

28 July 2010

Committee Secretary

Senate Legal and Constitutional Committee

PO Box 6100

Parliament House

Canberra ACT 2600

Australia

Dear Ms Dennett,

My name is Myfanwy Cumberford. I am twenty-nine and was conceived in 1980 via the use of an anonymous sperm donor at the Royal Women's Hospital in Carlton, Victoria. I discovered the truth of my conception at age twenty.

I am one of eight children who share the same biological father. Four of whom were also conceived using sperm donated by him. One is my brother with whom I was raised. The three others are females born to three separate families, I know virtually nothing about them except their approximate birth dates.

I have met and am in regular contact with my biological father as well as my half sisters, daughters born during his first marriage. My eldest half sister has a young son, as do I. The little cousins met for the first time recently, not only do I benefit from contact with my paternal family, my son also benefits from contact with his only cousin and is illustrative of the fact that the issues raised by the practice of donor conception are inter-generational. I am incredibly fortunate to be able to enjoy a relationship with my biological father and half sisters, simultaneously I am acutely aware that currently most donor conceived people in Australia are unable to experience the same. The following is my submission in the hope that the federal government will, as a result of this inquiry, effect changes to rectify the inequity of rights between donor conceived individuals in this country.

Overriding Premise

Conceiving a child using donated sperm, eggs or embryos can not be equated with conceiving a child conventionally. The federal government has a responsibility by virtue of its facilitation and funding of the practice of donor conception to inquire into and ensure the best interests of any person conceived.

Consequentially the question arises - on what basis can the federal government justify the denial of identifying information and contact between the donor conceived person and their biological family particularly in light of legislation which provides these opportunities for adopted people and the recent government apologies to the Stolen Generation and Forgotten Australians/Care Leavers recognising that to be denied knowledge of and contact with ones family is damaging and often results in a deep sense of loss.

More controversially - If donor conceived people demonstrate a desire to know and connect with their biological family members, as many do, then on what grounds (in the absence of any demonstrable danger to their welfare) is it permissible to intentionally separate them from their biological family members by way of donation pre-conception?

(a) donor conception regulation and legislation across federal and state jurisdictions; and
(d) the rights of donor conceived individuals.

Currently the rights afforded to a donor conceived person depend on where and when they were conceived. This is supremely unjust.

Australia is a signatory to many international human rights instruments most relevant to this inquiry being the United Nations Convention on the Rights of the Child (UNCROC). Notwithstanding the constitutional and jurisdictional issues that prevent direct legal recourse to the UNCROC domestically, its ratification by Australia requires the government to recognise all children as bearers of a broad range of rights, including a right to identity and a right to maintain relations and contact with their parents unless this would be contrary to their best interests.

That Australian children have rights with respect to their identity and parents is further fortified by the various provisions in the Family Law Act 1975 (Cth) under Pt VII and in particular the objects and best interests principles espoused in s60B.

NOTE: Whilst the term parent can be broken down to distinguish between legal and biological parents I must emphasise that the issues faced by a donor conceived person persist beyond the age of majority when the role of a parent shifts from that of legal guardian. To not recognise the term parent as inclusive of legal and biological parents in relation to best interests principles is prescriptive and treats the donor conceived person as a perpetual child.

The majority of Australian citizens can take for granted the ability to access identifying information regarding their family members. I submit there is no sound argument for denying donor conceived people the opportunity to do the same. Any right to privacy asserted with regards to the donor is not absolute. ss69V - 69ZA of the Family Law Act 1975 (Cth) provide an example of where the need to establish parentage will trump privacy permitting a court to order DNA testing and where a party refuses to undergo testing, infer parentage.

• Recommendation: That all donor conceived people be awarded the right to access identifying information regarding their unknown family members. This must be retrospective.

The Status of Children problem

The treatment of a donor conceived person as child of the mother and her intended partner under the various parentage presumption provisions in state and federal legislation creates a legal fiction of parentage and severs any connection between the child and gamete donor. I believe this method of relinquishing and reassigning legal parentage is the root cause of the complex legal situation that entangles a donor conceived person currently.

It fosters deceit by producing a birth certificate that is not indicative of true parentage and permits recipient parents to refrain from disclosing the use of donor gametes to any child conceived.

The lack of any formal record documenting the familial link between the gamete donor and any children produced means that should the recipient parents not disclose then the donor conceived person has no way of ascertaining the truth. And any descendent researching their family history shall be (colloquially) led up the garden path.

It is at the point of birth and registration of the child that the practice of donor conception diverges most markedly from the best interests principles. The current practice of pretence is parent-centric and must be

changed.

• **Recommendation:** That the current legislative framework must be overhauled. Australian legislation champions the best interests of children as an ideal but fails them in practice. I believe the system of open adoption in Australia provides a good example of how links between the child and their biological family can be maintained as well as a system of birth certification that provides a mechanism for the donor conceived person to independently discover the truth.

(b) the conduct of clinics and medical services, including:

(i) payments for donors,

• **Recommendations:**

Any payment of donors, even for mere expenses, is an incentive and must not be permitted.

The use of donors from overseas must not be permitted. The task of seeking out a biological parent is difficult enough for the donor conceived person (even where their identity is known) and is only exacerbated if that person is located in another country.

(ii) management of data relating to donor conception, and

• **Recommendations:**

All records pertaining to the identities of donors and children conceived via donor gametes must be centralised and preserved.

Victoria has a system of registers for the purpose of linking donors and any person conceived via their donations, it is vital that a national register is established and maintained to facilitate contact.

(iii) provision of appropriate counselling and support services;

• **Recommendations:**

Currently most of the counselling undergone by prospective parents intending to use donated gametes is provided by the clinic providing treatment. This is a clear conflict of interest.

Counselling should be provided independently of the treating clinic and preferably by professionals with experience in the fields of adoption and grief counselling.

Currently there are very few support services available solely for the donor conceived person and their families and those that exist receive little funding or are not funded at all. There are organisations with the requisite experience to provide support services to donor conceived and their families (eg. Vanish in Victoria) if funding was made available.

(c) the number of offspring born from each donor with reference to the risk of consanguine relationships;

• **Recommendation:**

The number of families permitted to use gametes from the same donor must be reduced and restricted to one family. The risk of consanguine relationships is a good reason for doing so although not the only reason. Meeting my biological father and half sisters has been vastly beneficial to my sense of identity and well-being. However the process of building a relationship has not been without difficulty, for all involved. If another of my half siblings seeks out our father (and I hope that they do) the process of establishing and building a relationship will begin again. I find it difficult to imagine how I (let alone my biological father and other siblings) would manage relationships with ten or twenty other siblings and their respective families. The greater the number of children conceived via the use of one donor the less likely it is that a meaningful relationship will be sustainable.

Conclusion

I thank the committee for the opportunity to participate in this inquiry. I have kept my submission deliberately brief but I make myself available to elaborate further if necessary. I would also like to draw to the attention of the committee the following papers which are relevant to the inquiry terms of reference.

Dr Joanna Rose - A critical analysis of sperm donation practices : the personal and social effects of disrupting the unity of biological and social relatedness for the offspring. Available online: <http://eprints.qut.edu.au/32012/>

Professor J. David Velleman - Family History. Published in Philosophical Papers Vol. 34 No. 3 November 2005.

Elizabeth Marquardt, Norval D. Glenn, and Karen Clark - My Daddy's Name is Donor: A New Study of Young Adults Conceived through Sperm Donation. Available online: http://www.familyscholars.org/assets/Donor_FINAL.pdf

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