



Australian Government
Attorney-General's Department

Access to Justice Division

10/19106

6 December 2010

Senator Guy Barnett
Senate Legal and Constitutional Affairs References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator

Inquiry into donor conception in Australia

Thank you for your letter dated 26 November 2010 to the Secretary concerning the inquiry into donor conception in Australia.

I note your comment that the table provided to the Senate Committee by the Department in the Secretary's letter dated 19 November 2010 did not contain certain information about the New South Wales assisted reproductive technology legislation.

The Department has now amended the table and a copy of the updated table is attached.

Yours sincerely

Matt Minogue
Acting First Assistant Secretary
Access to Justice Division

29/11/2010

Existing regulatory frameworks for the registration of human reproductive material used for assisted reproductive technology

This table outlines the current legislative and non-legislative material in each jurisdiction that dictate what types of information donor conceived individuals (DCI) can access about their donor.

- New South Wales, South Australia, Victoria and Western Australia have legislative regimes in place.
- Clinics providing ART services must comply with the National Health and Medical Research Council's [*Ethical guidelines on the use of assisted reproductive technology in clinical practice and research*](#).
- The NHMRC guidelines ensure compliance with the *Prohibition of Human Cloning for Reproduction Act 2002* (Cth).
- Clinics providing ART services are subject to the Reproductive Technology Accreditation Committee (RTAC) certification scheme, as set out in the *RTAC Code of Practice*.

| Jurisdiction | Legislative provisions: - record keeping | Legislative provisions: - access to donor information by DCIs - access to information about DCIs by donors | Type of Register - Mandatory? - Voluntary? - Central? - Govt? - Clinic based? | Non-legislative requirements governing access to donor information |
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| ACT | No legislation | No legislation | No register - information can be sought through the clinic where treatment is provided. | Clinics must comply with the NHMRC guidelines and RTAC certification. |
| Northern Territory | No legislation | No legislation | No register - information can be sought through the clinic where treatment is provided. | Clinics must comply with the NHMRC guidelines and RTAC certification. |
| Tasmania | No legislation | No legislation | No register | Clinics must comply with the NHMRC guidelines and RTAC certification. |
| Queensland | No legislation | No legislation | No register | Clinics must comply with the NHMRC guidelines and RTAC certification. |

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| New South Wales | <p><i>Assisted Reproductive Technology Act 2007</i> (NSW) commenced on 1 January 2010</p> <p><i>Assisted Reproductive Technology Regulation 2009</i></p> | <p>ART Act sections 37 – 39, as specified in Regulation 16, provide:</p> <p>(a) DCI can obtain identifying and medical information about donor</p> <p>(b) Adult DCI can obtain year and sex of birth of sibling offspring</p> <p>(c) Parent of DCI can obtain donor’s medical information</p> <p>(d) Donor can obtain year and sex of birth of offspring</p> | <p>All clinics must be registered and all registered clinics must maintain records.</p> <p>The <i>ART Act 2007</i> provides for a central registry (Part 3 – Sections 33-41). If conception using donated gametes occurs after 1 January 2010 it will be mandatory for information about a donor to be included on the Register once a child is born.</p> <p>The <i>ART Act 2007</i> also established a voluntary register for the inclusion of information about donors and individuals conceived as a result of ART treatment using donated gametes prior to 1 January 2010.</p> | Clinics must comply with the NHMRC guidelines and RTAC certification. |
| South Australia | <p>The <i>Assisted Reproductive Treatment Act 1988</i> (SA) provides for a donor register. The amendment legislation enacting the register commenced on 1 September 2010.</p> <p><i>Assisted Reproductive Treatment Regulations 2010</i> (SA)</p> | <p>Once established, the register will contain details of the donor, the person undergoing treatment, the donor-conceived children and any other information required by the regulations.</p> <p>ART Act section 18 prohibits identifying information being disclosed except –</p> | <p>Section 15 of the <i>Assisted Reproductive Treatment Act 1988</i> provides that the Minister may keep a donor conception register. Subsection 15(8) of the Act provides that the register will not be retrospective.</p> | Clinics must comply with the NHMRC guidelines and RTAC certification. |

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| | | <p>(a) in administration of the Act</p> <p>(b) in order to carry out an artificial fertilisation procedure</p> <p>(c) with the consent (given in the prescribed manner) of the donor of the material</p> | | |
| Western Australia | <p><i>Human Reproductive Technology Act 1991 (WA)</i></p> <p><i>Human Reproductive Technology (Licences and Registers) Regulations 1993</i></p> | <p>The Act allows access information about donors, participants to the procedure and DCI. Different right to information provisions apply according to when the donation was made – see endnote.¹</p> <p>HRT Act section 49(2) prohibits disclosure of identifying information except –</p> <p>(a) where necessary to carry out a procedure or conduct research,</p> | <p>CEO of Department of Health keeps and administers the RT Registers. Registers under section 45 of the Act require mandatory collection of ART data since 1993. The Act requires licensed fertility clinics and exempt practitioners to provide patient, donor and treatment data to RT Registers. A Voluntary Register has also been set up for DCI, parents of DCI or donors to seek non-identifying</p> | <p>Clinics must comply with the NHMRC ethical guidelines, RTAC accreditation and the RTAC Code of Practice.</p> |

¹ WA provisions

For donations made on or after 1 December 2004, a DCI who has reached the age of 16 years and has completed approved counselling will be allowed access to identifying information about the donor. A person who has parental responsibility for a DCI aged under 16 years and has completed approved counselling may consent for this purpose on behalf of the DCI. Information that would identify a DCI under 16 years cannot be disclosed unless each person whose consent is required has completed approved counselling.

For donations made prior to 1 December 2004, identifying information about the donor cannot be disclosed unless –

*the donation was used with the effective consent of the donor on or after 1 December 2004, or

*the CEO of the Department of Health (WA) is satisfied that, before the donation, the donor was adequately informed that future legislative changes might enable the information to be disclosed to the child without the donor's consent

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| | | (b) to administer Act or at the request of the Minister for certain purposes, (d) with the consent of each donor, participant or DCI in question or other person whose identity may be disclosed, in so far as it does not identify a person who has not given consent, (c & e) as authorised under the Code, regulations or another written law. | information (such as siblings). With mutual consent & approved counselling, parties can access identifying information about other parties (including donor siblings). Both clinic and RT Registers information is used for this. No outreach service is provided. This register was established and is managed by the Department of Health. | |
| Victoria | <i>Assisted Reproductive Treatment Act 2008</i> (Vic), which commenced on 1 January 2010 (repealing the <i>Infertility Treatment Act 1995</i> (Vic)). | Different right to information provisions apply according to when the donation was made – see endnote. ² Those conceived after 1 January 1998, and over 18 can access to identifying information about the donor. Access varies for information regarding conceptions prior to 1998. | Central Register contains information about: each woman who receives treatment and her partner, if she has one; donors; treatment procedures; and the outcomes, including the particulars of a person born as a result of a treatment procedure. Voluntary Register will be maintained by the Registrar | Clinics must comply with the NHMRC guidelines and RTAC certification. |

² Victorian provisions

1995 central register for donations made on or after 1 Jan 1998: DCI aged 18 years and over can automatically obtain identifying information about the donor. Donor can only obtain identifying information about the DCI with the consent of the parents, or the DCI when aged 18 or over.

1984 central register for donations made between 1 July 1988 – 31 December 1997: requires consent of the person to whom the information relates before releasing identifying information.

Voluntary register (1) for donations made prior to 1 July 1988: information provided voluntarily and exchanged in accordance with the person's wishes.

Voluntary register (2) for donations made post 1 July 1988: information additional to that contained in the 1984 and 1995 central registers may be lodged and exchanged with contributor's wishes.

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| | | | of Births Deaths and Marriages once the ART Act commences operation. It contains information voluntarily provided by persons involved in donor treatment procedures and their relatives. | |
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