Queensland Legal Affairs and Safety Committee
Parliament House George Street
BRISBANE QLD 4000

Submitted by: Kate Drysdale
[redacted]

Submission to the Queensland Parliament's Legal Affairs and Safety Committee Inquiry into Matters Relating to Donor Conception Information

Prepared by Kate Drysdale
BSW with Distinction (JCU)

To the members of the Legal Affairs and Safety Committee,

I thank you for the opportunity to submit a submission to the inquiry.

Personally, I am a donor-conceived person conceived and born in Queensland in 1991. Professionally, I hold a Bachelor of Social Work with Distinction from James Cook University and have worked in the areas of child protection and adoptions. As such, I believe I have a firm understanding of the social and emotional impacts of past and current donor conception practices in Queensland and consider these practices to be in conflict with other areas of policy, legislation, conventions and declarations to which Australia is a signatory such as the *Family Law Act 1975*, the *Child Protection Act 1999*, the *Queensland Human Rights Act 2019*, the United Nations *Declaration of Human Rights 1948*, and the UN *Convention on the Rights of the Child 1990*. As outlined below, these documents prioritise the best interests of the child, equality before the law, and the right to identity and family relations (particularly to know their parents).

Family Law Act 1975

Section 60B(1) -
"*children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child*."

Section 60B(2) -

(a) "*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.*"

(b) "children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives)."

(e) *"children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture)"*

(*Family Law Act 1975* [Cth] pt. VII, div. 1).

Child Protection Act 1999

Section 5A (Paramount Principle) -

“That the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child’s life, are paramount.”

(*Child Protection Act 1999* [Qld] s. 5A).

Queensland *Human Rights Act 2019*

Section 15 -

“*Every person is equal before the law and is entitled to the equal protection of the law without discrimination.”*

(*Human Rights Act 2019* [Qld] pt. 2, dvi. 2).

United Nations Declaration of Human Rights 1948

Article I -

“All human beings are born free and equal in dignity and rights.”

Article 2 -

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, ***birth*** *or other status.”*

Article 7 -

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such Discrimination.”

(United Nations General Assembly, 1948).

UN Convention of the Rights of the Child 1990

Article 2 -

“Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, ***birth*** *or other status.”*

Article 3 -

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 7 -

“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.”

Article 8 -

“States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.”

(*Convention on the Rights of the Child*, 1990).

International Principles for Donor Conception and Surrogacy

The international Principles for Donor Conception and Surrogacy (Allan et al., 2019) also provides minimum standards for laws and practice relating to donor conception in order for them 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)” (Allan et al., 2019, p. 1).

I am in full support of the Principles and believe that as a signatory of the UNCRC, Australia has an obligation to implement laws and practices in line with these principles.

My lived experience of being donor-conceived

I was conceived via donor conception in 1990, born 1991. My mother received fertility treatment through the [redacted] in Brisbane. At the time, my mother was married but divorced my legal father when I was 2 years old. My mother and legal father did not agree about whether they should disclose to me that I was donor-conceived; my legal father did not wish for me to ever know but my mother wanted me to know from the beginning. I was told at the age of seven by my mother.

While it certainly helped that I was reasonably young when this disclosure occurred, I had already formed the foundations of my identity and my concept of the family that I fit within. This secrecy extended to my legal father's biological children who were unaware that I was not in fact related to them. This, along with other factors, contributed to the eventual loss of my relationship with the people I believed to be my siblings. Had the means of my conception been disclosed and normalised from the beginning, I could have incorporated being donor-conceived into my self-identity as just a normal part of my existence.

Both prior to and after telling me that I was donor-conceived, my mother tried to contact the clinic twice seeking any further information about her donor, my biological father. I grew up knowing only that he was a university student with brown hair and green eyes. My mother was told by a lady working at the clinic that many medical students donated and this is what my mum believed had occurred. No further information or support was provided. Throughout my childhood, I frequently wondered what my father was like; What similarities and differences did we have? Did he want to know me? Did he wonder about me? At times, I struggled significantly with lacking half of my identity and there was no support available to assist me with this.

By adulthood, I had resigned myself to the fact that I would never know the identity of my father, I would never know the family that genetically I was a part of. I did not know my cultural background or the medical conditions that I might need to watch out for. Medically, my doctor was missing half of my medical history and this was problematic during a period of health problems that I experienced.

As is also common with adoptees and others who are unaware of their biological background, I started to struggle most with being donor-conceived after having my first child. As fate would have it, I was walking past the TV and I caught the end of a news story about a woman who had identified her biological father via his donor code. At this time, I was unaware that donors were given codes and even armed with this information, I did not know what to do with it. Again, there was no support or information available. I decided to reach out to the woman who I had seen on the TV and she gave me guidance around contacting the clinic where I was conceived.

Excitedly, I contacted the clinic straight away only to find out that I could not access any information, including the donor code, without the written permission of my mother. The information relating to my literal creation was, and is currently, not considered my medical information. I guess I am lucky in that I have a supportive mother who provided this consent. However, given a large proportion of recipient parents do not even disclose to their children that they are donor-conceived, it can be easily assumed that many parents will not support donor-conceived people to access their information from clinics. Information needs to be reclassified as belonging to not only the recipient parent receiving treatment but also the person created. This, to me, seems like common sense and basic social justice.

After gaining consent from my mother, I was provided with another non-identifying donor information sheet which did not provide the same information as the one my mother had been given years prior. I now had my biological father’s donor code, his age at donation, his blood type, how many siblings he had, that his parents were alive when he donated, and that he had been a Humanities student. I then requested that the clinic try to contact the donor and let me know how many siblings I had through his donations. I was told for a couple of months that they could not contact the donor and that I had no siblings. After some time, I was told that one sibling had been found but that they did not know if it was a boy or a girl but they were likely also born in 1991. They apologised and, during one phone call, told me that due to the time that had elapsed since my conception, many of the records were likely to have been lost and even suggested that they could have been ‘smoke damaged’ or ‘water damaged.” It appears that many biblical events occur in what should be secure record departments (please excuse my sarcasm). I have since been told by the clinic that at the time of my conception, records were often held by the doctors after procedures and that this has possibly caused the inconsistent records. This is in keeping with other stories I have heard from donor-conceived people conceived via [redacted] who have told me that historically, some doctors had taken records home to their personal houses. To my knowledge, in every other sphere of medicine, there have been laws specifying the secure retention of medical records for a significant period of time.

While going through the process of requesting information from [redacted] over a number of months, I DNA tested with a consumer DNA company. I immediately found a sibling. His mother kindly contacted the clinic and was told that her son was not the one I had been informed of. It should be noted here that there is no requirement for successful pregnancies or live births to be reported to clinics by recipient parents. Due to this, the lack of records, or the now apparent refusal to continue searching the medical files, it is unlikely that [redacted] will ever be able to ascertain how many siblings I have and how many children my biological father assisted to create with his donations. This is why it is so vital that clinics be mandated to provide any remaining documentation to an independent body who is able to adequately organise and store this information and provide it accurately to donor-conceived people and donors requesting this information. Evidence suggests that clinics cannot be trusted with this all important task that has the potential to significantly impact upon the physical and emotional wellbeing of the human beings that they have created for profit.

Having received my DNA matches through Ancestry, I was able to build an extensive family tree for my paternal line, using the small pieces of information I had been provided on the non-identifying donor information sheet. Eventually, with the help of many new found extended family members, I identified a man who I believed to be my biological father. With this information, I even managed to gain a phone number for a close family member. The relative ease by which I was able to identify the donor through DNA testing now widely available, demonstrates how anonymity can no longer be guaranteed. As I was deciding how to proceed with this information, I received a phone call from the clinic, advising that they had managed to contact the donor and that he was open to contact. I would like to note that I am very thankful to the people within [redacted] who did actually try to gain information on my behalf. However, they work within a system that is largely unsupportive and it is highly dependent on who one talks to as to what information you gain. It also took repeated phone calls and emails over many months. I wish to stress that had I not continuously pushed for information, I do not believe I would have ever received the information that I did.

Once contact had been made with the donor by the clinic, both myself and the donor were required to attend mandatory counselling. While I believe that support should be available throughout this process, being forced to engage with a clinic appointed counsellor or risk not being able to gain the identity of your biological parent is consent under duress. Additionally, counselling provided by one person to both parties is a conflict of interest. While the counsellor was a very nice lady, the counselling did not provide therapeutic support and was what appeared to me to be an assessment of my motives. I would also like to note that the person providing this counselling had a Diploma in Counselling. I do not believe that this is an adequate level of training for such a complex issue. After completing my counselling session, I asked what had to happen next. I was advised that in order to meet my biological father, I would have to do so via Skype with the counsellor present. I considered this to be a gross violation of my privacy and an invasion of what would be one of the most significant moments of my life. I refused and informed the counsellor that I possessed the information I needed to privately contact my biological father and requested, out of respect for him, that he be provided a letter of introduction that I had written, including my contact details. I wanted to leave it up to him as to whether or not he made contact. Thankfully, the clinic agreed to this arrangement but multiple people read my extremely personal letter prior to it being sent. Many people would not have this option or may not feel that they could stand up to the clinic.

This process from my first contact with the clinic through to the end of counselling, took over a year. Later, my biological father would tell me that he had contacted the clinic years prior to give consent to be contacted and to update his details. This was apparently a lengthy process. Neither of us should have had to go through that ridiculous process. The clinic should have been able to simply consult their records, advise that he was open to contact, and connect us. Instead, I experienced many months living in a state of near panic that I would not get any information or would ultimately be rejected by the person I had been searching for for so long.

I have now formed what I would call a friendship with my biological father and have met him, along with his wonderful wife and my half-siblings that they have raised. They have also met my son, his first grandchild. This has been an incredible experience for me and I believe that he too has valued getting to know me. I hope that we continue to build our relationship over time. However, given I am thirty, it is difficult to form these relationships as the history is not there. I understand that it will all take time but there are many years that I will never get back and this did not need to be the case.

Response to enquiry prompts

The overall message that I wish to convey is that donor-conceived people should have the same rights as everyone else; that is, the right to know their parents. I understand that legally speaking, a donor is not defined as a parent. While the donors do not have legal parenting responsibilities, they are by definition parents in the biological sense.

The following points are what I would like to see eventuate from this inquiry:

1) That all donor-conceived people be able to access identifying information relating to donors and their donor-conceived siblings, regardless of when they were conceived.
2) That donors have the right to access identifying information about their biological children.
3) That a register be established and that all clinics in Queensland be mandated to provide full and accurate information in a timely manner, with penalties for non-compliance.
4) That as donor-conceived people are identified and added to the register, donor-conceived people are contacted and informed of their donor-conceived status, their rights to information, the possibility of contact with the donor and siblings with the consent of all parties, and the supports available.
5) That donors be informed of the establishment of a register and provided with information about their rights and the supports available.
6) That a widespread public information campaign occurs to provide information about the establishment of a register and the information that will be released. This may enable recipient parents and donors to inform their families and donor-conceived people where they have not already done so.
7) That counselling be provided to donor-conceived people, donors, recipient parents and any other relevant family members to facilitate the wellbeing of all parties. Such counselling needs to be provided by adequately qualified and experienced professionals, free of charge and on a voluntary basis.
8) That all birth certificates of donor-conceived people include a notation that they are donor-conceived, with contact details for where they can get further information.
9) That donor-conceived people currently in existence have the right to amend their birth certificate to include a third parent entry for biological parent/s and that this be mandatory moving forward.

10) That the fertility industry be properly legislated with adequate independent oversight and enforcement.
11) That, under law, a limit be placed upon the number of families that utilise each donor's gametes.
12) That the register be linked and/or available to officials in other states to ensure donors do not simply donate interstate once they have reached the Queensland limit and to allow tracing of interstate donors and sibling groups. Queensland should also seek to gain information from interstate registers to ensure records are complete.
13) That the use of international gamete donations by clinics that cannot be held to Queensland standards be banned.

Thank you for taking the time to consider my personal story and my recommendations based upon this lived experience.

If you require any further information, please do not hesitate to contact me.

Kind regards

Kate Drysdale

References

Allan, S., Adams, D., Almeida, C., Cummerford, M., Dingle, S., du Toit, C., Franz, A., Gianci, S., Lloyd, J., Newton, G., Raeymaekers, S., Rose, J., Smith-Williams, H., Wright, M., Wright, B., Lloyd, C. (2019). International Principles for Donor Conception and Surrogacy. Available at https://surrogacy360.org/wp-content/uploads/2020/04/International-principles-for-donor-conception-and-surrogacy.pdf

Child Protection Act 1999 (Qld) s. 5A (Aust.). Retrieved from https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-010#sec.5A

Family Law Act 1975 (Cth) pt. VII, div. 1 (Austl.). Retrieved from https://www.legislation.gov.au/Details/C2022C00126

Human Rights Act 2019 [Qld] pt. 2, dvi. 2 (Austl.). Retrieved from https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2019-005

United Nations General Assembly. (1948). *Declaration of Human Rights (217 [III] A). Paris*. Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights

United Nations General Assembly. (1989). *Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)*. Retrieved from https://www.ohchr.org/sites/default/files/crc.pdf