

We can't keep them in the dark

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OPINION

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Donor-conceived children must have the right to know who they are and where they came from.

IF YOU are a child conceived with donor sperm in Victoria, your right to access information about your biological father depends on the date of your conception.

If you were born any time since 1998 you have no problems, as your donor was required to consent to identifying information being released to you. If you were born between 1988 and 1997, you have rights to receive information about your donor father only if he consents. But if you were born before 1988, you have no rights at all. Your only avenue is to put yourself on a voluntary register and hope that your biological father does the same.

Most donors pre-1988 were young university students acting altruistically, or attracted by the small fee paid to cover "expenses". The deal was that they would remain forever anonymous.

The problem is that the innocent non-parties to this deal, and the ones most affected, are the children. They are now adults and many desperately yearn for that most basic of human rights: to know who they are and where they came from.

The key questions that emerged in the Victorian Parliament's law reform committee inquiry into access to information about donors were essentially ethical: should all donor-conceived people have equal rights to access information about their donors? Should a donor-conceived person have this right even if the donor was assured of anonymity? What role, if any, should the state have in facilitating access to information about donors?

Many donor-conceived people who are unable to obtain information about their donors experience distress and anguish. Their ability to access information is constrained as a result of decisions made by adults - their parents, the donor, and medical professionals - before they were conceived. On the other hand, donors were promised anonymity. While all of the donors from whom the committee received evidence empathised with their donor offspring, some opposed the release of identifying information. They were concerned about how their existing families would be affected should their identity be released to their donor-offspring. Others wanted contact with their donor-offspring.

When the committee began its work, it was inclined to believe that the wishes of some donors to remain anonymous should take precedence and that identifying information should only be released with a donor's consent.

But by the end of the inquiry, the unanimous view was that the rights of the children should take precedence.

After receiving evidence from donor-conceived people, donors, parents, medical and counselling professionals, department representatives and academics, we decided that the state had a responsibility to provide all donor-conceived people with equal opportunity to access information about their donors.

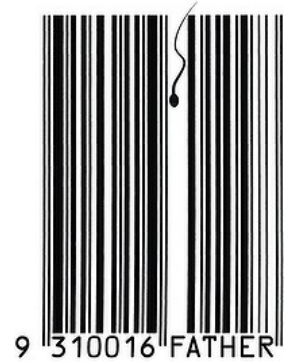
It is a ground-breaking recommendation, without global precedent. However, the committee recognises the importance of ensuring that there will be no unreasonable interference in donors' lives.

Consequently, one of the committee's recommendations is that donors, and donor-conceived people, have the ability to place a veto on contact from each other.

Giving all donor-conceived people the opportunity to access identifying information about their donors, regardless of their date of conception, is consistent with the first guiding principle found in the Victorian legislation regulating donor conception: that the welfare and interests of people born as a result of assisted reproductive treatment procedures are paramount. It is also consistent with the United Nations Convention on the Rights of the Child and Victoria's Charter of Human Rights. And it is not such a radical idea to give precedence to children's rights in these circumstances. Victorian legislation in the 1980s retrospectively allowed adopted people to access information about their birth parents, despite promises of anonymity.

Ultimately, what swayed the committee was the humanity in the passionate, cohesive arguments of the children. They were never thought of in terms of their needs and the desire they may eventually feel to know their lineage. This was one big social and medical experiment in which the donors, doctors and parents could not foresee the impact on these children. Several decades on, we know the results of this experiment. These children are young adults whom our society never properly considered.

We made a mistake 30-odd years ago, and now it is time to correct it.



Digital image: Judy Green.

Clem Newton-Brown is chairman of the Victorian Parliament's law reform committee. This is an edited text of his speech to Parliament yesterday.