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**Government
of South Australia**

15 April 2016

The Council for the
Care of Children

GPO Box 1152
Adelaide SA 5001
DX 541
Courier R11/71

Tel 08 8463 6429
Email ChildrenSA@sa.gov.au
www.childrensa.sa.gov.au
ABN 60 168 401 578

A/Professor Sonia Allan
A.R.T. Act Review
Policy and Intergovernment Relations Unit
SA Health
P O Box 287
Adelaide SA 5001

Dear Dr Allan

Thank you for inviting the Council for the Care of Children (Council) to make a submission to the review of the *South Australian Assisted Reproductive Treatment Act 1988* (SA) (the A.R.T. Act).

The Council's legislative mandate is set out in Part 7B of the *Children's Protection Act 1993* (SA) which came into effect on 1 February 2006 and the Council works to ensure that children and young people in SA are encouraged and supported to be the best that they can be, at every life stage, by:

- advocating for and supporting their active participation as citizens
- improving outcomes for children and young people by providing expert advice to government on their rights, needs and interests and the implications for policy, practice, and research
- raising awareness of issues impacting on children and young people
- monitoring the wellbeing of children and young people from birth to 18 years.
- promoting the wellbeing, development and safe care of vulnerable children and young people.

Please find attached a short submission from the Council to the A.R.T. Act review.

The Council Secretariat may be contacted by telephone on (08) 8463 6429 or via email on ChildrenSA@sa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Schrapel'.

Simon Schrapel
Chair
Council for the Care of Children

The Council for the Care of Children

Review of the South Australian

Assisted Reproductive Treatment Act 1988 (SA)

SUBMISSION

15 April 2016

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Care of Children



Enquiries about or comments on this submission should be addressed to:

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GPO Box 1152
Adelaide SA 5001
AUSTRALIA

Phone: (08) 8463 6429 or

Email: ChildrenSA@sa.gov.au

1 Introduction

In accordance with the legislative role and mandate of the Council for the Care of Children (Council) for children and young people from birth to 18 years in South Australia (SA), this submission advocates for the rights and interests of donor conceived children and young people to access relevant information.

2 Key messages

1.1 The rights of children and young people

The Australian Government ratified the United Nations Convention on the Rights of the Child (UNCRC) in December 1990. As the first legally binding international human rights instrument the UNCRC incorporates the 'civil, cultural, economic, political and social rights' of children and young people under 18 years of age, in 54 articles and two Optional Protocols¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

Pursuant to Article 3, UNCRC², the best interests of a child or young person should be a primary consideration in all actions concerning them.

For consideration

The best interests of donor conceived children and young people should guide consideration of any submissions to the *Assisted Reproductive Treatment Act 1988* (SA) (the A.R.T. Act) review.

1.2 Consultation with children and young people

Pursuant to Article 12, UNCRC³, children and young people under 18 years of age have a right to express their opinions and views about matters that affect them and to have their views taken seriously. Therefore, children and young people should be involved in all matters that impact on them.

It is not apparent from the A.R.T. Act review fact sheets if donor conceived children and young people have been consulted. As far as possible, they should be, to more holistically inform the review. Their views may both complement and differ from those of adult contributors.

¹ National Children's Bureau (2015), *Involving Children and Young People in Policy, Practice and Research*. Edited by Hugh McLaughlin. Published by NBC, London. <www.ncb.org.uk>.

² **Article 3, UNCRC:**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

³ **Article 12, UNCRC:**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Hearing from donor conceived children and young people should more accurately identify the pertinent issues from their perspective and clarify their views of their rights, interests and needs. This should facilitate a more socially inclusive and comprehensive depiction of any pertinent issues for the A.R.T. Act review.

For consideration

The views and needs of groups of seldom heard children and young people may differ, or be additional, to those of other groups of children and young people. Therefore, specific attention should be given to seeking their views, including those who may be from an Aboriginal or Torres Strait Islander or a culturally and linguistically diverse background and/or:

- who have a disability and/or
- who are under the guardianship of the Minister for Education and Child Development in SA.

3 Fact sheet 2 – Welfare of the child principle

The Council notes and supports:

- the post-2010 retention of the welfare of the child provision as a guiding principle in the A.R.T. Act
- that the welfare of the child principle has been strengthened
- efforts to clarify how the principle is operationalised in practice, including to identify potential physical and/or psychological harm to a donor-conceived child or young person.

The Council also notes and supports the rights of donor-conceived persons to information about their genetic parents eg in accordance with Parts B6 and B7 of the 2004 National Health and Medical Research Council 'Ethical guidelines on the use of assisted reproductive technology in clinical practice and research' (NHMRC guidelines) including that:

- '6.1.2...Clinics should help prospective recipients to understand the significant biological connection that their children have with the gamete donor. Recipients should be advised that their children are entitled to knowledge of their genetic parents and siblings; they should therefore be encouraged to tell their children about their origins.
- '6.11...People conceived using donated gametes are entitled to know their genetic parents. On request, clinics must arrange for either a medical practitioner or an appropriately qualified health professional, to provide...information to a person conceived through ART procedures, provided that he or she has either reached the age of 18 or acquired sufficient maturity to appreciate the significance of the request (including any implications for his or her younger siblings)'

For consideration

A donor conceived child should have a legal right to be informed at an early age of their donor conceived status. Consideration should be given to

specifying an age by which time a donor conceived child should be informed (unless, and in consultation with appropriately qualified medical and/or health professionals, it is considered contrary to the best interest of an individual child or young person to be informed at a particular time). Any such decisions should be documented and regularly reviewed.

A donor conceived child or young person should also be able to readily access information about his or her donor(s). Whether or not to access relevant information should be a matter of individual choice.

To facilitate access, there should be appropriate supports available, especially for donor conceived children and young people who may be vulnerable and/or who have been adopted.

4 Fact sheet 6 – Donor conception register

The Council notes that:

- the 2010 amendments to the legislation removed any impediments in SA to the release of relevant information by clinics to ‘third parties’ eg a donor conception register by allowing this State to ‘participate in a donor registration program approved by the Minister for Health’ (the Minister)
- a donor conception register, pursuant to the provisions of the A.R.T. Act has not yet been established in SA.

For consideration

A South Australian donor register should be established in accordance with prescribed guidelines to:

- collate relevant information in a reliable manner and in a central location
- ensure information is stored and preserved in the short, medium and longer term
- facilitate transparent and ready access to relevant information for donor conceived children and young people
- provide relevant information with the appropriate prior notification and consent, respecting the privacy of all persons formally involved in A.R.T procedures.

It should be a legal requirement to inform all donors, verbally and in writing, that a donor conceived child or young person has a right to be informed and to seek information about their genetic parent(s).

It should be a legal requirement to record the date that the information was provided to a donor.

The right to access information from a donor register should apply from a *point in time*, not retrospectively, except with the specific and informed consent of a donor (who donated prior to the introduction of the NHMRC guidelines on the basis that it was done on a confidential basis - as stated in Part B6.13 of the NHMRC guidelines).



About the Council for the Care of Children

The Government of South Australia (SA) established the Council for the Care of Children in 2006 under the *Children's Protection Act 1993* and the Council's functions and responsibilities extend to all children and young people in SA from birth up to 18 years of age.

In looking out for children and young people across all communities and sectors in SA, the Council advises government and others, and works collaboratively with state and national stakeholders, with the aim of ensuring children and young people in SA are cherished, nurtured and respected.

Broadly speaking, the Council's role in SA can be summarised as:

- advocating for and supporting the active participation of children and young people as valued citizens
- improving outcomes for children and young people by providing expert advice to government on their rights, needs and interests and the implications for policy, practice, and research
- raising awareness of issues impacting on children and young people
- monitoring the wellbeing of children and young people from birth to 18 years of age
- promoting the wellbeing, safe care and development of vulnerable children and young people (especially those with disability and/or under the guardianship of the Minister and/or who are Aboriginal or Torres Strait Islander).

One of the South Australian Government's seven key priorities is priority no 4, *Every chance for every child* which refers to all children and young people in SA up to 18 years of age. *Every chance for every child* aims to provide children and young people with the best possible start in life and to assist families to provide the best possible support for their children.

The Council supports *Every chance for every child*. This strategic direction is well-aligned with the Council's legislative mandate in SA and with the principles of the international human rights instruments which Australia upholds including the:

- United Nations Convention on the Rights of the Child (UNCRC)
- United Nations Convention on the Rights of Persons with Disability
- United Nations Declaration on the Rights of Indigenous Peoples.

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W: www.childrensa.sa.gov.au | Follow us on [Facebook](#)