

Response to the Review of Assisted Reproductive Treatment in South Australia

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Thank you for the opportunity to comment on the review of ART in South Australia.

My involvement in assisted reproduction matters

I have been involved in research and policy development in assisted reproduction for nearly 30 years. My particular interests have been in the area of third party assisted conception, having undertaken research in the UK, Canada the USA and internationally into surrogacy arrangements, egg, sperm and embryo donation and cross border reproductive services. Dissemination of this work has been achieved through many international conference presentations, including invited keynote addresses, in Asia, Australasia, Europe, North and South America, and publications in a variety of outlets. I have also provided expert advice for government and regulatory bodies in the UK, Australia, Canada, Hong Kong, New Zealand and Singapore and am currently an advisory panel member of the Victorian Assisted Reproductive Treatment Authority (Australia).

I joined the British Association of Social Workers Project Group on Assisted Reproduction (PROGAR) in the mid 1980s and for several years served as chair of this group. Most notably, PROGAR, in alliance with child care NGOs, parents of donor-conceived children and donor-conceived individuals, campaigned for a change in UK law regarding donor anonymity, which resulted in a successful change of legislation in 2005.

I was a founder member of the British Infertility Counselling Association, and consultant editor of BICA's *Journal of Fertility Counselling* from 1998 to 2003.

My entire working life has been spent in social work, first as a social work practitioner and then as a manager for a government social work agency and from 1983 I was employed in social work education. Most of the next 32 years were spent at the University of Huddersfield although this was interspersed with visiting professorial appointments at the Hong Kong Polytechnic University and the National University of Singapore. I was professor of social work at the University of Huddersfield from 2000 until my retirement in 2015. I now hold the position of emeritus professor of the University of Huddersfield.

In view of the limits of my expertise I offer comments on *Fact Sheet 2 - Welfare of the child* and *Fact Sheet 6 - Donor conception register* only

Fact Sheet 2 - Welfare of the child

I firmly believe that interests of individuals born as a result of ART *both as children and later as adults* should be paramount. The “welfare of the child in ART” has comprised a significant focus of my own academic study, on which I have published extensively (Blyth, 1993; 1995; 2002; 2007; 2008; 2015; Blyth, Burr, & Farrand, 2008; Cameron & Blyth, 1998). In my view the “welfare of the child” must be seen in the context of children’s rights – and for which the United Nations Convention on the Rights of the Child provides the best (although not perfect) internationally agreed standards. Justification for considering the “welfare of the child” to be paramount stems from the fact that all other parties involved in ART (patients seeking ART, professionals providing ART, gamete and

embryo donors and surrogates) do so as adults and who (at least for the most part) may be considered to have fully consented to engagement in the ART enterprise. Those born as a result of ART procedures alone have no say in their involvement in these processes and have to live with the implications of such involvement for the rest of their lives (and which may also impact on any children they may themselves have in the future). I do not consider it is acceptable to minimise or discount the significance of this by claiming that without ART the ART-conceived individual would not otherwise exist (as has been claimed by some scholars). The rights perspective also facilitates adjudication of contested rights (for example between a donor-conceived person's right to information about his or her biogenetic inheritance and a donor's or ART patients' rights to privacy).

Further specific measures flow from affording paramourncy to the welfare of the child in ART.

1. Patients undergoing ART should have the right to professional practices that are informed by current best practice and research. In this regard medically assisted donor conception is a medical practice that has been least exposed to – and informed by - an evidence base. This is in no small measure due to the promotion by medical practitioners (in particular) of practices that have militated against systematic research in donor conception (i.e. secrecy and anonymity).
2. ART should not be provided where there is evidence that any child might be exposed to significant harm. This necessarily requires sufficiently rigorous advance checks of patients, donor s and surrogates to be undertaken by competent professionals with relevant expertise.
3. Those considering donor conception or surrogacy should be able to access competent professional and peer information, advice, support and mediation services so as to prepare themselves and their children for the particular strengths and challenges of these models of family building, including disclosure to the child of their donor conception and/or surrogate birth. Further attention needs to be given to the particular implications of cross border reproductive services (Blyth & Farrand, 2005; Blyth, Thorn, & Wischmann, 2011; Hudson, Culley, Blyth, Norton, Rapport, & Pacey, 2011; Thorn, & Blyth, 2015; Thorn, Wischmann, & Blyth, 2012). Such services should be available throughout the family life-cycle as and when required.
4. Affording paramourncy to the welfare of child seems to me inconsistent with policies and practices that deny that child (and that person as an adult) access to information about their biogenetic inheritance. At the very least this should include an explicit right to learn the identity of their donor. Donors should therefore be required to agree to the disclosure of their identity to any “offspring”. In my view any specified age at which such information could be accessed by a donor-conceived person is arbitrary and the most equitable approach would be to adopt the “mature minor” approach that has already been implemented in some jurisdictions (Blyth & Frith, 2015). Existing research indicates that donor-conceived individuals are likely to have an interest in people other than the donor to whom they may be genetically related.as a result of their donation (Blyth, Crawshaw, Frith, & Jones, 2012). Provisions should exist to facilitate information exchange and contact between such individuals where this is mutually desired. Unlike the right to learn the donor's identity I do not think a similar *right* to information about other genetic relatives (especially where these are minors) can so easily be extended to donor-conceived individuals. In my view this therefore needs to be limited to mutually agreed information and contact. As far as I am aware there has been no research on donors' children, although I am aware of research involving teenage and adult children of surrogates (Jadva & Imrie, 2014). This latter research suggests that children of donors and surrogates may also have an interest in learning about others to

whom they may be genetically related as a result of the donation or surrogacy arrangement. Therefore similar provisions regarding information exchange and contact should be made available to them. Practice models for “donor linking” as pioneered in the State of Victoria provide suitable exemplars (<https://www.varta.org.au/donor-linking>).

5. Whether or not provisions enabling a donor-conceived person to learn the identity of their donor should be applied retroactively is a matter of considerable disagreement. At the present time only the State of Victoria has introduced legislation to mandate retroactive disclosure of a donor’s identity to a donor-conceived persons regardless of the donor’s consent. Since this legislation has only recently been implemented its impact cannot be evaluated. However as a matter of principle I believe that this is a logical extension of the recognition of the rights of donor-conceived individuals to information about their biogenetic inheritance and that arguments for discriminating against different groups of donor-conceived individuals on the basis of the date of the donation of gametes/embryos are weak (Blyth, 2011; Blyth & Crawshaw, 2016).
6. All parties affected by information-exchange and contact provisions should be able to access competent professional and peer information, advice, support and mediation services.
7. There should be a right to accurate birth registration that provides information about any donor or surrogate involved in the individual’s conception or gestation. Such provisions should ensure the necessary protection of individual privacy (i.e. where a third party may access or require sight of an individual’s birth certificate) (Blyth, Frith, Jones & Speirs, 2009; Stoll, 2008).

Fact Sheet 6 - Donor conception register

It is a matter of considerable regret that South Australia has yet to establish a donor conception register. In this regard it clearly lags behind other Australian States (New South Wales, Victoria and Western Australia) and some other jurisdictions. In my view there is much that South Australia (and other jurisdictions) can learn especially from Victoria and I sincerely hope that this review will provide the opportunity to develop relevant policies and practices regarding donor conception registers from a range of other jurisdictions (Blyth & Frith, 2015). Much of what I have already included in my comments in respect of *Fact Sheet 2 - Welfare of the child* are relevant for *Fact Sheet 6 - Donor conception register*. I will not repeat them here.

REFERENCES

- Blyth, E. (1993) Children’s welfare, surrogacy and social work. *British Journal of Social Work* 23: 259-275.
- Blyth, E. (1995) The United Kingdom’s Human Fertilisation and Embryology Act 1990 and the welfare of the child: a critique. *International Journal of Children’s Rights* 3(3/4): 417-438.
- Blyth, E. (2002) *Assisted conception and the welfare of the child: a critical review and analysis* (PhD University of Huddersfield)
- Blyth, E. (2007) Conceptions of welfare. In Horsey, K. and Biggs, H. (eds) *Human Fertilisation and Embryology: Reproducing Regulation*. London: Routledge-Cavendish pp.17-45.
- Blyth, E. (2008) To be or not to be? A critical appraisal of the welfare of children conceived through new reproductive technologies. *International Journal of Children’s Rights* 16(4): 505-522.
- Blyth, E. (2011) Provision of written evidence to Parliament of Victoria Law Reform Committee Inquiry into access by donor-conceived people to information about donors. (Submission No DCP 43) http://www.parliament.vic.gov.au/images/stories/committees/lawrefrom/iadcpiad/submissions/DCP43_-_Eric_Blyth.pdf

- Blyth, E. (2015) From need “for a father” to need “for supportive parenting”: Changing conceptualisations of the welfare of the child following assisted reproductive technology in the United Kingdom. In Horsey, K. (ed) *Revisiting the Regulation of Human Fertilisation and Embryology*. London: Routledge. pp. 12-30.
- Blyth, E., Burr, V., & Farrand, A. (2008) Welfare of the Child assessments in assisted conception: a social constructionist perspective. *Journal of Reproductive and Infant Psychology* 26(1): 31-43.
- Blyth, E. & Crawshaw, M. (2016) Retrospective removal of donor anonymity: respectful, fair, grateful and moral? An evidence based argument. *Bionews* 844. 21 March.
http://www.bionews.org.uk/page.asp?obj_id=630716&PPID=630844&sid=464.
- Blyth, E., Crawshaw, M., Frith, L., & Jones, C. (2012) Donor-conceived people's views and experiences of their genetic origins: A critical analysis of the research evidence. *Journal of Law and Medicine*. 19(4):769-789.
- Blyth, E. & Farrand, A. (2005) Reproductive tourism - a price worth paying for reproductive autonomy? *Critical Social Policy* 25(1): 91-114.
- Blyth, E. & Frith, L. (2015) Access to genetic and biographical history in donor conception: An analysis of recent trends and future possibilities. In Horsey, K. (ed) *Revisiting the Regulation of Human Fertilisation and Embryology*. London: Routledge. pp. 136-152.
- Blyth, E., Frith, L., Jones, C. & Speirs, J. (2009) The role of birth certificates in relation to access to biographical and genetic history in donor conception. *International Journal of Children's Rights* 17(2): 207-233.
- Blyth, E., Thorn, P., & Wischmann, T. (2011) CBRC and psychosocial counselling: assessing needs and developing an ethical framework for practice. *Reproductive Biomedicine Online*. 23(5): 642– 651.
- Cameron, C. & Blyth, E. (1998) The welfare of the child: an emerging issue in the regulation of assisted conception. *Human Reproduction* 13(9): 2339-2342.
- Hudson, N., Culley, L., Blyth, E., Norton, W., Rapport, F., & Pacey, A. (2011) Cross-border reproductive care: a review of the literature. *Reproductive Biomedicine Online* 22: 673– 685.
- Jadva, V. & Imrie, S. (2014) Children of surrogate mothers: psychological well-being, family relationships and experiences of surrogacy. *Human Reproduction* 29(1):90-96.
- Stoll, J. (2008) *Swedish Donor Offspring and their Legal Right to Information*. Uppsala: Uppsala Universitet.
- Thorn, P. & Blyth, E. (2015) Cross border reproductive services. In Covington, S. (ed.) *Fertility Counseling: Clinical Guide & Case Studies*. Cambridge University Press (chp. 22; pp. 308-320).
- Thorn, P., Wischmann, T., & Blyth, E. (2012) Cross border reproductive services – suggestions for ethically based minimum standards of care in Europe. *Journal of Psychosomatic Obstetrics and Gynecology* 33(1): 1-6.