

25 June 2021

Colin Brown

Director, Legal and Legislative Policy
Department for Health and Wellbeing
cc: HealthPolicyLegislation@sa.gov.au

Re: Consultation on the draft Bill to amend the *Assisted Reproductive Treatment Act 1988*

Thank you for the opportunity to comment on the *Assisted Reproductive Treatment (Donor Conception Register) Amendment Bill 2021* (the Bill).

As South Australia's inaugural Commissioner for Children and Young People, my mandate under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* is to promote and advocate for the rights, interests and wellbeing of all children and young people in South Australia. My work is underpinned by the rights contained in the United Nations Convention on the Rights of the Child (UNCRC).

I welcome the intent of the proposed amendments insofar as they align with the fundamental principle of the *Assisted Reproductive Treatment Act 1988* and appear to give effect to children's rights as set out in the UNCRC, including a child's right to identity (Article 8), rights to information (Article 13), and to the highest attainable standard of healthcare (Article 24).

The amendments appear to align with growing recognition of the importance of knowing one's genetic, social and medical history to inform the development of one's sense of identity, effectively manage and make informed decisions about health, and avoid consanguineous relationships.

I provide the following comments for your consideration, relating specifically to the age at which donor-conceived children can access information and the provision and quality of support services. With reference to legislation operating in other jurisdictions in Australia (notably, Victoria and Western Australia), this feedback seeks to ensure appropriate support is in place for all affected parties, particularly children and young people.

The age of access to information for donor-conceived people

The proposed insertion of section 15A would allow access to information in the donor conception register for donor-conceived people aged 18 years and older, or for a child under 18 with consent from both the donor and the parents/legal guardians of the child.

Legislation in both Victoria and Western Australia contain additional provisions allowing access to information for donor-conceived children who are under 18 years old if they have received counselling. Similar provisions in South Australia's

legislation should be considered to ensure donor-conceived children not only receive timely and appropriate information but also access to key support services.

S59 of Victoria's *Assisted Reproductive Treatment Act 2008* provides that donor-conceived children under 18 can apply for information and the Victorian Assisted Reproductive Treatment Authority (VARTA) 'must' disclose this information to the child applicant if:

- (i) their parent or guardian has consented to the making of the application; or
- (ii) a counsellor has provided counselling to the person and advised the Authority under section 67A(3) that the applicant is sufficiently mature to understand the consequences of the disclosure.¹

I also note s49(2d) of the *Human Reproductive Technology Act 1991* in Western Australia, whereby donor-conceived children can access identifying information about their donors if they have 'reached 16 years of age and [have] completed approved counselling'.²

In regard to the kind of information available, it is recommended that s15A(2) specifies information about donor-conceived siblings as well as information about donors in addition to the reference to 'information of a kind referred to in section 15(2)'.

The provision of support services and standards for support services

According to information available on the YourSay website, the donor conception register also intends to 'be able to provide professional support to donors and donor-conceived persons', including 'searching, donor linking/intermediary services (assistance and facilitation of information exchange and contact between parties where needed) and counselling to those who need it'.³

The effectiveness of the Bill will largely depend on the quality of this support. As such, it is recommended that the Bill contain provisions to ensure donors and donor-conceived people are supported through counselling and other means.

Victoria's legislation, for example, sets standards for support services, including that a counsellor is informed 'about the kind of information sought by the person from the Central Register' (s67A).

¹ *Assisted Reproductive Treatment Act 2008* (Vic), s 59. Available at <https://content.legislation.vic.gov.au/sites/default/files/2020-07/08-76aa024%20authorised.pdf>.

² *Human Reproductive Technology Act 1991* (WA), ss 49(1a), 49(2d) and 49(2e). Available at <https://www.rtc.org.au/wp-content/uploads/2016/12/Human-Reproductive-Technology-Act-1991.pdf>.

³ Government of South Australia, SA Health. The Donor Conception Register: What's Happening? Fact Sheet (See also Frequently Asked Questions, YourSay). Available at <https://yoursay.sa.gov.au/69071/widgets/338622/documents/203589>.

Part 10 of the *Assisted Reproductive Treatment Act 2008* (Vic) establishes the powers and functions of VARTA, the Authority that provides information, counselling and support services to all parties involved throughout the donor-linking process. VARTA also provides 'public education about the best interests of children born as a result of treatment procedures'.

There is potential for this Bill to establish an organisation or authority similar to VARTA for South Australia. This body would ideally be resourced with expert staff who have experience managing complexity of new relationships and can provide counselling and specific support, including support communicating contact preferences via the 'statement of wishes', giving key consideration to the child's best interests.

If you have any queries in relation to any aspects of this Bill, please do not hesitate to contact my office.

Yours sincerely,



Helen Connolly
Commissioner for Children and Young People SA