those impacted by donor conception.

Following the announcement of the inquiry into matters relating to donor conception information, we posted links to the Legal Affairs and Safety Committee of the Queensland Parliament submissions page on our [website](#), Facebook and Instagram and released a [podcast episode](#) about the inquiry. We have also spoken with Queensland and national stakeholder groups and individuals.

As you may know, most adoptees and parents in Australia have had access to identifying information now for decades. In Queensland, for example, both adopted people and parents who lost children to adoption have a right to this information once the adoptee has turned 18 years of age. Both parties are also able to lodge a contact preference, indicating whether they would like to meet.

Access to knowledge about one's origins and to whom one is related is an essential part of a person's identity. As in donor conception, some parties claimed that in the past donors were promised complete anonymity. However, such promises were not enshrined in legislation.

Since the opening of adoption records in Queensland and across the nation, we have seen a positive impact for those affected. The fears expressed by some while debating these changes did not come to pass and we believe it will be similar for those impacted by donor conception. As with all families, there will be emotionally challenging times for some in the future, however, experience has taught us that information, connection, and support changes everything.

Submission

- 1. Jigsaw Qld supports the right of donor conceived people over the age of eighteen to information about their personal origins and a similar right for donors to have information about their children.*

2. When it comes to examining these issues, there is much to learn from the past experiences of people affected by adoption and the impacts of legislative changes since 1990. Just as it was when adoption legislation was being debated in the 90s, some now misguidedly believe that there exists a vast army of donor offspring and donors waiting to pounce on unsuspecting biological relatives. They are sometimes caricatured as dissatisfied and disgruntled individuals who are unconcerned about messing up the lives of others. In fact, the adoption experience and statistics would suggest otherwise. The figures provided by the Queensland government to the Australian Institute of Health and Welfare indicate that both request for information and objections to information and contact peaked with the introduction of the new laws in 1990 and 1991. Since that time, the number of enquiries has been significant and steady, and the number of objections lodged has been dwindling. *The subsequent steady rate of information inquiries indicates that individuals approach search and reunion in a cautious manner, giving due consideration to their own needs and the needs of others.* This is borne out by our experience at Jigsaw Queensland. Most inquirers have waited a long time and thought carefully about the possibility of making contact with their birth relatives. In fact, many birth parents have a strong desire for contact but are reluctant to begin a search as they feel a lack of entitlement, believing that they 'signed away their rights' in the past. Jigsaw Queensland believes that access to records should be retrospective and government-controlled, with clinics required to hand over their historical records, ensuring accuracy of those records before they do so.
3. *Jigsaw Queensland believes that attempting to balance the right of privacy and the right to access information is attempting the impossible.* Firstly, no one has a metre to measure the relative pain and suffering (or happiness) of each party. Secondly, the capacity of one party to unilaterally lodge an enforceable objection prevents any real balance of interests at the personal level—the level that matters most to the individuals concerned. *The policy of achieving a balance would be better served by providing services that assist the parties to understand each other's point of view and current needs.*
4. *Regarding contact, Jigsaw Queensland believes that parties should have the right to express their preferences if they wish to have no contact or a range of intermediate forms of contact, such as by mail, email, phone, or mediated meeting.* Individuals should be able to express their preference for no contact 'at this time', leaving open the possibility to review that preference at a later stage.
5. *Jigsaw Queensland does not believe that there should be provisions for enforceable objections to contact within any future donor conception legislation or any prescribed penalties. If adults do not want contact, then they can simply say so.* They have the same recourse to legal protection from harassment as any other citizens. People affected by donor conception have the same rights as other citizens to avail themselves of legal means to protect

their own privacy, including privacy laws and anti-stalking provisions in the Criminal Code. We ought not to create laws where they are not necessary.

6. Despite what some may claim, there is no enshrined right to life-long secrecy in donor conception. Secrecy was a set of informal practices built up around confidentiality provisions designed to give stability to families formed by donor conception. *Rather than official policy, secrecy was a personal choice by some individuals, and the responsibility for managing the effects of that choice lie entirely with those individuals and is not the responsibility of the state.*
7. Jigsaw Queensland believes that it is important to draw a distinction between secrecy and privacy. We recognise that, just like other citizens, the various parties involved in donor conception have a right to privacy. When offering support, for example, we help people affected by adoption to anticipate, appreciate, and understand the needs of the other party before deciding whether to attempt a reunion. We always counsel caution, compassion, and patience. *Showing respect for each other when balancing rights to privacy with rights to access to information are matters of ethics, not law.*
8. We do not believe, however, that the right to privacy extends to the right of a person to withhold from another person information vital to that person's own private identity—knowledge of their origins or knowledge of their children. Not having knowledge of one's personal origins is like having the first chapters missing from one's life story. *Knowledge of one's personal history is so central to human identity that everyone ought to have a right to knowledge of their personal origins and the circumstances of their birth.* Indeed, privacy provisions have been made somewhat redundant by the availability and popularity of commercial DNA kits.
9. Again, looking to the history of opening adoption records has much to teach us when considering access to donor conception information. In considering the reform of previously closed adoption systems, legislators have sometimes considered a variety of measures—including contact vetoes, disclosure vetoes, compulsory mediation, and contracted undertakings—as a compromise position between parties in favour of and those opposed to, the opening of records. *However, as instruments of compromise, it is unlikely that such measures introduce any real advantages to most of those adults who see access to knowledge of their origins and contact with their birth relatives as a matter of their own choosing.*
10. *While the right to knowledge of one's personal origins ought to be virtually unconditional, contact between parties should be according to the wishes of the person's involved.* Jigsaw Queensland believes that there are strong ethical and therapeutic reasons to support parties to make contact with each other. There are strong prima facie duties involved, including respect for persons, care for others, and accountability to be considered by all involved.

Certainly, there is a need to balance conflicting personal needs and rights. There should be a climate in which the needs and aspirations of all parties are recognised. We take the position that such a balance cannot be legislated for.

11. *Matters of contact and reunion are matters for negotiation between the adults concerned with whatever support and access to services they may choose.*

They ought not be required to undergo any compulsory counselling or be compelled to use professional mediators. These services, however, ought to be available and offered to people seeking a reunion or wishing to state a contact preference, along with information on the variety of possible outcomes.

12. *The potential disruption to an individual person's life by the prospect of contact is a matter for them to assess and review.* The desire for contact, or not to have contact, at a particular time, should be communicated between the parties, either directly or through a mediator. This decision should be reviewed periodically by both parties. Ideally, there should be a provision of funded, support services to all parties. These services should be provided independently by an external provider to avoid any conflict of interest. Those donors, recipient parents and adult donor conceived people who feel illprepared for contact ought to be able to receive support in sorting through the issues and preparing themselves for contact. Support ought to be available well before an individual decides to make contact. The more widely known the issues surrounding search and reunion, the less likely it will be for individuals to make contact in careless ways. It is a system of secrets and restrictions that breeds frustration and carelessness. For example, Jigsaw Queensland receives a small amount of funding from the Queensland Government allowing us to provide information and support for people affected by adoption via our website and peer support (including support groups). We included a single page about donor conception on our website and because of the dearth of support services currently available, it consistently rates in our top five most viewed pages. We also receive a steady number of phone and email enquiries from people affected by donor conception. This indicates to us the strong need for funded support services for those impacted.

13. Finally, Jigsaw Queensland also hopes that any recommendations relating to access to information consider the rights of siblings to access information about their birth relatives. The sibling relationship is important and because of the similarity in ages, the relationship with birth siblings will often be lifelong, outlasting that between the donor and the donor conceived.

Thank you for providing this opportunity to make a submission. Should you require further comment or clarification we can be contacted as indicated above.

Jo-Ann D Sparrow, PhD
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