



Your Ref:  
Our Ref:

1 February 2011

Committee Secretary  
Senate Legal and Constitutional Committee  
Parliament House  
Canberra, ACT 2600

Dear Committee Secretary

**Submission to the Senate Enquiry:  
“The Past and Present Practices of Donor Conception in Australia”  
Written on Behalf of**

We act for \_\_\_\_\_, and refer to the inquiry into the past and present practices of donor conception in Australia noting the terms of reference as follows:

- (a) Donor conception regulation and legislation across federal and state jurisdictions;
- (b) The conduct of clinics and medical services, including:
  - (i) Payment for donors,
  - (ii) Management of data relating to donor conception, and
  - (iii) Provision of appropriate counselling and support services;
- (c) The number of offspring born from each donor with reference to the risk of consanguine relationships; and
- (d) The rights of donor conceived individuals.

This submission seeks to discuss points (a) and (d) above, with particular reference to the issues of: (1) Consequences of the known sperm donor listed as “father” on the birth certificates of donor conceived individuals; (2) The required consent by the birth certificate “father” on official documents and applications, eg. application for an Australian Passport; and (3) The Status of Known Sperm Donors and Parental Responsibility.

Towards the end of this submission, we made some concluding remarks and a request for assistance from you.

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- (1) Consequences of the known sperm donor listed as “father” on the birth certificates of donor conceived individuals**
- (2) The required consent by the birth certificate “father” on official documents and applications, eg. application for an Australian Passport**

Our client came to us in late 2008. She was looking to obtain Australian passports for her twin children conceived through a known sperm donor. Prior to conceiving, she was in a long term de facto relationship with a woman.

At the time of the birth of her children, our client was asked who the father of the child was for the purposes of their Birth Certificates. She had a decision to make – whether to leave the ‘father’ section of the Birth Certificate blank or put down the name of the known sperm donor. After a time of consideration, our client decided to place the known sperm donor’s name onto the Birth Certificate because she did not want to cause her children future embarrassment or questioning by peers, class mates or friends. Also she was informed that a name (of the father) had to be provided for the birth certificates.

Had she had known the consequences of placing the sperm donor’s name onto her children’s birth certificate, she would have objected to doing so.

Prior to the conception, our client and the known sperm donor had agreed that the sperm donor whilst having some contact with the children, would not be making any decisions in relation to the children nor would he be responsible for the children in any way. This was the policy at \_\_\_\_\_ and they agreed to this arrangement. \_\_\_\_\_

However, at the time of trying to apply for an Australian Passport for her two children, the application was rejected on the basis that the sperm donor was a person with parental responsibility for the children and had not provided his consent to the children travelling internationally, under Section 11(1) (a) of the Australian Passports Act 2005.

Section 69R of the Family Law Act 1975 states the presumption (a rebuttable one) that:

If a person’s name is entered as a parent of a child in a register of births or parentage information kept under a law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, the person is presumed to be a parent of the child.”

Further enquiry with the Australian Passport Office suggested that there was no avenue to appeal the decision with the Administrative Appeals Tribunal (AAT) as they did not have jurisdiction to hear this matter. The only recourse was to either get a Court order to allow the Passports to be granted to the children, or in the alternative, remove the donor's name from her children's birth certificate. Two years on, our client has still not been able to obtain passports for her children without the donor's consent. For the record the donor does not object and has actually sign the passport application forms although they were not witnessed. The issue here is the mother believes the donor's consent should not be required. It is to be noted that Centrelink recognises that the donor has no financial responsibility for the children.

### **(3) The Status of Known Sperm Donors and Parental Responsibility**

Sperm donation via private arrangement as opposed to through sperm clinics is becoming an increasingly popular option. Benefits of using privately recruited donors would include:

- The sperm donor is known to recipients as a friend, relative or acquaintance, which often allays fear of the unknown eg. health of the donor, physical appearance, character traits and personality;
- The sperm donor and recipient(s) may share similar values and views in relation to blended families, including the rights of the gay / lesbian community
- The children born through the known sperm donor would consequently have access to information on their biological father;
- The donor and recipient(s) may enter into private agreements as to the role and nature of the relationship with each other and with the donor conceived child(ren)

Whilst there are many benefits with using sperm from a known donor, issues may arise where there are no prior private agreements between the parties as to the donor's role, responsibilities and contact with the donor conceived child(ren). The second issue would relate to the fact that if there was a private agreement, how would these agreements be enforced?

Turning to the issue of parental responsibility, a necessary question would be the parental responsibility attributable to the known sperm donor.

Section 60H of the Family Law Act 1975 contains the provisions governing the federal regulation that define who is to be determined as the legal parent of a child born as a result of an artificial conception procedure. This section of the Family Law Act allows for consenting couples who undergo an artificial conception procedure to have full parental responsibility of the child even if that child is not biological theirs. Whilst Section 60H would

be interpreted on a case by case basis, it is evident that the case law at present provides inconsistent findings on who has parental responsibility in complex conception procedures, involving multiple parties.

In regards to state law, Section 14 of the Status of Children Act 1996 (NSW) defines the presumptions of parentage arising out of the use of fertilisation procedures; allowing for a woman in a de facto relationship with another woman who has undergone a fertilisation procedure to be the parent of any child born as the result of the pregnancy, if she has consented to the pregnancy of the other woman.

A complication arises whereby known donors are forced into a role of parental responsibility, otherwise not by choice or by agreement between the recipient or the donor. This could arise and has arisen, in our client's case outlined above, where the sperm donor is listed on the birth certificate of the donor conceived child(ren).

#### **(4) Conclusion**

It would appear that there needs to be some amendment or change to the law (at perhaps both Federal and State level to ensure consistency across the board) such that our client and others in a similar position as our client would not need the consent of a sperm donor to obtain official documents (eg. passports) or to make decisions for their children.

Known sperm donors who are listed on a donor conceived child's birth certificate should not be afforded the presumption of having parental responsibility for that child, especially if there is in existence a prior agreement between the parties that the known sperm donors role in the child's life was to be kept to a minimum (eg. occasional social visits). It should be a family court decision for the donor to be given rights as has been the case.

As a matter of principle, whilst our client would be able to get the consent of the known sperm donor for the purposes of her children's passport application, she does not feel that this is necessary as the sperm donor plays no significant role in her children's life. Nor should it continue to be an obligation that the known sperm donor, because his name is listed on her children's birth certificate be afforded such rights as having parental responsibility for the children. In reality, and for all intents and purposes, the sperm donor has no parental responsibility for these children.

It is submitted that the senate inquiry should have particular regard to the issue of having a known sperm donor's name on a child's birth certificate and the misnomer that follows, ie. that listed sperm donor has parental responsibility for the donor conceived children.

Would the Committee Secretary be able to request the Minister to intervene in our client's case so that the Australian Passport Office can approve the application for passport by our client for her children without the donor's consent? (The donor in this case has no parental responsibility.)

Yours faithfully

**Comasters Law Firm and Notary Public**