

Assisted Reproductive Treatment Act 1988 (SA) Review

- 1. Please comment upon the requirement within the Act that the welfare of any child born as a consequence of assisted reproductive treatment (A.R.T.) is treated as being of paramount importance, and accepted as a fundamental principle, in respect of the operation of the Act, as well as in the provision of assisted reproductive treatment.**

The welfare principle is a magnanimous inclusion in the act, however it is only worthwhile if the premise of paramountcy is genuinely accepted and adhered to.

As ART is provided as a "medical treatment" understandably and historically the primary focus has been on treating a patient or overcoming their inability to conceive or gestate a child. This focus is not so much of an issue where prospective parents are assisted to conceive their own biological children for example via hormone treatment or artificial insemination, but becomes very much more so when, for example, embryos are donated, the gametes of a deceased person are utilised or the reproductive capacity of third parties.

The legacy issue of donor anonymity is especially pressing and urgently requires examination. As was discussed in the recent Victorian ART legislation review it is impossible to "reconcile how the welfare and interests of a donor-conceived person can be in law both paramount and subordinate to donor anonymity".

The ART Act therefore fails a person conceived via the use of an anonymous donor, not only because the welfare provision is meaningless for them but also because the state has not yet acted to restore the rights that were denied them by the ineffectiveness of that provision, most fundamentally their right to know their parentage and own identity.

I hope that South Australia will look to the example provided by Victoria and effect access to information for all donor conceived people about their biological (donor) parents.

- 2. Please comment upon the replacement of the previous licensing scheme with a registration scheme for A.R.T. clinics— noting that the registration scheme now relies upon framework legislation whereby:**

**the Minister registers fertility clinics provided they satisfy specific criteria
the clinics must adhere to:**

**conditions of registrations set by the Act, the regulations and the Minister
the national accreditation scheme implemented by the Reproductive
Technology Accreditation Committee (RTAC) as established by the Fertility
Society of Australia,
the RTAC Code of Practice, and
the National Health and Medical Research Council's *Ethical Guidelines on the
Use of Assisted Reproductive Technology in Clinical Practice and Research 2004
(revised 2007), which are currently under review.***

The ultimate aim of ART is to facilitate the creation of new life, something which has regrettably become a valuable commodity, so much so that ART clinics count amongst some of the wealthiest companies in our country. It is therefore problematic that the licensing scheme in South Australia is in practice self accredited and regulated.

For service users and the people created by the practice of ART to have any faith in the industry, it must be independently accredited and open to regulation and review. Whilst patients accessing

treatment may only interact with the ART industry whilst they are undergoing treatment, the people subsequently created can be connected to the clinic where they were conceived throughout their entire lives. A donor conceived person may need to return to the clinic for health information, to report health information, for information about their donor, for assistance in locating and connecting with a donor and for assistance in locating and connecting with siblings. The donor conceived person's children may need to return to the clinic for similar services. Unfortunately to date the experiences of donor conceived people have reported on interactions with clinics or holders of records have been generally very poor.

Accreditation typically focuses on the operational aspects of ART providers and their responsibilities with respect to patients. The welfare principle in the legislation would be better served if clinics were required to give proper consideration to the initial and long term interests of the people created via ART as part of their accreditation. And then demonstrate how they propose to meet those needs within their practice.

3. Please comment on the dissolution of the SA Council on Reproductive Technology and its Code of Ethical Clinical Practice.

It is regrettable that the SACRT was dissolved as it performed many of the functions that are required and sorely absent. South Australia could look to the purpose and function of the Victorian Assisted Reproductive Treatment Authority in re-establishing the SACRT or similar body. Such a regulatory body could be further improved by requiring the inclusion of people created as a result of ART on advisory panels, committees and stakeholder meetings.

4. Please comment on the effectiveness and operation of the legislation regarding access to assisted reproductive treatment in South Australia. In particular, the conditions set out in the Act and in the regulations that relate to the circumstances in which, and to whom, A.R.T. may be provided.

The state is and should be concerned with who is accessing ART services because it funds and facilitates them. The state must be sure as far as possible that the welfare of the person to be created is paramount and provided for. Assisted reproduction is not the same as conceiving naturally, third party reproduction in particular has more in common with adoption. In serving the welfare principle it is appropriate to require the same checks and inquiries of prospective parents accessing donor gametes as those seeking to adopt.

5. Please comment on the effectiveness and operation of the Act in relation to it providing for the establishment of a donor conception register.

Without donor registers donor conceived people rely on the clinic where they were conceived preserving records pertaining to their conception and permitting them access to the information contained within them. South Australian donor conceived people are often thwarted in their efforts to find out information because the clinic where they conceived no longer operates or because their records have been destroyed.

The need for a central register to hold information about donors and donor conceived individuals is critical. Victoria provides a model for the establishment of a central and voluntary register. It may also be necessary to explore cross referencing information from the registers in other states with any data that is collected for any future South Australian registers as it is known that donor gametes were imported and exported between states.

It is recommended that a DNA database could also be established to assist individuals for whom there are no records or whose records have been destroyed.

6. Please comment on the effectiveness and operation of provisions within the Act for record keeping and confidentiality.

Unlike other records, records pertaining to ART concern the creation of a person and their genetic parentage, it is vital that any records relating to the provision of ART are retained in perpetuity. The information contained within those records may be pertinent not only to the person they concern but also their descendants. Consideration needs to be given for allowing access to the records of one person that contains critical information required by another person. Again the Victorian approach provides a model for the preservation of records and access to information.