

**Friday 30 July 2010**

**Attention Senate Legal & Constitutional Affairs Committee,**

Please accept the following Rainbow Families Council submission to the *Inquiry into donor conception in Australia*.

**Rainbow Families Council**

Rainbow Families Council is a volunteer community organisation advocating for same-sex parented families in Victoria. Established in 2006, the Council brings together lesbian, gay, bisexual, trans and intersex families, parenting support groups and prospective parents.

The Council's work includes sharing information and resources to support families, children and prospective parents; working for social and legal recognition for our children and families; speaking out about the diverse realities of our lives; representing the best interests and rights of children living in rainbow families, parents and prospective parents to government and non-government bodies; and encouraging rainbow families to be visible and proud. The Council currently has over 250 financial members, is managed by an annually elected committee and administers a community website [www.rainbowfamilies.org.au](http://www.rainbowfamilies.org.au).

The term "rainbow families" is used to describe families where there are one or more parents who identify as lesbian, gay, bisexual or transgender. Another commonly used term is "same-sex parents". In terms of accessing ART services in Victoria, lesbian couples and lesbian women as single people are now able to access ART regardless of their fertility or marital status. Many of these women do use clinic recruited donors however there are an increasing large proportion of women who choose to provide their own "Known donor" otherwise known as a 'client recruited donor". Throughout the submission we have attempted to address the issues raised by having either a clinic-recruited donor or a known donor.

In Victoria under the ART Act (2008) gay men are able to engage a surrogate to provide them with a child but must also have an egg donor. Rainbow Families Council support the rights of people also conceived through the use of egg donation to have access to identifying information as per the reasons outlined in our submission.

**Rainbow Families Council makes our submission based upon the following principles:**

- In line with both Article 26 of the International Covenant on Civil and Political Rights and Article 7 of the United Nations Convention on the Rights of the Child, the Council supports the right of people conceived through donation (including sperm, eggs or embryos) to have access to information about their genetic origins, regardless of the time, place or nature of their conception or of the donation.
- Consistent with upholding the rights and best interest of the child, donor-conceived people under the age of 18 should have the ability to access information about the donor subject to the relevant counseling, support and advice being provided by the appropriate organisation/regulatory body to the young person and their family.
- Donors, either of sperm, eggs or embryos, should continue to donate altruistically and as such should only be remunerated for costs incurred, such as medical or travel costs.

**Additional concerns**

While not directly addressed within the Terms of Reference, Rainbow Families Council also supports

the removal of restrictions to known donor embryo or sperm donations being transferred between clinics from states to state.

If the principle of the rights of child is to be upheld we believe that allowing known donor donations made in, for example, a Melbourne clinic should be able to be transferred to, for example, the Hobart Clinic, if the family moves from Melbourne to Hobart and wishes to continue to have children using the same donor.

Rainbow Families Council also believes another key issue of concern is the treatment by clinics of gay men as altruistic or identity release donors and of gay men as known donors. The Council also hears anecdotal reports from gay men of being subject to covert discrimination on the basis of their sexual orientation, particularly when it comes to completing the Sperm Donor Statement (or similar) where questions related to sexual practice do not ask about the degree to which such activities were conducted safely. In addition many gay men who have acted as known-donors report that they feel that the required STI and HIV/AIDS screening tests should be followed up with additional counseling upon receipt of the results, as is common practice outside ART clinics. As such the Council believes additional accredited training should be provided to registered clinics to ensure that there is a thorough understanding of the needs and concerns of gay men acting as both altruistic and known donors.

**Rainbow Families Council makes the following responses to the Term of Reference:**

***The past and present practices of donor conception in Australia, with particular reference to: (a) donor conception regulation and legislation across federal and state jurisdictions.***

Prior to the 2000 ruling allowing infertile lesbian and single women access to ART in Victoria and the implementation of the Assisted Reproduction Treatment Act (2008) on January 1, 2010, many lesbian couples sought access to clinics in states and territories outside Victoria.

Sometimes termed “Reproductive Tourism”, many women accessed clinics in NSW, ACT Queensland and Tasmania, these clinics favored because of their proximity to Victoria allowing you to travel there and back in one day thus limiting the personal and work related costs. Prior to 2010 clinics in these states and territories had different procedures for collecting and releasing donor identity information.

Consequently some children in the one rainbow family have been conceived at different times in different clinics across different states or territories using donor with different identity-release provisions. The past practice has created a confusing and often upsetting situation for parents and their donor-conceived children when, for example, only one child has access to the identifying information about their donor while the other child does not. A retrospective process for addressing this discrepancy – whereby all donors are re-contacted about their desire to be now be identify-release – would be supported by Rainbow Families Council.

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

**(i) payments for donors,**

Rainbow Families Council believes that donors should not be paid for their donation other than for any medical or travel costs incurred.

While some may argue that payment would induce more donations and hence increase the diversity of donors available to families, the Council believes that payment creates a commercial contract between the donor and the recipients, which could possibly be construed as the donor believing they have particular “rights” or “privileges” in relation to the donor-conceived child. For some donor-conceived people the knowledge that the donor was paid may also have an emotional and psychological impact.

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

Rainbow Families Council supports the creation of a national database of donors so that donor conceived people are able to access information about donors regardless of the date, place or method of their conception.

**(iii) provision of appropriate counseling and support services;**

Rainbow Families Council believes that, overall, the clinic-based counseling provided to both donor recipients and the donors themselves is woefully inadequate. The Council believes that calling the process “counseling” is inappropriate and leads to clients often misunderstanding what the true nature of the session/s will be. The Council also believes that the process of counseling donor-conceived people when they request information about their donor needs to be reviewed to ensure that there are sensible step-by-step approaches that can be offered and provided that suit the individual case, in acknowledgement of the complex emotional journey this can be for the donor conceived people, their families and the donors themselves.

Anecdotally many rainbow families report that their experiences of counseling and support services often unfortunately include:

- A lack of understanding about the variety of ways the same sex couples, and the lesbian and gay community generally, parent or create their families;
- A lack of understanding of the different legal situations in relation to parental recognition faced by lesbian couples and gay men in couples in different states and territories as well as federally;
- A lack of awareness of the language used by same-sex couples to describe themselves and their families, including how families describe themselves and the donor.
- Implied concerns for the best interest of the child being raised by same sex parents as well as assumptions made about the relationship of the child to each parent.

A donor’s partner is also required to provide consent to the donor’s choice to donate sperm and in some cases the donor’s partner is also required to attend counseling. Rainbow Families Council believes that in some cases when a known or clinic-recruited donor is a gay man, it is neither relevant nor necessary for the donor’s partner to consent to donations in every circumstance. The nature of gay male relationships is not the same as heterosexual relationships where a female partner of the sperm donor may have concerns about her own fertility or having children in the future or where she may feel compromised by having biological siblings of her and her partner’s future children.

Also of concern to the Council is the apparent lack of attention paid to the personal impact on a sperm donor himself of having a large number of children born as a result of their donation. Rainbow Families Council supports the need for ongoing, adequate and relevant counseling and support for the donor **and** his family *as well as* the donor-conceived person, their family and siblings.

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

Rainbow Families Council believes that a limit of five families should be placed on donors.

In some lesbian couples both women may wish to conceive and to therefore have access to the same sperm donor so that their children have a biological connection. In this case a limit placed on the number of women rather than the number of families directly discriminates against same-sex couples where both women wish to conceive.

Rainbow Families Council also believes that a limit of five families greatly reduces the risk of consanguine relationships between offspring within the same sex parenting community in Victoria and, we assume, within Australia too.

While considered to be an underestimation, the ABS 2006 Census recorded over 26,000 same-sex couples of which approximately 11% of these couples stated that they had one or more children living with them. Single gay or lesbian parents are not recorded and neither are statistics where a child may be staying with their co-parent/s or other parents on the evening of the census. Given this small percentage of rainbow families it is extremely likely that many same sex couples access the same clinic. A limit on the number of families could go a long way towards preventing the likelihood that children of same sex couples, who may attend the same rainbow playgroup or be friends with children from other same sex families, will form consanguine relationships as adults. In addition a more concerted effort made by clinics to recruit from the gay community may assist efforts to increase donation levels.

**(d) the rights of donor conceived individuals.**

Rainbow Families Council firmly believes that people conceived through donation (including sperm, eggs or embryos) should have the right to access information about their genetic origins, regardless of the time, place or nature of their conception or of the donation.

The Council also believes that, consistent with upholding the rights and best interest of the child, donor-conceived people under the age of 18 should have the ability to access information about the donor subject to the relevant counseling, support and advice provided by the appropriate organization/regulatory body to the young person and their family.

Rainbow Families Council believes that there should be uniformity between states and territories regarding when a donor-conceived person can access information. Many families move states to access better employment or to live near their own extended families. For example a same-sex couple with one child may wish to have an other child and, rather than travel back to the original state their first child was conceived in, will access a clinic in their new home state. When one child in a family has access to indentifying information about their donor bur another doesn't it can cause emotional rifts and problems within the family.

On behalf of Rainbow Families Council, we thank the Committee for the opportunity to contribute to the inquiry. Further the Council would be happy to present at any public hearings and we look forward to the final report.

Yours sincerely,

Eilis Hughes and Rebecca Ford  
Rainbow Families Council  
[www.rainbowfamilies.org.au](http://www.rainbowfamilies.org.au)  
Email: [info@rainbowfamilies.org.au](mailto:info@rainbowfamilies.org.au)