

The Chair
Committee on Law and Safety
Parliament House
Macquarie Street
SYDNEY NSW 2000

Enquiries: Siobhan Jenner
Tel: (02) 8019 1903
Our ref: A11/0418
Your ref:

Re: Inquiry into the Inclusion of Donor Details on the Register of Births

We are pleased to provide the following submission on Inquiry into the inclusion of Donor Details on the Register of Births. The terms of reference of the Inquiry into the Inclusion of Donor Details on the Register of Births invite a consideration of the provision of to allow 'donor details' to be included on the register of births maintained by the Registrar of Births Deaths and Marriages, presumably in addition to the details of the two individuals identified as parents.

The issues and interests associated with donor conception have the potential to become complicated by life events, which are often unforeseen at the time of donation or conception. This is acutely demonstrated in the recent case before the *New South Wales District Court, AA v Registrar of Births Deaths and Marriages and BB [2011] NSWDC*¹ (the BDM Act). In that case the Court issued an order for the removal of the name of the donor from the birth certificate of a child born to a couple who later separated. The Court noted that the *Births Deaths and Marriages Registration Act 1995* (NSW) 'is merely legislation to provide for the proper recording of population details for statistical and related purposes'² and that a reading of the provisions which take into account changes made to the *Status of Children Act 1996* (NSW) means that 'only two people can appear in the [Births] Register as parents'.

The inclusion of personal information on the Register of Births about conception donors could be of benefit to donors who want their role in the conception and/or support of a child born as a result of their donation, publicly acknowledged. However, as noted above, the BDM Act does not provide for the inclusion of a third person as parent (or as a donor) on the Register. If the BDM Act were to be amended to allow for the inclusion of the identity of a third person on the registration of a birth, it is likely that this information would appear on the face of a Birth Certificate issued under the BDM Act. An Australian Birth Certificate is worth 70 points in the Australian 100 point identification system. Only passports, citizenship certificates or documents of identity have the same high proof of identity value. The characterisation of a Birth Certificate as a high value proof of identity (POI) document means that at some point an individual will be required to produce their Birth Certificate for the purpose of establishing their identity. The inclusion of donor information on a Birth Certificate

¹ *New South Wales District Court, AA v Registrar of Births Deaths and Marriages and BB [2011] NSWDC*, handed down on 17 August 2011.

² At 37

would mean that an individual who was born as a result of donor conception would not be in position to prevent that information being viewed.

If it is proposed that the BDM Act be amended to provide for the inclusion of personal information relating to donors on the Register of Births I suggest that there be consideration as to whether it may be possible to have this information withheld from Birth Certificates, particularly where the individual concerned has the capacity to make this decision themselves.

We hope you find our comments of use and we invite you to contact Ms Jenner of this Office on (02) 8688 8576 if you have any queries regarding this submission.

Yours sincerely

John McAteer
Deputy Privacy Commissioner
Information and Privacy Commission